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TRANSATLANTIC DIGITAL CONFLICT AND THE EU-US TRADE AND TECHNOLOGY COUNCIL: THE BRUSSELS EFFECT ON PRIVACY, TRADE RELATIONS, AND SECURITY

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Abstract

For decades, the European Union and the United States' different understandings of digital policy have created a chasm between the two political entities that is poised to harm trade and security on both sides of the Atlantic. After decades of digital conflict, the EU chose to create a space to engage in diplomatic conversations with the United States by creating the EU-US Trade and Technology Council. In order to understand why the EU decided to launch the TTC, this paper assesses the reasons for which the EU selected to pursue this style of non-legislative lawmaking by investigating major events and changes in EU capabilities that impacted its ability to influence third countries. Through the lens of privacy, trade, and security, this paper uses the Brussels effect to explore the issues engendered by a lack of consensus in the digital space between these two powerful allies and vis-à-vis foreign adversaries.

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Contents

1. Introduction

In an age where technology is accessible in both the European Union and the United States either as a want or, considering the digitization of public services, as a necessity in order to participate and function in society, digital technologies and the regulations they must adhere to are of seminal importance. As the internet is an indispensable part of modern life, the EU, along with other political entities such as the US, are finding ways to adapt to the growing role of technology both within and outside of their borders. Although close allies and geopolitical partners, the EU and the US have developed disparate approaches to digital topics. Yet the question of digital regulation is not a new concept. Beginning in the 1970s, governments have created legislation in order to manage the digital space. Digital policy seeks to regulate digital issues and its impact on businesses and consumers. The World Bank defines digital policy as the process through which policy-makers "examine[ing] the wide-reaching social and economic impacts of online platforms, 5G, cloud computing, and the Internet of Things (IoT), among other emerging technologies that engage all sectors of the economy" (World Bank, 2022). The aforementioned features are aspects of modern life that internet users interact with knowingly, or unknowingly, every day. As a myriad of issues fall under the umbrella term of digital policy including privacy, security, and trade, the differences between the two approaches have caused tensions over the years. With the EU-US Trade and Technology Council (TTC), the transatlantic partners seek to resolve key differences. This thesis will study why the EU founded the TTC by exploring specific events over the past two decades in addition to changes in EU power that led the EU to this decision. Using the Brussels effect, this paper will evaluate the events and identify changes.

Enshrining the rights of citizens in EU law in tandem with the internet explosion of the late 1990s, the EU recognized the importance of creating digital policies early on (Gonzáles Fuster, 2014, p. 21). The EU's attention to this issue also predates the official adoption of the Euro, signaling that policymakers anticipated the importance of the digital space vis-à-vs trade and security prior to the Eurozone becoming a reality for the majority of its citizens (European Union, 1995). During the early development of the EU's data regulatory system, the EU prioritized individual rights. By writing personal data protections into law, the 1995 Data Protection Directive sought to protect "individuals with regard to the processing of personal data and on the free movement of such data" (European Union, 1995, p. 1). Directive 95/46/EC stated that "data which are capable by their nature of infringing fundamental freedoms or privacy should not be processed unless the data subject gives his explicit consent" (European Union, 1995, p. 34). The 1995 Data Protection Directive used Article 100a of the Treaty establishing the European Economic Community (TEEC)[1] as a legal basis (Gonzáles Fuster, 2014, p. 135). Article 114 TFEU delineates the functioning of the internal market and protects the free movement of goods, services, capital and persons. As the issue of data protection is also economic in nature, subsequent EU directives and regulations derive legal meaning from this foundational EU text.

Compared to the EU, the US has taken a more relaxed position on digital policy, letting corporations lead the discussion. The US does not have a federal data privacy law. Several bills promoting data privacy have passed through the House of Representatives only to be shut down in the Senate, precluding the creation of a national law and leaving regulation in the hands of individual states. Following the American capitalist model, regulation takes a backseat to innovation. Under this "laissez-faire spirit of entrepreneurial innovation," business

[1] Article 100a of the TEEC is now Article 114 of the Treaty on the Functioning of the European Union (TFEU)

benefits from limited government oversight (Csernatoni, 2021, pp. 161). As a result, corporations can collect an endless list of data points including Social Security numbers, IP addresses, purchase histories, and mouse movement information (Freedman, 2023). Whether it be behavioral or demographic data, businesses collect information by directly asking customers, or indirectly tracking them. After algorithms and artificial intelligence (AI) sort through the numbers, the end goal is to utilize this information to create a curated and hyper specific advertising profile for consumers. Due to the immense potential profit from personal data, third parties referred to as data brokers buy and sell consumer information to hungry advertisers. Social media companies that allow users access to websites subscription-free are prime examples of businesses that generate most of their revenue from advertising. Embroiled in perpetual controversy surrounding data privacy, companies such as Twitter, Facebook, and Tiktok face incessant scrutiny for selling user data. Data drawn from just a single Tweet can include the time stamp, its geo-location, as well as other information related to the profile of the Tweet's author (Small, 2012, p. 176). Although users can protect their privacy and attempt to mitigate aspects of the data collection process by changing their account settings to private, allowing only their approved followers to view their content, this process does not block advertisements. Thus, placing users in a predicament in which individuals must accept that "free" access to public forums costs them their privacy.

Due to the incongruencies of EU and US data policies, the two political powers have quibbled over which direction to take digital issues such as data protection. As privacy's definition varies according to different countries' legal systems and cultural beliefs, this ambiguity lends itself to issues in transatlantic trade. The discussion surrounding the disagreement dates to the creation of the 1995 Directive. A 1998 article from the *New York Times* highlights the stakes of the debate in relation to the first EU wide data regulation, the

1995 Data Protection Directive, “The European Union put into effect a law today prohibiting American-style buying and selling of personal data, a move that could interrupt electronic commerce with the United States if the two sides fail to resolve deep philosophical and legal differences over protecting privacy” (Andrews, 1998). The article speaks on the bilateral efforts to come to an agreement but recognizes the effects of failed negotiations, stating “If the issue, which neither side paid much attention to until a few months ago, is not resolved, European officials could theoretically soon begin to block trans-Atlantic data transfers by multinational corporations and the growing number of Internet companies” (Andrews, 1998). Decades later, the concerns raised by the article remain relevant. The EU has imposed heavy fines on American corporations for refusal to comply with EU data rules showing that even Silicon Valley giants such as Meta have fallen prey to the issues caused by incongruent standards (Bodoni, 2020).

In addition to privacy and trade, data problems also directly impact security. The lack of consensus between Brussels and Washington prevents the allies from having a common response to foreign adversaries. Take the example of China. Compared to the US, the EU has a more nuanced stance on China. In addition to perceiving it as a profitable economic partner, it also recognizes the competitive threat China and its state-capitalist model pose to the internal market. The US’ strict view on China arose over security risks which forbid the purchase and utilization of certain Chinese technologies (Federal Communications Commission, 2022). In the twenty-first century, security can no longer be defined solely in the number of fighter jets, tanks, and naval ships in order to take into account the multitude of modern technologies that are susceptible to malign foreign influence (Bederna and Rajnai, 2022, p. 36).

Following the harmful actions on the transatlantic partnership at the behest of the forty-fifth president of the United States, the EU sees the Biden administration as a renaissance of cooperative allyship (Csernatoni, 2021, p. 3). Seizing this opportunity as a chance to work together with its historical ally anew, the EU proposed the TTC in June 2021 at the US-EU Summit in Brussels. The goals of this non-legislative partnership between the two political entities are to "enhance trade and investment, strengthen technological and industrial leadership, boost innovation, promote emerging technologies and infrastructure, and encourage compatible standards and regulations based on shared democratic values" (European Commission, 2022.a). More specifically, this will be accomplished by strengthening bilateral trade and investment, avoiding new technical barriers to trade, finding common ground on supply chains, supporting collaborative research, developing international standards, and facilitating cooperation on regulatory policy and enforcement. This forum falls under the European Commission and focuses on the Commission's pledge to promote technology standards, develop safe artificial intelligence, and fight against disinformation as well as foreign interference in the digital space (European Commission, 2022.a). The TTC is co-chaired by the EC Executive Vice-President and EU Competition Commissioner (Margrethe Vestager), the EC Executive Vice-President and EU Trade Commissioner (Valdis Dombrovskis), along with the US Secretary of State (Antony Blinken), the US Secretary of Commerce (Gina Raimondo), and the US Trade Representative (Katherine Tai). Split into ten working groups to address specific issues, the TTC meets periodically to discuss various topics.

Swept into the digital storm caused by the proliferation of new technological developments from social media to AI and cybersecurity during the past two decades, the EU is stabilizing itself from the digital turbulence of recent years. With large American

corporations leading the search for new technologies—and the United States government having the first say on the regulatory policies which accompany these technologies—the EU feels the pressure to make its voice heard on the geopolitical stage. Digital policy allows the EU to contribute to a policy area that is in constant evolution. Since a multitude of topics fall under digital regulation such as AI, information and communication technologies (ICTS), and data transfers, governments struggle to legislate properly on each topic in the rapidly developing digital landscape. As shown by the multiple rulings of the Court of Justice of the European Union (ECJ) invalidating digital privacy regulations, policies that seemed appropriate only a matter of years ago are rendered obsolete by new technologies (Murphy, 2022). The topic of digital policy is also topical as it is inextricably linked to questions of privacy, trade, and security, which in turn, are vehicles for the EU to spread its influence and act as a global policy arbiter.

In combining forces, both the EU and the US are projecting their faith in democratic and liberal ideals onto the geopolitical stage. Under this ideological alliance backed by strong financial markets, the EU and the US hope to harmonize standards in addition to mitigating foreign influence. In applying the Brussels effect, this thesis seeks to understand why the EU founded the TTC after over two decades of regulatory friction by investigating major events during this timeline that had ramifications for the transatlantic digital policy space and what specific changes in EU power led to this decision.

Aim

This paper will seek to understand the reasons why the EU chose to engage in discussions with the US through the TTC, seek the reasoning behind this type of diplomacy, and identify the powers the EU has at hand to enforce its view of data regulation on the world stage. Three chapters will examine the key reasons why the EU chose to strengthen the

transatlantic relationship through digital policy at this particular moment in time through non-legislative bilateral means. Chapter 1 will discuss the fundamental legal differences between EU and US privacy laws that led to the divergence in legal thought across the Atlantic. This chapter will also delineate the two data protection regimes and the major court cases that altered the direction of the EU-US Data Privacy Framework (EU-US DPF). Chapter 2 will focus on the security implications of the TTC, the EU's external action, and the role of Chinese technologies in the alliance. Chapter 3 will speak on trade, the EU's evolving trade deal strategy, and how trade with China is complicated by transatlantic differences. The conclusion will look towards the future of the TTC and will discuss the possibilities for further cooperation.

2. Theory and previous research

Scholars have studied the differences between EU and American conceptions of privacy and data regulation since the nineties. Many studies have highlighted the issues caused between these two data protection regimes and spoken on the multiple attempts on behalf of the EU to bring the US closer to the European model. However, there is a dearth of literature on the TTC. This nascent selection of scholarship either addresses the TTC as a vehicle to explain topics in digital policy or offers suggestions and policy recommendations that could help the EU and the US to achieve cooperation (Bendiek and Stuerzer, 2023, and Loo, Vandenbussche and Aktoudianakis, 2021). As scholars have yet to engage in discourse on the role of the TTC and its relevance for EU external affairs, this paper attempts to contribute to the scholarship on the EU's digital policy by discussing why the EU felt compelled to establish this bilateral attempt to influence standards after two decades of digital difficulties. The paucity of studies on the TTC suggests that larger crises such as the COVID-19 pandemic and Russia's invasion of Ukraine were prioritized in scholarship over less immediate issues. As evidenced by an article focusing on the TTC published during the writing of this paper, the TTC is gaining relevancy and signals the growing interest in digital policy as a diplomatic tool (Bendiek and Stuerzer, 2023). Furthermore, the bulk of the research on the EU's digital landscape offers explanations for how the EU is able to unilaterally exert its influence abroad whereas this paper studies changes in the EU's power that can explain bilateral attempts at influence. Although studies do address the cooperative nature of the TTC (Bendiek and Stuerzer, 2023), no study has sufficiently delved into this idea.

In order to explain the ways in which supranational actors such as the EU achieve geostrategic aims, scholars have developed various theories and conceptual

approaches. As there is a lack of material on the TTC, this paper looks to theories previously used on other topics in digital policy to apply to the TTC. Market Power Europe (MPE) is used to explain the EU when referring to its economic prowess. The theory describes the pluralistic nature of the EU's power with a three-pronged approach: market size, institutional features, and interest contestation (Damro, 2021, p. 141). MPE encapsulates the nuances of the EU's external policy, understands the cooperative nature of MPE and how nations or political bodies strategically negotiate with one another. MPE states that the EU "exercises its power through the externalization of economic and social market related policies and regulatory measures" (Damro, 2012, p. 682). The TTC does directly impact trade in the EU as digital policy is connected to the free movement of goods, people, and services defined in the TFEU. Scholars seeking to explain the role of the EU in digital regulatory matters have affirmed the strength of MPE (Schwartz, 2013, p. 1986). While strong markets are major factors in the EU's ability to influence third countries, MPE alone does not explain EU power.

The second widely used theory to explain the EU is normative power Europe. This theory is the belief that the most defining factor of the EU depends "not what it does, or what it says, but what it is," (Manners, 2002, p. 252). In this view, the EU strives to be an international norm-setter that wishes to serve as an example for how other nations should act. Enshrined in Articles 21 and 5(3) of the Treaty on the European Union (TEU), the EU's normative role helps to explain its principles. The EU's normative powers include "peace, liberty, supranational rule of law, and human rights, social solidarity; anti-discrimination; sustainable development; and good governance" (Manners, 2002, p. 240). In terms of digital policy, specifically data privacy, the EU attaches a moral element to its regulatory policies in order to protect citizens from nonconsensual information sharing. Privacy is viewed as a fundamental right in the Charter of Fundamental Rights of the European Union (CFR) and the

Treaty of Lisbon. Used to justify arguments on how the EU spreads its influence, normative power Europe explains how the EU exports its standards in areas where it does not have jurisdiction (Odermatt, 2020, p. 56). An example in the data protection arena is the General Data Protection Regulation (GDPR) as it defines the limits to its jurisdiction but allows other actors to elevate their standards voluntarily. Although the EU is a defender of human rights and incorporates individual protections in various policy areas, normative power Europe sees the EU as an altruistic actor and does not recognize the constant conflict with its growing status as a powerful economic actor.

Combining elements from both MPE and normative power Europe, Bradford's Brussels effect describes the EU's ability to unilaterally influence other actor's legal and regulatory standards (Bradford, 2012, p. 3) The phenomenon states that "unilateral regulatory globalization occurs when a single state is able to externalize its laws and regulations outside its borders through market mechanisms, resulting in the globalization of standards" (Bradford, 2012, p. 3). There are three conditions for the Brussels effect to take place: market size, regulatory capacity, and strict regulatory standards. As the EU is the world's largest trading bloc, Brussels can assert influence through its Single Market. The growing bureaucracy of the EU can be observed by the regulatory agencies created by the GDPR. Even massive corporations such as Facebook were hindered by the EU's standards for data processing and were forced to comply to the most stringent global standard (Bendiek and Stuerzer, 2023, p. 13). Bradford herself dedicated a chapter in her 2020 book applying the theory to issues in transatlantic digital regulation. Originally, Bradford noted the EU's unilateral strength and viewed the Brussels effect as an accidental external result of the EU's internal processes. This view was plausible in the earlier stages of the EU. After decades of growth and bureaucratic expansion, the creation of the European External Action Service (EEAS), a global pandemic,

and Russia's persistent violation of the territorial sovereignty in a neighboring European state, this conception of the Brussels effect is not applicable. Despite the fact that the conditions for a Brussels effect are in place, in his study of information privacy regulation Schwartz recognizes that "the general conditions for the Brussels Effect appear to be present" and states that "the global policymaking process for information privacy has been more collaborative than unitary" (Schwartz, 2013, p. 1986-1987). Bradford herself recognizes this shift, "In its early decades— beginning in the 1960s but continuing well into the 2000s—the EU's external influence can thus best be viewed as an incidental by-product of its internal motivations. However, more recently, a conscious external agenda has emerged to complement the EU's internal regulatory agenda" (Bradford, 2020, p. 19). It is important to note the context in which Bradford wrote her seminal article establishing the Brussels effect. Major geopolitical events that required collaboration and compromise such as COVID-19 and Russia's 2022 invasion of Ukraine had not yet taken place. The EU's ability to influence unilaterally does not prevent its ability to cooperate as these two concepts are not mutually exclusive, "the EU has not and likely never will abandon international cooperation and consensus-based instruments altogether in favor of unilateralism" (Bradford, 2020, p. 87).

Bendiek and Stuerzer use the Brussels effect to explain how the EU externalizes its norms. Although the article uses issues of digital regulation discussed by the TTC to form an argument, it does not speak on the TTC itself as an instrument for diplomacy. The article observes that "EU (digital) sovereignty can only be realized in cooperation of like-minded countries (such as the US)," but does not elaborate on this statement (Bendiek and Stuerzer, 2023, p. 5). Bendiek and Stuerzer support the broadened definition of the Brussels effect as supported by Bradford but do not expand on the bilateral efforts of the EU to promulgate its

norms and standards. The TTC itself serves as an example of EU cooperation with a third country.

Other theories describe the cooperative efforts between political entities. The New Interdependence Approach (NIA) explains the collaborative process that occurs when globalization creates rule overlap between actors (Farrell and Newman, 2019). In order to solve these problems, actors make "extraterritorial claims to influence the behavior of actors outside their own jurisdiction" (Farrell and Newman, 2019, p. 27). NIA explains how interstate conflict results in achieving compromises across jurisdictions. Although NIA purportedly fills the collaborative gap of the original definition of the Brussels effect, it oversimplifies the EU's role as that of another nation state instead of viewing it as a supranational actor with a unique set of competencies. As this paper seeks to investigate the creation of the TTC from an EU perspective, the NIA is not applicable.

In order to contribute to the literature, this paper will explain the reasons why the EU opted to create the TTC by applying the Brussels effect and elaborate how this theory explains changes in the EU's power that led to the establishment of the TTC. This paper will use the Brussels effect to explain the EU's ability to unilaterally influence norms and look at how the Brussels effect is also present in non-legislative bilateral forms of cooperation. The paper will discuss how each theme in each chapter relates to the three conditions of the Brussels effect. The privacy element of the EU-US digital debate explains the EU's role as a regulatory superpower. Trade is related to the EU's market size. As trade and security are inextricably linked, both topics can explain the EU's strict regulatory standards.

3. Method and material

Method

This paper investigates the reasons why the EU founded the TTC. This study will be conducted by exploring the intersections of EU privacy, trade, and security exemplified by the TTC. This forum allows for a glimpse into a new dawn of EU external action that is being pursued through non-legislative bilateral means. As technology and digital regulations invoke questions on trade and security, the forum will be investigated to illustrate the beginnings of an emerging approach to external action. This paper will conduct the study through content analysis focusing on the rationale behind political decisions rather than gathering meaning through a close textual analysis. The decision to conduct qualitative content analysis was three-fold. First, the intent was not to derive meaning from a close textual analysis used in discourse analysis, but to look to specific reasons over the past two decades that brought the EU to initiate the TTC. This allows for the analysis of changes in policy priorities and objectives. Secondly, the transatlantic focus of the paper necessitated that the selection of documents be varied in order to present the full picture of why the EU selected to form the TTC. Lastly, the paper has limitations surrounding the availability of documents. Although a short report is published after each meeting of the TTC, there are no other public sources of information on the TTC's strategy since it could lead to breaches in security. The TTC plays an active role in coordinating Russia's limited access to technologies in Ukraine. This significantly impacts the research question itself, as a result, this paper relied on drawing connections from the meaning behind multiple sources. Content analysis fits with the research question as it allows for an analysis that looks to various sources to answer why the EU felt emboldened to create the TTC and why it decided to conduct matters bilaterally.

This paper begins with an overview of the data privacy regimes of the EU and the US and the EU's externalization vis-à-vis privacy. Secondly, I will examine the stakes related to the EU's regulatory approach to security. Lastly, I will describe the previous attempts at bilateral trade and the growing role of the Commission. The conclusion speaks on the future of the agreement and on the implications it has for the role of the EU.

Material

Content analysis also supports the types of documents chosen for this study. The paper uses documents that focus on the three themes presented in the structure of the paper: privacy, security, and trade. This paper examined the publicly available official documents from the EU and the US on the TTC. Since the paper seeks to understand the purpose of the TTC from the EU's perspective, it also looked at EU official communications and documents, speeches, and EU directives and regulations. It also points to EU treaty law to understand fundamental differences between the EU and the US' data privacy regimes, how the EU uses treaty law as a basis for its views on digital regulation, and how the EU justifies the creation of the TTC. In addition, this paper draws from rulings and opinions of the ECJ. These primary documents provide an initial start to the analysis by looking to what EU officials have stated as reasons for creating the TTC. These primary documents do not provide the full story as it is important to look to secondary sources that provide information public officials may not divulge. Given the questions about the non-legislative bilateral mechanism to diplomacy, this paper looks to the works of international relations scholars with legal backgrounds to describe the nuances of this strand of pseudo-lawmaking. The utilization of newspaper articles and briefings from non-governmental organizations in certain instances over academic sources signals that due to the speed at which technology is evolving, scholars are having difficulties

to publish relevant papers in time before new, powerful versions of technology are introduced to consumers.

4. Privacy

While technology progressed throughout the course of the twenty-first century, lawmakers saw the need to reinforce privacy in the digital sphere. Qualms over the non-consensual share of personal information can be understood by a 1998 journal article on privacy between consumers and Internet Service Providers (ISPs), “It may seem to some like a fantastic science fiction story rather than a reflection of the reality of the modern world” (Riley, 1998, p. 84). Although data protection derives from the right to privacy, it is separate from privacy law as it has its own laws and institutions. The right to privacy is considered a human right as confirmed by the Convention for the Protection of Human Rights and Fundamental Freedoms, otherwise known as the European Convention on Human Rights (ECHR). The right to personal data protection depends on the rights defined by the CFR and the Lisbon Treaty (González Fuster, 2014, p. 271). Data protection is defined as being “specifically related to the legal rules that regulate to which extent and under which conditions information related to individual physical persons may be used” (Dumortier, *et. al,* 2022, p. 23). The EU defines personal data as:

> Any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person. (European Commission, 2018).

The following chapter will address the differences between the EU and the US’ position on data protection and use the regulatory powers of the EU to explain why the EU chose to collaborate.

European Union

Prior to digital privacy gaining attention on the EU level, it was first recognized by the Hessian Parliament in Wiesbaden, Germany in 1970 with what came to be the first comprehensive information privacy law (Schwartz, 2013, p. 1969). Inspired by the legislation, other German states followed suit and eventually the national government in 1977 followed by other countries such as Sweden (1973), Austria (1978), Denmark (1978), France (1978), and Norway (1978) (Schwartz, 2013, p. 1969). Striving to break barriers that could obstruct global trade, the Organization for Economic Cooperation and Development (OECD) published the Privacy Guidelines in 1980 to offer suggestions to harmonize standards (González Fuster, 2014, p. 77). Soon after, the Council of Europe tackled the issue. The international organization created the Convention on Privacy of the Council of Europe (Schwartz, 2013, p. 1970). Created in 1981, Convention 108 became the first legally binding international law for data protection protecting "the free flow of information between peoples" for "automated personal data files and automatic processing of personal data in the public and private sectors" (Council of Europe, 1981, p. 1-2). Convention 108 focuses on personal protections instead of the market concerns of the OECD Guidelines. As Convention 108 deals with the right to privacy under data protection, it uses the right to respect private life in Article 8 of the CFR as a legal basis.[2] Article 8 entitled "Protection of personal data" confirms:

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected

[2] The Charter would eventually be legally binding in EU Treaty law in 2009 with the Lisbon treaty.

concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority. (European Union, 2012, p. 397)

Later in the early 1990s, the Parliament and the Commission commenced talks for another regulatory reform, the landmark 1995 Data Protection Directive. The 1995 Directive sought to protect both the interests of consumers as well as businesses. Drawing inspiration from Convention 108 and the OECD rules, the Directive reconciled the two aims. The Directive balanced the protection of individuals' personal data as a fundamental freedom with supporting the internal market (González Fuster, 2014, p. 130). Beginning with the Directive, the EU 's two facets asserted by the Brussels effect come to light—the EU that safeguards rights under its normative powers and the EU that prioritizes the internal market. During the debate over the Directive, the Commission stressed "the market making function" of the common data laws, whereas the European Parliament (EP) emphasized the need for regulation as part of basic rights, (Benediek, A. and Romer, 2018, p. 36). In the National French Data Commission's 1993 progress report, the French data protection commission asked, "Do we want a Europe of merchants, or one of human rights?" (National French Data Commission, 1993, p. 75). This question summarizes the internal debate within the EU that argues whether trade and the internal market and the EU's moral standards are mutually exclusive, or if one must eclipse the other.

The Directive used Article 100a of the TEEC as a legal basis.[3] This article established the functioning of the internal market, thus, tying together the concept of data processing and data privacy to the economic structure of the EU (González Fuster, 2014, p. 125). In line with Article 7a that established the free movement of goods, persons, services

[3] Article 100a of the EC Treaty became Article 95 of the EC, that is now Article 114 of the TFEU

and capital, the Directive is attached to the internal market as it ensures that personal data can transfer unobstructed between member states. As shown by the development of the EU's personal data protections, the focus was on the ramifications of legislation on EU citizens and on the EU's internal market. Harmonizing standards and protecting individual rights was originally an internal cause. Directive 95/46/EC allowed the EU to enter into data transfers with third countries if these nations met the criteria laid out in Article 25 and have "an adequate level of protection" (European Union, 1995, p. 45). As evidenced by Article 25 of the Directive, even clauses that impacted third countries were out of concern for EU citizens and did not serve as an ulterior motive to impose standards worldwide. Despite the requirements, the Commission may "enter into negotiations" with countries that have inadequate protections "with a view to remedying the situation" (European Union, 1995, p. 46). With regards to data transfers to third countries, the Directive created Model Contractual Clauses. This process delineated in Article 26(2), allows transfers to companies in third countries where there are "appropriate contractual clauses" (Schwartz, 2013, p. 1982). These preapproved or model contracts simplify data transfer agreements as companies can use pre-made model contractual clauses rather than having to write their own. However, these contracts are only permissible if they offer acceptable compensation for the absence of adequate data protection in the third country "by including the essential elements of protection which are missing in any particular situation" (Schwartz, 2013, p. 1982). Another way for companies in third countries to pass the Directive's requirements is through Binding Corporate Rules. This applies to data transfers that occur within a single company or a group of linked companies (Schwartz, 2013, p. 1983). These rules are then subject to enforcement by the potentially affected individuals, referred to as "data subjects" in EU privacy law, and the company must be approved by a data protection authority (Schwartz, 2013, p. 1983). By

virtue of these clauses in the Directive, internationally operating companies with the appropriate internal data processes are able to engage in data transfers.

Seeing the proliferation of digital tools in everyday life, the European Commission introduced a new reform in 2012. This reform added onto the 1995 Directive to "to strengthen online privacy rights and boost Europe's digital economy" (European Commission, 2012). The final piece of major legislation came in 2016 with the GDPR. This new reform replaced the 1995 Directive and highlighted the EU's interest in strengthening the existing rights of citizens. The GDPR supports the Brussels effect as it is inelastic, meaning it covers data subjects living in the EU although the data processing is taking place outside EU borders (Bradford, 2020, 168). Another facet of the GDPR was the creation of independent national data protection authorities (DPAs) to execute and enforce GDPR rules. The bureaucratic function of DPAs is to support the privacy rights of its citizens in each member state by upholding both national and EU laws. Bradford views the addition of DPAs as essential parts of the EU's regulatory capacity (Bradford, 2020, p. 168). Furthermore, the ECJ emphasized the need for "complete independence" of DPAs in order to ensure effective protection of the data subject's rights (Bendiek and Romer, 2018, p. 38). The GDPR grants the Commission the right to "decide with effect for the entire Union that a third country, a territory or specified sector within a third country, or an international organisation, offers an adequate level of data protection" (European Union, 2016, p. 19). The criteria the Commission uses to decide the adequacy level of a third country includes conditions such as the level of respect for inalienable rights, the rule of law, and legislation on public authorities' access to personal data. Leaving this decision in the hands of the Commission grants it the large responsibility of determining which countries will have automatic access to EU digital markets. Tying together the EU's market power, the Commission and the Council can impose

hefty sanctions in cases of noncompliance with the GDPR with fines reaching as high as 20 million euros (Bradford, 2020, p. 133).

EU data rights are also being formed by the ECJ. The two ECJ cases colloquially referred to as Schrems I and II exacerbated transatlantic tensions over data transfers and deepened the divide between the EU and the US. In 2013, Austrian law student Maximilian Schrems accused the EU of improperly handling data transfers. Schrems found evidence that his Facebook user data was wrongly transferred from Facebook's European subsidiary in Ireland to the Facebook servers in the US. The case began when Schrems filed a complaint with the Irish DPA stating that as exemplified by the Edward Snowden revelations, the US did not comply with the stipulations laid out in the Safe Harbor Agreement. The fruit of negotiations between the US Department of Commerce and the Commission, the Safe Harbor Act set a framework in which US firms voluntarily chose to comply by certain standards. Self-regulated by members of the private sector, this mechanism had minimal oversight by the Federal Trade Commission (FTC). If a company failed to comply, it would have to self-report the error and be subject to fines (Schwartz, 2013, p. 1981). The Irish DPA rejected the claim using a decision made by the Commission in 2000 which stated that the US had an adequate level of data protection. Schrems' case made its way to the ECJ. The court ruled that Safe Harbor was an ineffective system as it failed to preserve proper protections (Maximillian Schrems v Data Protection Commissioner, 2015). The ECJ ruled that it violated the protection of private life set in Article 7 of the CFR (Dumortier, *et. al.*, 2022, p. 63). Article 7 entitled "Respect for private and family life" reads, "Everyone has the right to respect for his or her private and family life, home and communications (Council of Europe, 2012, p. 397).

In the Schrems I judgment, the ECJ's standard for data transfers to third countries required them to have "essentially equivalent" standards to the EU (Maximillian Schrems v Data Protection Commissioner, 2015). Replacing Safe Harbor, the EU and the US created the EU-US Privacy Shield in 2016. This system was shut down by the ECJ in 2020 by the second case, referred to as Schrems II, when Schrems resubmitted his complaint to the Irish DPA on the basis that Facebook had yet again violated the rules of data transfers. Schrems pointed out Facebook's reliance on Standard Contractual Clauses (SCCs) in data transfers. The European Commission defines SCCs as "standardized and pre-approved model data protection clauses that allow controllers and processors to comply with their obligations under EU data protection law" (European Commission, 2021a). These rulings are salient examples of the EU's unilateral creation of standards. While third countries could instate a national privacy law with different standards than the ones already set by the EU, this would further complicate the transfer of data, leaving third countries with no other option than to adopt EU standards to meet the highest set of rules.

United States

As compared to the EU, the American conception of privacy is not protected by an explicit mention in the US Constitution but rather a notion formed through various Supreme Court cases. Since the landmark case of *Griswold v Connecticut*, justices have argued that the right to privacy and freedom from government interference falls under the penumbra of the Constitution (González Fuster, 2014, p. 28). Questions over the invasion of privacy in regards to computers began in the 1960s when Congress became aware of proposals by government officials and other experts to create data banks with large amounts of personal information for government access (González Fuster, 2014, p. 30). The media storm sparked by this news highlighted the public's recognition of the dangerous potential of

personal data. In response to concerns over information stored in computerized databases, Congress passed the Privacy Act of 1974. The law protects privacy by obliging government agencies to allow individuals to see records kept on them, follow fair information practices when gathering and handling personal data, and prevent the share of data with other agencies (González Fuster, 2014, p. 48). Notably missing from the piece of legislation is the protection of personal data against commercial interests (Farrell and Newman, 2019, p. 56).

Throughout the following decades, the US would develop individual laws covering personal data for various sectors. In lieu of an overarching federal law protecting both public and private sectors, large pieces of legislation such as the Health Information Portability and Accountability Act (HIPPA) and the Family Educational Rights and Privacy Act (FERPA) protect the medical and educational sectors. If information in the US is not covered by either law, there are slim chances that it will be protected at all (Schwartz, 2013, p. 1975). The differences in legal philosophy between the EU and the US can be described by former US Under Secretary of Commerce, David Aaron, "They [European nations] have privacy czars and bureaucracies, and that kind of top-down approach would probably be regarded as a violation of privacy rights by many people in the U.S" (Andrews, 1998). Another way in which the US system differs compared to that of the EU is that it lacks an independent body to advocate for privacy complaints. Although the Department of Homeland Security and the Department of Justice have chief privacy officers, these political appointees lack the transparency of DPAs (Farrell and Newman, 2019, p. 62). For these reasons, companies are poised to have an advantage when it comes to standard-setting since they are free from the jurisdiction of sector-specific legislation.

Over the course of two decades, ad-hoc attempts to bring the US closer to the EU's digital regime have proven to be unsuccessful. Previous examples when the US had to

comply with EU standards occurred with the aforementioned discussed Safe Harbor and Privacy Shield arrangements. The disputes that led to trade disagreements in the 1990s were temporarily fixed by Safe Harbor. Souring relations once more, the information produced by Edward Snowden eventually served as evidence for the end of Safe Harbor. This pattern then repeated itself when the ECJ invalidated the EU-US Privacy Shield. With many conflicts taking place in the courts, legislators are restricted in their policy aims. Schrems I and II signaled that policy makers would have to be more stringent in their demands when negotiating with third countries. The early development of EU data protection standards as shown by EU treaty law and the clauses in the data protection regulations and directives suggest that the EU's influence on third countries was inadvertent. This finding supports the Brussels effect as it sees EU internal processes with external implications as unintended results of its standard-setting. The increased regulatory capacity of the EU to specifically protect individual data with the creation of DPAs heightened the EU's ability to not only set standards, but also to enforce them. In addition, the role of the ECJ as a participant in the formation of EU law—and subsequently, standards abroad—is another piece of the EU's standard setting system. As illustrated by Schrems I and II, the US had to comply with EU standards. In light of the conflict over data protection, the EU's ability to inadvertently set global standards, and its proven ability to regulate and enforce rules, the EU had the necessary tools to seek action to harmonize standards across the Atlantic.

5. Security

Over the years, security has developed into a key priority for the EU. During her inaugural speech upon being elected President of the European Commission in 2019, Ursula von der Leyen stated her ambitions for her tenure as president (European Commission, 2019). Von der Leyen's view of a "geostrategic Europe" further solidified the EU's growing role as an independent security actor and set the tone for the following five years. Since its inception, leaders of the supranational institution have touted the merits of soft power. Relying on the democratic norms out of which the EU was borne, EU policy lacked a common defense strategy based on military might. Gradually, the EU has demonstrated a focus on building its various avenues of defense, notably with the creation of the Common Security and Defense Policy in 2003 (Keukeleire and Delreux, 2022, p. 306). The US filled EU policy gaps until 2016 when former President Barack Obama urged Europe to "bear its share of the burden" (Obama, 2016). Following Brexit, the migration crisis, and various terrorist attacks, the EU outlined a plan to manage its multiple crises in 2016. The strategies of 2003 and 2016 both expressed an increasing need for EU unity within the scope of security. This trend is due to EU leaders' conclusions that EU external policy lacked a realist approach (Damro, 2021, p. 137). After the 2022 Russian invasion of Ukraine just outside the borders of the EU, leaders saw the need for a more concrete defense strategy and published the new Strategic Compass for European Security in March 2022.

Although some scholars argue that nations prefer to project their economic strength in lieu of military might, Russia's aggression in Ukraine serves as an example of the violent climate that precludes a nation from depending solely on economic power for survival (Damro, 2012, Damro 2021, Schwartz 2013). Even the language used in the title of the new 2022 foreign policy strategy, the Strategic Compass for Security and Defense, speaks to this

change. The use of the word “compass” is evocative of the EU’s expedition to find its bearings in a new age. Swaying towards a more realist approach to international relations, the document states “Where the EU is not active and effective in promoting its interests, others fill the space” (Council of the European Union, 2022, p. 8). Although the Strategic Compass refers to digital security in terms of cybersecurity, it alludes to European and American dependence on Chinese technologies, stating, “In 2023, we will assess, together with the Commission, the risk for our supply chains of critical infrastructure, in particular in the digital domain, to better protect the EU’s security and defense interests” (Council of the European Union, 2022, p. 38). In this exceedingly hostile system, the EU and its member states are planning to invest more in their security and defense to be a stronger political and security actor.

Prior to the publication of the Strategic Compass, President von der Leyen highlighted the importance of digital sovereignty during her State of the Union Address in 2020. During this speech, she stressed the importance of ethical AI, safe digital identities, and stronger data infrastructures (European Commission, 2020). Following her speech, the Commission dubbed the period of 2020-2030 as Europe’s “digital decade” (European Commission, 2021.b). The Council of the European Union declared in the Strategic Compass that “achieving technological sovereignty in some critical technology areas, mitigating strategic dependencies in others, and reducing the vulnerability of our value chains are critical if we are to meet the challenges of a more dangerous world and be more resilient” (Council of the European Union, 2022, p. 30). In order to achieve these strategic aims, the Council believes “cooperating with like-minded partners around the world, on a reciprocal basis, is essential for enhancing the EU’s resilience and security of supply, while reducing strategic dependencies and increasing mutual benefits” (Council of the European Union, 2022, p. 30). The drive to secure the

internet and prevent foes from malicious abuses of technology pushed the EU towards cooperating with the US. Even though Russia had not yet invaded Ukraine when the TTC was created, the EU and the US seized the opportunity to reinforce its anti-Russia stance through the TTC. Having alluded to their goal of promoting "shared democratic values, including respect for human rights," the TTC fired back at Russia in its second and third ministerial meetings using Russia's aggression as a way to "underline the importance of close collaboration on countering the systematic use of information manipulation" (European Commission, 2022.a, European Commission 2022.b, European Commission 2022.c) The TTC plays a significant role in cutting off Russia's access to important military technologies.

As illustrated in the following chapter on trade, the discussion on a nation's economic strength is inextricable from its security powers. The most salient example of this is in EU documentation. Both official documents, the Trade Policy Review and the Strategic Compass, refer to a digital agenda within their respective scopes of trade and security. This signals that digital regulation is perceived as both a form of soft and hard power. The securitization of digital regulation gives power to the EU because its core competences of trade and market regulation are found under the umbrella topic of security politics (Mügge, 2023, p. 1440.) The Trade Policy Review of 2021 states, "the digital transformation and emergence of new technologies have an important security and values dimension for Europe and require a carefully calibrated policy approach internally and externally" (European Commission, 2021.b). In a notable departure from prior EU trends and traditions, the document continues, stating, "The EU can only succeed in its digital transformation if it builds its digital agenda in an outward-looking manner, taking full account of a global environment that is increasingly, fiercely competitive and sometimes challenging the EU's values-based approach to digitalization" (European Commission, 2021.b). The explicit mention of the EU's approach to

digital policy as a strategy that is first informed by outside factors before considering the internal impact signals that—in dealing with cases when digital policy intersects with security—unilateralism alone is not sufficient. Bradford acknowledges the complex role of security vis-à-vis the Brussels effect, stating that on issues such as national security "the EU can also entrench its norms globally through cooperative mechanisms, such as via bilateral or multilateral treaties" (Bradford, 2020, p. 69). In fact, the Trade Policy Review echoes this view, "The EU will also need to step up bilateral engagement and explore stronger frameworks for cooperation on trade-related digital issues with like-minded partners. It will seek to deepen its regulatory dialogues with like-minded partners" (European Commission, 2021.b).

Although Bradford states that the Brussels effect does not occur when the EU choses to bilaterally shape the global regulatory environment, the Brussels effect can still be observed in treaties, partnerships, and other diplomatic procedures. Bendiek and Stuerzer point to the EU's revisions in labeling its defense plans from "strategic autonomy" to "open strategic autonomy" as evidence of the EU's will to collaborate (Bendiek and Stuerzer, 2023, p. 5). Bendiek and Stuerzer applied the Brussels effect to explain the purpose of the TTC and asserted the EU's new approach to collaboration, taking Bradford's new definition of the Brussels effect one step further. As evinced by other aspects of the TTC, the Brussels effect is in place. Indeed, it was the EU that took the initiative to propose the council. As the proven global leader of digital standards, the EU was mindful of this role when it first took the idea to Washington in 2020. By labeling 2020-2030 Europe's "digital decade," von der Leyen made the aim of the Commission abundantly clear. In addition, the EU's re-introduction of the idea of the TTC to the Biden administration came after four years of Trump's erosion of the transatlantic relationship. Anticipating that Biden would want to signal his enthusiasm to

cooperate to inaugurate the beginning of his presidency, the EU leaped at the opportunity. Lastly, the key aims of the TTC lean further towards the EU's standards than those of the US. The ten working groups of the TTC all represent issues for which the EU is a global leader: technology standards cooperation, climate and clean tech, secure supply chains, ICTs security and competitiveness, data governance and technology platform, misuse of technology threatening security and human rights, export controls cooperation, investment screening cooperation, promoting SME access to and use of digital technologies and global trade challenges (European Commission, 2022.a). Taking into account the EU's previous unilateral successes and the new external view of the EU, it can be observed that, despite itself, the Brussels effect is in place when examining the specific bilateral efforts at cooperation of the TTC. Since EU history abounds with examples of Brussels' regulatory might, the Brussels effect has reached policies from climate change to cosmetics. This standardization of rules results in the de facto Brussels effect (Bradford, 2012, p. 6). As the Brussels effect is by nature a non-legislative tool, the TTC fits into this description. Since the Brussels effect has great influence, the EU is now using it as leverage in instances of bilateral cooperation. The EU's political capital places the sunk negotiation costs onto the EU's partners. In the end, states will eventually comply with EU standards to gain access to profitable or beneficial aspects of the EU such as the strong economic markets that will be expanded in the following chapter on trade (Bendiek and Romer, 2023, p. 4).

China

The joint statement on the TTC reveals its foreign policy motivations towards non-democracies, "We stand together in continuing to protect our businesses, consumers, and workers from unfair trade practices, in particular those posed by non-market economies that are undermining the world trading system" (European Commission, 2021.c). Without making

explicit reference to China, the EU and the US affirm their stance on the Asian superpower. Although both political bodies are wary of China's rise as an emerging digital force, their interests diverge in regard to levels of participation in the digital space with China. US security officials warn that the telecommunications company Huawei is clandestinely government-owned and thus a major national security risk (Bendiek and Stuerzer, 2023, p. 5). Huawei is controlled by the Chinese government through an opaque ownership structure, which causes concerns for allowing the company to build and operate infrastructure that can be exploited for gaining access to information ranging from confidential IP such as trade secrets to information sensitive for national security" (Bendiek and Stuerzer, 2023, p. 5) The company's rapid development has resulted in US fears over the potential for Chinese spying through Huawei equipment. Huawei is the world's leading developer and provider of 5G products and services. In 2021, half of Huawei's 5G contracts were for European networks (Bendiek and Stuerzer, 2023, p. 7). Concerns over cybersecurity led to the creation of the "toolbox" criteria to determine secure 5G networks before telecommunications companies can operate in countries. Neither a regulation nor a directive, the toolbox is not legally binding and offers tools and recommendations to achieve 5G network security. If the EU is successful in promoting its standards in the TTC, the toolbox could influence the way US policymakers view Chinese technologies.

The second US led battle on China deals with the popular social media app Tiktok. Continuing his mission to spark a trade war with China, Trump announced that the US would ban TikTok in the summer of 2020. According to Trump, the social media app that rose to fame during the pandemic posed to "threaten the national security, foreign policy, and economy of the United States" (Chander, 2022). Owned by the Chinese company ByteDance based in Beijing, Tiktok's Chinese origins were an issue for the Republican party. Trump

argued that the Chinese government gathered American's personal information from Tiktok's data collection processes—a remarkedly standard information collection for a social media website—for purposes of espionage. Despite American outcries over Tiktok's security concerns, the EU did not yet indicate a desire to ban the app. Although Trump's ban failed, Tiktok's CEO Shou Chew was called to testify before Congress in March 2023 (Maheshwari, 2023). Surprisingly, Trump's message also resonated with the Biden administration with US Secretary of State Antony Blinken saying that Tiktok should be banned "one way or another" (Thorbecke, 2023). In a shift from previous years, in March 2023 the EU banned Tiktok on official devices for staff in the EP, the Commission, and the Council (Xu, Brennan and Frater, 2023). The Tiktok debate raises questions on how the EU and the US will collaborate on security concerns with private companies. The US' push to ban Tiktok echoes its treatment of Huawei, yet the EU has shown its hesitancy to trust Tiktok.

Concerns on Chinese technologies are related to world security. High-tech development in China strengthens its military might. Technologies such as AI and government-controlled networks and software threaten security (Mügge, 2023). Beyond differing principles on 5G services and Tiktok, the EU and the US realize the threat that China poses to the global order. The EU and the US saw the need to work together to avoid a possible division of the world into industrial blocs based on EU, US, or Chinese standards. Since China and Russia enjoy a close diplomatic relationship, President Jinping has supported Russia's invasion of Ukraine. Beijing's refusal to condemn any part of Russia's invasion of Ukraine has also manifested itself in its use of Russian propaganda and its opposition to impose sanctions on Russia (AP News, 2022). Given that Russia has affirmed Tibet and Taiwan as Chinese territories, democratic nations fear that China, following in Russia's example and backed by Russian military support, could invade Taiwan. Less than two months

after Russia's invasion of Ukraine, China simulated precision strikes against Taiwan around the island (Lee and Blanchard, 2022). The global security concerns are another reason for transatlantic unity.

Catalyzed by the desire to leave its Joffelian "pacifier" days behind, the EU has built its external action around being a stronger security and defense actor (Joffe, 1984). Although the EU realized it could no longer depend on the US for security, this development does not mean that the EU wished to cease collaboration. In fact, the EU's decision to collaborate has grown since Russia's invasion of Ukraine. Realizing that the EU seeks to benefit from cooperative efforts in the security realm, it also sees opportunity to work with other democracies on digital matters that have become securitized. Diverging from the original—strictly unilateral—definition of the Brussels effect that Bendiek and Stuerzer began to introduce, even bilateral efforts such as the TTC are subject to the Brussels effect. This is because it is simpler and more efficient to meet EU standards than to attempt to evade the EU's regulatory system. Due to the differences of opinion on Huawei, the transatlantic dependency on Chinese semi-conductors, and the contentious battle between Washington and Beijing, the EU saw the need to collaborate. The following chapter will address the trade component of the TTC and connect the security concerns to the economic ones.

6. Trade

The Brussels effect is particularly visible when studying trade between the EU and third countries. With the EU and the US accounting for over 40% of the global Gross Domestic Product (GDP) combined, the shared normative power of the democratic institutions is legitimized by its economic prowess (Digital Europe, 2022). EU-US trade represents 1.7 trillion USD (White House, 2022). With the TTC, the EU and the US are joining forces to conquer trade in the technological sectors. This controversial subject has previously divided and prevented the two liberal democratic states from reaching an agreement surrounding this vital issue. After the failure of previous legislative trade agreements such as the Comprehensive Economic and Trade Agreement (CETA) and the Transatlantic Trade and Investment Partnership (TTIP) aimed at bilateral cooperation, the Commission is moving towards pursuing smaller-scale negotiations that do not involve producing legally bound treaties.

Non-legislative bilateral treaties

When considering the EU's switch to alter trade matters through informal means, it is important to reflect on the history of bilateral trade agreements. Previous legislative trade agreements such as CETA and TTIP proved ineffective and illuminated the difficulties and chaos that can arise when coordinating with third countries as well as domestic groups (De Bièvre and Poletti, 2020, p. 243). The backlash against the undemocratic lowering of regulations in support of large corporations resulted in widespread protests across member states (Gstöhl, 2021, p. 237). Pressured by public interest groups, member state governments pleaded the Commission to change CETA to a mixed agreement. Thus, 38 national and regional parliaments had to ratify CETA in order for it to go into effect. Waiting

for the remaining half of the member states to ratify the agreement, the EU implemented a provisional agreement. As of 2023, CETA is still awaiting ratification from EU member states and can only operate under the provisional agreement. The polemical TTIP was caused by high levels of politicization among actors at all levels and ultimately caused its demise (De Bièvre and Poletti, 2020, p. 246). Among non-governmental organizations, the TTC is being referred to as a diluted TTIP as it does not face trade head on, but rather the individual issues that affect trade. (Digital Europe, 2022, ISPI, 2022).

Bradford uses CETA's predicament to highlight the downsides of trade agreements such as contracting costs and internal EU fragmentation. Bradford argues that "market-driven harmonization leads companies to change their behavior without foreign governments necessarily changing the law, while treaty-driven harmonization may lead governments to change the law without companies necessarily changing their behavior as a result" (Bradford, 2020, p. 86). This suggests why the EU would attempt to strike a balance between market-driven and treaty-driven harmonization to find a middle ground with the TTC. Although the Commission is granted the exclusive competence of commercial policy, it must cooperate with other institutions during the legislative process including the European Council and the member states (European Parliament, 2022). In recent years, studies have shown that the legislative process for bilateral agreements is becoming increasingly democratic (Suse and Wouters, 2019, p. 400). With the Council, Commission, the parliaments of individual member states, and the various public interest groups vying for a say during the ratification process of a trade agreement, non-legislative bilateral agreements reduce the number of veto players. In addition, the EP does not have to ratify non-legislative trade agreements. As an underlying element of the Brussels effect, "the EU is also incentivized to seek treaty-driven harmonization to reinforce the effect of its own standards" (Bradford, 2020,

p. 89). Bradford cites the development of 5G as an issue where the EU has already set standards and seeks to benefit more from cooperation (Bradford, 2020, p. 89). Given the legal complexities of EU trade treaties and the perpetual dispute over the supremacy of competences versus legal bases, non-legislative agreements are a more efficient way to conduct agreements (Suse and Wouters, 2019, p. 401).

Despite the promises of a non-legislative agreement, there are drawbacks to this method of bilateral cooperation. First, the EU cannot enforce a non-legislative agreement. With the TTC, it lacks the authority it would have in a binding agreement. If the US decides to renege on a certain topic, the EU cannot respond with sanctions. Second, the Commission could face criticisms for acting alone and pursuing its own interests. Lastly, in conjunction with the previous point, if the Commission eschews legislative agreements between itself and third countries in favor of non-legislative agreements, member states and interest groups will push back and fuel claims that the EU suffers from a distance between EU policy and its citizens, a gap referred to as the EU's democratic deficit (McCormick, 2017, p. 119). Although member states do pool their sovereignty for the EU to act through the Commission as a "single entity, negotiat[ing] on behalf of all its Member States, both bilateral and multilateral trade agreements," the lack of transparency of the TTC could be harmful (European Parliament, 2022). The TTC does include public participation on a limited scale. A key feature of the TTC is the incorporation of the Futurium Platform. This online forum allows businesses, public authorities, non-profits, and other members of the public to take part in discussions. Although the Futurium Platform lets members of the public share ideas, it unclear how—if at all—the Commission takes these suggestions into account.

Role of the Commission

While the EU government is comprised of three institutions that work together to create and enforce legislation, one particular institution within the EU is gaining power—the Commission. The role of the Commission is at the core of the Brussels effect as it is the largest EU regulatory institution. As it is the executive branch, "the EU's external regulatory power can be as much a reflection of the bureaucratic interests of the European Commission as it is the economic interests of Europe as a whole" (Bradford, 2012, p. 43).

The first place where this can be observed is with the creation of the EEAS. Created by the Lisbon Treaty in 2009, the diplomatic service of the EU performs the EU's Common Foreign and Security Policy (CFSP) to "promote peace, prosperity, security, and the interests of Europeans across the globe" (EEAS, 2023). Led by the High Representative of the Union for Foreign Affairs and Security Policy, Josep Borrell, the EEAS works with the Council and the Commission. Further solidifying the EEAS to the Commission, the High Representative is also the Vice-President of the Commission. Having the dual title speaks to the Commission's expansive role in external affairs.

Second, the non-legislative nature of the TTC shows that the Commission is considering different avenues to achieve bilateral cooperation. The Commission's ability to break from diplomatic tradition signals its power. Even when engaging in traditional trade agreements, the EP's voice is minimized compared to that of the Commission that is tasked with enforcing the deal (Marx and Loo, 2021, p. 265). Although the Commission is handling matters differently compared to an official trade agreement, the TTC still has the power to enact change. Because a variety of topics in EU external policy are intertwined with the single market, the Commission is granted extensive authority. As the Commission has the exclusive

competence in trade policy, a power that falls under the EU's external action, it can be concluded that the purpose of the TTC is to promulgate EU interests abroad (European Union, 2002, p. 28). This connection reinforces the strong role of the Commission in EU affairs.

Lastly, the non-traditional character of the TTC allows the Commission to pursue its aims while bypassing lengthy negotiation periods during which it must cooperate with member states. Since the forum is only associated with one EU institution, the Commission, the TTC is not subject to criticism from member states, public interest groups, and other voices from outside the EU intuitions in the same way that legislative agreements garner attention. Beginning with the first step in legislative trade agreements, the opening of negotiations, the Commission does not have to depend on the Council to initiate the agreement (European Parliament, 2022). In circumventing negotiations with member states, the Commission is free to pursue its own goals without heterogeneous preferences leading member states to advocate for a mixed agreement (Gstöhl, 2021, p. 226). The Commission is also able to evade the EP's involvement as it does not need the parliament's consent to conclude the agreements and authorize the provisional application of an agreement, thus removing another layer of the lengthy process towards full implementation (Suse and Wouters, 2019, p. 401). Lastly, the President of the European Commission, Ursula von der Leyen, explicitly stated her vision for the Commission under her authority, "This is the geopolitical Commission that I have in mind, and that Europe urgently needs" (European Commission, 2019).

The Brussels effect explains why the strength of the Commission is growing. The theory shows that regulatory and economic power allows the EU to be a strong international actor as it can use its economic leverage as a negotiation tool to achieve its goals and set norms on a global scale. The Commission learned from previous failed trade

agreements and is using its newfound power to explore different avenues. Based on the success and effectiveness of the TTC, this model of bilateralism could become the preferred method to conduct trade matters.

EU-US Trade

As shown by the earlier chapter on privacy, the EU has proven its unique ability to influence global standards and regulations. This competitive advantage allows companies that operate in the EU to gain access to global markets, resulting in the EU achieving policy objectives along global supply chains. In 2020 after being faced with the Schrems II ruling, Facebook, now Meta, threatened to leave the European market in an effort to place pressure on the EU to loosen its standards. Seeing that the company's European revenue of 25% was too great to abandon, it chose to comply with the updated standards (Bendiek and Stuerzer, 2023, p. 13). In the wake of the realization that even a company as large as Meta could not evade EU regulations, it began to advocate for a federal US privacy law to harmonize policies with the GDPR (Bendiek and Stuerzer, 2023, p. 13). Meta's paradigm shift on regulation shows that the onus of incongruent standards on interoperability falls on internationally operating companies. As it is more efficient to provide the same safeguards globally as for European consumers, the Brussels effect offers American consumers the same protections, thus, "the EU de facto extends the territorial reach of its data protection law, forcing foreign market participants to obey EU law irrespective of whether they serve EU, US or any other customers" (Bendiek and Romer, 2018, p. 35).

China

Although both political bodies are wary of China's rise as an emerging digital superpower, their interests diverge regarding levels of participation in digital trade with

China. When considering the EU's global trade competitors, China's rise as a geopolitical power through its state capitalist model threatens the EU's economic status (European Commission, 2021.b). The EU itself has commented on the global shifts in its Trade Policy Review published by the European Commission in 2021 to prepare for 2030 in which it outlines a strategic framework for the EU's trade policy. According to the OECD, the real GDP in the euro area will grow by 1.4% per year over the next decade (European Commission, 2021.b). It is predicted that in 2024, 85% of the world's GDP growth will come from outside the EU (European Commission, 2021.b). Over the next 10 years, China's GDP is expected to grow by 4.7% annually (European Commission, 2021.b). The Trade Policy Review states that:

> Building a fairer and rules-based economic relationship with China is a priority. Ensuring that China takes up greater obligations in international trade, and dealing in parallel, with the negative spillovers caused by its state-capitalist economic system will be central to the EU's efforts to rebalance the bilateral trade relationship. (European Commission, 2021.b)

Partially fueled by competition, the security battle between the US and China continues to rage under the Biden administration. In addition to US fears over Chinese spying through Huawei equipment, the US also anticipates that as a result of emerging Chinese technologies, the government will be the first to define standards for these new inventions in AI, quantum computing, and 6G (Hendel, 2022). Economic competition fuels the American desire to form closer technological ties with the EU. Although the US continues to enforce the strict ban on Chinese technologies, this position has not influenced the EU's approach to China as exemplified by its heavy use of Huawei. As the world's top developer of 5G services, Huawei had more 5G contracts than other telecom companies with 50% of these contacts being signed with European nations (Bendiek and Stuerzer, 2023, p. 7). In 2020, China surpassed the US as the EU's most significant trading partner (European Parliament,

2022). While the EU sees China both as a trade opportunity and a competitor, the TTC will need to reach an agreement on the Asian superpower in order to establish a common digital policy.

Another issue the EU is faces is that of semiconductor dependencies. Otherwise referred to as chips, these materials are vital elements of digital technologies. The EU imports the materials needed to produce these chips. The Taiwanese company TSMC produces 92% of the global chip supply for the most advanced chips, creating a highly vulnerable supply chain bottleneck (Tarasov, 2022). COVID-19 showed the transatlantic partners the precarious nature of their access to this good. The TTC aims to work towards the "rebalancing of global supply chains in semiconductors with a view to enhancing respective security of supply as well as their respective capacity to design and produce semiconductors, especially, but not limited to, those with leading-edge capabilities" (European Commission, 2021.c). The EU's efforts to strengthen semiconductor value chain resilience with the US shows that European policy-makers set standards that have a wide range of implications for companies and markets outside EU borders. Following the Brussels effect, the result of this standard creation sets the agenda for discussion.

The EU and the US' ideological alliance and their combined market strength under the TTC are the driving forces of cooperation. Witness to the politicization of legislative trade agreements, the Commission decided to reduce the influence of outside actors and form a negotiating body that would operate discretely. The Commission's heightened profile speaks to the regulatory power of the EU. With the EEAS and the subsequent security strategies in 2003, 2016, and 2020, the Commission amplified its voice in external affairs. Due to its internal market and the norms and standards that it adheres to, the EU exercises the Brussels effect with the TTC. The example of Meta testifies to the strength

of the EU internal market. Compared to the US, the EU takes a more nuanced approach to China. Although it actively consumes Huawei products and services, in early 2023 the EU's hesitancy towards Tiktok demonstrated its qualified stance on China.

7. Conclusion

The Brussels effect helps to understand the events that have transpired over the past two decades and the development of EU powers that led to the EU-US Trade and Technology Council. This thesis has shown that Schrems I and II necessitated increased EU-US cooperation that would lead to a more permanent agreement on adequacy standards. The ECJ ruled that Safe Harbor and the Privacy Shield were ineffective. In order to avoid a third ECJ ruling against the EU-US Data Privacy Framework, the EU needed to collaborate with the US to form an agreement that would be sustainable long-term and envision the future technological issues that the court might view as problematic. Bringing the US closer to EU standards is an area where the Brussels effect continues to be observed. Security issues with China became legitimate threats following Russia's invasion of Ukraine. Given Beijing's unwavering support for Moscow, the EU's external action plan of open strategic autonomy allowed for increased collaboration with the US. The growing role of security in EU external affairs and the Commission's increasingly prominent position in determining EU foreign policy signaled the EU's desire to form bodies through which it can project its standards and norms. Faced with increasing security concerns that directly impact trade, the EU saw the need to come to a consensus with the US on the topic of China. Haunted by the failure of past trade agreements, the EU strategized in creating the TTC to bypass traditional trade agreements—and the multiple actors and stakeholders that could affect outcomes. Due to the growing strength of the Commission and the previous failures of bilateral attempts to influence the US' data protection standards long-term, the EU strategically selected to pursue a non-legislative bilateral agreement with the TTC.

This forum marks a resurgence of the transatlantic relationship ushered in with the Biden administration. Although both the EU and the US are advocates of digitalization,

they diverge on important topics that preclude them from achieving their goals. Seeking new sources through which to exercise its influence in the digital landscape, the EU initiated the TTC. As shown by the privacy disputes between these two powers since the start of the EU's creation of standards on data regulation, the ability to conduct safe transatlantic data processes is vital not only to consumers, but also to both actor's economies. In October 2022, Biden signed an executive order to begin to repair the holes of the Privacy Shield (European Commission, 2022.d). This new EU-US Data Protection Framework brings the US even closer to the EU's standards, signaling the strength in the EU's projection of norms and rules under the Brussels effect.

By studying the role of the TTC to speak on the growing role of both the EU's external action and the Commission, scholars can further the understanding of the EU as a global actor as well as the tools the political entity has at its disposal to achieve foreign policy goals. While there was a paucity of literature on the TTC at the time of publication, the literature on this type of bilateral legislation will continue to grow alongside this mechanism of diplomacy.

As for the future of non-legislative bilateral agreements with third countries, the EU co-founded the EU-India TTC in early 2023. The EU's ability to influence digital policies of other third countries besides the US should be developed further. The study of the EU's previous non-legislative bilateral agreements on other topics outside of digital regulation can reveal the advantages as well as the disadvantages to this form of agreement. There remains a gap in the study of the Brussels effect on bilateral and multilateral proceedings. Further research on the Brussels effect and how it presents itself when the EU interacts with other nations would illuminate how the EU might behave in future projects.

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