

# **Regional Mobilization in International Trade Policy: The US States in Transatlantic Trade Negotiations**

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Ever since the negotiations for the North American Free Trade Agreement (NAFTA), noncentral governments in the US have been clamouring for a bigger say in US trade policy making. Yet, constitutional and practical constraints remain for states to represent their trade policy interests. To investigate these constraints and how states try to overcome them, this contribution considers the case of the negotiations for the Transatlantic Trade and Investment Partnership (TTIP) between the EU and the US. I analyze how states formulated and represented their interests on the TTIP. While overall state interest representation on the TTIP was low, I find various avenues in which states mobilized, mostly in a coordinated setting including the federal government and mostly driven by progressive-leaning state legislators with a background in international trade. The analysis of state interest representation on the TTIP adds to the literature on noncentral actors in international trade policy making.

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

## Introduction

Between 2011 and 2016, the EU and the US were in talks to create the biggest trade and investment agreement in history, the Transatlantic Trade and Investment Partnership (TTIP). This contribution looks at the TTIP as a case study to examine how US states as noncentral governments mobilized to make their policy preferences known. This had become an issue because the TTIP, like some previous trade deals, could affect not only states' economies, but also their regulatory prerogatives. States' and other noncentral governments' roles as international trade *policy* actors have been investigated before (cf. McMillan, 2012; Kukucha, 2015b; Broschek and Goff, 2020), even though states' trade *promotion* efforts have received more long-standing scholarly attention (cf. Kline, 1984; Fry, 1990; Whatley, 2003; Burnett, 2015). These trade promotion efforts, i.e., attracting foreign direct investment (FDI) and growing exports, do make up most of states' international affairs. Nonetheless, states have been vocal on trade policy as well, for example, during the talks for the North American Free Trade Agreement (NAFTA).

States face constitutional constraints on international trade policy making, which has led them to call for better involvement within the federal system (Wilkie, 2004). At the same time, the TTIP negotiations offered unprecedented openings for actors not at the negotiation table – businesses, civil society, and noncentral governments – to represent their interests in public consultations and stakeholder fora (Buonanno, 2015b, 253–255). These circumstances make the TTIP an interesting case to study how states mobilized, despite the caveat that negotiations were never completed, which makes a full evaluation of state mobilization impossible and leaves comparisons to previous agreements fragmentary.

Scholarship on federalism and multilevel governance has examined the “paradiplomatic” efforts of noncentral governments or, in other terms, their multilayered interest representation (cf. Ducháček, Latouche and Stevenson, 1988; Hooghe and Marks, 1996). For example, regions in Europe (cf. Tatham, 2018) and US federal states (cf. Kincaid, 1999) use various avenues to represent their interests within intergovernmental or multilevel governance systems. This noncentral mobilization can follow different modes: Regions can interact with the federal government or not (coordinated vs. parallel interest representation). In either case, they can be in harmony with the federal government or in conflict with it (Soldatos, 1990, 38; Criekemans, 2010, 39; Tatham, 2010, 77–78, 90). Parallel interest representation (i.e., no state-federal interaction) on issues where regions and the federal level diverge is also called “bypassing” interest representation.

In this study, I analyze how and why states represented their trade policy interests during the TTIP negotiations. This research adds to the literature on multilayered interest representation and intergovernmentalism by highlighting noncentral governments’ international trade policy making within a federal system that does not provide many formal opportunities for such activities. The NAFTA negotiations is presented in the next section to draw attention to how federalism scholarship has analyzed states’ mobilization efforts so far and to provide a point of reference for the following analysis of the TTIP. I find that states used various formal and informal means to mobilize on TTIP issues. This happened mostly in a coordinated setting, with bypassing interest representation being the exception. I argue that progressive state legislators, in conjunction with civil society, drove state mobilization and that many of the hurdles already present during the NAFTA talks remained during the TTIP negotiations. The analysis is based on a review of US state, US federal and EU documents on the TTIP such as published

policy positions, letters, gubernatorial speeches and state resolutions as well as expert interviews with state, federal and EU officials who worked on the TTIP and/or on international trade topics.<sup>1</sup>

## **A look back at the NAFTA: Understanding states' intergovernmental constraints and opportunities in trade policy making**

### ***Limited formal avenues for state interest representation in trade negotiations***

The US constitution affords states only a limited role in international trade policy making, so formal opportunities for the states to represent their interests were scarce in the years leading up to the ratification of the NAFTA in 1993 (Gress, 1996, 62). The federal government negotiates trade deals and is allowed to bind the states to the agreements (Tangeman, 1996, 252–253). The agency tasked with negotiating international trade agreements is the Office of the US Trade Representative (USTR). States are not directly included in the negotiations, but are represented via the Intergovernmental Policy Advisory Committee on Trade (IGPAC) at the USTR, one of many committees advising USTR officials.

The IGPAC was the most important formalized way for states to mobilize on the NAFTA. This advisory-only body, established in 1974, is made up of elected and nonelected officials from US states and localities (Office of the U.S. Trade Representative, 2014, 1). At the end of each trade negotiation, the committee prepares a report for the USTR with recommendations to guide the subsequent ratification process. The IGPAC issued a report in 1992 favouring the NAFTA but also addressing some critical issues towards the federal government (Thompson, 1992). Thus, the IGPAC's mode of

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<sup>1</sup> The interviews were conducted between January and October 2016 as part of a research project on states in the TTIP talks, see Jaursch, 2018, 59–81 (also for methodological points).

coordinated interest representation (meaning there is state-federal interaction) could be both conflicting and harmonious. Despite its activity during the negotiations, the IG-PAC was criticized for its lack of regular meetings and qualified staff (Orbuch and Singer, 1995; Kaiser, 1998, 202; Boer, 2002).

### ***The importance of informal, non-institutionalized state interest representation***

Without a strong institutionalized intergovernmental consultation mechanism for states to provide input into the negotiations, informal mobilizing efforts became all the more important. The congressional delegation especially is an important part of states' interest representation (O'Neill, 1990, 188; Kincaid, 1999, 122; Fry, 2009, 306; Gollob and Leckrone, 2012). Letters and policy position aimed at members of Congress serve to make state positions known, and members of Congress can in turn use these letters to justify their own positions and voting decisions. This was another form of coordinated interest representation that could be both in conflict with and in harmony with the federal government.

During the NAFTA talks, such coordinated mobilization became an integral part of state mobilization. For example, contacts between governors and the USTR or the president took on an important role (Orbuch and Singer, 1995, 130). Many governors became crucial allies for the Clinton administration, as they spoke out in favour of the agreement for economic reasons (Seay and Smith, 1993; Kaiser, 1998, 206, 2005, 93–94).

### *Intergovernmental conflicts over state sovereignty issues in trade agreements*

A key point of contention between the states and the federal government was states' concern that their own rule-making powers might be negatively affected by NAFTA provisions the federal level favoured. These intergovernmental conflicts mostly played out in coordinated settings for state-federal interaction, via the IGPAC and several state legislators who emphasized questions of US federalism over economic considerations.

Worries that the NAFTA might affect state sovereignty were a sticking point, "because the trade agreement mandates uniform regulations, thereby requiring states to regulate according to the NAFTA guidelines in areas that were previously left to independent state regulation" (Tangeman, 1996, 251). The federal government had not done this in previous trade agreements, alarming states that they might lose their "independent lawmaking capacity" (Weiler, 1994, 132) due to NAFTA restrictions and new institutions curtailing them.

Overall, the NAFTA talks proved that the states cannot be overlooked in international trade negotiations. In constitutional and formal terms, the federal level asserted its primacy in trade policy making. In political terms, however, it became clear that federal actors could not ignore states' interests (Smith and Woolcock, 1993, 50, 103). This is an important starting point for an analysis of the TTIP, as many of the same actors, issues and intergovernmental conflicts came back to the fore during the TTIP negotiations. During the NAFTA talks, states showed that they are willing and capable to develop international trade policy preferences, which then shape the negotiation process, albeit to a small degree. For example, states secured provisions regarding the "grandfathering" of laws, meaning states were allowed to keep already existing state laws that conflict with NAFTA regulations (Chopra, 1993; Weiler, 1993, 41; Kaiser, 1998, 219; Boer, 2002); they received a pledge from the federal government to get help conforming their laws to

NAFTA standards (Tangeman, 1996, 264); they established a NAFTA Coordinator for State Matters (Weiler, 1993, 41; Tangeman, 1996, 265; Sager, 2002, 107–108) and the State Single Point of Contact system to exchange information with the federal level (Weiler, 1994, 129; Orbuch and Singer, 1995; Tangeman, 1996, 265; Kaiser, 1998, 216).

### **Brief background on the TTIP: Why transatlantic trade policy mattered to states**

The sheer volume of transatlantic trade and investment was reason enough for states to care about the TTIP. On average between 2011 and 2016, almost one fifth of a US state's annual exports went to the EU, and in 2015, all but two states had at least one EU member state in their top ten export destinations (Foreign Trade Division, 2016). Jobs generated from European FDI as a percentage of all jobs generated by FDI ranged from almost 40 per cent in North and South Dakota to almost 80 per cent in Connecticut and Rhode Island (U.S. Bureau of Economic Analysis, 2017).

The kind of trade deal the TTIP was shaping up to be also touched the states. The NAFTA marked the beginning of an era of multilateral trade deals being negotiated outside of the General Agreement on Tariffs and Trade and later the World Trade Organization (WTO) and shifting focus from tariffs to nontariff barriers to trade (NTBs). This emphasis on NTBs was even more pronounced in the TTIP than in the NAFTA because transatlantic tariffs were already low for most industries. Still, political leaders on both sides of the Atlantic presented an even more integrated transatlantic market, covering millions of businesses and roughly 800 million consumers, as a driver for jobs and economic growth (Obama, 2013). In 2011, they established the EU-US High Level Working Group on Jobs and Growth to identify areas of cooperation for the TTIP such

as eliminating tariffs and preventing NTBs (United States-European Union High Level Working Group on Jobs and Growth, 2013). Negotiations formally started two years later, in 2013, and broke down in late 2016.

The TTIP's focus on regulatory issues and NTBs was important for the states in two related ways: The states want the European market to be as open as possible (meaning as little NTBs as possible), so that companies from their states have it easier to export to Europe. Many of the trade barriers in the EU identified by the USTR, for example, directly concern market access issues for industries that are valuable for some states, such as beef or citrus fruit (Office of the U.S. Trade Representative, 2015, 2016, 148, 151). Simultaneously, US states want to prevent any infringement on their own regulatory power, as some of the NTBs that Europeans wanted to tackle stem from state-level laws and regulations (and not federal rules), such as public procurement. These issues help explain why some states actively sought to represent their interests during the talks: The rules that federal and EU negotiators agreed on could have altered their regulatory and legislative landscape. To illustrate, two examples for areas where states feared such potential preemption via the TTIP are briefly presented here, to be taken up in the later analysis.

### ***States' interest in preserving their powers regarding public procurement***

States have considerable power over their own procurement markets and generally want to preserve their laws granting preferential treatment to in-state producers and service providers (for example, rules favouring local agricultural producers or solar panel makers). This was bound to clash with EU goals for the TTIP.

States' preferential treatment laws, some of which are called "Buy American" laws (Hocking and Smith, 1997, 260; Buonanno, 2015a, 265–266), are meant to boost state economic and job growth and have been an item of international discussion before: The WTO's Government Procurement Agreement (GPA), for instance, specifically does not apply to the state and local level in the US (McNiff, 2015). Even under the latest revisions to the GPA, the US maintains exclusions for the states. The federal government cannot force states to adhere to international procurement rules, thus obliging them to open their procurement markets. Rather, the administration must ask states to voluntarily sign on to the procurement provisions. In the GPA, not all states signed on and for subsequent free trade agreements with procurement rules, the number of states agreeing to procurement rules gradually declined (Woolcock and Grier, 2015, 20–22; National Association of State Procurement Officials, 2016).

The EU's stated goal for the TTIP was to remove any barriers to noncentral procurement for European companies (De Gucht, 2013, 2015; Yukins, 2014, 2; Woolcock and Grier, 2015, 20–22). Because of this, some state officials were worried that the TTIP might impinge on state sovereignty in the field of public procurement.<sup>2</sup> This would have meant that the EU mounts enough pressure to force changes to US legislation, so as to require states to open their markets. The issue was exacerbated by the fact that the US federal government wanted to open up the European procurement markets as well and therefore needed to consider the state-level rules as a bargaining chip. But throughout the negotiations, it was questionable whether the EU had enough negotiation power to provoke legislative changes in the US because the federal government would put up strong resistance out of political calculations: The administration would likely not have risked a political battle with state governments over the popular "buy local" measures, even though some business organizations were against them (Trans-Atlantic

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<sup>2</sup> Personal interviews with state and federal executive officials and state legislators.

Business Council, 2013, 9; American Chamber of Commerce to the European Union, 2014, 34).

### *States' opposition to the ISDS mechanism*

The investor-state dispute settlement (ISDS) mechanism was a controversial part of the TTIP negotiations and one that many state officials focused their work on<sup>3</sup>. In brief, ISDS is a mechanism for foreign private companies to sue central governments over alleged discriminatory practices by either the central or the noncentral governments (for analyses of the ISDS mechanism in the TTIP, see, for example, Tietje and Baetens, 2014; Henckels, 2016; Tienhaara, 2017; Witkowska, 2017). An international arbitral tribunal, outside of a country's own judicial system, rules on cases brought by companies.

ISDS supporters say the mechanism protects investors against discrimination, which was the original rationale for the mechanism: It was meant to guard companies from having their property expropriated, for example, or for not receiving the same treatment as domestic companies. Opponents claim it places corporate interests above public interests: Foreign companies have the right to sue against legislative and regulatory decisions that do not amount to expropriation but are based on the local public policy interests. They can thus circumvent domestic legal system, including noncentral rules, by using ISDS tribunals (Sachs, Johnson and Sachs, 2015).

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<sup>3</sup> Personal interviews with state and federal executive officials and state legislators.

## **States' trade policy interest representation during the TTIP negotiations: Familiar policy issues and intergovernmental constraints**

### *Continued weaknesses of institutionalized intergovernmental consultation*

#### *The IGPAC*

The IGPAC remained the chief avenue of state mobilization in a coordinated setting, which allowed for both harmonious and conflicting interest representation. Since the days of the NAFTA talks, the body has continued to be the only institutionalized way in which state interests on trade negotiations are aggregated and relayed to federal actors. For the TTIP, this was mostly done online or via conference calls.

IGPAC members had access to a secure website on which the USTR posted negotiation texts before they were discussed with the EU. Even though there was criticism with regards to the timeliness of receiving these texts, state officials could theoretically comment on the proposals.<sup>4</sup> Additionally, they could express their opinions in conference calls and occasional personal meetings. The website and conference calls were the prime means of state-federal interaction, with the USTR providing updates in irregular intervals.

While overall a functioning body for intergovernmental consultation, the IGPAC exhibits weaknesses that diminish its role in state mobilization and that have been known since at least the NAFTA talks. No other committee at the USTR has democratically elected officials as members and is closer to the citizens than the IGPAC, which is an advantage. But the body is not able to go up against industry-specific USTR advisory committees stacked with corporate representatives (Jaursch, 2018, 108–114; Egan, 2020, 118–119). States have heterogeneous interests and often lack resources to develop trade policy expertise. In contrast, private sector industry groups come well-prepared,

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<sup>4</sup> Personal interviews with state and federal executive officials and state legislators.

well-staffed and well-funded to the USTR, and offer federal officials concrete demands that relate to particular pieces of tariff negotiations or regulatory cooperation.

States use the IGPAC to make broader, more abstract points than businesses, such as safeguarding state sovereignty, ensuring equal legal rights for companies at home and abroad, and improving intergovernmental relations. Yet, these issues – often conflicting with the federal government’s negotiation goals – were not the key topics that the USTR negotiated with its EU partners. The USTR discussed auto parts, sugar tariffs and drug patents. Business groups can offer specific expertise on such issues.

Finding a mechanism to discuss conflicting state-federal interests in US trade policy making has been a major undertaking by the IGPAC since the NAFTA talks. It has, however, not led to significant changes. A 2004 memorandum by the IGPAC’s then-chair described how trade liberalization and the nature of modern trade agreements have led to states being affected by trade policy more strongly than before (Wilkie, 2004). While she was aware of the increased state-federal consultations in trade policy, especially via the IGPAC, the chair was critical of the lack of resources awarded to the committee. This criticism has been put forth by scholars as well, who point to the general lack of staffing and resources (Kukucha, 2015a, 230) and that the IGPAC relies on data and staff coming from the USTR (Whatley, 2003, 10; Kukucha, 2015a, 230).<sup>5</sup> Staying abreast of trade negotiations was difficult for IGPAC members in the case of the TTIP as well. For example, on the secure website, new texts were sometimes posted after a negotiation round and sometimes without relation to any specific talks that had occurred. The conference calls, too, were held when deemed necessary and not, say, every two months or after every negotiation round.<sup>6</sup>

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<sup>5</sup> The findings were confirmed for the TTIP negotiations in personal interviews with state and federal executive officials and state legislators.

<sup>6</sup> Personal interviews with state and federal executive officials and state legislators.

### *Testimonies, hearings and TTIP consultations*

Congressional testimonies are another type of coordinated interest representation, but opportunities to testify on the TTIP were rare. Between 2013 and 2016, the US Senate and House of Representatives each held two hearings with a TTIP focus (Akhtar and Jones, 2014, 4; Jaurisch, 2018, 27–28). Only one contained testimony from a US state, which was a written statement by Sharon Treat from the Maine Citizen Trade Policy Commission, submitted by a member of Congress that actually addressed a Trans-Pacific Partnership (TPP) negotiation round from two years ago, not the TTIP (U.S. House of Representatives Committee on Energy and Commerce, 2013, 166–171).

The TTIP negotiation featured several hearings at the USTR and stakeholder dialogues in the US and the EU, which were opportunities for business and civil society organizations to comment on the discussions. They were also meant to address allegations that negotiations were not transparent and shut out nonbusiness actors. This criticism, mostly emanating from civil society organizations, was especially strong in some European countries such as Austria and Germany. Criticism of the ISDS mechanism in particular got so heated that the EU paused the negotiations to hold a public consultation. Having stakeholder gatherings and public consultations can be seen as an acknowledgement by federal and EU actors that the negotiations were under intense public scrutiny, at least in the EU, and required involvement of various other stakeholders besides the actual negotiators (cf. Buonanno, 2015a, 279–282). Yet, US states did not use these open, public fora widely. It seems only the Maine Citizen Trade Policy Commission took advantage of participating in a stakeholder dialogue. No US noncentral governments or organizations, i.e., state associations such as the National Governors Asso-

ciation, National Conference of State Legislators, Council of State Governments or State International Development Organizations, contributed to the EU's public ISDS consultation, while a few European noncentral actors provided input (European Commission, 2015, 13). The lack of US submissions might not be that surprising, since the consultation was conducted by the EU, and the TTIP was less controversial and received less media attention in the US than in Europe. Without much resources to develop and articulate trade policy interests, states were unable or unwilling to use this opportunity.

### ***Non-institutionalized intergovernmental state mobilization driven by progressive alliances***

#### *State executives and their main national organization*

State executives have traditionally focused strongly on attracting FDI from the EU and promoting exports to the EU. As just one example, state executives have invested in economic development programmes that often include trade representative offices in the EU. At the time of the TTIP negotiations, 27 states maintained 49 such offices in eight EU member states. The offices do not have policy-making responsibilities (Hocking and Smith, 1997, 115).<sup>7</sup> They are largely economic development outposts to attract FDI and promote exports. Tellingly, there was only one office left in Brussels, the seat of many of the EU's institutions, whereas most trade offices were in Germany (21 offices), the EU's biggest economy (Jaurisch, 2018, 89–92).

Against this backdrop, it is unsurprising that the vast majority of gubernatorial mobilization on the TTIP can be chalked up to trade *promotion* efforts and not trade

<sup>7</sup> This finding was confirmed in personal interviews with officials from state representative offices in Belgium and Germany, March-July 2016.

*policy* issues, which this paper is concerned with. Between 2013 and 2016, at least eight official letters and statements on the TTIP by US governors to the president and/or Congressional leaders are documented. This type of coordinated interest representation made little reference to policy issues. For instance, the letter with the most gubernatorial signatures squarely focused on the positive impact the TTIP might have on agricultural exports (Stalsberg, 2013). In contrast, a lone governor addressed the USTR with some reservations about the ISDS mechanism (Inslee, 2014). Similarly, governors' state-of-the-state speeches during the TTIP negotiations between 2011 and 2016 stressed trade promotion, if they mentioned international trade at all (Willoughby, 2016; Jaursch, 2018, 84–87).

While governors did travel to the EU quite frequently during the TTIP negotiations, this was mostly done as trade missions focused on economic development. They met with existing and prospective investors and connected exporters from their state to potential buyers in Europe. Looking at gubernatorial press releases regarding their trade missions, only a small number of governors spoke out on the TTIP via interviews, speeches or press statements at the margins of such business meetings.

The National Governors Association (NGA) also focused strongly on economic development regarding trade issues. The organization's 2015 policy position on commerce touched upon innovation, entrepreneurship, exporting, investment promotion and taxes related to commerce. It contained only one brief reference to trade agreements and there was no specific policy position on the TTIP (Egan, 2020, 121).<sup>8</sup>

Overall, most state executives remained muted on the TTIP, a contrast to the NAFTA talks, in which public gubernatorial support for the deal was crucial for the federal negotiators. There was no lack of interest in how the TTIP might boost states' eco-

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<sup>8</sup> This was confirmed in personal interviews with state legislators and state association officials.

nomies, as evidenced by the letter on agricultural exports. TTIP proponents attempted to highlight the potential positive economic effects for states, too, prominently exemplified by a business-friendly publication touting potential net gains for each state (Barker, Collett and Workman, 2013). Yet, the fact that the TTIP negotiations never reached the same level of attention in the US as in Europe might have prevented governors from speaking out more forcefully. Economic development in general is an example of interest representation without state-federal coordination and without intergovernmental conflicts, as states act independently on this and their goals largely align with those of the federal government.

#### *State legislatures and their main national organizations*

States, especially state legislatures, often lack the financial and staff resources to develop expertise on international trade relations. Nonetheless, legislatures – and especially individual legislators – engaged in coordinated and parallel interest representation on the TTIP. A key means for this are committees within state legislatures dealing with trade policy (Egan, 2020, 119). During the TTIP negotiations, states with active trade policy commissions included Maine, Texas, Utah, Vermont and Washington.<sup>9</sup> These commissions specifically deal with analyzing and influencing international trade agreements. In Texas, Utah and Washington, the commissions are solely made up of state representatives, state senators and state executive officials. In Maine and Vermont, there are additional members representing businesses as well as environmental and labour groups from the state.

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<sup>9</sup> Massachusetts' trade policy commission was not active, and New Hampshire's had been terminated.

In some states, including Maine (Maine Legislature, 2009), Utah (Utah State Legislature, 2006) and Vermont (Vermont General Assembly, 2009), the commissions have to be consulted before the governor binds the state to any international trade agreement. Such provisions are largely symbolic because state governments have no say in approving or rejecting trade agreements such as the TTIP in their entirety. They are, however, important for certain elements of international trade agreements, mostly pertaining to public procurement: In this field, the federal government has come to ask states to opt-in to rules agreed upon in international trade agreements.<sup>10</sup>

Typically, the commissions' mandates translate to holding public hearings, publishing state resolutions and writing letters on international trade policy. At times, the commissions work together amongst each other or with the IGPAC. The commission in Maine has been most actively engaged in transatlantic trade policy interest representation, both in a coordinated mode such as via testimonies at USTR stakeholder events or letters to the USTR as well as in a parallel mode via commissioning research (Hansen-Kuhn and Piotti, 2014) and holding public hearings. For instance, the commission wrote letters to the USTR on public procurement (Maine Citizen Trade Policy Commission, 2015, 41–43) and on the ISDS mechanism (Maine Citizen Trade Policy Commission, 2015, 44–45). The commission held that ISDS panels were not democratically selected, did not take into account the public interest when judging investors' rights and were costly for US taxpayers. In a show of coordinated, conflicting interest representation, these concerns were repeated in a letter to the Ways and Means Committee of the US House of Representatives (Maine Citizen Trade Policy Commission, 2015, 27–28), the committee responsible for international trade negotiations. The Vermont Commission on International Trade and State Sovereignty also voiced state-specific concerns on

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<sup>10</sup> Personal interviews with federal executive officials, state legislators and state association of officials.

the ISDS system in a letter to the USTR (Vermont Commission on International Trade and State Sovereignty, 2014a).

Legislative commissions were furthermore involved in drafting and publishing state resolutions on the TTIP. However, unlike letters and policy positions, state resolutions are not considered to have a high impact (Gollob and Leckrone, 2012).<sup>11</sup> They are nonbinding legislative tools typically declaring the position on a trade issue by one or both houses of a state legislature. A review of state legislatures' legislative databases shows that there were at least 17 state resolutions touching on the TTIP and/or the TPP, which was negotiated at roughly the same time. Ten resolutions from a total of six states (Arizona, Illinois, Maine, Michigan, Vermont and Washington) highlighted trade policy issues conflicting with federal negotiation goals. The other seven resolutions from five states (California, Florida, Georgia, Illinois and Washington) emphasized trade promotion and called for swift conclusions of the negotiations (Jaurisch, 2018, 124–131). Only two of ten policy-related, yet six of seven trade-promotion-related resolutions passed, which might point to the lack of intergovernmental controversy on economic development and the contentious nature of trade policy issues.

The National Conference of State Legislatures (NCSL) has taken a detailed stance on trade policy. While the NCSL offers its support for trade agreements, the policy resolution on trade is mainly a collection of demands for improving US trade policy making. It includes calls for better collaboration between the USTR and state legislators, demands for more resources for the USTR as well as opinions on specific trade policy issues of concern for states, including the ISDS mechanism (National Conference of State Legislatures, 2016b). The NCSL has provided several settings in which state legislators can form and advance their interests in transatlantic trade policy. Every

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<sup>11</sup> This finding was confirmed in personal interviews with state and federal executive officials and state legislators.

legislative summit – one of the NCSL’s two big annual conferences – between 2011 and 2016 featured a panel on international trade, and on multiple occasions, the TTIP was specifically addressed: In 2013, the legislative summit convened a panel dedicated to the TTIP (National Conference of State Legislatures, 2013). In 2016, the legislative summit agenda included an “International Trade Panel & Discussion”. Apart from the state legislators and a panellist representing the labour associations, an official from the USTR as well as a representative from the EU’s delegation in Washington, DC, participated (National Conference of State Legislatures, 2016a), creating an opportunity for coordinated interest representation.

Besides the NCSL as a general-interest organization, state legislators have formed other associations that were active on the TTIP, mostly in a coordinated setting via policy positions and/or letters to the federal government. One of the groups was the National Caucus of Environmental Legislators (NCEL), which has provided resources and fostered information exchange among state legislators on trade agreements (National Caucus of Environmental Legislators, 2016). The NCEL was founded in 1996, is made up of about 1,000 state legislators and staff from all 50 states, and is bipartisan but considers itself a progressive environmental organization.<sup>12</sup> In a 2014 letter to the USTR, 50 NCEL members laid out their in-depth comments on environmental issues in the TTIP (National Caucus of Environmental Legislators, 2014).

The efforts of the trade policy commissions and the state associations are aided by the fact that there are civil society groups working on trade at the state level (Kukucha, 2020, 168–171). Some state legislators had built relationships with progressive groups like Public Citizen and the Forum on Democracy and Trade over the years, whose interests aligned on the ISDS mechanism and other causes. Such connections had helped establish some of the trade policy commissions in the first place, and later

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<sup>12</sup> Personal interviews with state legislators and state association officials.

spawned joint activities including legislative proposals to reform US trade policy making.

By the time the TTIP was being negotiated, however, civil society interest in state-level trade policy making had begun to fade (Kukucha, 2020, 175), and some groups were not as actively pushing state legislators as they had been. Part of this decreasing interest can likely be attributed to the fact that funding for civil society organizations supporting state legislators, such as the Forum on Democracy and Trade, had run out (Jaurisch, 2018, 102; Kukucha, 2020, 171). This might explain the overall rather muted interest representation by state legislators: Without strong institutionalized consultation mechanisms and with little outside support, TTIP interest representation came down to about a dozen personally motivated lawmakers who established both coordinated and bypassing interest representation.

For state legislators, travelling to the EU is less common than for governors. The NCSL is active in fostering an exchange between state legislators and European politicians, which has focused on the TTIP at times. One exchange organized by the NCSL in 2015 brought US state legislators in touch with members of the European Parliament (MEPs). The topics of the excursion to Brussels, Belgium and Strasbourg, France included transatlantic trade policy.<sup>13</sup> The NCSL members met with MEPs from various parties and regions, allowing them to hear both pro-TTIP and anti-TTIP stances from European legislators.

Outside of the NCSL framework, there were isolated instances in which MEPs or national-level European legislators visited a US state with the express purpose of discussing the TTIP with state legislators. One such meeting took place in May 2014, when a German parliamentarian from the Left party addressed the Vermont Commission on Trade and State Sovereignty on “The European Perspective on the Trans-At-

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<sup>13</sup> Personal interviews with state legislators.

lantic Partnership” (Vermont Commission on International Trade and State Sovereignty, 2014b, 16). This transatlantic connection between an EU member state and a US federal state was facilitated by informal, personal connections via civil society groups.<sup>14</sup>

A year and half later, another state-EU legislative meeting dedicated to discussing the TTIP occurred, organized by the NCEL and the Maine and Vermont legislatures’ trade policy commissions and again based on personal connections.<sup>15</sup> Two MEPs from the Green party, who did not come to the US specifically for this meeting, discussed TTIP issues such as renewable energy, climate issues, procurement, regulatory cooperation and food labelling with representatives from five states (Iowa, Maine, Massachusetts, New Hampshire and Vermont; McKeagney, 2015; Vermont Commission on International Trade and State Sovereignty, 2015). These meetings did not involve state-federal interaction and addressed topics of intergovernmental conflict in the US. As such, they are the clearest example of bypassing interest representation during the TTIP negotiations.

## **Discussion**

States were not included in the TTIP negotiations directly, as the constitution stipulates and US chief negotiator Dan Mullaney confirmed: “They’re not at the table, but we [the USTR] talk to them constantly in between [negotiation] rounds.”<sup>16</sup> In light of these constitutional constraints, some state officials and the IGPAC have called for better state involvement in trade deals, for example, during the NAFTA negotiations and other previ-

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<sup>14</sup> Personal interviews with state legislators.

<sup>15</sup> Personal interviews with state legislators.

<sup>16</sup> Response to a question by the author at a public TTIP stakeholder forum in Brussels, July 13, 2016.

ous international trade talks. Yet, by the time the TTIP talks happened, little had changed. The limited role states are allowed to play in international trade negotiations and the related lack of incentives to develop expertise and secure resources on trade policy might explain why there was no large-scale, sustained state mobilization on the TTIP. It remains an open question, whether this would have been different, had the talks continued past 2016, with issues important to the states moving up the agenda. Despite the premature termination of the talks, the TTIP negotiations highlighted several facets of noncentral actors' mobilization on international trade policy.

First, a split between state legislatures' TTIP mobilization efforts and state executives' efforts was visible: While the executive branch seemed to be focused on trade promotion issues and viewed the TTIP largely in economic terms, legislative actors used various means of mobilization to speak out on trade policy issues. Governors used trips abroad mainly to promote trade, their umbrella organization, the NGA, did not publicly address TTIP policy issues, and gubernatorial speeches, if mentioning trade at all, framed this mostly in economic development terms. This mirrors state mobilization during the NAFTA, when governors touted the deal's positive economic effects, although governors were much more muted on the TTIP overall. In contrast, state legislatures used the NCSL to develop detailed policy positions on specific regulatory topics from the TTIP and wrote letters and testimonies to voice policy-oriented comments on the TTIP. This reflects state legislators' emphasis on their rule-making prerogative, which had been a key issue since the NAFTA negotiations. Governors, meanwhile, are reluctant to wade into politically charged debates on specific aspects of the TTIP (Egan, 2020, 121) and on the intergovernmental set-up of US trade negotiations.

Second, mobilization occurred mostly in the coordinated setting of the IGPAC, which allowed both conflicting and harmonious interest representation. Especially on

long-standing, overarching intergovernmental conflicts such as the inclusion of states in trade policy making, noncentral actors can use the IGPAC to voice their criticism directly to the central level. While the IGPAC process provided states this type of intergovernmental forum as well as some insights into the negotiations of the TTIP, in general, the committee's sway is limited. Reforms of the IGPAC have been suggested since at least the NAFTA talks. Especially in light of trade agreements that touch upon many state competencies, reform proposals to strengthen the standing of the IGPAC, allow for a more robust and frequent intergovernmental information exchange, and modernize the membership structure seem reasonable.

Third, interest representation outside of the IGPAC was also mostly done in a coordinated setting. States found other ways to make their voices heard in US intergovernmentalism, mainly via letters addressed to the federal government, specifically the USTR and/or members of Congress. This could be done in harmony, when it came to economic development issues, on which noncentral and central actors saw eye to eye, or in conflict, for example, when letters touched upon public procurement and the ISDS mechanism. Other mobilization efforts in state-federal settings included testimonies and participation in stakeholder fora. In few instances, there were examples of bypassing state interest representation, in the form of meetings between state legislators and MEPs on certain TTIP topics where there was intergovernmental conflict within the US.

Fourth, active state mobilization on the TTIP, including bypassing, was largely driven by progressive-leaning state legislators criticizing policy and policy-making aspects of the TTIP. These state legislators often had a history of working on international trade, in public service and/or in civil society, and drew their motivation to become engaged on the TTIP from this personal experience. Their engagement was reflective of much of the activism on the TTIP in general, which had become a lightning rod for pro-

gressives on both sides of the Atlantic. For instance, the ISDS mechanism had long been criticized by some civil society organizations as anti-democratic, and regulatory rules and rule-making had been criticized as favouring business interests over public interests. State legislators used networks built in these settings to mobilize on the TTIP. With public and political trade prerogatives having shifted after the TTIP, it could be interesting to study the robustness of these networks over time.

## **Conclusion**

The TTIP exemplified how deeply trade agreements can touch state industries and regulations, and how there nonetheless continued to be little formal leeway for states to represent their interests. The trade talks also showed, though, how in light of constitutional limitations, some noncentral government actors still mobilized both within US intergovernmentalism and internationally. Because states not only represented their interests on specific trade policy positions where they diverged with federal prerogatives, but also on the way US trade policy making works, the TTIP negotiations serve as a reminder for overarching, long-standing questions regarding the role of the federal states in international trade negotiations.

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