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Transatlantic Trade Relations:
a Comparative Analysis of TTIP and CETA

Elena Franchina

Abstract

Over the past decade the European Union has been negotiating two preferential trade agreements (PTAs) with respectively Canada and the United States: the Comprehensive Economic and Trade Agreement (CETA) and the Transatlantic Trade and Investment Partnership (TTIP). While CETA negotiations were successfully concluded in August 2014, TTIP negotiations made slow and little progress, and eventually stalled after the 2016 US presidential elections. This work aims at answering the following question: *why were CETA negotiations concluded successfully and those of TTIP were not?* To do so, the paper is divided into three sections: the first section introduces and describes the object of study – namely TTIP and CETA – underlining relevant similarities and differences between the agreements. In the second and third sections, using a comparative approach, I analyze the aspects that according to available literature might have played a determinant role for either the success or failure of the negotiations. Specifically, the second section is dedicated to domestic politics, while the third discusses major controversial issues present in both negotiating agendas. The results of the analysis are then presented in a dedicated section at the end of the work.

Introduction

Preferential Trade Agreements (PTAs) are nowadays among the most popular instruments of international trade policy and foreign policy in general. Transatlantic trade relations during the past decade have been characterized by two projects of PTA that the European Union has negotiated with respectively Canada and the United States: the Comprehensive Economic and Trade Agreement (CETA) and the Transatlantic Trade and Investment Partnership (TTIP). CETA and TTIP are structurally similar, both falling into the category of second-generation trade agreements that feature both tariff and non-tariff issues. However, while CETA negotiations were successfully concluded in August 2014, TTIP negotiations made slow and little progress, and eventually stalled after the 2016 US presidential elections. Thus, this work aims at answering the following research question: *why were CETA negotiations concluded successfully and those of TTIP were not?*

This paper is divided into three sections. The first section introduces and describes the object of study – namely TTIP and CETA. It is divided into two parts – with one dedicated to each of the PTAs – that follow a symmetrical structure designed to highlight the potential similarities and differences of the agreements. For both TTIP and CETA, the chapter will discuss: the context in which negotiations were launched and their current status, their content and scope of application, and their economic and political implications.

In the second and third sections, using a comparative approach, I analyze the aspects that according to the available literature might have played a determinant role for either the success or failure of the negotiations. Specifically, in the second section, I analyze how two aspects of domestic politics –the characteristics of the political systems and the occurrence of election cycles – influenced the negotiations. The analysis focuses on the US and Canada because, as the EU is party to both agreements, and the negotiations were carried out with a negligible time gap, it is assumed that highlighting the differences between the US and Canada would be of greater relevance. On the basis of the literature under the review, the research hypothesis are that (H1) *negotiations of a free trade area with a country whose administration operates in a context of divided government should be more difficult to conclude* and that (H2) *negotiations of a free trade area with a country whose government composition changes significantly and/or unexpectedly following a general election should be more difficult to conclude*.

In the third section, the analysis focuses on three particularly controversial issues present in both negotiating agendas – sanitary and phytosanitary (SPS) measures, geographical indications (GIs) and investor-state dispute settlement (ISDS) – to see how the parties' approach to these delicate topics influenced the outcome of the negotiations. The hypothesis is that (H3) *in CETA negotiations one or both parties were more willing to make concessions or to find a compromise than in TTIP negotiations*. Finally, the results of the analysis will be presented in a dedicated section at the end of the work.

1. The Trans-Atlantic Trade and Investment Partnership (TTIP) and the Comprehensive Economic and Trade Agreement (CETA): similar agreements, different outcomes

1.1 TTIP

1.1.1 Context, launch and status of the negotiations

The Transatlantic Trade and Investment Partnership (TTIP) is a proposed free trade area between the United States (US) and the European Union (EU). Since its launch in February 2013, TTIP has catalyzed the attention of domestic and international actors and generated a great amount of debate about its negotiations, content, and potential economic and political implications. This is not surprising, considering the stakes: the US and the EU are the two world's largest economies, together accounting for roughly half of global gross domestic product (GDP) and 30% of world trade. TTIP would thus create the world's largest mega-regionalstrade agreement (Hamilton, 2015; Young, 2015; Jančić, 2017). The launch of TTIP negotiations can be considered a renewed commitment to transatlantic trade relations by both the EU and the US. Following the US-EU Summit held in Washington DC on November 28, 2011, the two transatlantic powers established a High-Level Working Group (HLWG) on Jobs and Growth in charge of identifying policies and measures to increase transatlantic trade and investment. On February 11, 2013, the HLWG released a report with its findings, summarized as follows:

> The HLWG has reached the conclusion that a comprehensive agreement that addresses a broad range of bilateral trade and investment issues, including regulatory issues, and contributes to the development of global rules, would provide the most significant mutual benefit of the various options we have considered. We therefore recommend to Leaders that each side initiate as soon as possible the formal domestic procedures necessary to launch negotiations on a comprehensive trade and investment agreement (HLWG, 2013:1).

The first round of negotiations took place in July 2013 and until the moment of writing (October 2017) 15 rounds of TTIP negotiations have been concluded, the last in October 2016. Despite the willingness expressed by both parties to conclude the negotiations before the end of the Obama administration, their complexity and the numerous disagreements emerged over the course of the talks impeded the fulfillment of this objective. After the 2016 US presidential election, the Trump administration put the negotiations on hold and no new round has taken place so far.

1.1.2 Characteristics of TTIP

TTIP is often referred to as a "second generation agreement" or "21st century agreement" because, besides common trade liberalization through the elimination of tariffs, it aims to achieve a much deeper integration of the American and European markets, targeting an impressively high amount of non-tariff barriers. Following the guidelines provided by the HLWG report, the EU and the US established that TTIP should include provisions in three broad areas: market access, regulatory issues, and trade-related rules (European Commission, 2013; CRS, 2014). Facilitation and improvement of market access is the most traditional type of trade liberalization envisioned by TTIP, and includes reduction of tariffs and other similar barriers to trade in the area of goods, services, investment and public procurement.

While EU and US tariff lines are already quite low and both markets are generally fairly accessible, improvements are still highly desirable: in fact, given the magnitude of US-EU relations, even a small reduction of tariffs could generate significant change in terms of profits and economic gains.

TTIP is also often referred to as a "regulatory agreement", because its most important and ambitious objective is to reach as much regulatory coherence as possible between the US and EU

markets. Regulations are measures taken by states (or any other regulatory authority) to pursue objectives such as consumer protection, safety, health, environmental sustainability and general social security. As for the US and the EU, regulatory objectives in both parties tend to be similar (which is common for countries that have similar degrees of development and industrialization), but the actual regulations are often different and imply additional costs for manufacturers and producers (Hoekman, 2015). TTIP envisions regulatory cooperation mainly in the forms of mutual recognition, equivalence and harmonization. Mutual recognition – which the EU has experimented through the creation of the single market – entails that, in the absence of overriding concerns, products legally introduced into the commerce of one jurisdiction may be sold and consumed without additional control in another jurisdiction. Equivalence instead is based on trust and requires the two parties to rely on the equivalence of each other's regulatory objectives and especially on the effectiveness of their counterpart's system of implementation and enforcement. Finally, harmonization refers to future regulations, and requires the parties to create a mechanism of cooperation that would make TTIP a "living" or "dynamic" agreement. This means that the agreement should serve not as the end, but rather as a starting point for gradual regulatory convergence to be achieved over time through bilateral cooperation mechanisms. The two parties should thus create a forum (such as a Regulatory Cooperation Body) for the exchange of information and consultation on regulatory initiatives in each other's jurisdiction, the share of impact assessments and feedback, as well as collection of data and evidence (Hoekman, 2015; De Ville and Siles-Brügge, 2017; EC, 2017a). TTIP's focus on regulatory issues has generated an impressive amount of controversy and debate, in particular the claim that it will lead to a regulatory race-to-the-bottom or that it will cause a regulatory chill. Despite constant reassurance by both the US and the EU that TTIP would not be a threat to the quality of standards in either side of the Atlantic, TTIP opponents, among which European NGOs and civic groups stand out as the most fierce, continue to support their anti-TTIP arguments (EC, 2013a: 2; Global Justice Now, 2015: 2).

Finally, provisions on trade-related rules aim at setting ambitious international trade rules, not for just the US-EU trade regime, but also as an example for the multilateral level (HLWG, 2013: 5). The domain of trade-related rules in TTIP includes issues such as competition policy, energy and raw materials, customs and trade facilitation, small and medium sized enterprises (SMEs), intellectual property rights (IPR), the protection of the environment and sustainable development, labor standards, investment protection and investor-state dispute settlement (ISDS) mechanism. Among the most controversial, investment protection and geographical indications stand out: because of their relevance for the outcome of TTIP negotiations, both issues will be addressed more thoroughly in a dedicated section later in this work.

1.1.3 TTIP economic and political implications

TTIP, if ever concluded, would create the largest free trade area in the world, bringing under the same regime 30% of global trade, roughly half of global GDP and FDI flows worth $3.7 billion. A change in such a vast economic relationship cannot but have significant consequences and create systemic effects on both the internal level – namely in the US and the EU – and on the rest of the world. As for the US and the EU, a comprehensive liberalization agenda that includes all aspects envisioned by the HLWG (market access, regulatory issues, trade rules) would generate significant gains: GDP would increase by between €68.2 and €119.2 billion for the EU and between €49.5 and €94.9 billion for the US. On the other hand, an agreement whose scope is limited to tariff liberalization only, would generate lower, yet not negligible, gains: €23.7 billion for the EU and €9.4 billion for the US (CEPR, 2013: 50). As for unemployment rates, these would likely decrease in both the US and the EU, given that the increased level of economic activity and productivity gains created by the agreement would create new job opportunities for both high skilled and low skilled workers. However, as classical economists have taught us to expect from the creation of a

free trade areas, TTIP would provoke a relatively small, yet visible displacements and adjustments in the labor markets of both jurisdictions. In the EU, employment in the motor vehicle sector would expand by 1.28% for skilled labor and 1.27% for unskilled labor. On the other hand, the electrical machinery and metals sectors would experience a significant contraction. The US will experience the specular situation: acontraction in employment in the motor vehicle sector, and a rise in the metal products sector (CEPR, 2013: 71-78). As for excluded countries, some argue that the spill-over effects of TTIP would likely translate into increased exports for third countries. Rather than on tariff changes, this depends mainly on achievements in terms of regulatory cooperation, which may in fact facilitate market access also for countries that are not party to the agreement, as they would have to cope with less regulatory divergences if they wish to export to the US or the EU (CEPR, 2013: 81-82). On the other hand, other analysts raise concerns that there will be severe trade diversion consequences for excluded countries, in particular developing countries. Felbermayr, Heid and Lehwald (2013) point out that developing countries would be the main losers from the elimination of tariffs, as they would experience significant losses in market share from intensified competition on the US or EU markets. This applies particularly to countries in North and West Africa – traditionally important European trading partners – who would see their products pushed out by the US.

Finally, as the US and the EU are not just the two largest economies in the world, but also two of the most important actors in the international geopolitical framework, an extensive deal such as TTIP would not only have economic but also political and global governance implications. First, there are political implications for the US and the EU alone: TTIP could be a source of renewed cohesion between the EU and the US, who over the past few decades have tended to lose confidence in each other and be more reluctant in engaging in close cooperation. Besides improving US-EU bilateral relations, TTIP was also intended to facilitate the two transatlantic powers to reaffirm their leadership in global governance. It is evident that the role of the Western world in global governance has declined compared to the one it played throughout the 20th century: the rise of China and other emerging powers, the global financial crisis, the difficulty of the Western world to make an efficient collective effort to deal cooperatively with 21st century challenges such as international terrorism, the Arab spring, and the refugee crisis, are all elements that suggest that the West can no longer easily shape the dynamics of international relations like it did in the past. Through this ambitious agreement, the US and the EU could prove that despite the rise of other powers, if they work together they remain the fulcrum of the world economy and of the international order (Van Ham, 2013; Hamilton, 2015). More specifically, TTIP was part of a broader, two-pillar US foreign policy project: along with TTIP, the US had been negotiating a second very large PTA – the Trans-Pacific Partnership (TPP) – with eleven other countries of the Asia-Pacific region, including Japan. Negotiations had been concluded successfully in October 2015, however, the Trump administration withdrew the US from the agreement in January 2017, right after its establishment, in one of its earliest executive orders (Reuters, 2017). Together, TPP and TTIP constituted the two fundamental components of a US foreign policy project aimed at establishing a new US leadership in world trade as well as an effort to confront and contain the rising power of China. This project had controversial potentials: on the one hand, it could cause a hostile response from China, characterized by regional blocs waging trade wars; on the other hand, in a much more desirable scenario, it could have encouraged China to better integrate in the global economic framework and embrace the responsibilities that its current role in the global economy entails (Freytag, Draper and Fricke, 2014; Hamilton, 2015).

1.2 CETA

1.2.1 Context, launch and status of the negotiations

The Comprehensive Economic and Trade Agreement (CETA) is a free trade agreement between Canada and the EU whose negotiations started in May 2009 and were successfully concluded in August 2014. At the 2007 EU-Canada Summit the leaders decided – as part of a commitment to advance EU-Canada economic integration and facilitate trade and investment flows – to cooperate on a study to analyze and evaluate the potential costs and benefits of a closer partnership. The outcome
of this study, carried out jointly by the Government of Canada and the European Commission, was released in October 2008. On the basis of the latter, at the Canada-EU summit held in Prague in 2009 leaders officially launched CETA negotiations:

> The European Union and Canada confirm that delegations representing the European Union and Canada have defined the scope of a comprehensive economic partnership agreement, as outlined in the Joint Report on the EU-Canada Scoping Exercise, and obtained mandates necessary to launch negotiations. Accordingly, the European Union and Canada are pleased to confirm a launch of negotiations with the intention to conclude an ambitious comprehensive economic partnership agreement within two years (EU-Canada Summit Declaration, 2009: 10).

Although the 2-year deadline was missed, CETA negotiations were successfully concluded in August 2014 and the 1634 pages-long consolidated CETA text was published on the EU's official website at the end of September 2014. CETA was later presented officially during the EU-Canada summit of 25 September 2014 by the then Canadian Prime Minister Harper and the President of the European Commission Barroso. CETA obtained approval by the European Parliament and the Council on the side of the EU, and by the Canadian parliament on the side of Canada, it is still pending ratification from EU member states' national parliaments. In the meantime, several parts of CETA (e.g. the elimination of tariffs) are applied provisionally since September 2017 (Maurice, 2016; Crivellaro, 2017; EC, 2017b).

1.2.2 Characteristics of CETA

Even though CETA is not formally divided into three domains, it is possible to describe its characteristics according to the same structure used for TTIP, as its core components are also market access, regulatory issues, and trade-related rules. As for market access, like TTIP, CETA aims at facilitating market access in goods, investment, services and government procurement. CETA dedicates one chapter to each of these areas, respectively the 2nd, 8th, 9th and 19th. For tariffs, CETA establishes that the EU and Canada will progressively eliminate between about 99% of all tariff lines on products originating in each other's markets. Most of this tariff reduction – precisely elimination of 98% of all tariff lines – has already been applied starting from September 21, 2017. Increased access to the services market implies potential significant gains, as the two parties already share an important bilateral trade in this area (eg. transportation, travel, insurance and communication). Moreover, CETA also covers government procurement and clarifies the domains and the rules under which EU or Canadian companies and services providers can participate in governments bids in the counterpart's jurisdiction.

Like TTIP, a significant part of CETA is devoted to bilateral cooperation in regulatory issues, as the two parties also wish to tackle behind-the-border barriers to trade. Regulatory provisions build on the 1976 Framework Agreement for Commercial and Economic Cooperation as well as on WTO-established standards. Despite the high degree of informal exchange of information and best practices that the abovementioned system guaranteed prior to CETA, businesses in both parties

continued to highlight the challenges that regulatory requirements posed to market access. Among these, sanitary approvals, differences in standards, marketing, packaging and labelling requirements are indicated as particularly trade-impeding measures. CETA aims at easing the regulatory burden that these divergences entail, targeting those regulations that stem not from a science-based standard discrepancy, but from a situation in which the EU and Canada are in fact pursuing the same policy objectives, but happen to do so through different procedures (Krstic, 2012). First, CETA includes a general chapter on regulatory cooperation which defines its scope and principles, along with the establishment of a Regulatory Cooperation Forum (RFC) entitled to serve as a forum to discuss policy issues of mutual interest to the parties, review regulatory initiatives, and monitor and assist regulatory activities. Besides the general chapter on regulatory cooperation, CETA includes various other chapters devoted to specific areas of regulation, among the most important chapter 4, devoted to technical barriers to trade (TBT); 5, dedicated to sanitary and phytosanitary measures (SPM); and 9, which addresses cross-border trade in services. Similarly to TTIP, concerns have been raised – especially in Europe – as to whether regulatory cooperation in CETA will affect the parties' abilities to pursue their regulatory objectives and will lower the current level of protection. These concerns are addressed at multiple levels, by scholars, by the CETA text itself, and by European institutions. In a Joint Interpretative Declaration on CETA issued by the EU and Canada, both parties clarify and underline that the agreement preserves the right to regulate and that the character of regulatory cooperation is voluntary (The EU and Canada, 2016).

Finally, CETA also contains various provisions that pertain to the category of trade-related rules: competition policy, customs and trade facilitation, intellectual property rights (IPR), and investment protection with the related investor-state dispute settlement (ISDS) mechanism. Among these, the last two stand out as the most controversial as they include provisions on sensitive matters such as geographical indications and the establishment of a new Investment Court System (ICS) which would enable investors to resolve investment disputes with governments. Because of their relevance, these topics will be discussed more thoroughly in the following sections.

1.2.3 CETA economic and political implications

Like TTIP, CETA is a very extensive agreement which involves two industrialized countries with large markets. As such, it is expected to have various economic consequences for both Canada and the EU and the rest of the world. According to a study carried out by a group of independent experts on behalf of the European Commission – "A Trade SIA Relating to the Negotiation of a Comprehensive Economic and Trade Agreement (CETA) Between the EU and Canada" (Kirkpatrick et al, 2011) – the agreement should generate, over the long-term, an increase in real GDP of between 0.02% and 0.03% in the EU and of between 0.18% and 0.36% in Canada. In terms of total exports, an increase ranging from 0.05% to 0.07% is expected in the EU and from 0.54% to 1.56% in Canada, also over the long-term. As for employment rates, CETA is expected to have a positive impact in both the EU and Canada. In the EU, estimates suggest that 31 million jobs currently depend on exports and each additional €1 billion of exports will support 14,000 jobs. In Canada, 1 in 5 jobs is linked to exports; and CETA is expected to create 80,000 new occupations. However, there is debate over whether these estimates will translate into reality after a few years after CETA is in force: Kohler and Storm (2017) provide an alternative projection of CETA's economic effects, claiming that it will ultimately lead to around 230,000 job losses and increased inequality. The effect of CETA on excluded countries is expected to be rather discreet, especially if compared to TTIP. In fact, third countries will experience very slight welfare losses. China and Mexico are not expected to experience losses at all. The country that is expected to lose the most is the US, followed by countries which share a PTA with the EU and least developed countries (LCDs) (Kirkpatrick et al, 2011).

Finally, as a mega-regional trade agreement, CETA also has a political and global governance dimension. Even though this aspect attracted less attention in CETA than in TTIP, and considering that it in fact holds relatively more political weight and relevance in the EU-US agreement, there still are some issues worthy of being addressed. First, the renewed political relationship between the EU and Canada that comes alongside CETA is not a spillover effect of the latter, but is rather enshrined in a separate agreement between Canada and the EU specifically dedicated to their political relationship – the Strategic Partnership Agreement (SPA) – that was negotiated, signed and announced contemporarily with CETA (The European Council and the Canadian government, 2016: 3). In the agreement, the parties express their intention to defend Ukraine's sovereignty and territorial integrity, the condemnation of terrorism at the global level and of widespread violation of human rights and of international humanitarian law in the Syrian conflict, and the continued joint support of peace-building and stabilization operations. In relation with the multilateral framework, both the EU and Canada reaffirm their WTO commitments; in fact, CETA is considered a WTO-plus agreement, as its text makes consistent reference to WTO-set rules and builds on regulations (e.g. sanitary and phytosanitary measures and technical barriers to trade) established in the multilateral arena. Finally, CETA aims at laying the foundations of a future multilateral investment court: it would do so by building on the ISDS arrangements it achieved in PTAs and thus creating a sole international tribunal for investments disputes that would ultimately replace the various arrangements established through PTAs (Council of the EU, 2016).

1.3 Research question

As we have seen, TTIP and CETA have many characteristics in common: in terms of the context in which they were launched, the category of countries that they involve (industrialized, Western countries with large markets) and their scope of application, which includes both tariff and non-tariff barriers to trade. This apparent similarity between CETA and TTIP leads one to expect that the agreements' negotiations would result in the same outcome, which instead is not the case. Hence the research question of this work: *why were CETA negotiations concluded successfully and those of TTIP were not?*

This work thus aims at explaining why the EU managed to conclude CETA negotiations with Canada in a reasonable amount of time, while TTIP negotiations with the US – a similar PTA project – apparently failed. It will do so by examining two fundamental aspects of the agreement, to which section 2 and 3 of this work will be respectively dedicated: the political context in which the negotiations were carried out, and the content of the proposed treaties with a focus on the most controversial provisions.

2. The influence of domestic politics on TTIP and CETA negotiations: a focus on political systems and election cycles

2.1 Influence of US and Canadian political systems on TTIP and CETA negotiations

2.1.1 How political systems affect trade policy: literature review and research hypothesis

Various scholars argue that the characteristics of a certain political system and its structure of government can influence the way trade policy is carried out as well as its outcomes. Milner and Rosendorff (1996) highlight that even in foreign policy (including trade policy as one of its expressions), legislatures have various means to make sure executives take into considerations legislative preferences when formulating policy.

With regards to international trade policy, the two above-mentioned scholars, along with O'Halloran (1994), argue that "the extent of protection in a trade agreement monotonically

increases with the level of divided government" (Milner and Rosendorff, 1996: 120), thus protectionism in trade agreements is likely to be higher when the executive operates in a situation of divided government. "Divided government" refers to a situation in which, in presidential systems, the executive branch is controlled by one political party and the majority in the legislature is not controlled by the same party. It is a situation that occurs in presidential systems rather than parliamentary ones as the former entail an institutional framework that allows the creation of such situation. In fact, leaving a margin of variation, presidential systems – which are the dominant form of government in the American continents (with the fundamental exception of Canada) – are characterized by the separation of the legislature and the executive. This separation generally entails separate sources of legitimization and separate direct elections (also with different time frames). Furthermore, the institutions usually a have a certain degree of independence from one another: the legislature cannot remove the executive with a vote of no confidence, and similarly, the executive cannot dissolve the legislature and call for new elections at will (Rosenfeld and Sayó, 2012: 628-643). Conversely, in parliamentary systems, a situation of divided government cannot occur: the legislature and the executive are not as separated as in a full-fledged presidential system. In fact, generally in parliamentary systems – which are dominant in Europe – after a general election is held, the party, or the coalition of parties, that hold a majority in the Parliament form a government, who has the Parliament's confidence (Rosenfeld and Sayó, 2012: 650-668). If the confidence is withdrawn, the executive no longer has authority to govern, and a different government should be formed. Milner and Rosendorff (1996) note that even in parliamentary systems a situation which is relatable to divided government can occur, namely in the presence of coalition governments or minority governments. However, the divergences between the executive and the legislature are much more likely to be profound and decisive in the case of presidential systems, because of the separation inherent to their institutional framework.

The reason why divided government can lead to higher protectionism rests on the fact the differences in the preferences of the majority in the legislature and in the executive, especially if they are significant, will affect policymaking. In particular, the executive, even if entitled to negotiate trade agreements rather autonomously, has to take into account the preferences of the median legislator in the legislature, considering that the agreement will later be subject to the legislative scrutiny for final approval. Therefore, even if the executive prefers a higher liberalization of trade, it cannot afford to make excessive unwelcomed or controversial concessions in negotiations, because they would increase the agreement's chances to be rejected by the legislature. Considering these arguments, we can thus expect that (H1) *negotiations of a free trade area with a country whose administration operates in a context of divided government will be more difficult to conclude*.

2.1.2 Characteristics and fundamental differences between the US and Canadian political systems

The United States and Canada are liberal democracies and there is a fundamental difference in their political systems: the US is a presidential system while Canada has a parliamentary system modelled upon that of the United Kingdom. This peculiarity in turn reflects a historical, profound difference in the traditional governmental patterns of the US and European nation-states and in how these have been institutionalized: while the US moved towards separation of powers – realized institutionally with presidentialism – European nation-states moved towards fusion of power, inherent to parliamentarism (Fabbrini, 2010; Rosenfeld and Sayó, 2012). Thus, the form of government of Canada reflects the British, or more broadly, the European governmental pattern. As for the structure of government, the US separates the executive, legislative and judicial powers. The executive power is attributed to the President – who is both head of state and head of government – and its cabinet; the legislative power is held by Congress: because the legislature was considered the most powerful of the institutions, it was further separated into the House of Representatives and

the Senate; finally, the judicial power is assigned to the Supreme Court, guarantor of the Constitution endowed with the power of judicial review. In this system, as envisioned by the Constitution, all the governmental institutions enjoy reciprocal independence and autonomous legitimacy (regardless of whether they are elected directly or indirectly) and each of them – Supreme Court included – has a voice in the process of policy-making. Their separation and independence is strengthened by the fact that each of them is endowed with distinct electoral basis – thus representing different sets of interests – and their activity is subject to different time constraints. If on the one hand, the President does not need the confidence of Congress, or of its majority, in order to act; on the other, he does not have the power to dissolve the legislature, whose mandate, as mentioned above, is constitutionally set. Thus, decision-making in the US is the outcome of a process of negotiations between the actors of the different and separated institutions, each of them representing different sectors of the population and pursuing often divergent interests (Fabbrini, 2008; Fabbrini, 2010). Regarding trade policy making, The US Constitution assigns the authority to regulate international trade to Congress, which over time partially delegated this power to the Executive. In particular, a process called Trade Promotion Authority (TPA) created by the 1974 Trade Act, increases the margin of freedom of the executive branch in trade policy making. However, TPA is not a permanent legislation, and it is periodically granted by Congress upon request of the administration (Huenemann, 2002).

Canada, as already mentioned, is a Westminster-style parliamentary democracy. Being also a constitutional monarchy, Canada recognizes the British Monarch (King or Queen) as its Head of State. Differently from the US system (and presidential systems in general), the role of Head of Government is attributed to the Prime Minister. The legislative power in the Canadian institutional framework is assigned to the appointed Senate and elected House of Commons, which together constitute the bicameral Parliament. By tradition, the House of Commons, the only popularly elected organ, is the dominant branch of Parliament, with the Senate reviewing but rarely opposing its will. The executive power – the government – is attributed to the Prime Minister and its cabinet. Finally, the Supreme Court of Canada is entrusted with judicial power. Differently from the US system, the structure of the Canadian government is characterized by the fusion of power framework typical of European parliamentary democracies. Thus, after a general election, the governor general on behalf of the Monarch appoints as Prime Minister the person who holds the confidence of the House of Commons, practically the leader of the political party who holds the majority of seats in the chamber. Once the Prime Minister and its cabinet – composed of "ministers of the Crown" – have formed the government, the latter remains accountable to the legislature. Accordingly, the legislature can remove the government through a motion of no confidence. Similarly, the Prime Minister can dissolve the Parliament. In either case, a parliamentary session finishes and the governor general is called to summon a new one. Thus, the executive and legislative branches are not reciprocally independent like in the US, but rather bound together by a set of rules designed to make them cooperate and check each other to govern the country (Bickerton, 2009; Dyck, 2011). As a consequence of this institutional design, trade policy is conducted more freely by the Canadian executive than by the US': in Canada, in fact, the Constitution assigns the authority to regulate trade and commerce to the national government, who is thus entitled to negotiate and sign international trade agreements without a negotiating mandate from the Parliament (Wolfe, 2006; MacKnight, 2012).

2.1.3 Impact on TTIP and CETA negotiations

To see how the US and Canadian political systems influenced TTIP and CETA negotiations, we start by analyzing the conditions in which the two countries negotiated their PTAs with the EU.
During TTIP negotiations – namely since its first round in July 2013 until the last in October 2016 – the Obama administration acted in a situation of divided government, as the Republicans held first

control of the House (from January 3, 2013 to January 3, 2015) and then of both houses of Congress (from January 3, 2015 to January 3, 2017) (US Government, 2017). Moreover, Congress played an active role in TTIP negotiations, overseeing the process, organizing hearings and events which involved debriefings by US Trade Representative Micheal Froman, gathering opinions of various categories of stakeholders and dedicating special attention to the most relevant issues. While immediately after the launch of TTIP in 2013 Congress showed bipartisan support to the President's PTA initiative, as the negotiations went on division grew on various key issues and many legislators took a more protectionist and defensive stance on the agreement. Finally, the President was not granted Trade Promotion Authority until 2015, partly because of the influence of trade unions – who opposed negotiating TTIP under a fast track procedure – on Congress (Genderen and Bierbrauer, 2014; Beary, 2015).

Canada, on the other hand, has a parliamentary system of government, whereby a situation of divided government like that of the US cannot happen. CETA negotiations started in May 2009 and were concluded in August 2014, during Harper's 2nd and 3rd term as Prime Minister. While Harper led a minority government during the beginning of CETA negotiations, which can entail some constraints, from 2011 onto the conclusion of the negotiations he led a majority government. Thus, considering the abovementioned hypothesis (H1), it is possible to confirm that TTIP negotiations, that the US carried out in a context of divided government, were more difficult to conclude than CETA negotiations, which Canada conducted for the most part in a situation of majority government.

2.2 The influence of election cycles on TTIP and CETA negotiations

2.2.1 How election cycles affect trade policy: literature review and research hypothesis

Several scholars argue that election cycles, as well as election outcomes and related changes in the composition of a country's government can affect trade policy and international trade negotiations. Milner and Rosendorff (1996) argue that "elections affect both the probability of successful ratification and the terms of international trade agreements" (Milner and Rosendorff, 1996: 117). In particular, if an election occurs between the conclusion of a PTA's negotiations and its process of ratification, the new legislature may reject the terms of the agreement and refuse to ratify it. This is most likely to happen if elections produce an unexpected outcome: as the government of a country negotiates international trade agreements, it attempts to anticipate the demands of the legislature. While it can imagine the potential demands of the current legislature, it cannot easily do so with the preferences of the future legislation, whose identity is still unknown. Thus, even the sole uncertainty that elections inevitably bring about can affect international negotiations. This logic suggests that in parliamentary systems, where the legislature can withdraw the confidence from the government and the government can in turn dissolve the parliament, elections can occur more randomly than in presidential systems with fixed-term tenures, and are thus relatively more subject to disruptive influence in international negotiations.

Epstein and O'Halloran (1996) focus on the relationship between the preferences of political parties and trade: as parties often have a clear-cut positions on trade policy, their movement in and out of government can explain swings in trade policy.

> "When strong parties take divergent positions on an issue, changes in the preferences of the median voter that result in a new party taking office will lead to changes in policy outcomes." (Epstein and O'Halloran, 1996: 302).

Taking into consideration these theories, we can hypothesize that (H2) *negotiations of a free trade area with a country whose government composition changes significantly and/or unexpectedly following a general election will be more difficult to conclude.*

2.2.2 Characteristics and fundamental differences between the US and Canadian electoral systems

In this section we will explore how citizens of the US and Canada elect their legislatures and governments. The US features a complex electoral system, given that as previously mentioned both the President and the two houses of Congress are subject to different time constraints and have different electoral basis. The legislative branch is vested in Congress: every two years the whole House of Representatives – which has 435 members proportionately attributed to each state according to their population – and one third of the Senate – which is made of two senators per state with a total of 100 – are elected. As for the President, it is elected through a system that features both direct and indirect elements known as Electoral College: each state has a number of presidential electors equal to the sum of representatives and senators they have in Congress. The candidate that receives the most votes in a state obtains all of that state's presidential electors. Finally, the presidential electors, who had pledged to vote for a candidate prior to the election, will cast their votes accordingly and elect the President (Fabbrini, 2008: 64-68).

On the other hand, the Canadian electoral system reflects its parliamentary political system and resembles that of the United Kingdom and it is simpler if compared to that of the US. The legislature and the executive depend on each other and are formed through a sole general election which takes place every four years. Within the Parliament, the House of Commons is the only popularly elected body, with 338 members elected in the country's various electoral districts (called "ridings") according to proportional representation. On the contrary, the 105 members of the Senate are appointed by the Governor General (the representative of the Monarch) upon advice of the Prime Minister without a fixed term, as the Constitution establishes that they may serve until the age of 75. Differently from the US Senate – which is an extremely influential governmental actor with ample powers in many policy areas – the Canadian Senate mostly serves an advisory role, suggesting improvements and fixing major mistakes. After a general election, the leader of the party that wins the highest number of seats in the House of Commons is appointed by the Governor General to form the new government. The government can be formed regardless of whether the party has an actual majority in the House and as long as it has the confidence of the Parliament (Elections Canada, 2017; The Canadian Encyclopedia, 2017).

2.2.3 Influence on TTIP and CETA negotiations

Elections took place in both the US and Canada respectively during the negotiations of TTIP and between negotiations and ratification of CETA. Thus, it is possible to analyze whether and how these election cycles influenced the outcome of the agreements, and in particular if the hypothesis formulated at the beginning of this section applies. In the US, presidential elections of 2016 were carried out during TTIP negotiations and saw republican candidate Donald Trump most unexpectedly triumph over democratic candidate Hillary Clinton. Already with Clinton – who was forecasted to win the election – TTIP would have faced relatively more uncertainty than with Obama: in fact, Clinton's position on trade can be described as wavering and inconsistent. Unlike his husband, who oversaw the approval of NAFTA in the 1990s and generally an advocate of free trade, she has always adopted a more cautious attitude towards free trade both at the bilateral and the multilateral level (Phillips, 2016). However, with Trump, who embraces conservative protectionism as a doctrine and whose aversion for free trade was made notorious by his slogans "America First" and his promises to "bring jobs back to America" and to "buy American and hire American", TTIP chances of success dramatically plummeted (Allen, 2016). Just a few days after his inauguration, Trump signed an executive order to withdraw the US from the Trans-Pacific Partnership, a mega-regional trade agreement that had taken over a decade to negotiate and that was pending Congress ratification (Nakamura and Parker, 2017). Considering Trump's general aversion towards free trade, and the sudden withdrawal from TPP – who was part of a two-pillar trade policy

project along with the US-EU "twin" agreement – TTIP looks, in the words of bank Investec economist Philip Shaw, dead in the water.

As for CETA, there are two election cycles to be considered: the first took place in 2011, during the negotiations, while the second – the most relevant – was in 2015, between the conclusion of the agreement's negotiations and its ratification. The 2011 federal elections did not bring any major change in the government of Canada, and if any they strengthened the autonomy of the executive, as Prime Minister Harper transitioned from leading a minority government to leading a majority one. CETA negotiations were then concluded in August 2014. Meanwhile, Harper's third term as Prime Minister expired and another federal election was held in October 2015, thus between the end of CETA negotiations and its process of ratification. The election was a redemption for the Liberals, who won 184 seats in the House of Common, and thus formed a majority government led by Prime Minister Justin Trudeau. Differently from what happened in the US, polls forecasted correctly that the Liberals would have won the election, with many also envisioning a majority government (Ferreira, 2015; Murphy and Woolf, 2015). Thus, although not unexpectedly, the government composition in Canada changed, condition that increases the odds of failure of a trade agreement. However, the Liberal Party supports free trade, and the ratification of the agreement was carried out smoothly. Many observe that as the US becomes increasingly more reluctant towards free trade, Canada might be attempting to fill up the vacancy in international trade leadership, at least in North America, as demonstrated by the fact that besides supporting CETA, Prime Minister Trudeau is also trying to revive the Trans-Pacific Partnership, despite the defection of its most important member. Regarding CETA, Trudeau described it as the "blue-print" for future trade deals, and expects that it will create jobs and boost the middle class both in Europe and Canada (Austen and Swanson, 2017).

Thus, it is possible to verify the abovementioned hypothesis (H2): TTIP negotiations with the US, whose government composition changed unexpectedly and significantly in terms of positions on free trade following the 2016 presidential elections, were more difficult to conclude than CETA negotiations with Canada, whose government composition did not change in the 2011 elections, and changed but remained in favor of free trade in the 2015 elections.

3. Deal breaker issues in TTIP and CETA: how key areas in the agenda influenced the negotiations

3.1 Deal-breaker issues in international trade negotiations: literature review and research hypothesis

Some issues included in both TTIP and CETA negotiating agendas stood out as particularly problematic and generated a great amount of debate and disagreement during the talks. This is not surprising: by nature each economy has its strengths and weaknesses, and while it is relatively easy to liberalize trade and reduce tariffs in the strong and export-oriented industries – as those affected see opportunities to profit and grow their business – to do the same in more sensitive and import competing sectors, to which trade liberalization causes downsizing and potentially severe job displacement, is obviously not as easy (Oatley, 2014). It is thus expectable that when a PTA's negotiating agenda aims at liberalizing trade in particularly fragile sectors of the economy, finding a compromise will be more difficult. Besides the potential negative redistributive consequences of a PTA, there are also non-economic reasons why trade liberalization in certain sectors is controversial, and may thus constitute a deal-breaker issue in trade negotiations. Examples are the arguments that trade favors environmental degradation (Frankel, 2008), that it jeopardizes cultural diversity (Wright, 2015), and that it erodes state sovereignty (George, 1999).

For this work, I decided to take into consideration provisions in three issue areas that were particularly crucial and problematic, namely: sanitary and phytosanitary measures (SPMs); intellectual property rights; and investor-state dispute settlement (ISDS). Considering the outcome of TTIP and CETA negotiations, and that both treaties envisioned provisions in the abovementioned fields, we can expect that (H3) in CETA *negotiations one or both parties were more willing to make concessions or to find a compromise in potentially deal-breaker issues than in TTIP negotiations.*

3.2 Sanitary and Phytosanitary (SPS) measures

Sanitary and Phytosanitary Measures (SPS) are regulations concerning food safety and animal and plant health standards. They are fundamental because they ensure that consumers buy safe food, and because they prevent the spread of pests or diseases among animals and plants. SPS measures can take several forms, depending on the specific purpose they serve; common SPMs are product inspections, rules for the treatment or processing of products, and establishment of maximum levels of pesticide and food additives usage. SPS measures affect trade because while they are issued by the state or other domestic regulatory authority, they apply to all products entering the domestic market (WTO, 2017). They are a controversial topic because on the one hand, they are a fundamental measure, which also reflects the ability of the state to protect the health of its citizens; but on the other hand, they can also easily be used to disguise otherwise unjustifiable restrictions on trade. The inclusion of SPS measures in TTIP and CETA generated public agitation and disagreement in the talk because the EU a very peculiar approach – called "precautionary" – in matters of SPS regulations. On the other hand the US, and to a lesser extent also Canada, only follow science-based risk assessments and are more tolerant towards genetically engineered foods.

As for TTIP, one of the greatest divergences concerned genetically modified organisms (GMOs): current European legislation is much stricter on GMOs than US legislation. The EU only allows, and to a very limited extent, the sale of GMOs which have undergone a strict safety assessment by the European Food Safety Authority[1]. The producers who wish to sell products containing GMOs must prove their absolute safety; on the contrary, in the US GMOs and natural products are considered equivalent unless there is scientific proof that their sale and consumption causes harm. Differently from the US, GMOs foods and ingredients in the EU must have specific labels. Additionally, the EU bans raw milk cheese, hormone-treated beef, chlorine washed poultry and food products from cloned animals (EC, 2016b) The precautionary approach adopted by the European Union does in fact envision rules and standards that go beyond what the WTO considers science-based concerns, and on this basis the US has challenged the EU multiple times before the WTO dispute settlement mechanism. The earliest and most famous case regards hormone-treated beef: in 1996 the US initiated a WTO case challenging EU restrictions on the usage of natural hormones, bans on synthetic hormones, and subsequent prohibition of imports of meat coming from animals that have been given hormones. Although the WTO panel ruled in favor of the US, as EU restrictions are not supported by a science-based risk assessment, the EU decided to stick with its policies, and accepted retaliatory measures (European Parliament, 2013). The divergence in EU and US regulatory practices reflects a significant cultural difference, evident in the preferences of consumers: while most Europeans prefer organic foods and foods produced naturally, Americans

[1]The European Safety Authority is a European agency that provides scientific advice and communication on risks associated with the food chain. It was established in 2002 after a series of food crises which characterized the late 1990s. It is funded by the European Union, but it operates independently from the European institutions and Member States (EFSA, 2017).

are more tolerant towards genetically-engineered foods or foods "developed by alternative forms of agricultural production" (Akhtar and Jones, 2014: 7). It is indeed the perspective of allowing GMOs or hormone-treated meats flow freely in the European market that has generated the greatest amount of controversy and reaction by the public. Several NGOs based in Europe have led campaigns against the agreement and indeed the civic group mobilization to discourage policymakers to sign TTIP has been unprecedented. Under the European Citizens' Initiative (ECI) -- a EU public participation tool that allows groups of at least one million EU citizens to participate directly in EU policies – over 500 organizations have joined forces to fight against the deal (Stop TTIP, 2018). Considering both the past WTO disputes and the civic mobilization in Europe, it is fair to expect that the US negotiators will demand that the EU lift its bans, while the EU negotiators will want to retain them: this disagreement was confirmed in the most recent report of the TTIP Advisory Group after the last round of negotiations (EC, 2017).

As for CETA, the fundamental divergence is the same and opponents of the deal pointed out that like the US, Canada has weaker food standards than the EU, with a farm economy more heavily dependent on chemical additives and GMOs. Regarding civic group mobilization and public reaction, CETA has drawn relatively less attention than TTIP, especially in the early phases of its negotiations. However, as TTIP grew progressively infamous, and NGOs initiated their campaigns, the public started to pay more attention to the relatively smaller, apparently less relevant trade deal with Canada. Thus, groups that oppose TTIP also oppose CETA, yet this opposition seemed less fierce and somehow collateral to that against TTIP, still clearly perceived as the greatest threat. The consolidated and approved text of CETA has been published and it is thus possible to see what the actual chapter on SPS measures – Chapter 5 – envisions in terms of regulatory cooperation. With regards to standards, the chapter does not mention any convergence or decrease in either party's regulations, instead, it establishes a principle of mutual recognition for provisions that fulfill a level of SPS protection deemed "appropriate", and the institution of a Joint Management Committee for SPS measures, in charge of monitoring the implementation of the provisions contained in the chapter, directing the management and resolution of issues, and of providing a regular forum for the exchange of information concerning each party's regulatory system.

Based on this analysis, it is possible to conclude that in fact Canadian negotiators were more flexible than US negotiators as they let the EU keep its higher standards, even though the precautionary approach does not reflect the Canadian regulatory tradition, which instead is more similar to that of the US.

3.3 Intellectual Property Rights (IPRs): Geographical Indications (GIs)

The WTO defines Intellectual Property Rights (IPRs) as "the rights given to persons over the creations of their minds", that "usually give the creator an exclusive right over the use of his/her creation for a certain period of time" (WTO, 2018a). The form of intellectual property right taken into consideration in this work is geographical indications (GIs). They are distinctive signs that indicate a product's quality, reputation, or other peculiar characteristics associated to the place it comes from. Common examples of GIs are "Cognac", which refers to the brandy coming from the homonym region in France and "Parmigiano Reggiano", a famous type of Italian cheese coming from the region of Emilia Romagna (WTO, 2018b; MIPAF, 2017). Also in this case the inclusion of GIs in TTIP and CETA generated significant debate during the negotiations. Disagreement stems from the different regulatory approach – which also reveals a cultural gap – in matters of GIs protection in the EU on the one hand, and in the US and Canada on the other. The EU has a complex GIs system that is described as "sui generis" and it uses various tools to protect agricultural products, foodstuffs, and beverages. First, it has an administrative process that verifies that a GI holds the appropriate characteristics to be associated with a particular location, and a public register – open to both domestic and foreign GIs – in which all GIs protected in the EU

territory are listed. GIs and TMs coexist in the system and public authorities are in charge of the enforcement of rules.

On the other hand, the US and Canadian trademark laws only envision the registration of certification marks and trademarks (TM). Thus, GIs do not exist per se but are classified as a type of TM. Such a system entails some disadvantages for EU producers. In fact, as pointed out by a factsheet on GIs published by the European Commission (2015b), many names that are GIs in the EU are not protected under the US and Canadian trademark systems, and this allows producers to sell goods that bear the name of origin from a particular region in the EU, while actually being produced elsewhere. Besides the lack of protection for many EU products, the US system also includes other aspects that entail difficulties for EU producers. For example, many EU GIs associations do not have sufficient financial resources to cover the costs of registration under the US TM regime. Moreover, even if they manage to cover the cost of registration, there is no public system of enforcement in the US, thus it is up to the users to monitor their TMs in the market to prevent or challenge potential abuses, which entail further (sometimes unbearable) costs. This happens because in the US certification marks are usually owned by trade associations or other centralized commercial groups, that establish the standards for certification and are thus big enough to afford the costs related to the supervision of their Certification Mark's usage by others (LII, 2018). In view of these considerations about the characteristics of their respective systems, the EU's objectives for the GIs section in TTIP were the establishment of rules able to guarantee an appropriate level of protection for EU GIs; administrative enforcement against abuse of EU GIs in the US; and the creation of a list of GIs – open to both EU and US GIs and extendable in the future – to be protected directly through the agreement and through the provisions and means established by the agreement (EC, 2016c). However, the US has blatantly rejected to compromise on this issue, condemning the EU's system of GSs as an unjustifiable trade barrier. Moreover, it has fought the system both at the multilateral level and in other PTAs, which suggest that concessions in this area were extremely unlikely (Watson, 2015).

Differently from the US, Canada has partly accommodated EU's demands on GIs protection and the parties managed to successfully negotiate the highly controversial issue. In particular, CETA defines a list of GIs (Annex 20-C of the agreement) of products originating in the EU and Canada to be protected in both markets under the agreement. Besides this general protection for GIs included in the list, further provisions specify that it is also forbidden to use the GI even if it is translated or accompanied by expressions such as "kind", "type", "style", "imitation" and similar (Art. 19, Par. 3); moreover, the parties commit to ensure enforcement through administrative action to prevent or in case of breaches of the agreement's provisions (Art. 19, Par. 4-5). The greatest accomplishment for the EU is probably enshrined in CETA's border measures (Art. 43). In fact, the parties can request the non-release into the other party's market of products that contain a term which is identical to a protected GI. For example, a cheese labelled "Grana Padano" – a GI which does not fall within the scope of exceptions in CETA – should be detained by Canadian customs and denied access to the Canadian market if it is not produced in conformity with EU product specifications regarding its production and does not come from the homonym geographical region in Italy. This is a provision that the EU had campaigned for – unsuccessfully – in the Doha Round (Awad and Cadogan, 2017).

Based on this analysis, it is possible to conclude that also in this case, Canadian negotiators were significantly more flexible than US negotiators, as they accommodated EU's request to include a rather long list of GIs in CETA and grant them protection in the Canadian market, a measure the US has fought against in both the multilateral arena and in other bilateral agreements and that it has blatantly rejected to compromise on.

3.4 Investor-state dispute settlement (ISDS)

Investor-state dispute settlement (ISDS) is a mechanism for the resolution of disputes – usually included in bilateral investment treaties (BITs) and often in PTAs – between investors and states. Through an ISDS mechanism investors can bring proceedings against states which are recipients of foreign direct investment (FDI) before international law. If the state is found in breach of the provisions to which it had previously agreed to in a treaty, the investor is entitled to receive monetary or other forms of compensation. BITs are a relatively new tool of international economics, as the world's first was signed in 1959 between Pakistan and Germany. However, with the sharp increase in FDI flows that has characterized the second half of the 20th century as well as the past few decades, BITs (and ISDS) have become an increasingly attractive tool to both encourage and regulate investments, and at present there are more over 2,500 BITs in force (PL, 2018; UNCTAD, 2018).

The inclusion of ISDS in a PTA is a deal breaker issue because opinion is divided over the costs and benefits of this arbitration system, thus its potential inclusion in a trade agreement always raises debate and controversy. For example, those in favor argue that the protection provided by the ISDS, along with the legal certainty and predictability for companies that it creates, is crucial to attract investment, and that investment in turn is fundamental for the creation of jobs and to maintain a flourishing economy. On the contrary, those who oppose ISDS argue that the flaws inherent to this mechanism outweigh its benefits. For example, they claim that ISDS undermines state's sovereignty and constrains the ability of governments to implement policies through democratic procedures (Manzanares, 2007; Martinic and Maljak, 2014).

Within the section of TTIP dedicated to trade-related rules, the provisions regarding ISDS are those that generated the greatest amount of controversy among international stakeholders and concern among the general public. The Lisbon Treaty transferred authority to negotiate investment agreements from the level of Member States to that of the EU. Thus, EU Member States are already signatories of over 1400 BITs which they have negotiated autonomously for themselves. While the European Commission recognizes that a balance should be struck between investment protection and the governments' right to regulate, it generally supports the inclusion of ISDS in investment treaties and PTAs, stressing the fact that one of the key aspects of the European economy is its openness to trade and investment, and pointing out that in fact European investors are among the biggest users of ISDS mechanisms worldwide, accounting for 53% of ISDS registered cases in the period 2008-2012 (EC, 2013b; EP, 2014). However, since the launch of TTIP negotiations in 2013, the potential inclusion of ISDS provisions in the agreement with the US – home of thousands of corporation and big investors – has triggered fierce reactions throughout Europe, where NGOs, think tanks, and the public in general have mobilized to make sure their absolute dissent towards the issue was made clear to European institutions. What scares Europeans is the possibility by multinational corporations to directly sue states in case their profits are affected by a legislative or administrative act, and the subsequent constraint that this possibility will put on the governments' ability to pursue regulatory policies to protect the interest of their citizens (Martinic and Maljak, 2014). The massive civic mobilization pushed the European Commission to suspend negotiations in matters of investment in January 2014 and initiate a public consultation which received an impressive 150,000 responses. Of these, 98% disapproved of ISDS and condemned its inclusion in TTIP; in fact, many responses condemned TTIP entirely. Following the public consultation, in July 2015, the European Parliament passed a resolution calling for a reform of ISDS; thus, the European Commission designed a new mechanism for investment protection called Investment Court System, and formally presented it to the US in November 2015. Negotiations in matters of investment resumed during the 12th round of TTIP negotiations in March 2016, and proceeded with a certain degree of progress until the 15th round, when the negotiations were put on hold (Chase, 2015; EP, 2018).

Like TTIP, CETA has a chapter dedicated to investment that also includes provisions on ISDS. Similarly to what happened in the case of SPS measures, ISDS in CETA has been subject of debate and sparked public reaction, but only in relation and as a consequence of the attention drawn by TTIP, rather than as a perceived threat per se. In fact, it was because of the public consultation and European Parliament resolution discussed above that the European Commission and Canada decided to renegotiate the part of CETA concerning investment protection. Thus, CETA realizes the project that the European Commission had proposed to the US in TTIP negotiations before they were put on hold: the establishment of an Investment Court System. The new design and name for the resolution of investment disputes responds to public concern and aims at fixing the acknowledged flaws of the infamous ISDS mechanism (Puccio and Harte, 2017). Finally, it is worthy of notice that the establishment of the Investment Court System has been excluded from the provisional implementation of CETA carried out as of September 21, 2017. Following Belgium's request in early September 2017 to submit the question of compatibility of the Investment Court System with EU law to the European Court of Justice (ECJ), the latter judged that a regime governing dispute settlement between investors and states falls within the shared competence between the EU and EU Member States. Thus, CETA needs to be ratified by all 28 EU Member States for the Investment Court System to become effective (Croisant and Weiniger, 2017).

Based on this analysis, it is possible to conclude that unlike the previous two cases, the research hypothesis does not apply here: in this particular issue, the obstacle did not stem from an unwillingness by either party to make concessions or to reach a compromise, but rather on the one hand, from the impressive public reaction in the EU and the delay it caused in the progress of TTIP negotiations; and on the other, from the stall of TTIP negotiations after the 2016 US presidential elections.

Discussion of results and conclusions

The purpose of this dissertation was to answer the following research question: why were CETA negotiations concluded successfully and those of TTIP were not?

To answer this question, I adopted a comparative approach and focused on the US and Canada, since the EU is party to both agreements. I then analyzed the aspects that according to the available literature might have played a determinant role for either the success or failure of the negotiations. In Chapter 3, I analyzed how two aspects of domestic politics – namely the characteristics of the political systems and the occurrence of election cycles – influenced the negotiations. In chapter 4, the analysis focused on three particularly controversial issues present in both negotiating agendas – sanitary and phytosanitary (SPS) measures, geographical indications (GIs) and investor-state dispute settlement (ISDS) – to see how the parties' approach to these delicate topics influenced the outcome of the negotiations.

The analysis has produced the following answers:

(1) While Canada conducted the most part of CETA negotiations in a context of majority government, the US conducted TTIP negotiations in a situation of divided government, which implies greater constraints for the administration and consequentially, less freedom and room for concessions for negotiators.

(2) While Canada's government composition did not change in the 2011 federal elections, and changed but remained in favor of free trade in the 2015 elections, TTIP negotiations were interrupted by the 2016 US presidential elections, which unexpectedly handed the presidency to Donald Trump, whose positions on free trade are extremely negative.

(3) In some particularly controversial, potentially deal-breaker issues – such as SPS measures and GIs – Canadian negotiators were more willing to make concessions or find a compromise than US negotiators. This lack of flexibility might be attributed, in part, to the abovementioned situation of

divided government in which the US administration acted, and related demands and pressures exercised by Congress.
(4) Potentially due to the relatively less influential role played by Canada in international economic affairs and global governance compared to that of the US, CETA attracted less public attention than TTIP, and this allowed the parties to conduct negotiations more freely, without excessive pressure from public actors.

References

Allen, K. (2016) "Trump's economic policies: protectionism, low taxes and coal mines", *The Guardian*, [Online], available: https://www.theguardian.com/us-news/2016/nov/09/trumpseconomic-policies-protectionism-low-taxes-and-coal-mines , accessed December 17, 2017.

Akhtar, S. I. and Jones, V. (2014) "Proposed Transatlantic Trade and Investment Partnership (TTIP): In Brief", *Congressional Research Service*, [Online], available: https://fas.org/sgp/crs/row/R43158.pdf , accessed December 30, 2017.

Austen, I. and Swanson, A. (2017) "Trudeau steps up on trade for Canada, as America under Trump pulls back", *The New York Times*, [Online], available: https://www.nytimes.com/2017/12/03/world/canada/trudeau-trade-china-nafta-tpp.html, accessed December 19, 2017.

Awad, B. and Cadogan, M. S. (2017) "CETA and the Future of Geographical Indications Protection in Canada", *Centre for International Governance Innovation*, [Online], available: https://www.cigionline.org/sites/default/files/documents/Paper%20no.131_WEB_0.pdf, accessed January 8, 2018.

Beary, B. (2015) "TTIP edges forward, buoyed by votes in US Congress and EU Parliament", *The European Institute*, [Online], available: https://www.europeaninstitute.org/index.php/eiblog/263-july-2015/2057-ttip-edges-forward-buoyed-by-votes-in-u-s-congress-and-euparliament-7-17 accessed December 7, 2017.

Bickerton, J. (2009) *Canadian Politics*, Toronto: University of Toronto Press.

Center for Economic Policy Research (2013) "Reducing transatlantic barriers to trade and investment – an economic assessment: Final report for the European Commission", [Online], available: http://trade.ec.europa.eu/doclib/docs/2013/march/tradoc_150737.pdf, accessed November 7, 2017.

Chase, P. H. (2015) "TTIP, Investor-State Dispute Settlement and the Rule of Law", *US Chamber of Commerce*, [Online], available: https://occupylondon.org.uk/emergency-demo-12th-septat-bis/, accessed January 11, 2018.

Congressional Research Service (2014) "Proposed Transatlantic Trade and Investment Parternship (TTIP): In Brief", [Online], available: https://fas.org/sgp/crs/row/R43158.pdf , accessed October 25, 2017.

Council of the European Union (2016) "Joint Interpretative Instrument on the Comprehensive Economic Agreement (CETA) between Canada and the European Union and its Member States", [Online], available: http://data.consilium.europa.eu/doc/document/ST-13541-2016-INIT/en/pdf, accessed November 19, 2017.

Crivellaro, R. (2017) "Un primo sguardo all'EU-Canada Comprehensive Economic and Trade Agreement – CETA", *whitersworldwide*, [Online], available: https://www.withersworldwide.com/en-gb/un-primo-sguardo-alleu-canada-comprehensiveeconomic-and-trade-agreement-ceta , accessed November 15, 2017.

Croisant, G. and Weiniger, M. (2017) "The European Commission proposes a move towards a Multilateral Investment System", *University of Oxford*, [Online], available: https://www.law.ox.ac.uk/business-law-blog/blog/2017/11/european-commission-proposesmove-towards-multilateral-investment, accessed January 12, 2018.

De Ville, F. and Siles-Brügge, G. (2017) "Why TTIP is a game-changer and its critics have a point", *Journal of European Public Policy*, Vol. 24, No. 10, pp.1491-1505.

Dyck, R. (2011) *Canadian Politics Concise, 5th Ed.*, Andover, Hampshire: Cengage Learning.

Elections Canada (2017) "History of Representation in the House of Commons of Canada", [Online], available: http://www.elections.ca/content.aspx?section=res&dir=cir/red/book&document=rep1&lang=e, accessed December 12, 2017.

Epstein, D. and O'Halloran, S. (1996) "The partisan paradox and the US tariff", *International Organization*, Vol. 50, No. 2, pp. 301-324.

European Commission (2013a) "EU-US Transatlantic Trade and Investment Partnership. Trade Cross-Cutting disciplines and Institutional provisions: Initial EU position paper", [Online], available: http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc_151622.pdf , accessed November 6, 2017.

European Commission (2013b) “Fact sheet Investment Protection and Investor-to-State Dispute Settlement in EU agreements” , [Online], available: https://trade.ec.europa.eu/doclib/docs/2013/november/tradoc_151916.pdf, accessed January 10, 2018.
European Commission (2014) “Consolidated CETA text”, [Online], available: http://trade.ec.europa.eu/doclib/docs/2014/september/tradoc_152806.pdf, accessed January 3, 2018.
European Commission (2015) “Intellectual property rights (IPR) and geographical indications (GIs) in TTIP”, [Online], available: http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc_153020.7%20IPR,%20GIs%202.pDf , accessed January 6, 2018.
European Commission (2016a) “Final press conference of TTIP 15th round of negotiations”, [Online], available: http://trade.ec.europa.eu/doclib/press/index.cfm?id=1553 , accessed December 14, 2017.
European Commission (2016b), “Report of the 13th round of negotiations for the Transatlantic Trade and Investment Partnership”, [Online], available: http://trade.ec.europa.eu/doclib/docs/2016/may/tradoc_154581.pdf , accessed January 2, 2018.
European Commission (2017a) “TTIP Advisory Group: Meeting Report of 9 March 2017”, [Online], available: http://trade.ec.europa.eu/doclib/docs/2017/april/tradoc_155484.pdf, accessed November 6, 2017.
European Commission (2017b) “European Commission – Press release: EU-Canada trade agreement enters into force”, [Online], available: http://europa.eu/rapid/press-release_IP-17-3121_en.htm, accessed November 15, 2017.
European Parliament (2013) “Principal EU-US trade disputes”, [Online], available: http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2013/130518/LDM_BRI(2013)130518_REV1_EN.pdf, accessed January 2, 2018.
European Parliament (2014) “Briefing: Transatlantic Trade and Investment Partnership (TTIP) negotiations: State of Play”, *Directorate-General for External Policies*, [Online], available: http://www.europarl.europa.eu/RegData/etudes/BRIE/2014/536397/EXPO_BRI(2014)536397_EN.pdf, accessed January 10, 2018.
European Parliament (2018) “Legislative Train Schedule: TTIP Negotiations on Investment Court System for TTIP”, [Online], available: http://www.europarl.europa.eu/legislativetrain/theme-reasonable-and-balanced-trade-agreement-with-the-united-states/file-ttipinvestment-court-system-for-ttip, accessed January 11, 2018.
Fabbrini, S. (2008) *America and Its Critics: Virtues and Vices of the Democratic Hyperpower*, Cambridge: Polity Press.
Fabbrini, S. (2010) *Compound Democracies: Why the United States and Europe Are Becoming Similar*, *2nd Ed.*, Oxford: Oxford University Press.
Felbermayr, G., Heid, B. and Lehwald, S. (2013) “Transatlantic Trade and Investment Partnership (TTIP) Who benefits from a free trade deal?”, *Global Economic Dynamics*, [Online], available: http://www20.iadb.org/intal/catalogo/PE/2014/13541.pdf , accessed November 13, 2017.
Ferreira, V. (2015) “Canadian election 2015”: *Poll tracker, National Post*, [Online], available: https://www.theguardian.com/world/2011/mar/26/canadian-government-no-confidence-vote, accessed December 19, 2017.
Frankel, J. (2008) “Environmental Effects of International Trade”, *The Globalization Council*, [Online], available: https://sites.hks.harvard.edu/fs/jfrankel/Swenvirinlaga31proofs.pdf , accessed December 29, 2017.
Freytag, A., Draper P. and Fricke, S. (2014). *The Impact of TTIP - Volume 2: Politcal Consequences For EU Economic Policymaking, Transatlantic Integration, China and the World Order*. Berlin: Study for the Lonrad-Adanauer Foundation.
George, S. (1999) “State Sovereignty Under Threat, Global Policy Forum”, *Global Policy Forum* [Online], available: https://www.globalpolicy.org/component/content/article/172/30584.html, accessed Decemver 29, 2017.
Global Justice Now (2015) “Race to the bottom. Regulatory cooperation in TTIP: A blueprint for corporate domination?”, [Online],

available:http://www.s2bnetwork.org/wpcontent/uploads/2015/09/race_to_the_bottom1.pdf, accessed November 6, 2017.
Krstic, S. (2012) "Regulatory Cooperation to remove non-tariff barriers to trade in products: key challenges and opportunities for the Canada-EU Comprehensive Trade Agreement (CETA)", [Online], available: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2025509, accessed November 16, 2017.
Hamilton, D. S. (2015) "TTIP's Geostrategic Implications" in CEPS (2015), *TTIP in the Balance*, Washington, DC: Center for Transatlantic Relations, Johns Hopkins University SAIS.
High Level Working Group on Jobs and Growth (2013) "Final Report", [Online], available: http://trade.ec.europa.eu/doclib/docs/2013/february/tradoc_150519.pdf , accessed October 25, 2017.
Hoekman, B. (2015) "Fostering Transatlantic Regulatory Cooperation and Gradual Multilateralization", *Journal of International Economic Law*, Vol.18, No. 3, pp. 609-624.
Huenemann, J. E. (2002) "On the Trade Policy-Making Process in the United States", *The Trade Policy-Making Process Level One of the Two Level Game: Country Studies in the Western Hemisphere*, occasional paper 13, pp. 67-75 [Online], available: http://www.sice.oas.org/ctyindex/ARG/policymaking_e.pdf , accessed November 19, 2017.
Jančić, D. (2017) "TTIP and legislative-executive relations in EU trade policy", *West European Politics*, Vol. 40, No. 1, pp. 202-221.
Kohler, P. and Storm, S. (2016) "CETA Without blinders: how cutting trade costs and more will cause unemployment, inequality and welfare losses", *Global Development and Environment Institute*, Working Paper No.16-03, [Online], available: http://www.ase.tufts.edu/gdae/Pubs/wp/16 03CETA.pdf , accessed November 19, 2017.
Legal Information Institute (2018) "Certification Mark", [Online], available: https://www.law.cornell.edu/wex/certification_mark, accessed January 6, 2018.
O'Halloran, S. (1994) *Politics, Process and American Trade Policy*. Ann Arbor: University of Michigan Press.
MacKnight, S. (2012) "Developments in Canadian International Trade Policy: the impact of an economic shift West and the role of provinces in Canadian trade policy", [Online], available: https://ruor.uottawa.ca/bitstream/10393/23869/1/MACKNIGHT%2C%20Stephanie%2020125.pdf accessed December 4, 2017.
Manzanares, B. B. (2007) "The independence and impartiality of arbitrators in international commercial arbitration", *Mercatoria*, Vol. 6, No. 1, [Online], available: https://www.google.it/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwjRzpPTmcz YAhWFVhQKHTUmD_4QFggxMAA&url=https%3A%2F%2Fdialnet.unirioja.es%2Fdescarga%2F articulo%2F5197420.pdf&usg=AOvVaw1DCkMPu5MugkqZz6DQmveM, accessed January 9, 2018.
Martinic, S. and Maljak, M. (2014) "Certain Controversial Issues of EU-US Trade negotiations leading to the signing of the Transatlantic Trade and Investment Partnership (TTIP)", *Croatian Yearbook of European Law and Policy*, [Online], available: http://www.cyelp.com/index.php/cyelp/article/view/195, accessed January 9, 2018.
Maurice, E. (2016) "Belgium green lights unchanged CETA", *EUobserver*, [Online], available: https://euobserver.com/economic/135717, accessed November 15, 2017.
Milner, H. V. and Rosendorff B. P. (1996) "Democratic Politics and International Trade Negotiations", *The Journal of Conflict Resolution*, Vol. 41, No. 1, pp. 117-146.
Ministero delle politiche agricole alimentari e forestali (2017) "Elenco dei Prodotti DOP, IGP e STG", [Online], available: https://www.politicheagricole.it/flex/cm/pages/ServeBLOB.php/L/IT/IDPagina/2090 , accessed January 5, 2018.
Murfy, J. and Woolf, N. (2015) "Justin Trudeau elected new Canadian prime minister as Liberals return to power", *The Guardian*, [Online], https://www.theguardian.com/world/2015/oct/20/justin-trudeau-set-to-become-pm-as-liberalssweep-board-in-canada-election, accessed December 17, 2017.
Nakamura, D. and Parker, A. (2017) "Trump's 'America first' looks more and more like 'America alone'", *The Washington Post*, [Online], available: https://www.washingtonpost.com/politics/trumps-

america-first-looks-more-and-more-likeamerica-alone/2017/11/11/5cffa150-c666-11e7-aae0-cb18a8c29c65_story.html?utm_term=.c37982261bcc accessed December 17, 2017.
Oatley, T. (2014) *International Political Economy*, 5th Ed., New York: Pearson.
Phillips, A. (2016) "Hillary Clinton's position on free trade? It's (very) complicated", *The Washington Post*, [Online], available: https://www.washingtonpost.com/news/thefix/wp/2015/06/17/tracking-the-many-hillary-clinton-positions-ontrade/?utm_term=.deef5704f398 , accessed December 16, 2017.
Practical Law (2018) "Bilateral Investment Treaty (BIT)", [Online], available: https://uk.practicallaw.thomsonreuters.com/4-502-2491?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1, accessed January 8, 2018.
Puccio, L. and Harte, R. (2017) "From arbitration to the investment court system (ICS)", *European Parliament*, [Online], available: http://www.europarl.europa.eu/RegData/etudes/IDAN/2017/607251/EPRS_IDA(2017)607251_EN.pdf, accessed January 12, 2018.
Reuters (2017) "Trump signs order withdrawing US from Trans-Pacific trade deal", [Online], available: http://www.reuters.com/article/us-usa-trump-executiveorders/trumpsignsorderwithdrawing-u-s-from-trans-pacific-trade-deal-idUSKBN1572AF , accessed November 14,2017.
Rosenfeld, M. and Sajó, A. (2012) *The Oxford Handbook of Comparative Constitutional Law*, Oxford: Oxford University Press.
Stop TTIP (2018) [Online], https://stop-ttip.org/it/?noredirect=it_IT, accessed January 2, 2018.
The Canadian Encyclopedia (2017) "Redistribution of Federal Electoral Districts", [Online], available: http://www.thecanadianencyclopedia.ca/en/article/redistribution/#h3_jump_2 , accessed December 12, 2017.
The European Council and Government of Canada (2016) "XVI EU-Canada Summit – Joint Declaration", [Online], available: http://www.consilium.europa.eu/media/24232/xvi-eu canadasummit-joint-declaration-brussels-30-october-2016.pdf , accessed November 19, 2017.
The European Union and Canada (2016) "Joint Interpretative Declaration on the Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union and its Member States", [Online], available: http://www.politico.eu/wp-content/uploads/2016/10/Jointdeclaration-10.10.16.pdf , accessed November 17, 2017.
UNCTAD (2018) "International Investment Agreement Navigator", *Investment Policy Hub*, [Online], available: http://investmentpolicyhub.unctad.org/IIA/mappedContent, accessed January 9, 2018.
Van Ham, P. (2013) "The Geopolitics of TTIP, Clingendael Policy Brief", [Online], available: https://www.clingendael.org/sites/default/files/pdfs/The%20Geopolitics%20of%20TTIP%20-%20Clingendael%20Policy%20Brief.pdf , accessed November 14, 2017.
Wolfe, R. (2006) "Transparency and public participation in the Canadian trade policy process", [Online], available: http://post.queensu.ca/~wolfer/Papers/Consultations.pdf , accessed December 4, 2017.
WTO (2017) "Understanding the WTO Agreement on Sanitary and Phytosanitary Measures", [Online], available: https://www.wto.org/english/tratop_e/sps_e/spsund_e.htm, accessed December 30, 2017.
WTO (2018a) "Trade-Related Aspects of Intellectual Property Rights", [Online], available: https://www.wto.org/english/tratop_e/trips_e/trips_e.htm#NegHist , accessed January 5, 2018.
WTO (2018b) "Geographical Indications", [Online], available: https://www.wto.org/english/tratop_e/trips_e/ta_docs_e/modules4_e.pdf , accessed January 5, 2018.
Young, A. R. (2016) "Not your parents' trade politics: the Transatlantic Trade and Investment Partnership negotiations", *Review of International Political Economy*, Vol. 23, No.3, pp. 345-378.