

AN AMBITIOUS TTIP

- A comparative study of the EU's
different approaches to CETA and TTIP



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Abstract

The EU had recently finished negotiating a comprehensive free trade agreement with Canada, the CETA, and is currently negotiating the TTIP agreement with the US. Both agreements are 2. Generation free trade agreements characterised by the development of common rules and standards concerning among other things investment protection and sustainable development and a high degree of liberalisation in goods, service and investment. The CETA and TTIP can be compared because of the similarities in their content and because both the US and Canada are the first western develop countries to enter into a free trade agreement with the EU. Despite the highlighted similarities, the substance of the EU proposal of sustainable development and ISDS, together with the transparency in the negotiation process is characterised by a relative more ambitious approach in TTIP compared to what was done in CETA. This apparent difference in approach is analysed through the method of outcome explaining process tracing using the theoretical framework of actor-centred institutionalism. By tracing the causal process that has led to the adoption of the joint EU approach, the constellation of actors and the institutional frames that have influenced this will be identified. It is found that differences in policy goals has resulted in a different set of available policy options to the EU institutions to achieve these goals. Different and changing preferences and perceptions towards the two agreements, along with the constrain of specific institutional settings, have resulted in approaches to sustainable development, ISDS and transparency, with a higher level of ambition in the TTIP compared to the CETA.

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List of abbreviations

CA	Canada
CETA	Comprehensive Economic and Trade Agreement
EC	European Commission/Commission
EP	European Parliament
EU	European Union
FTA	Free trade agreement
ICS	Investment court system
ILO	International labour organisation
IP	Intellectual property rights
ISDS	Investor-to-state dispute settlement
MEP	Member of European Parliament
NTB	Non-tariff barriers
SD	Sustainable development
TBT	Technical barriers to trade
TTIP	Transatlantic Trade and Investment Partnership
US	United States
WTO	World trade organisation

1.0 Introduction

In the following section the area of research will be presented. After that in section 1.2 the area of research will be more precisely defined and limits in the scope of analysis will be explained. In section 1.3 the academic literature on the subject will be reviewed to make possible the positioning of this contribution within the subject field. In section 1.4 the contribution of this thesis and the research question will be described.

1.1 Area of research

The European Union (EU) has negotiated international trade deals for many years and has positioned itself as one of the largest trading powers in the world (Meunier & Nicolaïdis 2006, p.907; European Commission 2010b, p.2). Through trade the EU is not only looking to liberalise international trade and secure their economic interest, but also to use trade as an outlet for pursuing non-trade objectives like exporting political values and norms (Gstöhl 2013, p.9).

The shaping of the EU approach to trade agreements have in part been influenced by the failing of the WTO Doha round in 2005-2006 (Gstöhl 2013, p.10). After this the EU published its 'Global Europe' strategy (2006) which aimed at strengthening the EU's international competitiveness through bilateral trade agreements, however the commitment to the WTO is retained in the strategy (European Commission 2006, p.10). The 'Global Europe' also put forth the EU's take on a new trade policy in a global world:

"We do not yet live in a world without tariffs, but many sectors are moving in that direction. For Europe, knowledge, innovation, intellectual property, services and the efficient use of resources are now the keys to competitiveness. Trade policy and our whole approach to international competitiveness need to adapt" (European Commission 2006, p.3)

Here the foundation for the content of a new generation of free trade agreements (FTA) is laid out. It is no longer just about tariff reduction but about a whole range of new areas outside the scope of the WTO (Gstöhl 2013, p.10).

It is not just external events that effect the formulation of the EU trade policy, also internal factors play a vital role (Gstöhl 2013, p.20). With the Lisbon treaty trade and investment policy became an exclusive competence of the EU, and the European Parliament (EP) gained new power with the co-decision legislative procedure being extended to include the trade and investment area. The formation of the EU trade position is now to a higher degree decided by the Commission, the Council and the European parliament and their mutual relationship.

This is also the case with EU's FTA with Canada and the ongoing trade negotiation with the United States (US), both follows an approach that is the outcome of the combined positions of the European Commission (EC), the EP and the Council of ministers. Both agreements are further examples of the new generation of trade agreements aiming to fulfil the goal of being both comprehensive and ambitious:

"In terms of content new competitiveness-driven FTAs would need to be comprehensive and ambitious in coverage, aiming at the highest possible degree of trade liberalisation including far-reaching liberalisation of services and investment" (European Commission 2006, p.11)

The EU started negotiation concerning a trade and investment agreement with the US in July 2013. The Transatlantic Trade and Investment Partnership (TTIP) is an agreement that seek to decrease all tariffs and non-tariff barriers (NTB) on both goods and services between the two parties (Akhtar & Jones 2014a, p.1). It is also an agreement that aims at developing common rules and standards between the EU and the US, standards and rules which are expected to have a possible impact on the global trade (ibid). The negotiation of the TTIP has been characterised by extensive public and political awareness: the proposed substance of the agreement along with the negotiation process, has been diligently discussed and both criticised and praised. It is an agreement that like no other EU FTA has divided the European polity.

Opponents of the agreement fear that it will result in deregulation and a decrease in European standards on consumer protection, labour rights and environmental protection (Castillo 2015). This fear is grounded in the differences in these standards between the EU and the US, with the US portrayed as the one with the lowest standards. Especially the proposed increased regulatory cooperation that aims at removing NTB to trade by institutionalising cooperation between US and the EU on existing and new regulation and standards is considered to be a danger to European standards. Also the proposed chapter on investment and investment protection has resulted in concern about the possible abuse of such mechanism by multinational corporations and the impingement on the EU member states right to regulate (Castillo 2015; Maier 2013).

The proponents of the TTIP expects that the agreement will result in economic growth and job creation by exactly removing NTB's to trade like regulatory differences and ensuring that European investors will be guaranteed fair treatment in the US. The proposed removal of NBT's is especially thought to be beneficial for small and medium enterprises. The proponent does not share the concern of lower European standards, as they argue that a vital part of the EU TTIP proposal, is that an agreement will not be acceptable if European standards on any area are thought to be diminished (European Commission 2015k, p.2). They

further see the TTIP as an opportunity, together with the US, to develop rules and standards that based on European values¹ can serve as model in the global trade (Malmström 2015b).

The division in opinions have not been as sharp in regards to the EU and Canada FTA that began in 2009. The agreement did not attract much attention before the beginning of the TTIP, but is in many ways a novel EU FTA. In 2014 Canada and the EU finished negotiating the Comprehensive Economic and Trade Agreement (CETA) after five years of negotiations, a FTA that is expected to make trade and investment between the two regions easier so as to foster economic growth and job creation (European Commission 2009a). What sets the CETA apart from previous EU FTAs is that Canada is the first western, developed country that the EU has ever negotiated a FTA with (European Commission 2015a). The agreement is by the EU described as comprehensive and ambitious, meaning that the scope of the agreement covers more than just tariff reduction and that the agreement as a minimum contains the most ambitious chapters from previous agreements (The joint scoping group 2009, p.3). From 2011 the EC was granted permission to also negotiate a chapter on investment, an EU competence since the Lisbon treaty. The CETA was the first FTA to encompass the new EU rules on investment (European Commission 2015f). In many ways the CETA has been ground-breaking for EU trade politics, and some considered it to possible serve as a blue print for how the EU would negotiate its future agreement with the US.

Although the TTIP proposal builds on how previous EU trade agreements has been formulated, and also draws from the CETA experience, TTIP is in many ways more ambitious than CETA. This can be said for both the content of the TTIP as well as the negotiations process. The TTIP includes proposals on a more detailed chapter on sustainable development (SD), the 'most ambitious provisions ever put forward (European Commission 2015e, p.1), a new approach to investment protection and new rules on areas that are not yet part of the World Trade Organisation's (WTO) agenda. In terms of the negotiation process the TTIP has been an agreement that has seen unprecedented levels of transparency and stakeholder involvement. This is seen in the increased access to negotiation documents and the establishment of an expert advisory group and public hearings(European Commission 2014d).

Both Canada and the US share several similarities in terms of cultural heritage and political structures and they are both the first western industrialised regions to negotiate ambitious and comprehensive trade agreements with the EU, so it poses the question of why the common EU position has resulted in a more

¹ When referring to European values it is based on the values established in the Treaty on the European Union *"The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail"* (European Union 2007 art. 2)

ambitious approach towards TTIP compared to CETA. In the following section I will further define the area of research in terms of what will be considered within the scope of the thesis, and what will be excluded.

1.2 Defining the area of research

As the TTIP has not yet been concluded the EU proposals that have been published will serve as the foundation of the analysis. The CETA is concluded, but to make the comparison between the two agreements valid I will use the EU proposals for the CETA as well, and not the finished texts.

Although all five EU institutions² have great influence on EU policy making the focus will be limited to include the three institutions that are directly involved in formulating the joint EU approach to both CETA and TTIP and directly involved in the initiation and conclusion of FTA's. The focus will therefore be on the EC, the EP and the Council and their preferences in regards to both agreements and how these have influenced the chosen approach in each case, resulting in a more ambitious approach towards the TTIP. Lobbyism and stakeholder inclusion are an intricate part of EU policy making, and will not be included in this thesis.

I will analyse the differences in level of ambition in the approach in the two agreements in two ways: The first is connected to the substance of the two agreements. It is outside the scope of this thesis to investigate all areas of content in which the TTIP is more ambitious than the CETA, and it will be limited to include the following: SD chapter; as noted previously the proposal for TTIP is viewed as the most ambitious in any agreement to date and investor-to-state dispute settlement (ISDS); as it has been a controversial issue for both CETA and TTIP. Where it is relevant, conclusions will be made about the more general content of the two agreements. The second way is connected to the EU side of the negotiation process; here the focus will be on transparency; inclusion of stakeholders and any initiatives with the aim of increasing transparency in the negotiations.

To identify any measure in the TTIP as 'more ambitious' than in the CETA will require the measure to go beyond what has been done in the CETA. This definition correspond with how the EU uses the word 'ambitious' in trade agreements, both in CETA and TTIP negotiation directive it is mentioned that the content should go beyond WTO commitments (Council of the European Union 2013b, p.2; Council of the European Union 2009, p.4). Instead of using the WTO commitments as the base line for the level of ambition the CETA will be used. When the word 'ambitious' is used about one of the two agreements without any comparison, the definition becomes more complex. EU defines both CETA and the TTIP as

² The European Court of Justice, the European Council, the Council of ministers, the European Commission and the European Parliament

being ambitious despite there being differences in the two agreements. The definition of the word 'ambitious' according to the Oxford English dictionary is as following "[a] piece of work intended to satisfy high aspirations[...]". Translated into EU trade policy this means that an agreement is ambitious if it satisfies the politically defined goals which are based on the EU trade policy. In the analysis an approach will be defined as 'ambitious' if it is regarded to satisfy policy goals and as 'more ambitious' if it goes beyond what has been done before.

As mentioned previously both external and internal factors have an influence on the EU trade policy, but it will be the internal processes of the EU policy making that will be in focus in the following analysis. The external international political landscape as a primary factor of influence will not be included, but if these factors are used as an argument by any of the EU institutions to justify specific actions they will be taken into account. The focus on the EU side of the negotiations also means that both the Canada and the US side of the negotiations as well as their relation with the EU will be outside the scope of this thesis. For clarification purposes; when a reference is made to the 'negotiation' or 'negotiation process' it will thus refer to the internal negotiation between the three EU institutions in formulating the joint EU approach and not to the negotiation between EU-Canada or EU-US, unless explicitly stated.

The influence of lobbyism is also to be considered outside the scope of this research. Although lobbyism on several occasions has been demonstrated to have an influence on EU policy making and on the preference of the EU institutions (Traynor et al. 2014) the purpose of the analysis is to account for the institutions current preference and how that have influenced the outcome.

As the previous outline has shown there are many social, economic and political reasons to further investigate the differences in approach to the CETA and TTIP respectively. I will now turn to the more academic relevance of the subject.

1.3 Literature review

In this chapter the literature on the subject of the TTIP and the CETA are examined to determine what is already known in this area, and where this study will offer its contribution. First the literature in TTIP will be examined and from section 1.3.5 the literature on CETA will be examined.

1.3.1 The Transatlantic Trade and Investment Partnership - TTIP

The negotiations of the TTIP seems nowhere closer to a final agreement than when the EU and the US first started negotiations in 2013, despite this there is already an extensive body of literature on the subject. Some literature is critical towards the agreement, either criticising economic expectation or doubting that the agreement will benefit other than the big transnational corporations (Alemanno 2015). Others try not

to judge prematurely and offers recommendations on what to include or exclude in the agreement (Hoekman 2015; Schott & Cimino 2013; Imperiali 2014). There is a lot of literature concerning itself with different aspects of the TTIP, the most influential presented below.

1.3.2 Economic impact

The economic impact of the TTIP is used by both proponents and opponents of the agreement, and the primary question sought answered in the literature in this field is regarding the distribution of wealth. The possible economic gains from TTIP has been documented in various studies, some published on request of the EC itself (Francois et al. 2013). These studies have been used to justify the FTA to a certain degree by promising growth and job creation (Felbermayr et al. 2013; M. Lind et al. 2015; Francois et al. 2013). The study from Felbermayr et al. is a comprehensive study analysing the economic effects of the TTIP considering different scenarios. This study is generally positive towards the TTIP, although it also lists possible negative effects. Other studies downplay the economic benefits even when best case scenarios are being used (Raza et al. 2014; Cardoso et al. 2014; Myant 2014). What is common for most of the studies with an economic perspective is that the benefits will not derive from eliminating tariffs, as they are already very low, but from regulatory harmonisation/economic integration (Felbermayr et al. 2013; Raza et al. 2014; Bendini & Przetacznik 2014). The size of the alleged benefits depends on the scope of harmonisation. Most literature also agree on that not all European countries will benefit equally from the agreement, as some intra-European trade will be replaced by EU-US trade (Raza et al. 2014; Bendini & Przetacznik 2014).

Included in some of the more comprehensive studies, along with being the main focus of a few studies, is also an assessment of the TTIP's impact on third countries. The overall estimate is that the principal third country trade partners to the EU and US stand to lose with the agreement (Bendini & Przetacznik 2014; Felbermayr et al. 2013). However if third countries manage to adapt the one set of regulatory standards in the TTIP, there might be some economic gains (Cardoso et al. 2014; Seshadri 2013; Akman et al. 2015).

Common for the majority of the economic studies of the TTIP is the positive attitude towards the opportunities the agreement will possibly provide; even if economic gains are small they are there, and there is a possibility for developing common regulatory standards that will also benefit third countries.

1.3.3 Political impact

Within the literature there is a general consensus that the TTIP will have a huge political impact both within the US and EU but it is also expected to have a certain impact on global politics. When the political impact is examined the focus lies more with the content of the agreement, possibilities and perils, and in some cases a more normative approach is taken reflecting on what should be a part of the agreement and giving

recommendations. Within this group the literature can roughly be divided into two categories; the more comprehensive studies of the TTIP within different analytical frameworks (Buonanno et al. 2015; Serfati 2015; Schott & Cimino 2013; Cardoso et al. 2014; Akhtar & Jones 2014b; Akhtar & Jones 2014c) and the studies focusing more specifically on the repercussions of regulatory harmonisation (Lester & Barbee 2013; Hufbauer & Cimino-Isaacs 2015; Alemanno 2015; Hoekman 2015), or other controversial aspects like the ISDS mechanism or democratic issues (Petersmann 2015; Imperiali 2014; Bronckers 2015)

The first group of studies often starts out by placing the TTIP within a certain analytical framework to which the subsequent research will refer to. Buonanno et al. 2015 places the TTIP within the larger aspect of transatlantic governance and shows how the TTIP is a continuation and possibly a renewal of the transatlantic partnership between US and EU. Cardoso et al. (2014) and Serfati (2015) both place the TTIP within a more political economy perspective (Serfati also draws on a more geo-political framework). Cardoso et al. has a very broad approach to the TTIP both examining the effect of the TTIP on consumer rights, 3rd countries and the economy along with a focus on specific policies like the ISDS and regulatory cooperation. Generally this study is negative towards the TTIP, and predicts a dim future if the TTIP is implemented (Cardoso et al. 2014). The circumstances resulting in this conclusion is the lack of transparency in the negotiation process, along with a lack of trust in the negotiation directive given to the EC (Serfati 2015; Buonanno et al. 2015).

The TTIP is an agreement that divide opinions also within academic circles, especially when asking the question if the TTIP will be beneficial and to who. If the TTIP managed to be ratified in its most ambitious version some studies predict that the TTIP could have a large positive political impact both within the EU and US, as there would be an opportunity to heighten standards within consumer safety, labour standards etc., but also on a more global scale, as standards agreed on, could be 'exported' to the rest of the world (Schott & Cimino 2013; Buonanno et al. 2015). Other studies predict more negative consequences of a comprehensive agreement focusing in particular on the risk of downward spiralling standards as a result of regulatory harmonisation and the hampering of national environmental or social regulation caused by trans-national corporations exploiting the ISDS mechanism (Serfati 2015; Cardoso et al. 2014; Maier 2013; Petersmann 2015).

1.3.4 Regulatory cooperation, ISDS and democratic issues

Besides the very comprehensive studies of the TTIP in its entirety, some literature is concerned with more specific areas of the agreement. There is a broad consensus that the chapter on regulatory cooperation is both the most difficult to agree on, but also has the potential for extensive benefits, both economic and politically. There is a general public concern that components like mutual recognition and harmonisation of

standards, might result in 'a race to the bottom' and inflict upon the governments sovereign right to regulate (Alemanno 2015). The literature however concludes that if designed appropriately by including stakeholders and keeping processes transparent, the regulatory cooperation could result in more efficient regulation and at the same time keeping high levels of security (Chase & Pelkmans 2015; Hoekman 2015; Alemanno 2015). Global implications of a possible EU/US regulatory cooperation is a subject also emphasised; as several studies point out, the WTO and the Doha rounds has failed to make any serious progression in multilateral regulatory cooperation, and therefore the outcome of the TTIP could be used as a blueprint for future multilateral regulatory cooperation (Hufbauer & Cimino-Isaacs 2015; Chase & Pelkmans 2015).

The ISDS mechanism envisioned to be included in the agreement as well, poses some issues. Some highlight the negative impact the ISDS mechanism has had in other FTAs on areas such as environmental and social policy (Serfati 2015; Cardoso et al. 2014), whilst other mention the public and political opposition towards the TTIP and why there is a need for a ISDS in a FTA between two very democratic developed regions (Buonanno et al. 2015; Akhtar & Jones 2014b; Serfati 2015). The literature also agree on, that to be accepted as a part of the TTIP from all involved parties, it might need to be reformed and altered to address some of the strong opposition (Buonanno et al. 2015; Bronckers 2015), if this is done the inclusion of ISDS in the TTIP can pose as a standard for future FTA's.

A last group of studies is focusing on the democratic procedures surrounding the TTIP, questioning trade agreements and their ability to safeguard citizens' democratic rights. Some offers recommendations on how to improve transparency and democratic legitimacy (Imperiali 2014), while others claim that trade agreements in general and the TTIP more specific undermine democracy, are a threat to civil rights and that the agreement will be favouring industrial interests (Petersmann 2015; Maier 2013).

1.3.5 Comprehensive economic and trade agreement - CETA

After five years of negotiation a final agreement on CETA was reached in 2014. Despite CETA being the first comprehensive trade and investment agreement negotiated between EU and an industrialised country, the agreement has received less academic attention than the TTIP. The literature on CETA is mostly concerned with specific areas, and few concern themselves with the entirety of the agreement. Most studies also share the feature of primarily examining the CETA from a Canadian point of view and the impact on EU is mostly addressed in economic studies.

1.3.6 Economic impact

The economic gains from CETA are examined in a study made by the EC and the Government of Canada. The focus is particular on non-tariff barriers and what possible costs and benefits there would be in

removing them (European Commission & Government of Canada 2008, p.ii). The study concludes that an agreement will result in economic gains for both regions, although most substantially for Canada, and that the biggest contribution to these benefits would come from liberalisation in services (European Commission & Government of Canada 2008, p.167). Patrick Leblond (2007) uses this study to comment on the possible economic gain for both the EU and Canada. The CETA is highlighted as a 'second generation' agreement where the focus is not just on tariff elimination but also on NTB's and regulation.

1.3.7 Political impact

The group of studies that focusses on the political implications of the CETA, for the most part has a Canadian outlook. CETA is by several authors highlighted as being important for Canada due to its relative weak trade position globally (Deblock & Rioux 2010; Leblond 2007). The motivation for Canada to initiate the CETA is found in the stalling of the WTO Doha round, the weakening of NAFTA and the advances that EU has made on other trade fronts (Deblock & Rioux 2010; Schwanen 2011). However it is also emphasised that Canada should be cautious in the negotiations process, as an agreement that will be beneficial to Canada is not something that will necessarily come by easy but demands a lot of hard work (Schwanen 2011).

There is a wide agreement on that the CETA can be beneficial for Canada both political and economic if Canada manages to turn the negotiations in their favour. The most comprehensive study analysing the finished text (before the legal review that is) has a very critical view of CETA, concluding that the risk connected to the substance of the agreement clearly outweighs the benefits (Sinclair et al. 2014; Whittington 2014). Not much attention is given to the possibly positive political and economic gains for Canada.

1.3.8 Specific aspects

The most extensive group of studies examining the CETA, are concerned with more specific policy areas of the CETA. Some have been published during the negotiation process, and gives an account on what could be expected in terms of the content of the agreement and offers recommendations.

Both the issue of ISDS and intellectual property rights (IP) have been highlighted as problematic for Canada in the CETA agreement (Schwanen 2011; Grootendorst & Hollis 2011). To make sure that there is an incentive to research in new medicine, rules on IP have been included on CETA, the author suggests that there could be other ways to encourage research without the cost for the consumer, and is not particular enthusiastic about the IP proposal in CETA (Grootendorst & Hollis 2011). An equally sceptic approach is found with regards to ISDS. It is viewed as having almost exclusively negative consequences for the both the governments and the consumers in EU and Canada (Eberhardt et al. 2014) and it is suggested to leave a

ISDS mechanism out of TTIP altogether regarding the extensive concern the ISDS in CETA has caused (Rostowska 2013).

The areas of regulatory cooperation and public procurement are assigned importance (Schwanen 2011; Krstic 2012). Krstic (2012) places CETA within the context of regulatory cooperation in trade agreements more generally, highlighting what challenges the CETA faces in this area, and the potential of the agreement of serving as a model for future FTA's (Krstic 2012). Concerning public procurement it is seen as an area that has potential economic gains for both EU and Canada (Schwanen 2011; Hübner 2010).

Escobar's (2015) analysis of the finalised agreement places the CETA as the, for now, final chapter of the EU's agenda on sustainability and investments in FTA's. She does not give the agreement much credit in terms of enforcing and upholding sustainability, pointing to several flaws where she sees lost potential. The inclusion of a sustainable development chapter is however in line with the EU agenda on sustainability, but the investment chapter leaves something to be desired, which might be explained by the lack of EU FDI-framework to reference (Escobar 2015).

1.3.9 Democratic issues

Besides the studies focussing on the substance of the CETA, a few studies also concerns themselves with democratic issues in connection with CETA. The main argument is that the CETA negotiations lack transparency and that the democratic legitimacy is threatened by the lack of stakeholder inclusion (Fafard & Leblond 2013; Trew 2013; Rostowska 2013). The concern over democratic issues is founded in the asymmetry in which stakeholders are included and indeed listened to, it is clear that corporate interest have had a more prominent influence on the negotiations than the civil society interest (Trew 2013). Further the poor integration of the provinces into the negotiations provinces has not only delayed the negotiations but has also given the provinces the competence to refusing to implement, or only partially implement CETA (Fafard & Leblond 2013). Recommendations is offered on how to improve the negotiations design so as to integrated the provinces more, and heighten the chances of success in implementation (Fafard & Leblond 2013; Rostowska 2013).

1.4 Contribution of thesis and research question

The studies of the economic impact of CETA and TTIP have generally used economic theories that have prompted quantitative approaches. Other studies has taken a starting point within the area of political economy, international relations or policy formulation employing a qualitative approach some employing comparative methods to compare CETA and the TTIP proposal with what has already been done in other trade agreements. Academically the TTIP, and CETA to a slightly lesser degree, has been thoroughly scrutinised from many different angels, but of all the studies included here, few have investigated in detail

how the EU institutions has influenced the negotiation proposals and which effect this have had on the approach chosen in negotiations in regards to both CETA and TTIP. Often the comprehensiveness and level of ambition in the agreements are attributed only geopolitical considerations. In international politics EU is often defined as an actor in its own right with a mind of its own, or the EU is represented by the EC. This simplification is justifiable and sometimes empirically necessary; however analyses that look into the inner workings of the EU institutions and what actions might come from their interaction can contribute with equally important information and it is here this thesis will be of relevance.

This thesis will use actor-centred institutionalism to shed light on the EU institutions influence on the negotiation proposals, and will be using outcome explaining process tracing to investigate the causal pathway that has led to the differences in approach in the CETA and TTIP negotiations.

With both the social and academic area of research being thus far developed my contribution within these areas will answer the following research question:

What internal factors in the EU have caused a different more ambitious approach to the Transatlantic Trade and Investment Partnership, compared to the Canada-EU trade agreement?

Following the development and operationalisation of my theoretical framework sub-questions will be derived to guide the analysis and answer the research question, thus adhering to a more deductive approach.

1.5 Readers guide

Chapter 1: Here the area of research is defined and the academic literature is examined in order to define where this thesis will make its contribution.

Chapter 2: Here the theoretical framework guiding the thesis will be explained and empirical indicators to guide the analysis will be defined.

Chapter 3: Here the methodological considerations will be presented and the research design structuring the thesis will be presented.

Chapter 4: Here the four parts of the analysis is included, together their purpose is to answer the research question of this thesis

Chapter 5: This chapter included the conclusion where the research question will be answered.

2.0 Theory

In this chapter the theoretical framework to be used to guide the analysis will be developed. In section 2.1-2.2 the more general considerations of the framework will be outlined. In section 2.3-2.5 a more detailed account of the theoretical concepts to be employed in the analysis and how they will be operationalised. Concluding this chapter some working questions based on the operationalisation of the concepts will be presented with intend to serve as the structure of the analysis.

2.1 Actor centred institutionalism

The framework provided by Fritz Scharpf proposes to combine an actor approach with institutionalism. The argument for this new framework is that *“... social phenomena are to be explained as the outcome of interactions among intentional actor [...] but that these interactions are structured, and the outcome shaped, by the characteristics of the institutional settings within which they occur.”* (Scharpf 1997, p.1) In other words, rational choice theory might provide a part of the explanation for human action, but institution specific information like capabilities, cognitions and preferences should be considered as well (Scharpf 1997, pp.20–22). This is further an illustration of Scharpf’s use of both rational choice and social construct to develop his framework on human behaviour (Scharpf 1997, p.21). He acknowledges that human behaviour can to a certain extent be guided by motives of self-interest, but outside an economic setting, humans’ behaviour will also be shaped by culture and socially constructed beliefs (ibid). The area of research is focussed on the EU institutions and how their interaction and specific institutional traits have resulted in different approaches to two comparable trade agreements the TTIP and the CETA. Scharpf’s theoretical framework presents tools that can guide an empirical analysis of the phenomena and contribute to an explanation of the outcome.

Scharpf stresses that what he (along with his colleague Renate Mayntz) has developed is not a theory but a framework, along with a set of analytical tools to be used by policy researches. Some of these tools take their starting point in game-theory. What can be learned from game theory when being applied to social sciences, is that a social phenomenon *“...must [...] be understood as an encounter among intelligent and resourceful actors who are likely to respond to any moves in order to improve their own situation”* (Scharpf 1997, p.99) meaning that a focus on strategic interdependence between actors can be a useful contribution to social science research. With regards to the later analysis this has the implication that it is not only the independent preferences of the individual actors that might influence the policy outcome, but also the actors’ interdependence. This argument will be further developed in the section on actor constellations.

2.2 Composite actors

Before expanding one of the most central concepts of Scharpf's theoretical framework, the actor and its characteristics, I will use his concept of 'composite actors' to justify the definition of the three EU institutions as 'actors'.

"A composite actor implies a capacity for intentional action at a level above the individuals involved" (Scharpf 1997, p.52). This concept allows us to treat aggregates of individuals as an actor with the capability of intentional action. A presence of coordinated action is a prerequisite to treat aggregates of individuals as a composite actor (Scharpf 1997, pp.53–54). In other words *"the individuals involved intend to create a joint product or to achieve a common purpose"* (Scharpf 1997, p.54).

The EU institutions involved in the CETA and TTIP negotiation will for the purpose of the rest of the analysis be classified as composite actors³. The European parliament, the EC, and the Council are the institutions directly involved in the negotiation process and can all be defined as composite actors, as they adhere to Scharpf's definition of having the capacity for intentional action, and each of the institutions are composed of individual actors whose intention is to pursue a common purpose.

Now that the EU institutions have been defined as actors I will turn to Scharpf's concept of 'actors' and expand on how this concept and its features will be used in the analysis.

2.3 Actors

In this section the concept of actors will be unfolded according to Scharpf's definition. The definition presented will allow for us to proceed on to the part of the framework that explains actor behaviour. Before actors can be identified the set of interactions that produce the outcome we wish to explain should be identified (Scharpf 1997, p.43). The set of interactions in focus here are the TTIP and CETA negotiations. It is however not the negotiations themselves and their possible outcome that has the analytical focus, but the interaction between the EU institutions when deciding on a joint EU approach to the two agreements. Actors are the components involved in the interactions that produce policy outcomes and Scharpf characterises actors with three specific features: capabilities, perceptions and preferences (ibid).

2.3.1 Capabilities

Refers to action resources; both physical resources like money and personal properties like intelligence, human and social capital or institutional rules, which enable the actor to influence the outcome (Scharpf 1997, p.43). It is capabilities related to institutional rules that will be included in the analysis. When analysing the official institutions of the EU, their capabilities are fairly transparent; each institution has

³ it will used interchangeable with 'actor' – if there is referred to a person the term 'individual actor' will be used.

different institutional capabilities in connection with trade negotiations that are both formally and informally defined. Capabilities will be further operationalised in connection with modes of interaction in section 2.5.2.

2.3.2 Perception and preferences

This characterises the specific action orientation of the actor. These characteristics are in rational-choice theory assumed to always be stable, in this framework however they can be stable but they can also change through learning or persuasion, and are influenced by the institutional setting. Both concepts cover the complexity of actors' motivation and require further explanation; this will be done in section 2.4.2 and 2.4.3.

2.4 Actor orientation

This section will describe the part of the theoretical framework that characterises actors' behaviour. This section will give an account of what factors motivates actors behaviour, and how these will be utilised in the thesis to contribute to an explanation to answer the research question.

Actor orientation explains an actor's intentional action and what kinds of strategies are available to that specific actor. With regards to the area of research actor orientation can explain the behaviour of the three EU actors when their approach to the three focus areas in CETA and TTIP was chosen, and what constituted their available strategies. Actions are however not motivated by the *"...actors' objective interests but by their subjective preferences"* (Scharpf 1997, p.60). Subjective action cannot always be directly observed and Scharpf (1997) therefore presents a framework that disaggregates the complex notion of actor orientation into simpler components that can be empirically observed or determined institutionally. (Scharpf 1997, p.60) The three explanatory factors of actor orientation is, 'unit of reference', 'cognitive orientation' and 'preferences'. Of these three factors the first will be used as a methodological tool to critically asses my collected data, especially the interviews made. The two last factors will be guiding the empirical analysis (Bähr 2010, p.7).

2.4.1 Unit of reference

The unit of reference is important for an individual actor's orientation. The behaviour of an individual should be related to the unit of reference on *"...whose behalf action is taken and from whose perspective intentional choices can be explained"* (Scharpf 1997, p.61). As the analysis is focussing on behaviour of composite actors and not individuals this factor will to this end guide my processing of data from interviews more than it will be used to guide the analysis.

2.4.2 Cognitive orientation

Perception

A central aspect of cognitive orientation is perception. This refers to how an actor perceives a policy problem, “[...] which options are available to solve the policy problem or achieve policy goals, and which outcome is related to the respective option” (Bähr 2010, p.32). The actor’s hypothesis of cause and expected effects will serve as the basis on which action is taken (Scharpf 1997, p.63). This causal linkage is shaped by policy paradigms and causal theories in that particular institutional setting and time (Scharpf 1997, pp.63, 66). It is understood that the actors in institutionalised interactions will share these cause-effect hypotheses, unless there is a reason to think otherwise, but that applying a different causal theory will result in different available strategic choices (Scharpf 1997, p.62). For the actors in the CETA and TTIP negotiations this means that different perceptions could result in different choices of approach based on which one the actors’ will be considered to be the most adequate solution to their particular perception of the CETA and TTIP (Bähr 2010, p.25).

Empirical indicators: An indicator of perception will be a reference in the empirical evidence to the general position of the actors towards CETA or TTIP; this can for example be manifested by statements of support or opposition towards the entirety of the agreements. Concerning indicators of the actors’ cause-effect hypothesis it will be reference in the empirical evidence to the actors’ position towards their own approach in regards to the three focus areas and what outcome they expect to follow from this approach. It is outside the scope of the thesis to thoroughly investigate all the actors’ available options in regards to the three focus areas, therefore the emphasis will be on the actors’ already chosen approach.

2.4.3 Preferences

This last explanatory factor is a complex concept dealing with actor motivation. Together with perception this is what guides the actors’ choice of approach. To become empirically useful it needs further disaggregation. Scharpf (1997) divides it into four components; Basic self-interest, normative role orientation/norms, identity and Interaction orientation. The first three components all inform preference formation in individual actors, while the fourth informs preference formation in the relation between actors. The fourth concept will not be applied in the following analysis as the concept of ‘mode of interaction’ will more adequately explain the interdependence between the EU actors in the two negotiations. Scharpf’s concept of preference combines, like the rest of his theoretical framework, ideas from both a rational choice and a constructivist approach on what motivates an actor’s strategic choices. He follows March and Olsen (1998) in adopting the view that political action cannot be accurately explained

from only a focus on either self-interest or norms (March et al. 1998, p.952). Where March and Olsen see preference and identity and norms as separate components that affect actor behaviour, Scharpf sees identity and norms as what informs an actor's preference and through this constitute the behaviour. I will adhere to Scharpf's definition of the relationship between preference and identity and norms. March and Olsen also introduce the concepts of logic of consequentialism and logic of appropriateness (March et al. 1998). Their definition of these two concepts complement Scharpf's preference components and applied together will make a more comprehensive framework for the analysis.

2.4.3.1 Basic self-interest – logic of consequentialism

For an organisational actor self-interest can be defined as organisational survival, autonomy and growth (Scharpf 1997, p.64). Pursuit of self-interest is by March and Olsen defined by the logic of consequentialism, where the goal of an action is to “[...] maximize or optimize one's interests [...]”(Risse 2012, p.147). Action is motivated by calculation on what will have the best result for oneself (March & Olsen 2009, p.5). When the self-interest of the EC, the Council and the EP has to be determined, it is by these two complementary definitions necessary to look at whether or not the motives for certain actions are based on the expectation that the following outcome will optimise the actors' interests or the interest of those they represent. 'Self-interest' will be used interchangeably with 'interest'.

Empirical indicators: An indicator of self-interest as motivation for action will be reference in the empirical evidence to economic or political benefits/gains both for the separate actors but also for the ones they represent, improvement of status quo and affirmation or strengthening of institutional competences. When the EC is representing the EU, self-interest in terms of growth can be reference to either internal growth manifested by the further integration of EU investment and trade policy or external growth manifested by the export of European values and specific policy designs.

2.4.3.2 Norms – logic of appropriateness

This covers normative expectations that are connected to a person holding a specific position. It does not have to be in the shape of formal legal rules, but these expectations should be shared among participants (Scharpf 1997, p.64). Norms can also refer to organisational purpose, goal or mission to be achieved by a specific action, or to rules that institute as specific behaviour (Scharpf 1997, p.64). March and Olsen add to this by defining their logic of appropriateness as rules that defines appropriate behaviour in a given situation and often in connection with a specific role (March & Olsen 2009, pp.3–4; Risse 2012, p.148). Appropriate behaviour being “[...] *internalized prescriptions of what is socially defined as normal, true, right or good, without, or in spite of, calculation of consequences and expected utility*” (March & Olsen 2009,

p.3). This means when actors' behaviour is motivated by what they consider to be the appropriate response without necessarily considering their self-interest.

Empirical indicators: An indicator of normative role orientation will be reference to informal rules and norms manifested by expectation of a certain kind of behaviour, or organisational purpose. Expectations are often easiest to identify when they are not met, so I will look at critique towards the actors in their way of handling the negotiations. An indicator of norms will further be reference to behaviour that does not necessarily consider self-interest or behaviour that corresponds with behaviour in previous trade negotiations, manifested by considerations of policy coherence. Formal rules will be addresses in regards to mode of interaction.

2.4.3.3 Identity

Both self-interest and norms should make it easier for actors to choose between possible strategies, but sometimes actors can find themselves in situations where neither self-interest nor norms can guide their actions. A clear corporate or individual identity can help an actor in reducing the complexity of their available choices and will inform other actors what actions can be expected (Scharpf 1997, p.65). This concept will only be used when there is ground for inferring that an organisational identity has had a significant influence on the chosen approach, meaning that motives of self-interest or norms have been of secondary considerations.

Empirical indicators: Identity will be recognised as motives based on a clear self-defined role that adheres to a particular set of values. It can also be reference to political ideologies.

2.4.4 Changes in preferences and perception

According to Scharpf different preferences and perceptions will guide what actions the actors choose to take, and is formed in regard to the particular policy problem at hand (Scharpf 1997, p.43). However Scharpf also stipulates that preferences and perception can change with regard to a specific policy problem trough the course of time (Scharpf 1997, p.66). There is the possibility that the EU actors will change their preferences and perception in regards to CETA and TTIP respectively during the negotiation process, and there should be paid attention in the analysis to any such change. While CETA and TTIP might be characterised as two different policy problems and as such the perception and preferences towards these will also be different, the three areas on which they are compared can be considered as the same kind of policy problems, from CETA to TTIP. Preferences towards ISDS, SD and transparency might therefore be characterised by changes from CETA to TTIP. Change in preferences and perception can be the result of either learning or persuasion (Scharpf 1997, p.43) and the change in perception can further be caused by change in causal theories (Scharpf 1997, p.66).

Empirical indicators: An indicator of change in preferences or perception will be reference to learning processes or persuasion. Learning is manifested as increasing access to information, active participation in the negotiations, new knowledge, the use of new capabilities, and experiences from previous trade agreements. Persuasion is manifested as pressure for change based on arguments of legal or moral obligations, the adoption of an argument that is not initially one's own and change of approach due to discussion, debate or consultations. An indicator of changes in perception will further be reference in the empirical evidence to changes in causal theories, meaning if the effect of an approach is perceived differently than it was initially.

Summary

The actors' choice of approach is informed by preferences and perception towards a specific policy problem and possible solutions. Preferences are further informed by; self-interest, norms or identity. Empirical indicators have been defined for each concept to guide the analysis. With the theoretical framework for describing the actors preferences thus operationalised, the next section will develop Scharpf's concepts of actor constellations and mode of interaction. Both concepts are relevant when analysing the approach to TTIP and CETA as the actors' preferences vis-à-vis each other and the institutional frame within which the negotiations take places will influence the choices available to the actors.

2.5 Actor constellation and modes of interaction

The outcome of policy making is the result of the interaction between intentional actors shaped by institutions (Bähr 2010, p.33), this situation is described as *"...the combination of a specific 'actor constellation' and a specific 'mode of interaction'"* (Scharpf 1997, p.44). Both can vary independent of each other and both have explanatory power in terms of accounting for specific actions (Scharpf 1997, p.44).

2.5.1 Actor constellation

Actor constellation is meant to be a simplified model of *"The players involved, their strategy options, the outcomes associated with strategy combinations, and the preferences of the players over these outcomes"* (Scharpf 1997, p.44). Scharpf sees this concept as being the link between substantial policy analysis and interaction oriented policy research (Scharpf 1997, p.45) meaning that by mapping the policy problem into the actor constellation, we will get an indication of the actors strategies and preferences and how these converge or diverge (Scharpf 1997, p.48). This concept is a part of the framework explaining policy outcomes, by describing the relation between the actors involved (Bähr 2010, p.51) in this analyses however the focus is not on how the EU managed to reach an agreement on the approach to CETA and TTIP respectively but more about why TTIP approach is more ambitious than the approach to CETA. The actor constellation concept will be used to make visible the difference in preferences and strategies with regards

to CETA and TTIP and illustrate the actors' preferred outcome over both CETA and TTIP in relation to each other.

2.5.2 Modes of interaction

Modes of interaction are where actor constellations are played out, and can be described as: 'unilateral action' (non-cooperative), 'negotiated agreement' (cooperative), 'majority vote' or 'hierarchical direction' (Scharpf 1997, p.47). These all describe institutional structures with specific rules in which actor interaction takes place, and influence which strategies are available to the actors and how they interact. The institutional rules also define the capabilities of the actors. Modes of interaction are not only defined by the institutional rules, under which they function, but also by the different institutional settings. These settings will influence the character of the institutional structures, and describe more in detail how the actors' interactions are guided (Scharpf 1997, pp.46–47). The EU's institutional design can, depending on the policy issue, be characterised by all of the mentioned institutional structures. It will be analysed which institutional structure and setting guides the negotiation process of developing an approach to CETA and TTIP respectively and which capabilities the actors are granted within the given institutional design. In the context of policy research the capabilities that matter are "[...] *competencies and granting or limiting rights of participation, of veto, or of autonomous decision in certain aspects of given policy processes*". (Scharpf 1997, p.43), access to information will also be included as capability (ibid).

2.6 Summary of theory

All of the described theoretical components will be employed together in the following analysis and seek to explain how the actors' perception, preferences and the specific institutional structure of the negotiations has resulted in the difference in approach with regards to the three area of focus in TTIP and CETA. The operationalisation of the different explanatory factors has resulted in the following working questions that will serve as the structure of the analysis.

Work questions:

1. What are the actors' preferences towards CETA and TTIP?
2. What are the actors' perception of CETA and TTIP?
3. How does the actor constellation look in the CETA and TTIP negotiations respectively?
4. What is the mode of interaction in both the CETA and TTIP negotiations?

When these questions have been answered through the four parts of the analysis it will enable me to ultimately answer the research question by providing conclusions that together can sufficiently serve as an explanation for the differences in approaches with regards to CETA and TTIP. However before the

theoretical framework can be adequately employed the methodological considerations structuring the thesis have to be accounted for. This will be done in the following chapter.

3.0 Method

With the theoretical framework and suitable working questions developed in the previous chapter I will now turn to the accounting of the methodological considerations. In section 3.1 the research design will be explained, followed up by the case selection in section 3.2. In section 3.3 the selected empirical data will be presented and in the last section, 3.4, considerations of validity and reliability in the thesis will be discussed.

3.1 Research design

To adequately be able to answer my research question information is needed about the institutional frames of policy making in the EU in regards to trade negotiations and the actors' individual roles and their relationship in the process of developing the joint EU approach. Further information about the CETA and the TTIP in regards to the chosen focus areas of sustainable development, investor-to-state dispute settlement and transparency and the actors' position towards these is of vital importance to answer the research question. The evidence needed to give an adequate explanation to the posed question should clearly illustrate if internal factors in the EU trade negotiation process can account not only for the difference in approach towards TTIP and CETA, but also account for the higher level of ambition in TTIP compared to CETA. This evidence will be found through the answering of the four working questions which have been based on the theoretical concepts of perception, preference, actor constellation and mode of interaction as developed in the actor-centred institutionalism cf. chapter 2.0. Answering these questions will be done by analysing the collected empirical data using the empirical indicators, which have been defined with regards to each concept. To be able to give a satisfying explanation to the research question a multiple case study is considered the most appropriate method (Yin 2009, p.4). The two cases of the CETA and the TTIP are selected by the method of most-similar cases as identified by John Gerring: *"The researcher looks for cases that differ on the outcome [...] but are similar on various factors that might contribute to that outcome [...]"* (Gerring 2008, p.668). The most-similar cases differ in all but one aspect, however in the complex world of social science this an ideal that cannot be fulfilled, and therefore the use of most-similar cases will be an approximation to this ideal. When doing a case study there are some potential pitfalls to consider. Yin (2009) especially points to the risk of case study as lacking methodological rigor; being sloppy, unsystematic and biased (Yin 2009, pp.13–16). To overcome this, the area of research have been thoroughly defined, empirical indicators have been defined for the purpose of explanation, and a group of standardised questions have been formulated to be applied in both cases to ensure

comparability (L. George & Bennet 2005, p.69). These steps will also help to strengthen the reliability of the research. To structure the thesis the method of outcome explaining process-tracing will be used to examine the processes leading to the adoption of the specific approaches in the area of SD, ISDS and transparency in both CETA and TTIP. The causal process is traced backwards by identifying the actor constellations and mode of interactions in connection to the three defined areas. (Dagnis Jensen & Nedergaard 2012, p.847). The purpose of employing this method is to get a sufficient explanation to the research problem through a theory guided analysis, the ambition is to highlight this particular case and not to be able to generalize the findings to a broader population (Beach & Pedersen 2013). To trace how a specific approach was chosen in regard to each of the three areas a paper trail has been created for each of the actors, identifying their position and possible changes in this. This is based on official documents from the EC, the Council and the EP supplemented by independent reports and articles. Further a series of interviews have been conducted resulting in essential information regarding the actors' position towards the areas and concerning the mode of interaction for both the CETA and the TTIP. A more thorough account of the selected data and interviews will be given in section 3.3.

3.2 Case selection

In this chapter the similarities of the two cases will be accounted for, first some general considerations will be presented and then a brief recap of first the TTIP and then the CETA will be given. Lastly a model summarising the factors justifying the use of the most-similar approach will be presented.

The TTIP and the CETA have been chosen because of their difference in level of ambition, but share several similarities; both agreements are considered to be comprehensive and ambitious 2. generation FTA's⁴, both agreements include provisions on sustainable development and investor-to-state dispute settlement, and the partners are considered by the EU to be developed western civilisations that share many of the same political and social values as the EU. Both Canada and the US are important transatlantic partners for the EU, countries in which the EU cannot easily impose its own standards (Rostowska 2013, p.1). As the CETA negotiation is finished and the TTIP still ongoing direct comparison of the content of the two agreements should be made with attention to the timeline. Content of the TTIP which is still being negotiated cannot accurately be compared to the finished content of the CETA, but should be compared to material from the same stage of the negotiations process.

⁴ Comprehensive and ambitious means that the agreements, besides tariff-elimination, include rules on sustainable development and intellectual property and offers the highest degree of liberalisation on goods, services and investments (European Commission 2006, p.3,11), and goes beyond WTO commitments. Further ambitious refers to an agreement that can satisfy EU's politically identified trade goals cf. p 10.

Below is a brief recap of the content of both agreements is highlighted the similarities of the two agreements and give the reader a short introduction to the agreements. The section on TTIP is based on how the current EU proposal for a comprehensive agreement with the US looks like, and what has initially been discussed between EU and the US to be included in such an agreement. The section on CETA is based on the initial discussion between Canada and EU, but corresponds with how the agreement has turned out.

3.2.1 TTIP - Transatlantic trade and investment partnership

The TTIP is a comprehensive FTA being negotiated between the US and the EU. The negotiations started in July 2013 after recommendation from the High Level Working Group on Jobs and Growth (HLWG). The HLWG was formed in order to explore the possibilities of an even closer partnership between the EU and the US. Its task was to identify policy measures where cooperation would be mutually beneficial and create economic growth and jobs (Seshadri 2013, p.2). The conclusion was that the best way to achieve these goals would be a comprehensive FTA (High Level Working Group on Jobs and Growth 2013). The agreement is envisioned to have 24 chapters divided into 3 parts (European Commission 2015d):

Marked access: This part is similar to other FTAs and is meant for creating better access for US products in the EU and vice versa by removing tariffs (European Commission 2015b). Furthermore in this part access to public procurement procedures is expected to be opened up.

Regulatory cooperation: This is considered new within EU FTA's (European Commission 2015b). Closer cooperation on regulation in order to remove technical barriers to trade (TBT) is negotiated in this chapter. TBTs are characterised by different technical requirements and procedures for ensuring quality causing unnecessary expenses. It is these expenses this chapter should strive to remove. To ensure that measures taken to ensure efficient regulatory cooperation do not impinge on protective policies the EC has highlighted different areas that are to be safeguarded: regulators independence, the precautionary principle and the right to regulate to protect people and the environment (European Commission 2015b). It is within this regulatory cooperation that the alleged huge benefits for the TTIP are expected to come from. Regulatory cooperation could take the form of harmonisation of legislation, approximation of different legislations or mutual recognition.

Rules: This part includes new rules that should apply to both the US and the EU, like sustainable development, ISDS, intellectual property and geographical indicators (European Commission 2015b). In this chapter the cooperation between US and EU to develop rules that can in the future serve as global standards is also expanded.

Because of this design the TTIP is considered to be a comprehensive and ambitious 2. generation FTA.

3.2.2 CETA - Comprehensive Economic and Trade Agreement

Negotiation between the EU and Canada for a FTA was launched in May 2009 and a final agreement was reached in August 2014 (Sinclair et al. 2014, p.5). The agreement has not entered into force just yet, as it still needs to be ratified by both parties, however it is expected to enter into force by the beginning of 2017 (Sinclair et al. 2014, p.7; European Commission 2015a). At the time of writing the legal review has been finalised and the CETA waiting to be approved by both the Council and the European Parliament before it can enter into force (European Commission 2015a).

CETA, while not as strictly divided into parts like the TTIP, will cover a similar wide range of areas like market access for goods and some services, investment and regulatory corporation (European Commission 2014c; The joint scoping group 2009). In terms of rules the CETA includes some of the same areas as TTIP like geographical indicators and intellectual property rights, ISDS and a sustainable development chapter (European Commission 2014a; The joint scoping group 2009). Because of the agreements comprehensiveness especially with its inclusion of non-tariff barriers to trade, it has been labelled as a 2. Generation trade agreement, *"...a template for the rest of the world to follow..."* (Leblond 2007, p.77) and the EC has stated that experiences from CETA could be useful in the TTIP negotiations, although they do not view the CETA as a 'one-size-fits-all' blueprint to FTA's (European Commission 2015a).

Common for both agreements is the strong focus on dealing with NTB's, as tariffs between both EU-Canada and EU-US is already relatively low, the real economic gains are to be found in removing 'behind the border' tariffs (Roy & Domínguez 2014, p.39). The contents of the two agreements show some variation, but the general design of the two agreements are similar and will serve adequately as cases in a comparative method of most-similar (Rostowska 2013, p.3). For clarification the similarities between the two cases have been summed up bellow.

Transatlantic Trade and Investment Partnership - TTIP	Comprehensive Economic and Trade Agreement - CETA
<ul style="list-style-type: none"> • Comprehensive and ambitious; high degree of liberalisation concerning goods, services and investment • Development of common rules including: <ul style="list-style-type: none"> • Chapter on sustainable development • Investor-to-state dispute settlement mechanism • Western industrialised economy • EU's transatlantic partner 	<ul style="list-style-type: none"> • Comprehensive and ambitious; high degree of liberalisation concerning goods, services and investment • Development of common rules including: <ul style="list-style-type: none"> • Chapter on sustainable development • Investor-to-state dispute settlement mechanism • Western industrialised economy • EU's transatlantic partner

Figure 1: Summary of case similarities

3.3 Data selection

In this section the empirical data used in the thesis will be presented. The empirical data consist of information from different sources. In section 3.3.1 the written sources will be accounted for, and in section 3.3.2 the interviews will be presented.

3.3.1 Written sources

A substantial part of the written sources consists of official documents from the EC, the Council and the EP. This has been position papers, press releases, reports, speeches, meeting minutes etc. which have all been analysed according to document analysis. As more official documents concerning TTIP have been published, the analysis of CETA is to a higher degree supported by leaked documents, independent reports and newspaper articles. The same is true of the analysis of the Council's position, as the access to official Council documents is more limited than the access to EC and EP documents. The analysis of the Council's positions is also supported by secondary documents from the EC, the EP or newspaper articles referring the Council's position. The official sources from EU, both written and interviews will most likely convey a biased opinion, but in accordance with my theoretical framework and area of research, it is the subjective preferences and not the objective reality which is investigated. Newspaper articles could also convey biases by leaving out certain details or only portraying one side of a debate. As long as the documents' unit of reference is kept in mind, and triangulation is used to test convergence, the bias of the information should not weaken the claim to validity.

3.3.2 Interviews

Seven interviews have been conducted as a part of collecting empirical evidence. Four interviews have served as background information and will not be directly included in the further analysis. The remaining three has supplied vital information that has been actively used in the analysis. Some of the interviewees requested to be anonymous due to the sensitivity of the matters discussed. To ensure consistency all interviewees will be addressed anonymously throughout the analysis. The option of being anonymous also gave the opportunity for the interviewees to be less restricted in what they were saying. Two of the interviews have been conducted via telephone in a semi-structured design, interview guides can be found in annex I. The last interview was conducted via email. All three interviewees were keen to share their knowledge, and some questions were therefore formulated during the interviews to make sure that the format was not too stringent so as to discourage the interviewees from speaking freely (S. Harvey 2011, p.434). When using the information gained from the interview the interviewees' unit of reference has been given attention, as it can affect their preference towards a given subject (Scharpf 1997, p.61). The interviewees have all been very clear about what unit they were representing and highlighted when something was a personal opinion. Scharpf mentions that self-esteem can never be completely ruled out as influencing the interviewee's response, but that it tends to be more so in regards to leaders or other big personalities (ibid). That the three interviewees are treated anonymously can eliminate some issues of self-esteem as what is said cannot result in any benefits for the interviewees. It can also be revealed that none of the interviewees holds high political leadership positions. The validity of the interviewees' information was secured by triangulation of data.

The three interviews and the abbreviation used when referred to in the thesis:

- A staff member from the EC connected to both the CETA and the TTIP negotiations (Commission Interview part 1), (Commission Interview part 2)
- A staff member from the EP connected to the TTIP negotiations (EP 1 interview)
- A member of the European parliament (MEP) from the S&D group (MEP interview)

3.4 Validity and reliability

To ensure the quality of the research in this study, considering validity and reliability is essential. There are many different understandings of both concepts and some are belonging more to the quantitative research methods than to the qualitative method that is the nature of a case study design. Here the focus therefore lies with the understanding of the concepts which are more qualitative in nature, as to ensure a valid measure for the research quality. The concepts used will be construct validity, internal validity and reliability (Yin 2009).

3.4.1 Construct validity

Construct validity is a test meant for ensuring establishment of “...correct operational measures for the concepts being studied” (Yin 1994, p.33). This means that firstly there has to be a very clear definition of the concepts being studied and secondly that the measures derived from the used theory will adequately measure these concepts. Construct validity therefore refers to measures that manage to keep the idea of the theory as well as ensure that the selected measures will actually measure what is intended (Yin 1994, p.33; Hancké 2009, p.87). The chosen theoretical framework employs well-defined concepts and the operationalisation of these into specific empirical indicators has been done in close connection with the theory, to ensure construct validity.

3.4.2 Internal validity

Internal validity is a test meant for ensuring that any claim about causality is true (Yin 2009, pp.42–43). Using the method of process-tracing to examine the causal relations between the theoretical concepts, by analysing the empirical indicators will strengthen the claim of internal validity. Internal validity is also relevant when studying a case where not everything can be directly observed (ibid.). As the case in question is an ongoing, closed negotiation between the EU and the US, and the conclusions made will be based on interview and document analysis, it is important to have certain considerations about the convergence and trustworthiness of the collected data (ibid.). The selection of data from different sources strengthens the internal validity by making it possible to test the convergence of the gathered data by triangulation (Yin 2009, p.18).

3.4.3 Reliability

The reliability of a study depends on if it is possible to do the same study again and get the same results. With a qualitative study, this can be difficult to adhere to, as social events are dynamic and rarely portrait a static phenomenon, that can be measured more than one time with the same result (Bryman 2008, p.376). It can however be ensured that the process with which the study has been conducted can be replicated, by documenting the research process along with having transparent methods (Yin 2009, p.45). In this project reliability is ensured by having a clear strategy for both analysis and data collection as laid out in the research design cf. p. 25-26 along with a transparent theoretical conceptualisation, further the chosen research strategy will contribute to this.

3.5 Summary of method

Process tracing has been defined as the method structuring the analysis within a comparative case study of most-similar cases represented by the CETA and the TTIP. The empirical evidence comes from both written and oral sources to ensure internal validity through triangulation. Now both the theoretical framework and

the research design that will structure the analysis have been accounted for, the following chapter will present the analysis.

4.0 Analysis

In the following my theoretical concepts will guide my empirical analysis to answer my working questions through the method of process tracing, ultimately leading to the answer of my research question. The analysis is structured in four sections each corresponding to one of the four working questions. In section 4.2 the preferences of the actors will be analysed – what factors have motivated their behaviour in regards to both CETA and TTIP. Following this, section 4.3 will analyse how perception of TTIP and CETA have contributed to the EU's chosen approach towards these. In section 4.4 these preferences and perceptions and their position vis-à-vis each other will be summed up in the actor constellations for both agreements. In section 4.5 the institutional setting within which the proposals for both agreements have been negotiated and the impact this has had on the actors' behaviour will be examined.

4.2 Preferences

The following chapter will elucidate which motives the three EU institutions have had for their actions in regards to both CETA and TTIP. Section 4.2.1-4.2.3 starts with the preferences of first the EC, then the Council and lastly the EP in regards to CETA. Section 4.2.4-4.2.6 will use the same sequence but in regards to TTIP.

4.2.1 The Commission and CETA

The EC's motives for initiating a trade agreement with Canada is mostly linked to economic benefits (European Commission 2015a). The agreement is expected to help increase economic growth in the EU as well as supplying jobs. The CETA should also be seen in the light of the political context at the time it was initiated, as this contributed to the EC's motivation. The negotiation directive was given in 2009 in the beginning of the financial crisis, and the EC saw the CETA as a possible tool to counter the recession that EU was going through, by boosting growth and counter protectionist tendencies and reaffirming the EU's commitment to free trade (European Commission 2009a). These economic considerations are motivated by the EC's self-interest as a successful conclusion and implementation of CETA is expected to ensure the economic survival of the EU and possible growth of the European market.

For the EC it is considered a landmark agreement as it is the first developed non-European country to enter into a FTA with the EU. This fact serves as an argument for the EC as to why the CETA is beneficial for the EU. This argument is motivated by both economic and political self-interest. Economically the EC sees a trade agreement with an equally developed partner as an opportunity to include more comprehensive

chapters on a range of areas like public procurement and trade in services (European Commission 2015a). As with the overall economic argument for CETA, increased market possibilities are something that will contribute to strengthening the economic interest of the EU. Politically the EC highlights that a trade agreement with a country that shares 'underlying values' with the EU (Malmström 2015a, p.4) is an important ally internationally. As it has long been a part of the EU trade policy to export European values, concluding an agreement with another major western economy will only help this endeavour (Malmström 2015a, p.4; Gstöhl 2013).

It is visible that the motives for initiating CETA are corresponding with the EU trade agenda at the time. The Europe 2020 trade agenda is focussing primarily on increasing economic growth, secure cheaper products for the consumer and create more jobs in the EU (European Commission 2010b, p.5), and ensuring a beneficial safe environment for European investors. With CETA the EC follows behaviour considered appropriate in order to achieve the policy goals set out in the Europe2020 agenda.

Sustainable development is in the Europe 2020 mentioned in limited terms, but it is emphasised that SD chapters should be included in all FTA's. This builds on the EC's 'Renewed EU Sustainable Development Strategy' from 2006 and the 'Global Europe' strategy from the same year. Here it is highlighted that FTA's are an important avenue to improve labour and environmental standards (European Commission 2006, p.12; Council of the European Union 2006, p.21). The EC's proposal for the SD chapter in the CETA is coherent with this policy and includes standard commitments to international labour and environmental standards, a feature which is not a novelty (Cosbey 2014, p.15; European Commission 2015i). The substance of the SD proposal does not include strong enforceability mechanisms; only the commitment to not lower environmental standards is binding, and the obligations included do not surpass any of their international obligations, a feature which is also standard procedure in bilateral FTA's (Cosbey 2014, p.15). This approach to SD is motivated by legal expectations of what should be included in a FTA, but for the EC it was also a question of carrying out its purpose by promoting better social and environmental standards as included in the fundamental values of the EU (European Union 2007 art. 3 §3).

The EC supports the inclusion for investment protection in all bilateral trade and investment agreements (European Commission 2010a, p.3; European Commission 2015f) and the ISDS proposal is a manifestation of the. The proposal includes some innovative additions not seen before (European Commission 2015g; European Union & Government of Canada 2014). In the CETA the inclusion of an ISDS mechanism, however innovative, was not unconditionally supported by the rest of the European actors, and the EC had to change their approach due to extensive pressure from both member states and the EP. France and Germany along with several other voices in the EP had expressed their concern with the design of investment protection in

the CETA after the conclusion of the negotiations signalling that the EC would have difficulties in getting the agreement approved in both the Council and in the EP. After the publication of the results of a public hearing on the ISDS issues in connection with TTIP, France and Germany opted for the reopening of the CETA negotiation, as they saw it as the EC's moral obligation to listen to the concern of all who had contributed with an opinion in the ISDS hearing (Gabriel et al. 2015). The EC, although not viewing the CETA as the blueprint for TTIP, saw the CETA as the agreement that should establish that concluding a FTA with a 'like-minded partner' was possible. To reopen the CETA negotiations and risking Canada backtracking on certain concessions (Schöllmann & Sibona 2016, p.6), could have potential negative influence on the recently started TTIP negotiation. While the EC reaffirmed its institutional autonomy as negotiator by denying reopening the EU-Canada negotiations (Fox 2014), completely ignoring the strong request for a new ISDS in CETA from both the EP and the Council would be counterproductive for the finalising of the agreement and could jeopardise the ratification process, and hence the EU's interest. The EC managed to steer through this dilemma although with delays to the process. It introduced parts of the new ISDS design, proposed for the TTIP, during the legal scrubbing thereby avoiding reopening the negotiations and at the same time meeting the "[...] expectations of both the Member States and the European Parliament" (European Commission 2016). The EC managed to act in accordance with its own self-interest and at the same time adhering to the expectations of the member states and the EP and what they considered to be the most appropriate approach.

In the area of transparency the negotiation process of the CETA does not stand out from previous agreements. Many of the tools used to enhance transparency in the TTIP trade negotiations, were not developed at the time of the CETA, "[...] because it was not really part of our policy [...]" (Commission interview part 2, 4:38), this illustrates that although the Lisbon treaty offers an institutional framework for enhancing transparency in trade policy (European Commission 2010b, p.9), it was not expected of the EC to do more than what had been customary previously, there was no pressure for a change in preference. The EC did hold civil society dialogue meetings and invited 'all interested parties to come forward with their views' (European Commission 2015a) which is in line with the behaviour prescribed in EU policy making by the Commission 2011 white paper on European Governance (Commission of the European Communities 2001, p.10).

Summary

CETA has been an important step for the EC in showing that an agreement with another country at the same level of development is possible, and that the EC can manage to conclude an agreement of that magnitude both securing economic gains for the EU while addressing concerns and critique from the

member states and the EP. The EC has based their approach to CETA on experience from previous FTA's, and on the then current trade political focusses and other political initiatives. Motives for initiating the agreement was found in the economic benefits as the EC perceive CETA as a way to secure growth and survival of the European project.

4.2.2 The Council and CETA

The Council adopted the CETA negotiation directive in April 2009. It is clear that some economic benefits are expected and according to the new trade agenda Europe2020 that was adopted less than a year later, trade should serve as a part of bigger political agenda to improve the overall European economy(Council of the European Union 2010), CETA could contribute to this. The Council has on other occasions expressed their support for the agreement, and the EC's work in the negotiations (Republic of Estonia -Ministry of Foreign Affairs 2013; European Commission 2009b). It is like the EC motivated by the opportunity of optimising the EU-interest.

The Council states its support for sustainable development in the directive by establishing that the finished CETA will include both a general commitment to the promotion of sustainable development as well as specific chapter on sustainable development comprising of commitment to international standards on labour and environment (Council of the European Union 2009). The inclusion of sustainable development has been normal practise in EU FTA's since the late 1980's (Escobar 2015, p.8), as the EC, the Council is motivated by what is considered an appropriate approach.

In the initial directive there was not included a specific chapter on investment protection, but an addition to the directive was adopted in 2011 including investment protection into the CETA. Here the Council supports the inclusion of a provision that secures protection of EU investors in Canada and vice versa and to make sure that neither is victim of unfair or discriminating treatment (Council of the European Union 2011, pp.4–5 no. 26a, 26c), but it should not affect the member states' right to regulate on issues with a public policy objective (Council of the European Union 2011, p.4 no. 26a). Investor-to-state dispute settlement is viewed as the most appropriate means of arbitration, but it is highlighted that the design should be 'effective and state-of-the-art'. The Council's approach to investment protection is motivated by self-interest; the focus on the right to regulate and the moderate scepticism towards ISDS shows that Council wants investment protection that does not negatively impact the interest of those it represents, the member states, and at the same time can offer some benefits. This ambiguity in the preference towards ISDS could arguably be the result of internal division. France and Germany have both expressed concern about the ISDS on the CETA, and threatened not supporting the agreement unless the ISDS was excluded or reformed(Fox 2014; Euractive with Reuters 2014; Euractive with agencies 2015a). After the new ISDS

proposal from the EC, it was demanded that the new design was also included in the then finalised CETA. As mentioned in the previous chapter the changes were included during the legal revision of CETA, to the satisfaction of the Council. Changes in preferences in regards to the ISDS approach in CETA can be attributed to the publication of the results of the ISDS public hearing. The Council gained new knowledge of how an investor-to-state dispute settlement mechanism could be designed and this contributed to changing their preference towards the ISDS.

The approach to transparency in CETA from the Council's perspective was based on already constituted behaviour. As mentioned previously, transparency was a part of EU policy making, but the Council was not active in promoting more transparency in the case of CETA. They advocate transparency in the new institutional provisions of CETA, but have not shared any opinion on the openness of the negotiations process. This is emphasised by the late publication of the negotiation directive in December 2015 (Council of the European Union 2015a), a year after the publication of the directive for TTIP and six years after the directive was adopted, a change only prompted by a strong pressure for change in regards to the TTIP negotiations from the public and the European ombudsman and the EP. Publishing the negotiation directive is not something that has been custom and the Council is not legally expected to do so it (Council of the European Union 2014b, p.2). Further the disclosure of the negotiation directive during the EU-Canada negotiations could potentially be counterproductive to the interest of EU, and because of this it has been normal practice not to publish negotiation directives (O'Reilly 2014a, p.2).

Summary

Besides the conflict of the ISDS, the CETA has not caused any significant concerns for the Council, at least not in terms of what the Council has officially stated. The Council has supported the CETA based on motives of economic benefits and the contribution of the CETA to the broader EU trade policy. In its approach it has largely been guided by its institutional purpose of representing the interest of the member states and has fulfilled its legal role of formulating the negotiation directive.

4.2.3 The EP and CETA

In the EP's resolution on CETA the EP's clearly states its support for the agreement but also offers some concern that it wants the EC to address. The support is motivated by "[...] *significant potential gains for both Canada and the EU from the liberalisation of their bilateral trade*" (European Parliament 2011, p.3) and that the CETA is a means to fully realise the economic relations between EU and Canada.

The EP urges the EC to include a binding and enforceable approach to sustainable development that improves protection of labour and environmental standards, and recalls the need to commit to

international agreements on environment. There is however no reference to the International Labour Organisation (ILO) convention. In the recommendations there is a strong demand on not lowering European standards in any areas of the agreement. The EP's motives for highlighting these issues is to be found in the EP's purpose of representing the interests of the European citizens and the expectation that they will be safeguarding the citizens' rights.

The EP's approach to ISDS is also motivated by its organisational purpose; the EP only partly supports the ISDS based on a concern on whether investor-to-state dispute settlement at all is relevant in an agreement between two democratic states. It states in its resolution that a state-to-state dispute settlement should be preferred over ISDS, but further states that if the ISDS is included anyway it should under no circumstances impinge on the member states right to regulate and not result in lower standards in any areas.

CETA negotiations have been criticised for a lack of transparency by voices in the civil society, and while some of the political groups in the Parliament have voiced their concern with regards to transparency, the EP has not taken official part in this critique. The EP does however in its resolutions raise concern about the lack of inclusion of the EP in certain parts of the negotiations process. This concerns the EC proposal on modifying the negotiation directive to include investment, without waiting for the EP's position on the issues, and the failure to make available the negotiation directive for the EP (European Parliament 2011, pp.4–6). This behaviour can be understood through different motives. The EP has in decades fought for more influence in the EU policy making process and with the Lisbon treaty it got co-decision power in the trade area, and new rules constituted that the EP should be informed of all steps of a trade negotiation. At the time of the EP's CETA resolution the Lisbon treaty was applicable, and the EP saw the need to enforce its legal rights and thereby optimise its own interest. It was also a question of the EP being able to fulfil the legal expectations of for the first time being a more integrated part of trade negotiations (EP 1 interview 3:34). There is however also credit given to the EC negotiation process; in its resolution the EP encourages the EC to continue to include various stakeholders (European Parliament 2011, p.4), this corresponds well with the EP's self-proclaimed identity as 'guardian of democracy' (European Parliament 2015d, p.14).

Summary

The EP supports the CETA as an agreement that are expected to have economic gains for EU, and as a continuation of the already good EU-Canada relationship. The EP's approach is motivated by its role as safeguarding democracy, and by the legal expectations to its involvement in the CETA negotiation process as representing the interest of the European people, and is evident in its conditioned support. The CETA also has implications for the self-interest of the EP as it is the first agreement under the Lisbon treaty where

the EP has increased competences, it was important for the EP to affirm this manifestation of organisational growth.

Now that the actors' preferences towards CETA have been mapped out, the same will be done with regards to TTIP.

4.2.4 The Commission and TTIP

The EC's support of negotiating an agreement with the US can be divided into two types of considerations: economic and political. Economically the EC expects the TTIP to generate jobs and growth along with cutting prices on products in the EU and giving the consumer more shopping choices (European Commission 2015b). The political argument is that TTIP will influence global trade rules and contribute to 'exporting' European values. These gains are much needed after the financial crises and with the current refugee crises. The EC is here motivated by self-interest; the TTIP will ensure growth by enhancing the EU's global influence and the economic gains will secure the survival of the European Union. The power of the EC has been declining, particularly due to criticism following its handling of the financial crisis and the increased power of the EP after the Lisbon treaty (Wallace & Reh 2015, pp.78–79; Brunsden 2016). The EC increasingly have to fight for influence with the other EU institutions (Wallace & Reh 2015, p.79), and trade negotiations an area where the EC still enjoys significant influence is important in this regard, hence the EC wants to conclude a TTIP that is both ambitious and in the favour of EU to cement its role as a strong negotiator. This will show that it can manage to include not only the official opinion of the EU but also the opinion of many different stakeholders along with the member states, and come to terms with a big global player like the US.

The EC has proposed a very ambitious and detailed chapter on sustainable development to be included in the TTIP negotiations. One could argue that a sustainable development chapter should not be necessary in an agreement between two regions with a high level of development as the US and the EU (Compa 2014), but the motives for including a detailed and ambitious SD chapter, is not based on any arguments claiming that any wrongdoings in either the US or the EU are happening, but serves more as a political statement: *"[...] I think it's really very important for but of us – both sides – to make it clear and visible that we do not see trade agreements as something that happens in isolation from labour, environment or other policies"* (Commission interview part 1, 19:30). In other words the preference towards including a SD chapter in the TTIP is motivated by self-interest; the EC can ensure that EU's objectives on sustainable development is included in the biggest FTA to date, and possibly serve as a model for future multilateral FTA's. The inclusion of an SD chapter in the TTIP is also a question of policy coherence, it has been the norm for the EU

to include and SD chapter in FTA's and leaving it out of the evidently most important FTA for the EU would be inappropriate political behaviour.

What is different about the EC's approach to the labour provisions in the proposed SD chapter in the TTIP compared to what can be found in CETA is the level of detail and ambition. The obligations under each of the four ILO principles are more detailed and extensive than ever (European Union 2015). According to an official from the EC this level of ambition can be attributed several aspects: *"If you put the three elements together; political ambition, strong tradition [for including SD provisions in trade agreements] and the civil society and public debate interest you have the result of an innovative text going beyond others"* (Commission interview part 1, 17:34). In other words the approach to the SD proposal is motivated by the EC's purpose of representing and optimising the EU interest, the legal expectations of policy coherence with regards to trade, and the expectation of including stakeholders. To 'export' European values, including sustainable development, has long been an objective for EU trade policy (Escobar 2015, p.8), and is included as an objective in the Lisbon treaty art. 21:2, including an ambitious SD chapter in the TTIP will arguably accelerate the pursuit of this objective (European Commission 2015e, p.1).

The different approach to the SD proposal in TTIP compared to CETA is the result of different preferences towards what should be included in such a chapter. The EC's new trade strategy has contributed to these new preferences resulting in a new approach to the SD in TTIP (European Commission 2015e, p.1). The 'Trade for all' strategy has a stronger focus on sustainability in FTA's as well as transparency (European Commission 2015j). It is clear compared to the previous EC's trade strategy that the new goal is to be the leading actor within sustainable trade (European Commission 2015j; European Commission 2010b). According to trade commissioner Cecilia Malmström this new strategy is the reason why the SD proposal for the TTIP is more ambitious than ever before it has to live up to the new rules for trade: *"I made it my clear priority in the new 'Trade for All' strategy and I want to put it into practice in our agreement with the US"* (European Commission 2015e, p.1). With this Malmström outlines not only new rules but new norms for the EU on the issue in sustainable development, and this has contributed to a different approach to SD.

The EC's proposal for an investor-to-state dispute settlement employs a different approach than what was initially proposed in the CETA. This difference in approach can be explained by a change of preferences as a result of a pressure for change from both the public, the Council and the EP. Ever since the beginning of the TTIP ISDS had been one of the most debated topics, and the topic that have caused the most concern among the European citizens (European Commission 2015g, p.2), resulting in a general scepticism against the entirety of the TTIP (Euractive with agencies 2015b; Spongenberg 2016). Due to this the EC organised a public hearing on *"[...] these important issues that matter to Europeans"* (European Commission 2015g, p.2)

inviting everybody with an interest in the topic to contribute to assist the EC in developing and ISDS which “[...] *would achieve the right balance between protecting investors and safeguarding the EU’s and Member States’ right and ability to regulate in the public interest.*” (European Commission 2015g, p.2) In these statements the EC’s purpose of representing the interest of the EU is apparent in the threefold consideration of the member states, the business and the ‘Europeans’. The new knowledge the EC got from the hearing along with further consultation with both member states and the EP (European Commission 2015c), contributed to a reformed ISDS design. The new design has more focus on making dispute settlement procedures more transparent, ensuring the integrity of the elected judges, creating an appeal court, and working towards the creation of an international independent investment court (European Commission 2015c; European Commission 2015h). As with the rest of the TTIP this new ISDS design is expected to have global implication as underlined by commissioner Malmström: *“This approach will allow the EU to take a global role on the path of reform, to create an international court based on public trust”*(European Commission 2015c). The new ISDS proposal is not just about optimising EU’s interest globally, it is also about furthering the integration of the EU investment policy by using the new ISDS design to, in the future, replace the ‘old’ ISDS in all existing EU and member states investment agreements (European Commission 2015c; Malmström 2015c).

The EC’s approach to transparency in TTIP is different from the approach in the CETA negotiations; this is the result of a different set of preferences. The approach to transparency in TTIP is motivated by new norms developed by the new EC in 2014 (Juncker 2014a, p.9; Juncker 2014b, p.4); The Juncker Commission has as one of its objectives to enhance transparency in the TTIP negotiations towards both citizens and the EP (ibid). After consulting with both the EP and the EU ombudsman concerning specific recommendations from both, this objective was followed up with a proposal including some concrete initiatives to enhance transparency in the TTIP negotiations. These initiatives aim at winning public trust and support for the TTIP by increasing the public access to negotiation documents and increasing the sharing of documents with the EP, consolidated texts⁵ will however still remain restricted. The aim of winning public trust and support is to increase the chance of success for the TTIP negotiations by increasing the democratic legitimacy of the agreement; it is at the end a question of finalising and successfully implementing the TTIP (O’Reilly 2014b, p.2) and ensures economic and political gain for the EU. The EC’s approach to transparency in the TTIP was however not only influenced by new norms; like the ISDS proposal it has been influenced by pressure, which has resulted in a change in preferences resulting in an approach promoting even more transparency. The pressure came from both the EP and the Ombudsman concerning specifically a further increase in

⁵ Negotiation texts that includes both EU and US proposals

access to documents and the involvement of stakeholders and the public. For the Ombudsman it was a question of further increasing the public access to documents, including the US side of the negotiations and enhancing the public involvement in the negotiations (European Commission 2014b). Some of these measures had already been accommodated, like the launching of the Advisory group in January 2014 and four public consultations as a part of the Barroso Commission's commitment to the inclusion of stakeholders in the TTIP negotiation (European Commission 2014d). For the Barroso Commission, this approach was a result of the consultation with the EP, which in their 2013 resolution on TTIP explicitly recommends the engagement of stakeholders from all sectors (European Parliament 2013, p.5 no. 21). The ombudsman's request for publishing documents from the US side of the negotiations was considered with more caution by the EC. Although the EC is committed to the norm of transparency and considers this as the appropriate behaviour in policy making, the regard for the EU interest in the negotiations with the US takes priority over considerations of transparency. Publishing US proposals without the consent of the US could seriously harm the trust between the negotiation partners and lead to a suspension of negotiations. The EC therefore commits to forward the ombudsman's recommendations to the US (European Commission 2014b, pp.1–2), and no more than that.

Summary

It is evident that the EC supports the TTIP based on the positive implications it is expected to have for the EU both in terms of economic gains and the possibility of exporting European values. There are of course red lines that cannot be crossed as defined by the negotiation directive. The EC's approach to SD, ISDS and transparency is different compared to what was done in the CETA negotiation and is characterised by both new preferences and changes in existing preferences. New preferences were particularly decisive for the approach to SD and transparency where new rules and norms were constituted by new policies. The approach to transparency was further developed due to changes in preferences caused by negotiations with the EP and the Ombudsman. Changes in preferences occurred with regards to the approach to the ISDS, and can be attributed pressure from the public, the Council and the EP, caused by their concerns. The change was further characterised by the consultation with the EP and the member states and the acquirement of new knowledge through a public hearing regarding a possible new ISDS design.

4.2.5 The Council and TTIP

In June 2013 The Foreign Affairs Council adopted the EU negotiation directive for the TTIP (Council of the European Union 2013a). The directive consists of a Council decision and of a decision by the member states representatives and draws on the conclusion of the HLWG. The content of the directive shows support for strengthening ties with the US by negotiating a comprehensive and ambitious FTA. Like the EC the Council's support is motivated by the possible political and economic growth of the EU as a result of the creation of

global standards and the increase in trade and investment (Council of the European Union 2013b, p.5 no. 7).

The Council has since the adoption of the negotiation directive, on several occasions, reaffirmed its support for the TTIP. This is evident in the Council conclusion from November 2014:

“Enhancing sustainable growth and jobs is a key priority for the EU. Trade in goods and services and investment can make a significant contribution in this respect. In this context, the Council reiterates the fundamental role of a deep, ambitious, balanced and mutually beneficial TTIP Agreement with the United States, which will provide significant new opportunities for citizens and companies in the EU and the US.”
(Council of the European Union 2014a)

This statement shows that the preference of the Council coincides with those of the EC and that it is motivated by the prospect of enhancing the European economy, for the benefits of citizens and enterprises.

As in the CETA negotiation directive, the Council has included commitments to sustainable development, both as a general objective of the TTIP but also through a specific chapter on trade and sustainable development. Due consideration is given to the reaffirmation of international standards on both labour and environment (Council of the European Union 2013b, pp.14–15). The approach to sustainable development shows political consistency with CETA as the chapter on sustainable development is almost to the word similar to what is included in the CETA directive (Council of the European Union 2009). Considering that sustainable development has not been a topic offered much attention in the public debate surrounding TTIP, it is possible that this similarity in approaches is the reflection of member states interest and their low priority of this topic. Adding to this explanation is that there might not have been anything to prompt the need for change in approach; there has been not pressure on the Council and the subject has, as mentioned, not been publicly debated.

With regards to the ISDS mechanism the Council makes it clear in the negotiation directive that this mechanism should be considered cautiously. Any such measure is only acceptable after the member states have been consulted and if a solution meeting the EU interest can be achieved (Council of the European Union 2013b, p.8 no. 22), but it is supported based on motives of self-interest; that it is necessary feature to level the playing field between US and EU investors and for the protection of EU investors in US. Besides that any ISDS mechanism should be ‘state-of-the-art’, the Council’s approach to such a mechanism is very different in the TTIP compared to CETA. The need for independence of arbitrators and transparency in proceedings is highlighted and there should be a mechanism safeguarding against frivolous claims. The

Council further encourages the EC to consider the development of an appellate mechanism and the relationship between any ISDS mechanism and domestic policy (Council of the European Union 2013b, p.9). This approach reflects the purpose of the Council to protect the interest of the member states, and is further a reflection of an internal pressure for change to accommodate concerns that have been expressed by some member states since CETA. Particularly France and Germany, to some degree supported by Denmark, Luxembourg, the Netherlands, (Barbière 2015) Sweden and Austria (Sopinska 2015), have challenged the design of the ISDS and even questioning the logic of including it in the TTIP at all, as both EU and US has highly developed legal systems. After an extensive public hearing organised by the EC a proposal was tabled reforming the ISDS. This final proposal was presented in the negotiations in November 2015 and was composed of both the results from the public hearing and extensive consultation with both the member states and the EP. The Council supports the new ISDS mechanism called an investment court system (ICS) and underlines that the proposal is addressing the concerns of the member states as was articulated by the chair of the May 2015 Council meeting, Edgars Rinkevics Latvia's foreign minister: *"Basic, if not all, concerns that member states have raised in the past have been addressed in the paper"*(Sopinska 2015).

For the Council the reform of the ISDS is an important step in direction of concluding the TTIP (Foreign Affairs Council 2015), and it has supported the EC in its work concluding debates on this issue(Presidency of the Council of the European Union 2015).

The Council's approach to transparency in the TTIP negotiation has changed during the negotiation and is different from the approach in CETA. The Council was late on joining the demand for more transparency and public inclusion in the TTIP negotiations, as is also evident by the absence of these issues in an early Council opinion (Council of the European Union 2013a). As the EC is legally obliged to inform the Council regularly on the progress of the negotiations, and the Council and the EC have a tradition of close cooperation in trade issues (Woolcock 2015, p.394) there is no obvious reason as to why the Council should support more transparency in the negotiations as it has nothing to gain from such an approach. The Council used this, along with following rules of procedures as justification when it resisted publishing the negotiation directive despite it being available on the internet due to a leak: *"[...] there is no obligation in the Regulation requiring the institutions to make public non-legislative documents such as negotiation directives, in a preventive way. [...] Moreover, the Council has complied with Article 12 by entering in its public registry the reference of the document at issue"* (Council of the European Union 2014b, p.2). This statement is from a reply to the European Ombudsman and shows that the Council's approach to transparency is motivated by rules. The European ombudsman wrote the Council a letter based on the

public pressure for more transparency urging them to change their approach and declassify the negotiation directive to ensure public support and legitimacy in the policy-making process. The ombudsman put great emphasis on the moral obligation of the Council, as well as a general reflection on good institutional behaviour: “[...] in the interests of transparency, good administration, the effective use of resources and, ultimately, encouraging public trust, I also invite the Council to consider proactively publishing the document in question” (O’Reilly 2014a, p.3).

Although the Council retains its legal right to not declassify the negotiation directive they do, however, in the end acknowledge the importance of transparency and their own role in promoting it and promise to enter into negotiations with member states concerning making the negotiation directive public.

It would seem that the pressure from the ombudsman succeeded in changing the Council’s perception towards transparency, preferring a more proactive approach. This resulted in an approach different to what was employed in CETA, and the negotiation directive was made officially public in October 2014. Subsequently the pledge to increasing transparency in the TTIP negotiation is to be found in Council conclusions from November 2014: *“The Council underlines the importance to better communicate the scope and the benefits of the agreement and to enhance transparency and dialogue with civil society[...]”* (Council of the European Union 2014a, p.1). It would have been against the self-interest of the Council to retract on its acknowledged role in promoting transparency, and it has since become an important issue for the Council. In 2015 following the EC publication of its proposed new trade and investment strategy, the Council adopted conclusions supporting this strategy and highlighted that transparency was the key to a successful and responsible EU trade policy: *“A responsible EU trade policy must be accompanied by a high level of transparency and an effective communication with citizens about the benefits and challenges of trade and open markets”* (Council of the European Union 2015b, p.6). Following this statement it is however underlined that the need for transparency should not negatively affect the negotiation or go against institutional rules of procedure: *“This [transparency] should respect the existing institutional balance and applicable rules regarding classified information, and not prejudice the EU’s negotiating positions or international relations”* (Council of the European Union 2015b, p.6). This statement elucidates that the Council’s new approach to transparency is motivated by what is considered appropriate behaviour while still following rules and not jeopardising the interest of the member states. It also shows that while the Council may have changed its preference towards certain aspects of transparency as a result of pressure, certain aspects remain the same.

Summary

The Council shares the motives of the EC for initiating the TTIP, there is the possibility of both economic and political gains, but has based its further approach on its role as representing the member states. The

approach the Council has chosen in regards to TTIP is more ambitious than CETA in particular two areas; ISDS and transparency. In regards to ISDS the change in approach has been motivated by the Council's organisational purpose of ensuring the interests of the member states, along with an internal pressure from member states to change approach, resulting in the inclusion of a more comprehensive ISDS mechanism. With regards to transparency it was motivated by considerations of appropriate behaviour, and the change in approach that occurred can be explained by the pressure from the Ombudsman. This resulted in the publication of the negotiation directive and the continued pledge of the Council to promote transparency.

4.2.6 The EP and TTIP

The EP has voted on two resolutions on the TTIP, one in 2013 before the negotiation directive was made public and one in 2015 after the directive was made public and after the 2014 parliamentary election. The two resolutions differ slightly in their level of detail but the arguments for supporting the TTIP are the same. The difference can be attributed to the fact that the 2013 resolution is solely based on the recommendation from the INTA committee, while the 2015 resolution is the outcome of recommendations from 13 different parliamentary committees (European Parliament 2015b) and hence reflect that knowledge from outside the scope of INTA has been included.

The TTIP is an agreement that could result in not only economic gains but more importantly can have a significant strategic influence for the EU. The 2015 resolution points to the uncertainty of the size of the possible economic gains, but still supports the agreement by referring to the potential for positioning the EU-US constellation stronger in the international trade arena, develop common standards that could serve as example in future multilateral FTA's, and recognising the contribution of the TTIP to the broader EU strategy to create jobs and growth (European Parliament 2015c, pp.4–5). In 2015 studies on the economic benefits of TTIP had produced contradictory results and it is this new knowledge that has caused the EP to change its expectations of economic gains from the TTIP (ibid). The EP's support is motivated by the possibility of optimising the interest of the EU and ultimately the European citizens. The EP does however have some conditions which are defined in the 2015 resolution; there is a demand that no measures in the agreement will in any way decrease the existing EU standards in any area and that no measures should impinge on the right to protect or increase those standards. This is again based in the role of the EP to ensure the interest of the European citizens.

In the 2013 resolution it is stated that sustainable development should be addressed; labour- and environmental laws should be strengthened and developed with regards to EU-US commitments. It is also emphasised that no matter the scope of the agreement standards in both labour and environment should

never be diminished (European Parliament 2013, p.5). The ILO is mentioned as the preferred point of reference with regards to labour standards, but no demand for the explicit inclusion of the eight core standards is stated. This is included in the 2015 resolution where the EP demands that the agreement should aim at the ratification and implementation of all eight core labour standards (European Parliament 2015c, p.13). According to the EP the sustainable development chapter should be binding and enforceable, this is a change from the 2013 resolution where no claim to enforceability is made. The mentioning of ILO and its eight core standards as well as the recommendation for any provisions on environment and labour to be enforceable is going a step further than from what was done in CETA. The change in approach to include the eight core labour standards can be attributed internal debate, where the S&D group successfully advocated for the inclusion of these (MEP interview p. 2).

The ISDS mechanism is only included in the 2015 resolution where it is recommended that the ISDS should be replaced with a new mechanism *"[...] which is subject to democratic principles and scrutiny, where potential cases are treated in a transparent manner by publicly appointed, independent professional judges in public hearings and which includes an appellate mechanism [...]"* (European Parliament 2015c, p.16) and it is further highlighted that the mechanism should not 'undermine public policy objectives' (ibid). The EP's more ambitious approach to the content of the TTIP is a reflection of the general increased public awareness of the TTIP and the European citizens' increased concern over in particular ISDS and lowering of standards. The EP is expected to defend the interest of the citizens and its approach reflects this by both encompassing the concerns and optimism that has been voiced in the public debate. The change in approach can also be attributed to new knowledge in the EP; when the 2015 resolution was adopted the TTIP negotiations had been ongoing for one and a half year and the EP had gained access to more documents about what to be included in the TTIP, and this has contributed in shaping the preferences in the different committees concerning the TTIP, thus resulting in a different more ambitious approach (EP 1 interview 18:19, Bierbrauer 2014, p.10).

The need for transparency is highlighted, more persistently in the 2015 resolution where transparency is not only expected in the negotiation process, but is also expected to be included in any new institutions developed in the TTIP (European Parliament 2015c, pp.16–17). The EP recommends that the EC continues to make negotiation proposals available to the public, and to continue to include a various range of stakeholders (ibid). It also recommends strengthening the dialogue with both the member states and the EP and to agree with the US that they will pursue the same level of transparency (ibid). As with CETA this approach to transparency can be expected of the EP, as it is in line with its identity as protector democratic rules. For the EP this is the only appropriate behaviour given *"[...] the many critical voices from the*

European public and [...] the weak public acceptance of the agreement [...]" (European Parliament 2015b, p.21). This more extensive approach to transparency, different from the CETA negotiations, has its origin in the EP's new competence under the Lisbon Treaty. Since the Lisbon treaty key members of the EP have been granted access to all Commission documents in trade negotiations, but with an increasing number of MEP's interested and involved in the TTIP, the limited access was not considered enough to ensure political scrutiny and thereby adhere to the values of its identity, and the EP started pressuring the EC for more transparency (EP 1 interview 13:31). The EP succeeded in pressuring the EC for more transparency, increasing its access to documents, including getting access to the consolidated texts. For the EP it was important to get access to these, and after 11 months of negotiation, the EC agreed to this (European Parliament 2015a).

Summary

The EP supports the TTIP as an agreement that is expected to result in economic gains for EU, but especially as an agreement that can strengthen the EU's global trade position. The EP's approach is, as with CETA, motivated by its democratic identity, and by the legal and public expectations to its involvement in the TTIP negotiation process as representing the interest of the European people. This approach is manifested by conditioned support, where certain conditions are expected to be met; a binding and enforceable sustainable development chapter and a new ISDS that safeguards the member states rights to regulate, which is transparent and with independent arbitrators. The EP's approach to TTIP is different than to the CETA, and can be seen in its request for a more comprehensive chapter on SD, a new ISDS mechanism and an increasing demand for more transparency. These differences reflect the concerns of the European citizens, and the EP is thus motivated by both the interest of the people, living up to the expectation as the voice of the people, but also adhering to its identity. Contributing to this explanation of differences in approach is the learning process that has occurred in the EP from the first resolution to the second; more committees with access to more documents have contributed in shaping the new approach, resulting in more comprehensive recommendations to the TTIP in the 2015 resolution.

As the resolutions for both agreements has been adopted by majority vote, it follows that the chosen approach to CETA and TTIP is not necessarily supported by all members of parliament, and those who do support it might have different motives for doing so. To understand the approach of the EP more in depth it is necessary to disaggregate the EP as a composite actor and look at how the preferences of the political groups have influenced the approach to both CETA and TTIP.

4.2.7 Partial conclusion

The actors' preferences have been a contributing factor in shaping their approaches towards SD, ISDS and transparency in TTIP and CETA respectively. For all three actors, considerations of self-interest have been the most important motive for initiating both agreements. The Council prefers an agreement that will bring economic benefits to the member states and the entire EU without infringing their right to regulate, the EP have the same preference but also prefers an agreement that will not lower standards for in any area so as to result in negative consequences for the European citizens. The EC shares the Council and the EP's preferences.

In the areas of SD, ISDS and transparency the preferences of the actors differ in certain aspects both with regards to each other and in regards to the two agreements. In CETA the actors approaches to SD and transparency have been characterised by considerations of policy coherence and legal expectations in regards to how a trade negotiation should be conducted and what should be included in an EU FTA. The approaches included standard provisions on SD, a few public consultations but no commitment to further increase transparency. The EC's approach to ISDS was partially a continuation of earlier approaches, and partially new initiatives, but both the EP and the Council preferred a CETA without any ISDS. The EC was later pressured into changing this approach to include parts of the new dispute settlement for investor protection developed in connection with the TTIP negotiations.

Pressure from the EP and the Ombudsman also prompted the Council to change its approach to transparency in the TTIP negotiations resulting in the publication of the TTIP and CETA negotiation directives and new commitments to increasing transparency in trade negotiations. The EC's approach to transparency also changed in the TTIP motivated by new rules and norms established in the EC's new trade agenda and general political objectives. The change in approach to ISDS was characterised by a learning process through the launch of a public hearing and extensive consultation with the Council and the EP. For the EP the approach to transparency is different in TTIP as a result of new competencies under the Lisbon treaty. This approach further changed as the EP learned to utilise their new capability more exhaustively.

New and changing preferences have resulted in approaches to SD, ISDS and transparency in TTIP, where the level of ambition is higher than what was seen in CETA. Accounting for preferences is contributing to the explanation of why a more ambitious approach to TTIP has been chosen, but it is evident that the actors' positions towards the two agreements have had a significant influence as well. This will be analysed in the next chapter.

4.3 Perception and policy goals

In this section the actors' perception towards the CETA and the TTIP will be analysed. Following this a brief account of how the policy goals of the two agreements have been defined, will be given.

4.3.1 Almost 'business as usual' and the unique opportunity

Many parts of the CETA has for by actors been perceived as 'business as usual', a FTA that will suffice until the Doha round is completed; in all CETA documents WTO is highlighted as being the most appropriate institutional setting for trade agreements, this is something that is normally included in FTA between EU and another country. Further the CETA is perceived as a natural step for the EU-Canada relations and an agreement that fully falls within the scope of the EU trade policy (The joint scoping group 2009; European Parliament 2011, p.3).

The EC and the EP perceive the CETA as important for the EU but not as important as the TTIP. This is apparent in the political goals the TTIP and the CETA is expected to fulfil respectively. The CETA is not expected to set global standards, and is not expected that the final agreement will increase the EU's international influence, although it is still considered an important international ally (Malmström 2015a, p.4). The goal of the CETA is to bring about economic gains for both Canada and the EU in terms of more jobs, increased growth and market access. This perception is shared by the Council; the CETA is not viewed as a novelty in the EU trade portfolio, but more as a standard bilateral FTA that should be consistent with or go beyond the commitments to the WTO. Further the Council confirms that they view WTO as the most appropriate avenue to negotiate trade rules, and that the conclusion of the Doha round is a priority (Council of the European Union 2009, p.4 no. 2-3). In the TTIP directive it is reaffirmed that a FTA should be consistent with WTO rules as well as thrive to go beyond, but the Doha round is not mentioned as priority, which confirms that the TTIP is perceived as a unique agreement (Council of the European Union 2013b).

The differences in perception towards the TTIP and CETA is adequately summed up by this statement: *"So I think in a way the nature of the agreements, [...] the way they have been perceived by our respective leaders is in terms of saying 'it's [TTIP] a unique opportunity', it really can be a laboratory for going beyond what has been more standards practise, whereas CETA [...] I think was a bit more in the area of... a bit more in the sort of the standards tradition"* (Commission interview part 1 12:39). The TTIP is not 'just' another FTA. It is perceived as a ground-breaking agreement which is expected to result in, not just economic growth and jobs, but also a strengthened transatlantic relationship and through that a strengthened geopolitical position of the EU in the international trade arena. At the same time there is an understanding that what is possible in connection with TTIP is not necessarily an option in other agreements (Commission interview part 1, 13:25); the perception of the TTIP as the unique opportunity and the goals it is expected

to fulfilled has resulted in that the actors strategic choices available when choosing an approach has been significantly different from what had been the case in CETA. This is confirmed by a MEP: *"EU and US has to strengthen their cooperation if western values in the future shall continue to influence the global order. The TTIP negotiation is an opportunity for the EU and the US to establish high standards in environment, consumer protection and not least labour rights. This is not just about the EU and the US it is about creating conditions for the entire global free trade"* (MEP interview 2016, p. 1). Following this statement it is clarified that the goal the TTIP is expected to fulfil puts certain demands on the approaches employed to realise this goal. As has been shown in the previous chapter the actors approaches to SD and ISDS in both TTIP and CETA has been characterised by the perception that their chosen approach would adequately serve this purpose. It is however also clear that the perception of which approach would be the right approach to realise the policy goals of CETA and TTIP differs from actor to actor dependent on their preferences.

This positive way of perceiving both CETA and TTIP are reserved the proponents of the agreements, which is the clear majority including the EC the Council, and most of the EP. A minority perceive the agreements more negatively and see the goal of the negotiations to stop the agreements. This is based on their perception that regardless of the approach to the TTIP negotiations any outcome will result in negative consequences that will outweigh the positive.

While the majority of the actors share the same perception of TTIP and CETA, the same cannot be said in regards to transparency. All the actors can agree to that transparency is an important quality in policy making cf. the Lisbon treaty, but they differ in their perception of transparency in regards to the trade negotiations. The Council's perception of transparency is based on the rules guiding the access to document in relations to FTA's (Council of the European Union 2014b). They do not believe that there is a lack of transparency and therefore perceive the existing approach to be adequate. This perception was however changes due to pressure from the ombudsman, and the Council's changed perception correspond with that of the EC and the EP; they perceive transparency as an important way to secure public support and ensure democratic legitimacy. The actors' perceptions have influenced their respective approaches and can be seen in the EC and EP's eagerness to promote and increase transparency. The Council's approach changed as a result of changing perception and preferences and went from being an approach advocating status quo to a more ambitious approach with the aim of increasing transparency.

That the perception of TTIP is different than from CETA can be attributed difference in the policy goals the two agreements are expected to realise respectively; for CETA the goal of the negotiation was an ambitious comprehensive agreement, designed to secure economic growth, and whilst the goal of the negotiation of TTIP is similar it is also its goal to secure EU's global influence on the area of trade. TTIP is more than just

another FTA, it is not meant for just being the next step in the EU trade policy, but as a unique opportunity to go above and beyond what the EU and the US have done before. The chosen approaches to both CETA and TTIP have therefore been the options considered to be able to realise the goals of the agreements. This means that the approaches to CETA reflected a preferred outcome that would realise the goal of economic benefits within the framework of EU trade policy, whereas the more ambitious approaches to TTIP reflects the preferred outcome that will realise the goal of a TTIP with both economic and political benefits not just within the EU trade policy but also within a larger transatlantic global trade strategy. This is also why the possibility of a 'TTIP-light' – a TTIP only comprised by areas that can easily be agreed on – is not an available option: “[...] *the objective is a comprehensive TTIP, otherwise there is not much value*” (Commission interview part 1, 42:46). With the policy goal being a contributing factor in explaining the differences in approaches, the next section will investigate how the policy goals of TTIP and CETA were defined.

4.3.2 Scoping exercises – defining the goal

These perceptions of CETA and TTIP have not just appeared out of thin air, they are based on analyses made very early in the negotiation process. These analyses are called scoping exercises and the EC initiates these informal dialogues prior to the beginning of any formal negotiations. The objective of the scoping exercises is to investigate the possible scope of any future agreement and what areas would be beneficial to included and “[...] *whether the countries have a similar enough interests for a deal to be feasible*” (Yap & Standen 2013, p.3). When comparing the scoping exercises from CETA and TTIP it is evident that already early on it was deemed feasible that the TTIP could result in the development of global rules and standards (High Level Working Group on Jobs and Growth 2013, p.6) whereas the scoping exercise for CETA more focus on the full realisation of the EU-Canada economic relationship (The joint scoping group 2009).

The two scoping exercises also make suggestions as to the level of ambition in the two agreements, and even though both CETA and TTIP are considered to achieve the objective of being ‘comprehensive and ambitious’ there is a clear difference in what approach the scoping exercises view as the best solution to realise the possible potential of the agreements. Considering CETA, regards is given to WTO and previous agreements:

“[...] given the objective of concluding an ambitious agreement, commitments should go beyond current WTO levels. The agreement should include, as a minimum, all the chapters of the most ambitious EU and Canadian bilateral economic agreements to date” (The joint scoping group 2009, p.3)

With TTIP it is more considered as an agreement in its own right capable of being something altogether new:

“To achieve these objectives, the HLWG believes that innovative approaches will be necessary, and that the two sides will need to be creative, flexible, and open-minded in developing and negotiating solutions that respond to the specific characteristics of the transatlantic economic relationship” (High Level Working Group on Jobs and Growth 2013, p.2)

There are however some mentioning of previous FTA's in the TTIP scoping exercise, one of which mentions that the TTIP should go beyond what has been done before in the area of market access (High Level Working Group on Jobs and Growth 2013, p.2) and the other in terms of sustainable development that should consider what has been done before in both EU and US FTA's (High Level Working Group on Jobs and Growth 2013, p.5).

In some areas the recommendations from the scoping exercises are the same, with recommendations to build on and enhance already existing WTO framework and include provisions on sustainable development. The areas to be included in the agreements are generally similar, only exception being the development of common standards on global trade issues that are included in the scoping for the TTIP (High Level Working Group on Jobs and Growth 2013; The joint scoping group 2009).

Summary

The scoping exercises have from very early in the negotiations constituted different goals that the two agreements are expected to achieve; and the goal for TTIP is more ambitious than the goal for CETA. This has influenced the actors' perceptions of the two agreement's resulting in a different set of strategic choices being available in regards to TTIP. The actors' different and more ambitious approaches to SD, ISDS and transparency in TTIP can be attributed this differentiation in policy goals together with the changes in the actors' perception and preferences.

4.4 Actor constellation

With the preferences and perception of all the actors examined in regards to the areas of SD, ISDS and transparency, these will now be assessed against each other. To make this easier four models have been created to give an overview of the actors' positions relative to each other.

The actors are placed in the model depending on what their preferred outcome would be as outlined in their respective approaches. The first models depict the actors' position with regards to the entire substance of the TTIP and CETA; the horizontal axes show a continuum from protectionism to complete market liberalisation. The vertical axes show an increasing realisation of the goals of a 2. generation FTA. The further one moves up, the more comprehensive the agreement will be in terms of sectors included and commonly developed rules and standards.

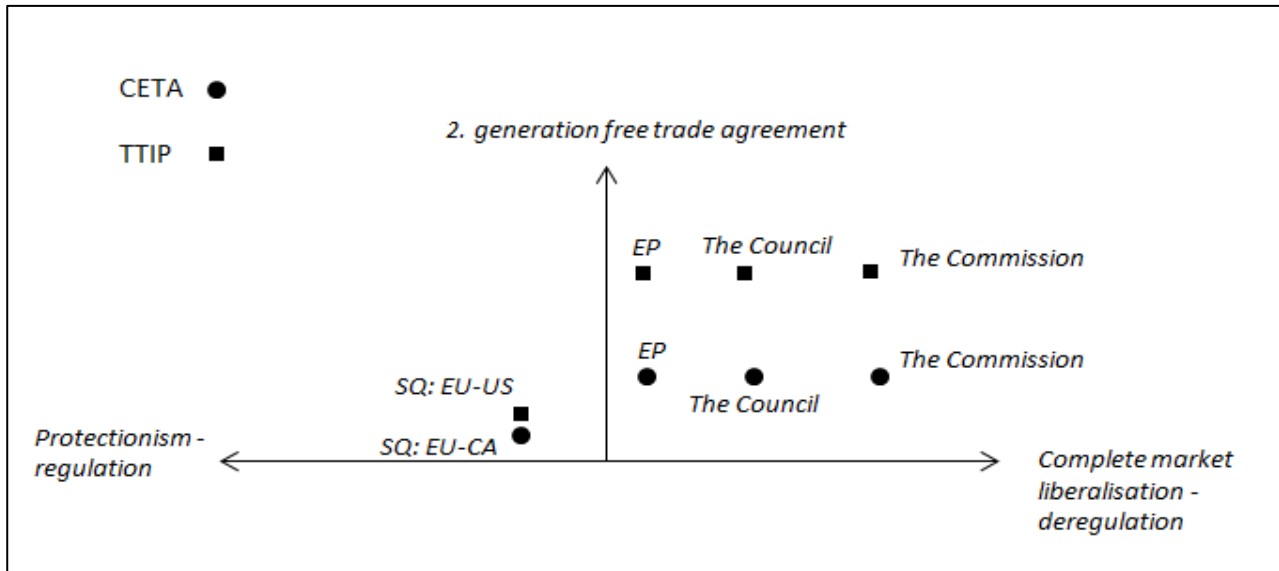


Figure 2: Actors' position in regards to TTIP and CETA based on their general preference and perception towards both agreements.

Status quo (SQ) is positioned for both EU-US and EU-CA to the left further towards protectionism and a little up the vertical axes. This position is based on the current EU-US and EU-CA relationship; tariffs on goods are already low in most sectors, and there is a steady flow of foreign direct investments in both directions. The SQ's is not placed at the very bottom as the EU has good political relations with both US and CA, where they are committed to collaborate on amongst other things sustainable development and investment (European Union & United States of America 1997; European Union & Government of Canada 2004).

TTIP: The EC prefers an outcome that opens up sectors that has not previously been included as extensively in FTA's, like services and public procurement, as it will secure economic benefits for the EU. They also wants to ensure that the TTIP result in less regulation, and smarter regulation, but still wants to preserve the rights of the member states to regulate. The EC therefore falls further to the right due to their strong focus on market liberalisation, but is pulled a little to the left due to the considerations of the sovereign rights of the member states. The Council position itself a little left of the EC; this is primarily due to the fact that the Council has some national reservations that the EC does not have to consider to the same degree. The Council share the preference of the EC towards the outcome of an agreement that will secure market liberalisation within new sector for the benefits of Europe. Both the Council and the EC are positioned on the vertical axes closer to the top, as the both prefer an agreement where joint rules can be developed on the basis of European values and exported not just to the US but also in a more global context, this is closely linked to the opinion that however the final outcome, it should not decrease European standards

but should on the other hand result in the development of transatlantic standards that can serve as a model for global standards.

An outcome that would fall much further to the right and farther below would not be acceptable to neither the EC nor the Council as it is simply not what is expected of the agreement, and hence not what the approach is based on. The talk of a 'TTIP-light' in relation to the many obstacles in the negotiation process is completely disregarded by the EC, as it is simply not what they set out to conclude (Commission interview part 1, 42:46). Small adjustments to accommodate the need of the member states or the EP is accepted but changes that would result in that the purpose of the agreement is not achieved, is not.

The EP is on the vertical axis positioned in line with the Council and the EC. As the Council and the EC, the EP supports a TTIP that can result in the development of common rules within the areas of investment and sustainable development amongst other issues. That they are positioned further to the left is because of their approach to sustainable development that includes the commitment of including and making binding the eight core labour standards from the ILO, to protect the European labour standards. This sets them apart from both the Council and the EC, as neither of them has expressed support for this.

CETA: The actors' positions with regards to CETA are very similar to that of TTIP. The difference lies in the preferred outcome in terms of the development of common rules. Some common rules were preferred to be developed, but not with the intent of developing rules that could serve as global standards. The outcome preferred by all actors, was one that would ensure market liberalisation within some new areas, like services and public procurement, but that was not expected to have any significant influence for the EU on the global stage. An outcome that was not preferred would be an agreement without the inclusion of services and public procurement; it is in these areas that the largest economic gains are expected, as the tariff between EU and Canada is already low (The joint scoping group 2009).

ISDS: With regards to the preference towards the ISDS, the two models below show the actors' position in relation to the old ISDS and the new dispute settlement for investor protection (ICS), respectively. They are positioned in regards to whether they perceive the approach to be able to achieve their policy goal, the preferred outcome. These models also give a good idea of the actors' general position towards the two FTAs if they were to include the old or the new ISDS. The Council did not express explicitly that they would prefer no outcome to an outcome with the old ISDS in the case of CETA, but it is difficult to imagine that the Council would support CETA if the old ISDS were included when both France and Germany was against this. This was also the case with TTIP before the new ICS was proposed. As can be observed the EP and Council's position was very far from that of the EC prompting a conflict that could have resulted in a rejection of the

CETA (Troszczynska-van Genderen 2014, p.6). The ICS was the EC’s approach to a new investor protection dispute settlement mechanism, which was presented in the EU-US negotiations. Both the Council and the EP supported this approach although they still feel that there is room for further improvement (Lange 2015; Patterson 2015), which is also why they are not positioned to the right of the EC. As is evident in figure 4 the actors’ positions are much closer to each other, lowering the level of conflict which could have a positive implication for the further TTIP negotiations.

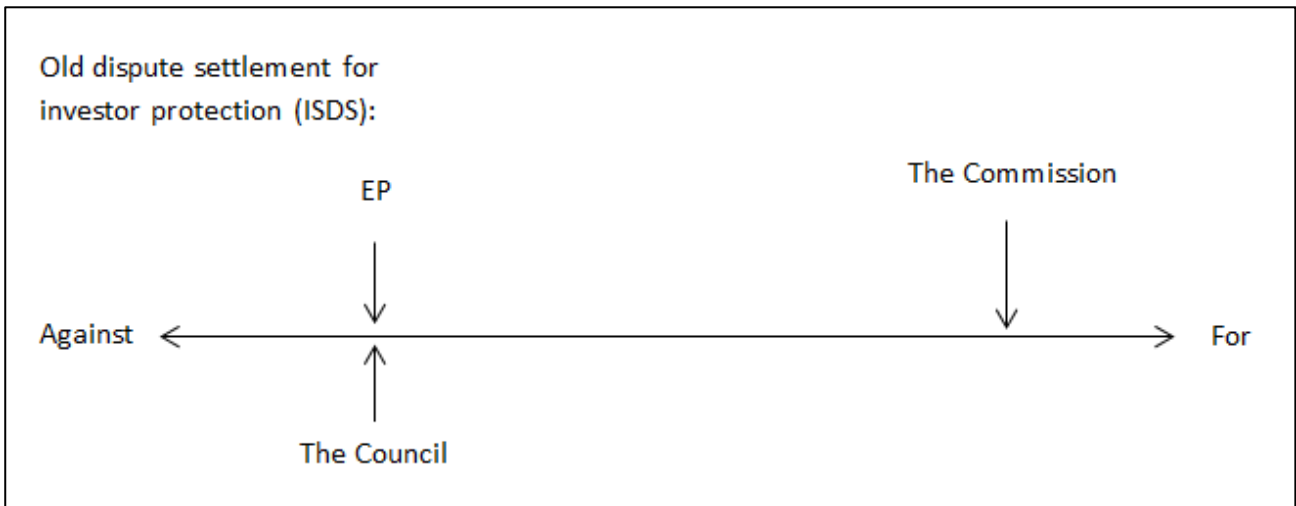


Figure 3: Actors’ position towards the previous ISDS approach, based on preferred outcome.

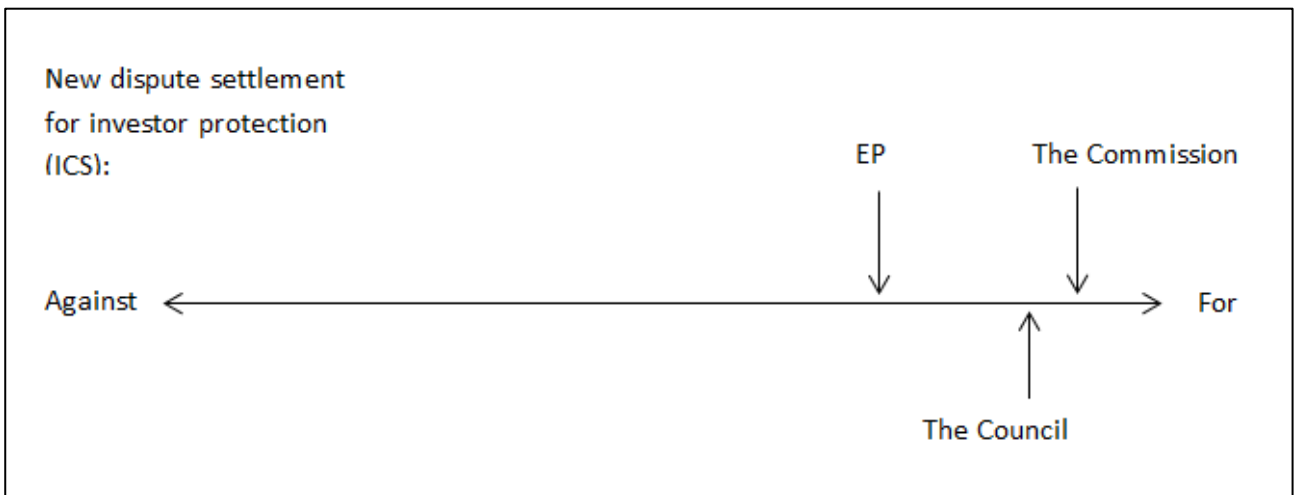


Figure 4: Actors’ position towards the new ICS approach, based on preferred outcome.

With regards to transparency the following model show the actors’ position towards transparency based on their preferred outcome as outlined in their respective approaches. SQ is the approach to transparency as laid out by the Lisbon treaty, to ensure a valid comparison the actors’ position towards transparency in CETA is therefore based on their position after the Lisbon treaty had entered into force. The EP preferred

more transparency in the CETA negotiations in terms of how much it itself was included, and a claim the transparency more generally in the CETA negotiations did first come later. The Commission and the Council reaffirmed their commitment to transparency in regards to CETA, but no big initiatives were launched and the transparency was limited (European Commission 2015a). Considering the actors' position towards transparency in TTIP, they have all moved considerably towards the right. The EP prefers an approach that is as open as possible to the TTIP with only the barest minimum of consideration for the consolidated texts. The Commission and the Council has once again reaffirmed their commitment to transparency, but has followed it up with concrete initiatives. The Commission has published more documents than for any other FTA, held public consultations, included stakeholders and launched an advisory group. It is the specific policy objective of the Commission to enhance transparency in the EU policy making, and the Commission seems committed to this new approach. The Council on the other hand seems more reluctant to adopt this new approach to transparency, as can be exemplified by its late publication of both the CETA and the TTIP negotiations directive, and its reluctant response to the EU ombudsman cf. p. 43.

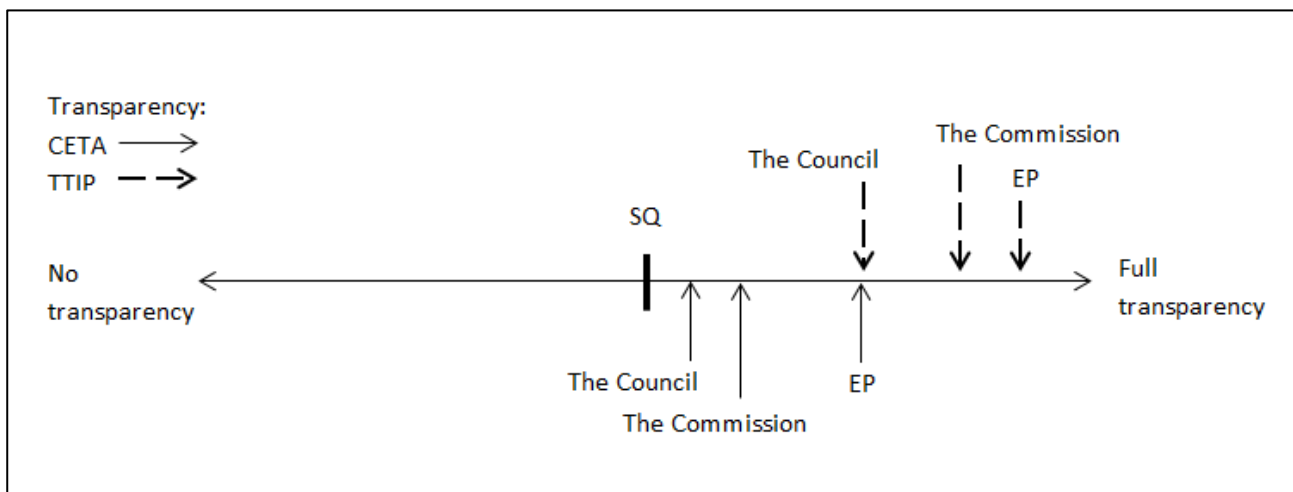


Figure 5: The actors' position in regards to transparency

Summary

While the majority of the EU institutions share their positive perception towards both CETA and TTIP, and share the perception of that the goal of the Canada-EU and EU-US negotiations are to result in comprehensive and ambitious agreements, the preference towards the specific outcome and the approach chosen to realise this, differ both among the actors and with regards to the agreements. The joint EU approach is to be found in the interaction between the actors and their respective approaches, within a specific institutional design. It is to the examination of this institutional design we now turn.

4.5 Modes of interaction

With the actor constellation analysed with regards to the substance and transparency concerning both TTIP and CETA, this chapter will explain the institutional designs within which these actor constellations are played out, and how they can be said to have either been constraining or enabling for the strategic options available to the actors when having to decide on the joint EU approach.

The Commission is by the EU treaties constituted as the only EU actor with an exclusive right of proposing legislation and initiating trade agreements, but before the negotiation can start the Council has to formally adopt a negotiation directive based on the EC's proposal. The negotiation directive outlines the political frame within which the EC can negotiate. It is also here the Council will formulate its 'red lines': content that are of-limit in the negotiations or very restricted in how it can be included in the final agreement. For both agreements there are multiple red lines within each policy area, but there are conditions that more generally pertain them both as shown in the previous chapter; the clear demand for an agreement that does not under any circumstances lower EU standards in all areas, and does not impinge on the right to regulate. The more obvious legal red lines are that CETA and TTIP has to be in compliance with the EU acquis and international commitments.

The negotiation directive sets are the broader frame for the content of both agreements but there are still many details that the EC has to negotiate and this is done in close connection with both the EP and the Council. The EC is legally obliged to inform and consult with both the Council and the EP during the negotiations, but it is not only these legal constraints the EC has to consider when engaging with the Council and the EP. Both actors have the competence to reject the agreements in their entirety when the agreements are ready for ratification, if they do not support the content. The EC is therefore very aware of the positions of the Council and the EP throughout the negotiation process, to make sure that the conditions for consent are as favourable as possible. This has been the case for both CETA and TTIP where there EC has been in regular contact with committees from both actors as well as participating in plenary debates and bilateral meeting with the member states (European Commission 2015k, p.4; European Commission 2015a). It has been particularly true during the TTIP negotiations where the EC has worked even closer with both member states and the EP (Malmström 2015b; European Commission 2015k). This inclusion of all actors in the negotiation process supports the legitimacy of the process and ensures that when the EC decides on the joint EU approach to SD, ISDS and transparency in both the CETA and the TTIP it is based on a consensus among all the EU institutions (Commission interview part 1, 26:53). However while the Council's negotiation directives are legally binding, the same cannot be said for the

recommendations in the EP's resolutions, resulting in that the EP's participation in the negotiation process is to a lesser degree constraining for the EC's behaviour.

The EP's participatory capabilities changed from CETA to TTIP with the Lisbon treaty granting them a more advantaged position. Although this happened early in the CETA negotiations it was not until the TTIP the EP managed to take advantage of this: *"[...] there has been a difference in how much the parliament has involved itself in the negotiations concerning CETA and TTIP. There is no doubt about that the TTIP have been scrutinised more exhaustively, for longer time, and more critically than any other trade agreement"* (MEP interview 2016: 3). The EP was in CETA just beginning to develop as a player in the trade policy where with TTIP the EP was actively involved from the earliest of stages (EP 1 interview 3:34).

Despite the fact that the institutional rules and norms guiding the negotiation process are in place to secure that action resources is evenly divided, there are imbalances in both the TTIP and CETA negotiations, especially with regards to access to information, and veto power. The EC is the one sitting at the negotiation table and has directly access to all information in the negotiations, including information from the counterparts, Canada and US respectively. The relationship between the EC, the Council and the EP can be explained by the principal-agent model, with the EC being the agent and the Council and the EP being the principles: the Council and the EP are dependent on the EC to inform them correctly and exhaustively (Woolcock 2015, p.396). This imbalance has somewhat been changed in the TTIP negotiations following the heightened focus of the EC to increase transparency. The EC has increased the amount of documents made public and MEP's have gotten access to consolidated texts though subject to certain security measures as to not put the EU at a disadvantage in the negotiations (European Parliament 2015a). As was examined in section 4.2.6 the increased access to information can be seen in the EP's 2015 resolution where there is reference to documents that have been released and the detailed content of the resolution and its recommendations are characterised by a higher degree of knowledge (European Parliament 2015c). An official from the EP explains that the access to more documents has qualified the discussions and debates; it is easier to articulate some of the myths that have been surrounding the TTIP when the arguments can be based on facts instead of stipulations (EP 1 interview 18:19).

When an agreement is finalised it has to go through legal revision. Here the legal staff of EC and the other country will go through the agreement and review it. At the time of writing this process has been concluded for the CETA agreement, it was during this process that the new ISDS design was incorporated, although legal is scrubbing is only meant for minor legal and linguistic adjustments (Vi-eu-ws 2016). As the ISDS was a special case it is unlikely that the legal scrubbing in regards to TTIP will be used for anything else but the intended purpose. After the legal scrubbing the agreements have to be ratified by both the EP and the

Council. Both holds veto powers in this process while the EC holds no formal competencies in this, and can only await the result. The Council has to give consent for the signing of the agreement and when it is signed the EP has to vote on the agreement by the use of absolute majority. It has veto powers over the agreement in its entirety but any amendments the EP would desire it has to negotiate with the EC during the trade negotiation. There have been doubts about whether the EP would 'dare' to reject either agreement if the Council supports them, but the EP showed in 2012 with its rejection of ACTA that it is not afraid to use its competence in this area (European Parliament 2012). In connection with TTIP this is supported by a statement from a MEP *"[...] we have been even more proactive with regards to, both publicly and behind closed doors, making sure that the Commission understands that the EP's support for TTIP is not a given [...]"* (MEP interview 2016: 3). If the EP and Council ratify the agreements, the Council will adopt the final decision to conclude the agreement. If the agreement can be identified as a 'mixed-agreement' meaning that it touches upon member states competences, the member states will have to ratify the agreement before the Council can adopt its final decision. There is still doubt about whether TTIP and CETA will be treated as 'mixed-agreements', but it is likely that if the CETA is identified as a 'mixed-agreement' the TTIP will be too.

4.5.1 Partial conclusion

Generally the institutional setting for both the CETA and the TTIP has been/is similar, but the increased access to information is a pivotal difference. By giving the EP and the Council access to more information in the TTIP negotiation compared to the CETA negotiation, their action resources have changed. The EP gained more influence with the Lisbon treaty in terms of more access to, and participation in the negotiations not long after the beginning of the CETA negotiations, the TTIP was where the EP more actively utilised these capabilities. The institutional setting within which the actors negotiated the approach to CETA and TTIP can be characterised as a joint-decision system; none of the three actors can unilaterally decide on an approach or the formulation of a proposal and after the possible adoption of the two agreements, democratic legitimacy has been secured by the 'double democratic guarantee' – the adoption by both the EP and the Council. This institutional setting constrain the EC's available options when deciding on an approach to CETA and TTIP, it could and cannot choose an approach motivated exclusively by its own preferences but has an obligation to consider the suggested approach by both the Council and the EP, and develop the joint approach through a continuous dialogue with both.

5.0 Conclusion

This chapter contains the conclusion of the thesis, thereby answering the research question which reads:

What internal factors in the EU have caused a different more ambitious approach to the Transatlantic Trade and Investment Partnership, compared to the Canada-EU trade agreement?

The TTIP has since its initiation 2013 caused a lot of debate both publicly and inside the EU. It is to be the biggest bilateral trade agreement with implications for 500 million people living in the two biggest economic markets in the world – the EU and the US. But before the TTIP, the EU's trade agreement with Canada - the CETA claimed the price as the first ever industrialised western country to enter into an agreement with the EU.

These two agreements share many similar features in terms of the design of the agreements and both are comprehensive and ambitious trade agreements among two western countries. Despite these similarities, the EU's approach to TTIP has been more ambitious than their approach to CETA. This can be exemplified by looking at the level of transparency in the negotiation process and the proposals for SD and ISDS.

The SD chapter goes further than the CETA including specific and detailed commitments and obligations related to each of the four fundamental ILO principles. The ISDS has been reformed into the ICS and includes an explicit reference to the member states' rights to regulate, a new court system with a transparent appointment of independent judges and an appellate court. For the TTIP negotiation process it applies that new transparency initiatives including a special expert advisory group, publication of all EU negotiation proposals and the granting of access for MEP's to consolidated texts.

Several factors contribute to the explanation of why the EU has chosen these more ambitious approaches in TTIP. The scoping exercises for both agreements clearly defines what the goals of the negotiations should be; For CETA it is emphasised that the goal should be an agreement that fully realises the EU-Canada relationship by liberalising trade in a diverse area of market sectors. For the TTIP the goal should be the same, but the EU and the US should further strive to agree on rules and standards on global issues that can serve as a possible model for future multilateral trade. It is emphasised that there should be a focus on developing new and innovative solutions. These different definitions of goals have influenced the actors' perception of the two agreements by supplying a different set of possible options available to achieve these goals in regards to CETA and TTIP respectively.

In their choice of approaches, the actors have been motivated by considerations of serving the citizens and the member states, as well as coherence with EU trade policy and the rules and norms constituted by the

Commissions trade agenda and for the EP particular its identity. However these motives have been altered through processes of learning and persuasion, causing their preferences to change resulting in the choice of more ambitious approaches. The Council adopted a more ambitious approach to transparency after pressure from the ombudsman and the Commission adopted a new approach to ISDS in TTIP after gaining new knowledge through the public hearing and consultation with the EP and the Council. For the EP its change in approach was a result of its ability to more exhaustively use its access to more documents and its increased possibility of participation in the negotiation process. The institutional setting of a joint decision system has further limited the available options for the actors by constituting that none of them can decide on the joint EU approach unilateral. The Commission has to operate within the frame of the negotiation directive defined by the Council, as well ensuring support for the TTIP and CETA in general and its proposals in particular, by continuously consulting with both the EP and the Council. The Council and the EP on the other hand both have to ratify the agreement, but do not have the competencies to negotiate the agreements.

All these factors put together, the difference in policy goals and perception, the different and changing preferences along with the institutional design have contributed to, that the approaches considered by the actors to be the best options for realising the goal of the TTIP, were more ambitious than in CETA.

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