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The "completeness" of the EU Single Market in comparison to the United States

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The "completeness" of the EU Single Market in comparison to the United States

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Thirty years after the 1992 deadline for "completing" the European single market, how can we judge Europe's progress toward that goal? How should we estimate prospective gains from further steps? This paper argues that new insights on these questions can be generated by comparing Europe's single market governance, economic flows, and some related political attitudes to the same conditions in the United States.

When considered by itself, Europe's single market governance can seem quite incomplete. Barriers remain within it, especially in services. Even where strong rules for openness are established, evolving products and member-state regulations continually re-introduce challenges. This impression changes profoundly, however, in comparison to the US. Though much scholarship and political discourse presumes that Europe's young single market must still be catching up to the old American effort for free-flowing interstate commerce, in fact Europe already has stronger and more systematic rules for internal openness than Americans have ever considered. The US maintains many interstate barriers that the EU has removed or mitigated, from goods standards to professional qualifications to financial regulation to public procurement.

In comparative perspective, the political achievement of the Single Market is especially striking given that EU rules extend over far more robust and heterogeneous subunits than those in the US (or in any national federation). At the same time, this observation underscores political trade-offs for Europe's project. Without the lubricating conditions of common language or identity across diverse subunits, it is plausible that Europe needs especially strong rules to achieve gains in cross-border economic flows. But this also implies that such economic gains in Europe come at especially high costs in terms of local autonomy and democracy.

These political trade-offs in a diverse single market make its case for economic gains especially important. There is no shortage of econometric studies showing substantial effects

from Europe's single market project on flows of trade and mobility. Estimates of these effects are very sensitive to methodological choices, however, and struggle to address the vexing baseline question of expectations for "normal" flows in a diverse single market. To some extent the United States plays this baseline role in the literature, but problematically so: economists routinely assume that it displays "a plausible lower bound of [interstate] impediments" (Head & Mayer 2021, 29). Our comparison of US and EU rules shows this to be wrong, introducing some further challenges to interpreting what the economic data suggests about Europe.

Our comparative research also hints at more complications. We have recently begun a large project, SINGLEMARKETS,[1] that investigates how businesspeople, public officials, and the public in the US and the EU perceive interstate regulatory barriers and what to do about them. Preliminary findings from interviews in the construction sector suggest differences in how single-market rules relate to political mobilization and economic integration in these two contexts. Construction firms encounter interstate barriers in both the US and the EU, but American business appears to take regulatory barriers more for granted. This contrast is reinforced by EU and American federal politics. The European single-market project has little parallel in today's United States, mainly because its most avowedly pro-market political actors are champions of "states' rights." Given little prospect of change in fragmented regulation, but strong cultural integration, Americans flow over barriers that they see as the normal "costs of doing business." Europeans inhabit the reverse conditions: cultural fragmentation alongside constant invitations from the EU to mobilize against regulatory barriers.

These political differences, together with our comparison of EU and US rules, suggest that relationships between economic flows and barriers may vary considerably from context to context. Such potential variation implies that measurement of the economic completeness of the EU Single Market may need to go beyond modeling of economic flows alone, to incorporate indexes of regulatory barriers and studies of different populations' sensitivities to such barriers (allowing for what economists would call heterogeneous elasticities of trade or mobility). We conclude by calling for interdisciplinary efforts along these lines.

[1] https://www.sv.uio.no/arena/english/research/projects/singlemarkets/index.html. Funded by the Norwegian Research Council and administered by the ARENA Centre for European Studies, University of Oslo.

I. Comparing single market rules in the EU and the US

"Single markets" are political-economic phenomena, made up of a combination of governing rules and economic behavior or flows that stretch across a set of lower-level jurisdictions. As such, they could be more or less "complete" on two potentially-separable dimensions. They are more complete politically to the extent that economic activity across the subunits takes place under a single set of governing rules. They are more complete economically to the extent that flows of trade, mobility, and capital across the subunits integrate economic behavior into a single arena where unified pricing mechanisms relate supply to demand.

This first section assesses the political completeness of single-market rules in the EU and the US. We first survey their general principles and then briefly summarize their arrangements across the "four freedoms" of goods, services, capital, and persons.

The general regimes: legal standards, legislation, administration

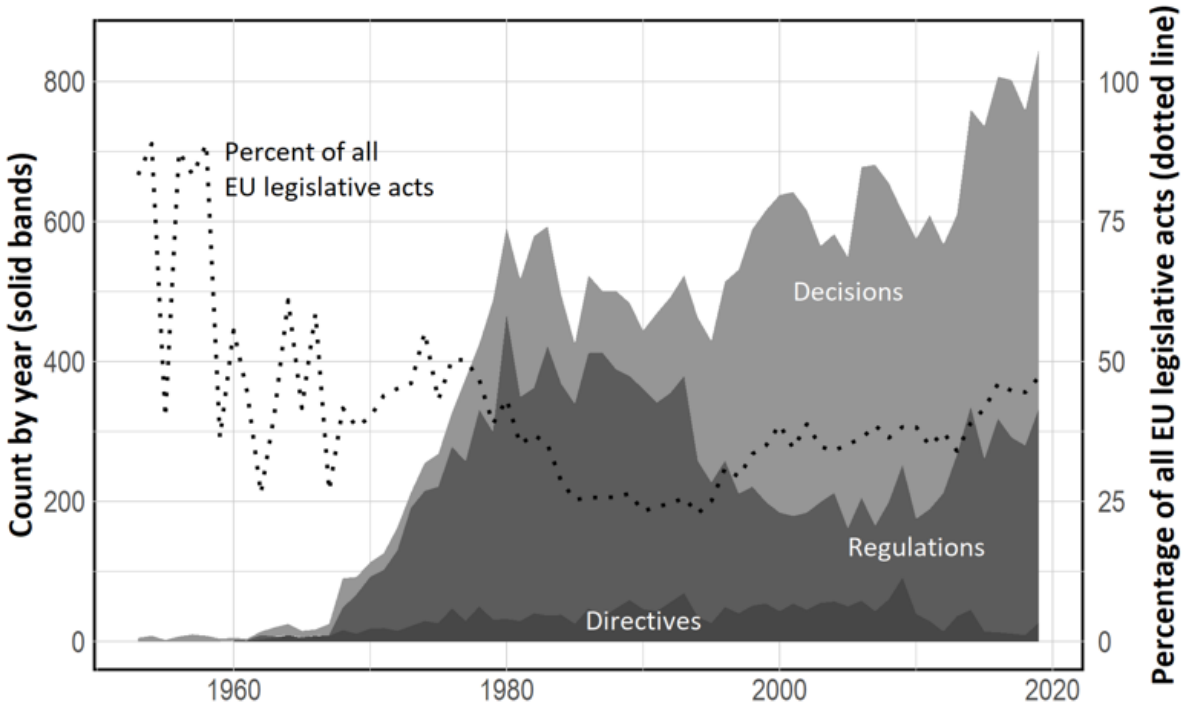
The EU's founding treaty, the European Economic Community (EEC) treaty of 1957, aimed to liberate the "four freedoms" of goods, services, persons and capital. Signatories committed to eliminate tariffs, quotas and "all measures of equivalent effect" for goods and "abolition of obstacles" in the other areas. Today's version of these standards began coalescing in the 1970s, when what we now call the Court of Justice of the European Union (CJEU) started interweaving jurisprudence on the "freedoms." By century's end it had identified potential treaty violations in any national measure that "hinders or makes less attractive" cross-border market access (Barnard, 2019). It also inferred default principles of "mutual recognition" (also known as "country-of-origin" rules): goods or services marketable in one member-state may be sold elsewhere without meeting further requirements. National exceptions are permissible on many grounds, but only if the CJEU deems them non-discriminatory by nationality, "imperative," "suitable," and "proportional" for their purpose (the "*Gebhard* test"[2]). Public services are broadly exempted, but public contracts or subsidies to private actors are not. Legal scholars summarize this regime as defining practically *all* member-state rules as potential violations, to which the EU authorizes exceptions (Weatherill, 1996; Snell, 2010; Davies, 2010).

[2] Reinhard Gebhard v Consiglio dell'Ordine degli Avvocati e Procuratori di Milano (1995) C-55/94.

As US legal scholar Cass Sunstein observed long ago, Europe's broad pursuit of "free trade" contrasts to the American federation's narrower focus on "protectionism" (Sunstein, 1988). The constitutional Commerce Clause gave Congress authority over interstate exchange. From it, the early Supreme Court (SCOTUS) inferred the "Dormant Commerce Clause": even where Congress has not legislated, courts should invalidate state laws that unduly burden interstate commerce. Evolving through the 20th-century expansion of federal and state regulation, this standard came to be interpreted in the 1970s as barring "purposeful discrimination." States may not intentionally advantage in-state commerce, unless—a big "unless"—the "burden" is balanced by some public purpose (Regan, 1986; Friedman & Deacon, 2011). In the 1970s the Court also discovered the "market participant exception": states may favor their residents when participating in markets rather than regulating, like spending on contracts or subsidies (Coenen, 1989; Williams & Denning, 2009; Francis, 2017). Most states distribute contracts and aid in preferential ways, including outright bans on public purchase of certain goods or services from other states (Hoffmann, 2011). Overall, summarizes Cambridge legal scholar Catherine Barnard, U.S. internal-market law displays "a greater degree of deference to state actors and to state regulation" than EU law (Barnard, 2009, p. 578).

These differences in legal standards are magnified by their extension in legislation (or not). Especially since the 1980s, the EU's executive European Commission has sought to enact treaty law and CJEU rulings into statutes (Schmidt 2018). Figure 1 sketches its project, which includes framing Directives, directly-applied Regulations, and specifying Decisions. Beginning with goods and workers, the Commission eventually developed an approach of legislating mutual-recognition rules with "harmonized" rules where member-states balked (Armstrong & Bulmer, 1998; Grin, 2003; Howarth & Sadeh, 2013). The 1990s and 2000s brought broadly similar legislation for capital and services. Mutual recognition operates within harmonized parameters for service providers or "passports" for financial firms.

Fig. 1 Annual EU single-market legislation, 1953-2019



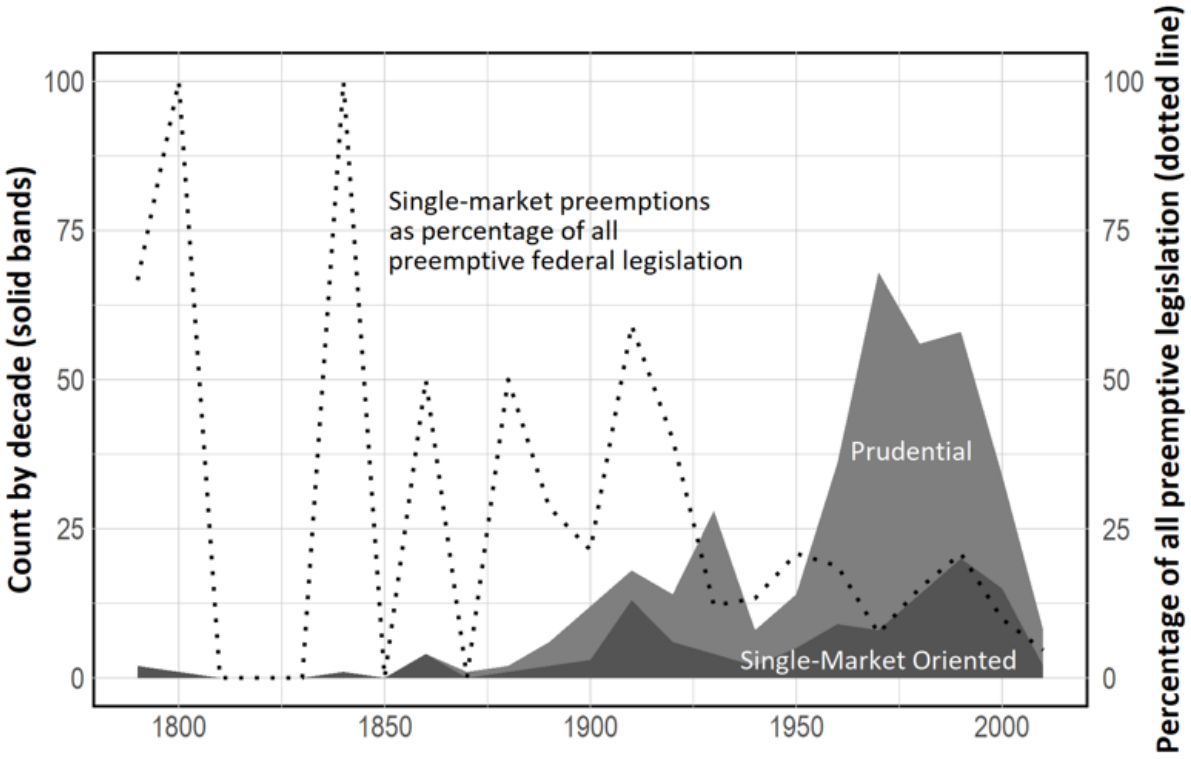
Legislative acts passed under EU authority for the "four freedoms" remain a major portion of EU activity, and have shifted over time toward implementation-focused Decisions. For definitions and data, email cap@uoregon.edu.

The U.S. Congress, meanwhile, has rarely used its Commerce mandate to promote interstate openness. Occasional legislation has imposed openness-related requirements on the states—the Interstate Commerce Act of 1887; the 1968 Grain Standards Act; the 1994 Interstate Banking Act—but most federal statutes privilege other goals like food and drug safety, environmental stewardship, or worker or consumer protection. Though such laws partly harmonize market rules across states, their focus on these prudential goals rather than openness means they typically set regulatory "floors" that states may exceed with additional varied requirements.[3] Federal statutes are also highly idiosyncratic by sector, and SCOTUS interprets their diverse restrictions on states with a "presumption against preemption" discovered in 1947 and reiterated since: limits on states go no further than Congress specifies.[4] Figure 2 displays our coding of all federal legislation from 1790-2012 that was somehow "preemptive" of state

[3] The main exceptions, with uniform federal standards, cover appliance energy efficiency; most medical devices; and auto emissions, with an exception for California.
[4] Rice v. Sante Fe Elevator Corp., 331 U.S. 218 (1947); Wyeth v. Levine, 555 U.S. 555 (2009).

powers, breaking statutes into categories of "single market oriented" (coded very generously to mean legislation whose text or legislative process involved any mention whatsoever of intentions to facilitate interstate commerce) and "prudential" (based on all other stated purposes).

Fig. 2 U.S. federal single-market legislation by decade, 1790-2012



Within the subset of federal legislation that somehow "preempts" state powers, prudential concerns have been dominant since the New Deal. Generous coding of "single-market oriented" acts includes any mention of intentions to facilitate interstate commerce in legislation, committee reports, or Congressional Research Service reports. For definitions and data, please email cap@uoregon.edu.

The administrative contrast is still greater. Given modest EU staffing and a budget capped at 1.2 percent of GNI, SMP implementation mainly operates through requirements on member-state action. For example, as of 2019, most public contracts must be tendered through a Commission-administered "e-procurement" system. By 2023, member-states must maintain "Single Digital Gateways" where citizens can process 21 cross-border démarches online. The Commission enforces member-state "infringements" in legal proceedings but has increasingly developed systems to head them off (Koops, 2011). New SMP-related national rules are legally void unless pre-notified to the Commission (with ongoing contestation about local-level

regulations: Commission, 2020). Anyone may submit cross-border problems to the "SOLVIT" system, which can trigger pre-infringement dialogue in "EU Pilot." A "Single Market Scoreboard" shames member-states and feeds the "European Semester" process, where the Commission may set SMP-compliance conditions for its annual approval of national budgets.[5]

The U.S. federation undertakes few analogous activities. It has huge resources and direct regulatory responsibilities, but given little legislation for interstate openness, it also does little to implement it. In areas with the tightest federal regulations, like appliance energy efficiency, states must seek federal pre-authorization for exceptions, but no such rules prioritize interstate openness per se. Court decisions in the 1990s consolidated a ban on federal "commandeering" of state capacities, so federal agencies mainly implement their own rules alongside state activities.[6] Federal spending greatly influences state policies with conditional grants, but conditionality is rarely employed for goals of openness or regulatory uniformity (McNiff, 2015; Zimmerman, 2004, p. 48). The Federal Trade Commission expresses occasional interest in state-level restraints of trade, but far less actively than the European Commission's anti-trust division (Philippon, 2019). Overall the contrast is straightforward: the United States makes little general attempt to remove interstate barriers in the style of Europe's SMP.

Comparisons across the "four freedoms"

The presence of a stronger general openness regime in the EU than in the US might seem to make good sense, if we believe that there are few interstate barriers to remove inside the US and many more in Europe. Many otherwise-well-informed people assume this to be the case. As a 2019 special feature on the EU Single Market in *The Economist* put it, Europe's "creaking" and "incomplete" project can still only dream of being "like America, with nothing to impede the free movement of goods, services, people and capital" (Economist, 2019). Uncharacteristically, *The Economist*'s portrayal is deeply inaccurate. This becomes clear from a quick look at US and EU regulatory arrangements across the "four freedoms."

In *goods,* interstate barriers are modest in both arenas, but more explicit exclusions exist in the United States. EU goods markets are certainly far from seamless, and implementation of

[5] See https://ec.europa.eu/internal_market/scoreboard/.
[6] New York v. United States, 505 U.S. 144 (1992); Printz v. United States 521 U.S. 898 (1997).

its openness rules will always remain a work in progress. The Commission struggles to keep up with evolving products and member-state regulations. In areas with "minimal harmonization" it wrestles with "gold-plating," when countries add requirements as they transpose EU directives into national law—much as U.S. states add requirements above federal "floors" (Thomann, 2015). Still, underlying EU principles of mutual recognition mean that similar issues typically work out in more pro-openness ways in Europe than in America. For example, when Austria passed strong animal-welfare laws in 2004, EU rules limited their application to Austrian producers, not to incoming products like eggs that meet common EU standards. Under a U.S. regime with fewer common standards and no mutual recognition, California's 2018 animal-welfare law keeps eggs from many states off its markets. Similar exclusions arise even in areas with relatively strong federal statutes, such as chemicals, drugs or toys (Katrichis & Keller, 2000; Costello, 2018). Recent concerns around the world about phthalate chemical additives, for instance, drove a wave of state-level bans in the U.S. and a scramble among producers and packagers. Meanwhile the EU worked more systematically to update common chemical requirements. Occasionally the U.S. achieves systematic rules through the "California effect," where big-state requirements effectively become national standards, but this has been rare outside the classic example of auto emissions (Vogel, 1995). Some goods on American markets lack any coordinated rules: elevator manufacturers tailor different models to state or local standards (Hoffmann, 2011).[7] Not so in the EU, thanks to its 1995 Lifts Directive.

In *services*, EU and U.S. rules are almost mirror images. The EU exhibits default rules of openness with sectoral exceptions, while the U.S. maintains legally-separate jurisdictions with sector-specific areas of openness. General EU directives for professional qualifications and services define baseline harmonized requirements for sensitive professions, like doctors and architects, and otherwise stipulate that practitioners meet home-country regulations. Special deals preserve more national autonomy in important sectors like energy, transport, and telecommunications, and implementation remains very challenging due to "gold-plating" and other foot-dragging by national regulators, but the pre-pandemic decade saw a steady stream of

[7] As the American National Standards Institute notes in its advice for importers, besides respecting federal regulations, "a business wishing to operate within the U.S. must also consider which additional requirements may be necessary in the state where their business will operate. In some cases, regulations may exist at the state level that do not exist at the federal level. In other cases, state level regulations may be more stringent than federal regulations. Companies operating in the U.S. must identify and follow the regulations of each state in which they are doing business." https://www.standardsportal.org/usa_en/key_information/state_level.aspx, consulted 18 November 2022.

implementation-focused initiatives (Pelkmans, 2016). In the U.S., federal legislation sets largely nationalized rules for transport and telecommunications, but generally service providers must meet each state's requirements. These are often near-identical—unlike, say, German and Spanish qualifications—but professionals seeking another state's license must usually pay fees or repeat testing or training. For example, an experienced plumber from Georgia must pass a seven-hour exam to practice in Florida. Oregon's requirements for in-state apprenticeships make it "basically impossible" for an experienced plumber from another state to become licensed.[8] Several kinds of decentralized arrangements mitigate these costs, but only partly. Private associations for professionals like engineers, contractors, or cosmetologists sell test-based certifications, but states endorse them in a messy patchwork (Tate, 2001). Multistate "licensure compacts" facilitate movement for nurses and six other professions, but some large states do not participate (Sandra, 2015). Several recent state laws offer "universal recognition" of out-of-state licenses, but some, like Arizona's, apply only for in-state *residents*—still excluding actual cross-border service provision. Telemedicine offers a timely example of the overall transatlantic contrast. During the pandemic, most U.S. states authorized cross-border telemedicine on emergency bases, but only 14 states have made this permanent. The EU authorized cross-border telemedicine two decades ago (Pirvu & Snyder, 2013).

For *capital*, Washington, D.C. plays a bigger role in unifying state-level markets, but here too the EU has taken some further steps in regulatory openness. The American federal government enjoys fiscal resources that EU actors can only envy, since member-states have limited their fiscal capacities. Federal resources support national deposit insurance, and related requirements for reserves and reporting, that substantially homogenize banking markets. Federal agencies also oversee nationally-chartered banks and exempt them from most state laws. However, for holding companies, state-chartered banks, securities firms, or insurance, varying state rules still apply, creating complex mixes of reporting and oversight (Brown, 2005; Sykes, 2018). In the EU, these state-level rules are far more heterogeneous, and common deposit insurance remains an aspiration, but the key capital directives authorize "financial passports" across this more diverse arena. Harmonized requirements for banking, securities, insurance, market infrastructure, or non-banking financial services authorize EU-wide operations under home-state rules and oversight (Garcia, 2009; Mügge, 2010).

[8] Interview, Oregon state licensing official, October 2022.

The comparison is also mixed for *persons*—the most politicized of the "four freedoms"—but even here, the EU system does more for market openness than the U.S. In the mid-20th century, SCOTUS consolidated a "right to travel" that requires states to allow migration and to extend residency benefits to new arrivals (with exceptions, like in-state university tuition). U.S. citizens freely choose their residency and immediately gain most related privileges, but must also immediately meet their new state's rules (Strumia, 2005; Bruzelius & Seeleib-Kaiser, 2020). EU member-states have more discretion over residency, which they may make conditional on employment, study or resources, but less over work-related mobility: workers hired in one country may be "posted" for up to 18 months in another while mainly meeting home-state regulatory requirements, including social charges. The "Laval quartet" of CJEU cases in 2007-8 ruled that this opening for firms to hire more cheaply-regulated workers from other member-states is precisely what the treaties intended (Barnard & Deakin, 2011).

We could further discuss comparative studies of the EU's stronger openness rules relative to the US in areas like taxation (Genschel & Jachtenfuchs, 2011), business establishment (Allmendinger, 2013), state aid (Schenk, 2006), or procurement (Hoffmann, 2011), but this basic survey makes our point: in the governance of interstate exchange, Europe has a more "complete" single market than America. That EU rules are more complete than those in the U.S. does not mean, of course, that they are close to "complete" in an absolute sense. Many unambiguous interstate barriers remain in the EU, despite its overarching rules, like the example we note below of French requirements for insurance that are very difficult to fulfill for neighboring countries' construction firms. The relative point is nonetheless extremely important for how we think about the achievements of the Single Market project so far. We can state it even more dramatically: though this short paper cannot catalogue the internal-market regimes of other federations like Canada or Australia, a broader comparison would show that *no multi-level polity has ever constructed single-market rules as strong and complete as those in the EU today*.

II. Political trade-offs and economic benefits in a strong but diverse single market

To some degree, the preceding sentence speaks by itself to the question of how much the thirty-year-old Single Market project has achieved. In political terms, this architecture of rules for openness is simply extraordinary. The achievement becomes even more striking once we note that these rules have been established over the oldest and most robust sovereign states in the world—subunits far more distinct and powerful than those within any federal state. Moreover, the notion of market openness has always been contested among the peoples and governments of continental Europe, in particular relative to more pro-market attitudes prevailing within the large Anglo-Saxon federations. Time travelers from the 19th or early 20th centuries would surely be surprised that countries like France, Germany, Italy and Sweden have accepted stronger federal-level requirements for cross-border openness than Texas, California, and Illinois, or Ontario and Saskatchewan, or Queensland and New South Wales.

At the same time, the robustness and diversity of EU member-states help make the political case for the strength of their single-market rules. With their separate histories, languages and cultures, and largely-distinct national regulations elaborated over centuries, it is plausible to argue that a project to encourage economic flows and social integration across them could only make headway given an unusually strong and explicit single-market regime. Inside the US, by contrast, economic flows and social integration are facilitated by shared language and identities, as well as far greater homogeneity of subunit institutions and practices. Even if the US retains many regulatory barriers to cross-border market access that the EU has mitigated, a citizen from Florida finds a move to Oregon far more familiar, legible, and "normal" than a Portuguese immigrant finds conditions of life and work in Finland (or even Spain). Additionally, the fiscal action of the US federal government contributes to social and economic integration far more than the activities of the fiscally-limited EU. If the EU had US-style federal capacities to fund infrastructure, insure banking deposits, provide welfare benefits, offer housing support, and so on, its ambitions for economic flows and integration would not depend so heavily on strong single-market rules.

These broad observations carry two related implications for evaluating the Single Market's achievements. The first concerns political trade-offs. The notion that especially strong single-market rules may be necessary to promote cross-border flows in an especially diverse

arena can be rephrased to say that the promotion of cross-border flows in a diverse arena will demand especially high costs in local regulatory autonomy. Thanks to Americans' relative homogeneity and the integrating activities of a resource-rich federal government, it seems that America states can retain considerable regulatory autonomy while still enjoying substantial macro-economic and social fluidity across the federation. Californians may be able to vote for stronger animal rights for chickens or pigs than citizens of Arkansas would support, and may then apply their own rules in ways that keep Arkansas's eggs or pork off the California market, without deeply threatening economic flows and social integration across the country.[9] If Austrians were allowed to apply their strong animal-welfare laws in the same way—and, by extension, if Europe's diverse members had similarly broad autonomy to pursue other diverse priorities they might like—we would expect cross-border flows in Europe to be more at risk. This is precisely the justification for EU requirements that Austria's animal-welfare standards apply only to its own producers, and that it must accept on its market other member-states' products that meet (lower) EU standards. While we marvel at the extraordinary political achievement of Europe's Single Market rules, then, we must allow that many Europeans might not prefer this resolution of the trade-off. They might prefer to forego some cross-border flows to regain more national-level choice over some of the many areas touched by Single Market rules. Many clearly have such preferences, as displayed in Eurosceptical mobilization, challenges to EU-related referendums, and Brexit. Among academics, these concerns are reflected in the large literature about the problems of "constitutionalization" of openness principles over others (e.g., Weiler 1991; Grimm, 2015), and more generally about the EU's "democratic deficit" (e.g., Scharpf, 1997; Føllesdal & Hix 2006; Cheneval & Schimmelfennig, 2013).

Closely following is a second implication: to speak to such political trade-offs around Europe's Single Market rules, we would ideally want sharp estimates of how much these rules have indeed produced economic payoffs. Most importantly, we would want to know how much the construction of this regime has augmented cross-border flows, which plausibly bring overall gains in competition, efficient allocation of resources, and the fluidity of macro-economic

[9] We say "may," because a challenge to California's rules, led by out-of-state pork producers, is now before the Supreme Court. The outcome is somewhat unpredictable, but most commentary leans toward the expectation that the liberal justices will ally with the most conservative justices to preserve California's "police powers" rights, further weakening the Dormant Commerce Clause. "May" is also the correct phrasing because this decision could have substantial economic effects, especially if it encourages other states to do similar things.

adjustments. As much as possible, we would want these estimates to be informed by baseline expectations about what is feasible in Europe: what levels of cross-border flows would prevail in a "complete" single market free of interstate regulatory barriers, while allowing for the linguistic, social, and institutional diversity of EU member-states? Helpfully, a large economic literature has arisen in the past two decades to address these questions. Moreover, it tends to look implicitly or explicitly to the United States' internal market to formulate expectations about "normal" flows in an internal market. Our next section looks at some recent scholarship along these lines, and considers how it relates to our comparison of European and American rules.

III. Economic flows, "border effects," and regulatory barriers in the EU and the US

Only fairly recently have economists developed sophisticated models to estimate how jurisdictional borders affect flows across them. The question of economic "border effects," or why trade shows a "home bias," was described two decades ago by Maurice Obstfeld and Kenneth Rogoff (2000) as one of the six major puzzles of international economics. John McCallum (1995) attracted attention to it by estimating that Canadian provinces traded 20 times more with each other than with US states, despite a relatively open border. Over time other studies improved the "gravity model" approach McCallum used with better controls for distance, the varying size of economies, and a polity's average trade frictions with all partners (or "multilateral resistance": Anderson & Van Wincoop 2003). Estimated international border effects generally decreased with these improvements, and also came to seem relatively less dramatic in light of findings of *intra*-national home biases between subnational jurisdictions like the American states or regions within EU countries (Wolf 2000; Nitsch 2000; Hillberry & Hummels 2003; Chen 2004; Millimet & Osang 2007; Coughlin and Novy 2013).

Building on this literature, Keith Head and Thierry Mayer recently offered a state-of-the-art contribution with striking conclusions: "We report here—with some degree of surprise—a body of quantitative evidence suggesting that, by several important metrics, European states have matched or surpassed the levels of openness prevailing amongst the 50 American states (Head & Mayer 2021, 24). For trade in goods in 2017, they estimate that the average interstate border within the US decreased trade by 37% (relative to baseline "trade with self"), while the average national border among the EU28 decreased trade by 32%. Much of this apparent increase in flows appears to involve eastern Europe, since the 2017 number calculated only for the western EU15 is higher, at 45%. They also report comparable levels of price convergence for selected models of cars across the EU15 and the US states. EU capital flows in terms of cross-border mergers also come out very close to US levels in their analysis, though not migration, where US border effects still look roughly 10 times smaller than in the EU15.

These findings seem to fit nicely with our comparison of single market governance. If the EU has constructed more complete single market rules than the US, that helps explain how it has caught up to certain American economic flows. Moreover, Head and Mayer's estimates include a dummy variable for common language, so their more plausible full finding is that EU goods

flows have equaled or surpassed US flows when discounted for linguistic heterogeneity by roughly 30-60% (the language dummy coefficients in various specifications of their model). At the same time, however, our comparison of governance complicates the interpretation of this econometric work. Like practically all gravity-model scholars before them, Head and Mayer assume that the US displays a "plausible lower bound of impediments" across borders, due to its "constitutional prohibition on barriers to interstate commerce" (Head & Mayer 2021, 29, 45).[10] As we have seen, this is not very accurate even in goods, let alone services. The less we conceptualize the US case as barrier-free, the less obvious are the implications of Head and Mayer's analysis. Rather than evaluating an ongoing EU barrier-removal project against a barrier-free American baseline, with a discount for linguistic and other social heterogeneity, we are evaluating two arenas with various kinds of barriers, plus a contrast in social heterogeneity. It is still very striking, of course, that EU goods flows might only be discounted 30-60% relative to those in the US. Head and Mayer also provide separate longitudinal analyses of change in home bias among EU members since 1960—comparing to themselves over time rather than to the US—and their analysis leaves no doubt about strong EU effects. The remaining ambiguity is not about whether the EU has substantially facilitated cross-border flows, but about how we theorize and measure a baseline for larger questions about "completeness."

We suggest in our conclusion that given the absence of an empirical baseline like the imagined barrier-free US, strong answers to completeness questions about Europe's Single Market face a difficult challenge. Rather than attempting to infer barriers' effects from cleverly-controlled measures of economic flows, we must actually measure barriers to disentangle their effects from other conditions. Before elaborating that point, though, we introduce some more EU-US comparative observations that further complicate this challenge. Our ongoing research suggests that analyses of single market "completeness" may need to go beyond measuring interstate barriers, to factor in how people *think* about interstate barriers.

[10] To our knowledge, the gravity-model literature does not ever mention the possibility that regulatory barriers to trade might exist between US states. Wolf (2000, 555) noted that his demonstration of interstate border effects in the US was a puzzle "given the strong constitutional protections for interstate commerce." Even a paper that argues that the trade effects of US interstate borders are larger than those for US international trade does not mention the possibility of actual interstate trade barriers (Coughlin and Novy 2013).

IV. Perceptions of barriers in the EU and the US: initial findings in construction

Our current research investigates whether Americans' and Europeans' different internal-market regimes reflect different political views about market openness, interstate barriers, and government authority in these two arenas. With funding from the Norwegian Research Council, our SINGLEMARKETS project is comprised of sectoral case studies, based on interviews with businesspeople and public officials, in construction, alcoholic beverages, and retail banking; a wave of interviews with EU and federal officials about the overall trajectory of internal-market policymaking in recent decades; and an original survey of 4,000 Americans and 22,000 Europeans in 11 countries, to be fielded with IPSOS later in December 2022.

This conference comes too early for us to report more than preliminary and therefore impressionistic results, particularly since we only just received our first transcriptions of initial interviews in the construction sector and with EU/federal officials. The following discussion is based on the first dozen semi-structured interviews with French, German and some Spanish building companies and a dozen interviews in the United States (mainly in the state of Oregon), supplemented by some written sources. We begin by summarizing what construction firms tell us about the interstate barriers they encounter in each arena. Then we pull out some observations about how they frame those barriers, considering what they see as problems that might call for change. Lastly we offer some initial takeaways from our interviews at the EU and federal levels.

1. What construction firms say about cross-border challenges in the EU and the US

Our first key impression from our early interviews is that construction firms' experiences of working across intra-EU or intra-US borders (or deciding not to) are *more similar overall* than most observers would expect. The specific barriers they confront are different, and of course EU firms struggle with linguistic and cultural differences that are not present in the US. Still, in both arenas, construction firms emphasize that they can only do projects across internal-market borders if they make substantial investments in local legal, bureaucratic and institutional expertise, and if the promise of a lucrative project outweighs those additional costs.

We organize these impressionistic points loosely within four dimensions of economic activity: production and sourcing, finance, employment and commercialization (Jullien and Smith, 2011, 2014).

Production and sourcing. In both the US and the EU, construction firms generally tell us that their materials and equipment are not a major impediment to cross-border work. This does not mean that they can always build with exactly the same materials in the same way across US states or EU countries, but in both contexts they see some such variation as normal: a building must ultimately be approved by local inspectors whose requirements may be shaped by local practices, or may simply be idiosyncratic. In Europe, the Construction Products Regulation and a coordinated system of "Eurocodes" set a more unified regulatory framework around these products than exists in the US. American states or local authorities voluntarily adopt regular updates of building codes sold by the International Codes Council (ICC), or in some cases by the National Fire Protection Association (NFPA), and do so erratically, such that builders may need to meet the 2018 ICC standards in one place and the 2015 standards in another. Still, European firms report that they must similarly attend to local specifications: EU rules may allow the same materials to be placed on the market across member-states, but the approved use of materials and final judgments in inspection regimes still vary considerably. Again, our interviewees on both continents say that these considerations do not greatly affect their choices about where and whether to pursue projects.

Finance and liability. Firms report more significant variations across jurisdictions in this category, in particular in insurance. While our interviewees have not mentioned banking as problematic, they note important cross-border differences in insurance, with especially significant consequences on the European side. European firms report that variation in insurance requirements can be substantial deterrents to cross-border projects—and in some cases, deal-killers. French law first requires construction companies to take out a form of building insurance (*la garantie décennale*) which, for each building concerned, guaranties that for ten years they will be financially responsible for any defects that may arise. By contrast, in Spain building firms take out annual building insurance that covers all their activity. Consequently, responsibility for what they have built is more diffuse and less individualized to specific projects. The outright

barrier, however, is the fact that no French insurance company can provide a *garantie décennale* for any company whose headquarters is not in France. Foreign companies must therefore find a means of partnering a French company to build or renovate buildings on French soil. Spanish firms in particular object to this practice as discriminatory.

In the US, meanwhile, insurance requirements also vary from state to state in significant ways—since insurance is regulated by the states, not the federal government—but construction firms generally say that large insurance firms work out these problems for them. Insurers must be separately licensed in every state, but as a manager at a large Oregon-based firm told us, "The large carriers that we have for general liability for our bonding and surety, they all work with large [construction firms] that have large footprints in multiple states." For smaller firms, however, this can be an issue. One manager at a medium-sized firm told us:

> It's just making sure that if you are going to travel across states that you're with a[n insurance] firm that can tackle that. A lot of…small companies, they will go with more local smaller insurance firms or smaller finance firms [that] might not travel that far out of state. So it's important to know that if you want to do work, that you're covered. That's the same thing in regards to our attorneys and everything else. That's why when you're looking [for projects]….you're dang near starting up a whole different company in a different state. So you just need to make sure that you're covered and your guys are certified and whatnot. Because that's one of the big things with our subcontractors, is ensuring that the subcontract meets the same laws as the states that you're working in. Because if they don't, your insurance won't cover it because your insurance not bound to it. It's different law entirely.

Employment. Firms in both the EU and the US report major challenges in employing workers for projects across internal-market borders. One subset of these issues concerns qualifications and licensing. In the EU, despite all the work done over the past 70 years to harmonize or mutually recognize vocational qualifications, member-states including Spain, Denmark and Sweden still maintain systems of permits for plumbing or electrical work that are very difficult for foreigners to access, often due to requirements about apprenticeships. Operators of heavy machinery, too, often must undertake additional steps to operate in another member-state. Exactly the same problems arise in the US, however. Heavy-machinery licenses vary from state to state. In specialized trades, as we noted earlier, an Oregon public official told us that it is "basically

impossible" for an experienced plumber from other states to work in Oregon, since it requires an Oregon-approved apprenticeship. The more generous Oregon regime for electricians allows out-of-state candidates to sit for examinations only if they have 4 more years of experience than Oregon candidates. American firms also find it annoying that they must carry general-contractor licenses in each jurisdiction, some of which take require a course—sometimes a month long—plus an exam, fees, and a few days a year of continued training. One medium-sized Oregon firm mused about their decisions not to expand into Arizona, "…that's probably why we've limited ourselves to just a two-state [area], because it's just such a pain in the rear [in] Arizona. Arizona's booming. [But] it's a pain in the butt to get a license in Arizona."

European firms also report difficulties within the EU's posted-workers regime. Spanish firms are often cost-competitive in France, but to bring workers in, they must notify social security authorities in advance, provide workers with equivalent pay and conditions to host-state workers—a challenge since categories of workers and work may not match up—and, in principle, demonstrate overall equivalent levels of social-security payments and other benefits. In France, paperwork to this effect must be completely in French.

Again, however, American firms report analogous challenges that may be similarly onerous—even, perhaps, on the level of the language difference. In the absence of anything like a posted-workers regime, all firms and workers in a given state must simply meet all its rules, with considerable variation in taxation and social charges. Firms in Portland, Oregon who work across the Columbia River in Washington must navigate its unique state regime for workplace insurance ("workmen's comp"), as well as the fact that payroll tax systems in Oregon and Washington are "complete opposites," according to one firm. Along similar lines, our interviewees frequently cited the high-regulation state of California as simply too complicated for inexperienced firms to enter: "If you haven't worked with [California workmen's comp] OSHPD before," said a manager at a large Oregon firm, "look out because you have no idea what you're getting into." While these phrasings may include some hyperbole in comparative perspective—Oregon's and Washington's bureaucratic systems are simply not as different as those in France and Germany—American construction firms also face other limits on worker mobility. For firms that work with unionized labor, American unions for trades like plumbers, electricians, pipefitters enforce "portability" rules that simply prohibit a contractor from bringing

more than one supervisor and four workers outside of their home union territory (which are usually roughly aligned on states).

Commercialization. Firms also tell us that their choices to operate across borders (or not) are shaped by the ease or difficulty of establishing commercial relationships. Doing business depends on some level of trust and familiarity, and their absence can translate into discriminatory treatment toward outsiders that constitutes a significant barrier. This is a common concern among our European interviewees. For example, a Spanish trade union official who represents plumbers and electricians told us that if Spanish builders manage to win work in the French market, they often attract unusual levels of scrutiny from French inspectors. Similar dynamics arise in public procurement. Local firms' advantages in being "plugged in" to information circuits constitute a huge advantage, according to an electrical equipment installer based in France but who participates often in building work in Germany.[11] If a non-national firm does win such a contract, it may then find extra controls imposed on it. As a Spanish interviewee stressed, "This is always very difficult. Extra documents for Spanish builders are always requested."

We have not yet encountered equally explicit statements about discriminatory treatment on the American side, but we have been surprised at the degree to which American firms express the same sentiment about the difficulty of developing commercial relationships in new markets. To a large degree these problems appear to arise in the construction sector even without differences in identity or language—and even across geographically-distant markets within the same regulatory jurisdictions. One contractor based in southern Washington and active in Oregon called himself a "foreigner" outside his familiar territory:

> It's interesting because…here I am in the state of Washington and I don't go to the Seattle market…. Because I'm the biggest [builder of dentists' offices] in the state of Oregon, I've had people drag me into Seattle market. And I finally just had to refuse to do it. If you're going to work around the nation, here's your biggest struggle. You're a foreigner going into that area… if I hire an electrician to do a job in Seattle, and he's working for five other Seattle contractors, so he's got six jobs he's going on;

[11] This may be less true for very large firms bidding for very large projects. A large German firm that often works in Scandinavia suggested that they find EU-wide procurement rules reasonably open: 'the regulations that are there, are not so different, but nevertheless there are rules -- EU-wide -- that have to be observed. A certain project has to be put out to tender throughout Europe, which of course also has the advantage that you find out about it at all and perhaps also find out about it in good time."

five with Seattle contractors, one with me. And I need him on a job site and the other five need him as well. I'm last on the list.... Because he's going to work for the five guys who may give him a job next week, not the guy who's going to be gone and may not be back.…They're not mean or anything, but they understand, hey, this guy may or may not be back…. And it's harder to warranty work when you're far away. So to me, it's not cost effective for us to go too far outside of our area unless we literally had a local presence there. I've got a bank right now who's trying hard to get us to go into Idaho. I'm considering it, but we would literally have to have a local presence there… if you go into Bend, Oregon [250 km away] and you're an out-of-town contractor, they will shun you. They will.

This EU-US parallel should not be overdrawn: surely a Washington contractor's perception of being "shunned" as a "foreigner" in other regional markets is not on the same order as the distrust and discrimination that a Spanish contractor may confront in France. Along with the preceding points, however, this observation contributes to the surprisingly similar feel of construction firms' experiences in the US and EU. In both arenas, firms undertaking or considering cross-border projects encounter both a range of regulatory impediments and challenges in establishing themselves in unfamiliar markets.

2. Framing barriers: an incomplete Single Market, or the "cost of doing business"?

Besides asking construction firms about challenges they experience in cross-border operations, we are also asking them whether they think anything should or can be done about such challenges. Here we see greater distinctions between our EU and US interviewees. Europeans suggest that more should be done to achieve an open and fair Single Market, notably to further harmonize rules. Americans suggest that it is up to businesses to navigate different jurisdictions, and that state-level authority is legitimate and immune to change.

On the EU side, our interviewees' tendency to frame interstate barriers as calling for more harmonized EU rules does not reflect any simple Euro-enthusiasm. To the contrary, many construction firms are skeptical of what the Single Market has achieved, concerned that not all have benefited from it, and wary that it may threaten national standards and regulations they value. As an official from a Spanish trade union for plumbers and electricians said, after listing the barriers he saw his members confronting to operate in France, "For us the single market is

very theoretical!"[12] An official working for a French national federation of large building firms said much the same thing. Many of our interviewees suggested that only big companies have profited significantly from the Single Market so far. Given that cross-border work remains difficult, in their view, only big firms have the capacities to find partners in other member-states or set up affiliates, and also to hire or contract out for expertise to deal with foreign regulation. Interviewees also frequently expressed concerns about a "race to the bottom," like the French federation official:

> If one looks for everything to be set at the European level, that would increase the risk of lowering norms and standards to a minimum baseline, which is not necessarily a good thing when certain countries already have a well-structured framework… if it lead to undoing things, unpicking everything, that would be a shame.

Without exception, however, our interviewees to date have framed these criticisms as arguments for changes in order to achieve an open and fair Single Market (as they see it), not as reasons to oppose or pull back from the goal of a single market. The starting point for nearly all our interviewees is that harmonized rules and norms are the ideal goal. Most also voice skepticism that this can be fully achieved, and/or that it will take a very long time, but they still frame their comments around expectations that progress will be made in these directions. To quote from an official from a local builder's association in a French border region:

> I would tend to say that harmonizing rules would be ideal, both for social and fiscal reasons, as this would make competition fairer, meaning that everyone would be faced with the same type of competition but (…) when I see the time it takes at the European level to achieve harmonisations, I don't have any illusions! I think all that will take quite some time.

On the American side, by contrast, our overwhelming impression is that construction firms do not see interstate barriers as public problems that need to be addressed. When asked if construction sector associations ever address such issues, they uniformly answer no—and often add that firms simply need to be responsible for dealing with the jurisdictions they operate in. In

[12] In what follows, we have translated our quotes into English ourselves when necessary.

the words of one manager at a medium-sized firm who has been active in the American General Contractors (AGC) association, “It's not really a discussion that happens. It's because if you want to go work in a different state, you're at your own due diligence to go chase it.” For someone at another medium-sized firm, though he spent “two weeks’ worth of actual work” getting a contractors’ license in another state, he couldn’t imagine the industry caring that much about these problems:

> I think that it's not a big enough issue for the midsize to larger companies that are traveling out of state to really address. For me, it was a four-week process, and really it was two weeks’ worth of actual work of crafting the resume, reviewing it, making sure all of our docs are in blah, blah, and then the waiting period. And so that's the thing. It's not really worth tackling this national issue because we have the resources to fight it.

Some interviewees acknowledge that interstate barriers may be problematic for smaller firms, like the manager at a firm with over $1 billion in annual revenue who offered this summary: “I don't think it's that challenging, honestly. For sophisticated business, it's not... If you were a little guy, it'd be a big issue.” On the other hand, in the two interviews we’ve done at smaller firms (on the order of $10-$20 million in revenue), they did not describe this terrain as unfair. They too portrayed challenges with multiple jurisdictions as normal parts of their operations.

In addition to interpreting these issues as the responsibility of the firm, our interviewees also frequently mention that the US states have legitimate rights to set their own rules. We end our interviews by asking if they think their business environment could be improved by more uniform federal rules, more room for state control, or arrangements for generalized mutual recognition. (This last option must be explained to Americans, since this is not a familiar idea). While none of our interviewees has argued for more state control than already exists, their responses tend to rationalize the largely state-based regime by setting aside the other two options. Most flatly oppose steps toward uniform federal rules. As one contractor put it, “Frankly, the federal government scares the bejesus out of me.” They are considerably more positive about the idea of mutual recognition, especially for licensing—some fully enthusiastic—but they also tend to express that they do not think it is likely to come about. One mid-sized firm’s manager in Oregon, who complained about the difficulties of licensing in Colorado, spelled out why he thought arguments for state authority would prevail:

> '…Colorado, if you were to propose something like [mutual recognition] to them, their argument is very easy to understand. And it's a very proud statement. It's like, "No, we don't want you building in our state if you don't have the right. If you're not the right person to do the job, if you can't qualify, then you shouldn't be working in our state." So it's a really big soapbox to stand on. I think that's why [the idea of addressing interstate barriers] just gets lost in conversation.

This quote expresses a similar sentiment as the French federation official cited above—concern that openness could lower regulatory standards is common to both arenas—but the two interviewees framed that thought differently in terms of political action. The French respondent presented it as a reason to continue work toward harmonized EU rules. The American cited it as a powerful justification for sticking with state-level regulation.

3. Profoundly different political projects at the EU/federal levels

If our interviews with businesspeople suggest that construction firms in both the EU and the US encounter a variety of interstate barriers, but that US firms tend more toward accepting and normalizing such barriers, the differences are far more pronounced in our interviews with policy actors in Brussels and Washington, D.C. Though the Single Market is no longer the leading edge of the EU policy agenda, mitigation of remaining barriers is still an active project. Among US policymakers, meanwhile, similar concerns are rare. Indeed, some of our federal-level interviewees seemed puzzled when asked if anything should be done about interstate barriers.

To some degree, this difference will be unsurprising to anyone familiar with the institutional landscapes of the EU and the US federal government. Our host for this conference, the European Commission's DG GROW, carries forward the tasks of the original Directorate General for the Internal Market. Although the institutional salience of the internal-market agenda decreased with the 2015 merger of DG MARKT and Entreprise/Industry into DG GROW, and again with a 2020 reorganization of DG GROW into units based on sectoral "ecosystems" rather than internal-market tasks, it remains true that dozens of high-level officials work primarily on identifying and mitigating barriers to cross-border market access. They interact with other clusters of internal-market expertise around the European Parliament's Internal Market and Consumer Protection committee, the Competitiveness Council, and in member-state

governments through linking committees like the Single Market Enforcement Taskforce. Across "the Pond," nothing like this institutional complex exists. Even though the leading reason for the creation of the US federal government was to guarantee open interstate commerce across the states, today it is simply not anyone's job to mitigate interstate barriers. The Federal Trade Commission comes closest to such tasks, but concentrates its efforts on private actors, with very rare attention to state-level restraints of trade.[13] The White House Office for Information and Regulatory Affairs (OIRA), which reviews all new federal regulation, sometimes considers how new rules will impact interstate commerce, but this is not a major theme at an agency without a mandate with respect to cross-border openness. An Undersecretary at the Commerce Department oversees the National Institute for Standards and Technology (NIST), but its activities focus on voluntary industry-led standards, with no legal force with respect to state-level regulation.

When we talk to actors in and around these institutions, however, we encounter differences in perspective that go considerably beyond a contrast in institutional and organizational mandates. Consider first the examples of the peak associations for construction firms that lobby in Brussels and Washington, D.C. We might expect such associations in both contexts to show some interest in facilitating interstate operations for their larger members, mixed with likely concerns about such steps from smaller members who could be threatened by cross-border competition.[14] This fits roughly with what we see on the EU side. Interviewees at the European Construction Industry Federation (FIEC, which represents firms of all sizes) tell us that they generally support the Single Market and often work to help their members who encounter barriers to cross-border market access, while also complaining that sometimes EU proposals for Single Market openness go too far (like the "Services E-Card" the Commission proposed in 2018, which would have pre-authorized construction firms to work in other countries, and which was withdrawn partly due to construction-sector opposition). Even the European Builders' Council (EBC), which represents SMEs, espouses broadly pro-Single Market

[13] The notion of FTC action against interstate barriers has come up on a few occasions in the past fifty years, but was mostly shut down by political pushback to defend "states' rights." In the early years of the Reagan administration, a proposal to create an FTC office focused on interstate barriers was briefly considered and discarded (Craig and Sailor 1987). In the early years of the George W. Bush administration, FTC Chair Tim Muris launched a study of state restrictions on online wine sales, leading to one of the few recent Supreme Court cases that invoked the Dormant Commerce Clause (*Granholm*, 2005). When Muris proposed similar studies in other sectors, Congress zeroed out the budget for these activities (interviews).

[14] This would certainly be the expectation of leading theories that explain the rise of the EU, which posit that supranational EU rules arose largely due to support from businesses who stood to gain from easier cross-border trade (Moravcsik 1998, Sandholz and Stone Sweet 1998).

positions and actively participates in policy conversations about it, despite the fact that most of its members consider they are not large enough to pursue cross-border work.

In Washington, D.C., by contrast, interviewees at the powerful Associated General Contractors of America (AGC) tell us that they cannot think of instances where they addressed issues about interstate regulatory barriers. They recognize that some such barriers exist, like in licensing or public procurement, but note that these are issues of state-level policy that are the turf of their state-level chapters. AGC of America focuses on the federal government—and given that the federal government does not take action to address interstate barriers, they do not address such issues either. Interviewees at various AGC chapters, meanwhile, say that interstate barriers are generally not their concern. They focus on issues within their states.[15] In other words, neither level is responsible for interstate regulatory barriers. Much like with the American firms cited earlier, when we ask AGC staff at these associations about an EU-style regulatory model of mutual recognition within some harmonized standards, they say it has some appeal—but that they cannot see how it would come about.

We are just beginning our interviews with public officials, focusing on the Commission and its closest analogues among American federal departments and agencies, but it appears that their differences are still more pronounced. Again, consider the EU side first. It will not surprise this audience that our first half-dozen interviewees at the Commission generally support ongoing progress in the Single Market agenda, especially those in DG GROW or DG COMP. They recognize that the Single Market agenda has settled into the background of the overall EU agenda, but emphasize both that it continues to be dynamic itself, and that is a fundamental backdrop that sets conditions for other EU policy discussions. As one experienced official put it,

> I think we have moved away from the debate on, "How can we remove barriers for specific services?" or "How can we remove barriers to the free movement of goods?" to a way of [asking], "The Single Market is our joint good. How can we protect it best, because we are very much dependent on each other?" And that plays into [today's leading issues like] energy, into the digital world. No one contests that digitization of our economy is a Single Market matter.

[15] This even includes AGC chapters that extend across states, like the Philadelphia-based chapter whose territory includes parts of Maryland and Delaware.

Our interviewees describe a maturation of the Single Market agenda, roughly since the mid-2000s, into a more normalized process of good governance (as they see it). At a broad level, they emphasize that EU internal-market action has become less legalistic and more selective, pursuing new legislation or infringements where substantial economic effects are at stake, and leaving many small issues to state-to-state coordination in administrative systems like SOLVIT and the Internal Market Information Tool (IMI). In goods, where roughly 80% of products are traded under harmonized EU regulations today, much ongoing work concerns maintenance of largely "complete" rules in light of perennial change in products or member-state regulations. For construction materials, which have their own Construction Products Regulation, the leading issue today is altering the established system of requirements and standards to incorporate sustainability principles. In services and persons, the focus has shifted from a "regulatory" agenda about harmonizing national regulations toward an "administrative" approach that seeks to facilitate cross-border market access across different national regulations. The Single Digital Gateways are a prime example. This is also the main approach for recent discussions of construction services, which was designated as a priority area by the Single Market Enforcement Task Force (SMET) created in 2020.

It could be possible to read these changes and other elements of the EU context as a pull back from Single Market ambitions, but our interviewees do not see them this way. Despite more selective enforcement, reorganized DGs that downgrade internal-market priorities, and a policy agenda dominated by energy supply, war, and climate change, we have heard considerable optimism that the Single Market is robust and will move forward. Part of that optimism reflects a belief that the member-states, despite their regular temptations to challenge or evade EU rules, have now internalized Single Market principles. As one interviewee put it, this reflects that EU implementation happens almost entirely through the member-states:

> Many member states, till today, have attempted to say, "I'm in charge and I decide whatever I like." And I think the European law says, "You're in charge, you decide, but you have to decide also according to certain principles we have agreed upon in the treaties." This is quite powerful. If you can say you're in charge of a regulated profession or you are in charge of your minimum pay in your country, this is all fine, but you have to execute your competence in a way which is compatible with proportionality, with transparency, and administrative simplification. And I don't know whether you have the same principle in the US, but these can become quite powerful instruments.

Another source of this optimism is the belief that business prefers the "legal certainties" of the Single Market. One interviewee who works mostly on goods told us,

> On harmonization…you might think that companies would say, "Leave us alone. Let us do our thing." But actually, harmonization protects them. With harmonized rules, you can trade freely and comply with the rules…. I think the appetite of companies to have legal certainty is higher than their fear of red tape or overregulation. Unless you go into new areas and you do stuff that nobody likes, and you really create new burdens. But normally if you have legal certainty, people know what they need to do. They're safe, and they do it, and they're left alone. And if you have to do a little bit more, that's fine if they…have certainty to operate. That is surprising actually, but I've encountered this over the years all the time.

Now consider the US side. How does the preceding image of a Single Market project embedded in EU mandates, member-state implementation and business support compare to analogous US federal policy discussions? There are some modest parallels, notably in terms of some business interest in federal-level rules, but overall the contrast is striking.

We have only undertaken a few interviews with federal regulatory officials, but here we combine a few takeaways with some information available in secondary literature. Any assessment of "American federal" views must recognize that US federal officials are more partisan than Commission officials, of course, changing in policy perspectives from presidency to presidency. Our first interviews have focused on officials who worked for President George W. Bush (2000-2008)—the last US administration widely seen as strongly advocating open markets and tightly allied with business. In regulatory affairs, it was notable for an attempt to redefine the administrative law of federal "preemption" to constrain state-level rules on legal liability for a variety of products (McGarity 2008). This effort, which drew strong business support, shared some features with much EU-style single-market policy-making—aiming to establish more of a single legal framework over products. In parallel, Bush appointees at the Federal Trade Commission also expressed new interest in interstate regulatory barriers, most notably by studying them in online wine sales (see footnote 21 above). We might expect, then, that interviews with Bush-era officials would seem rather EU-like on these themes.

Instead our interviewees present these initiatives as unusual and contested steps that were limited or overwhelmed by internal Republican opposition. One top regulatory official described a contest between "Hamiltonian pro-industry conservatives," who supported this use of federal authority to restrict state regulation, and "Federalist Society lawyers," who championed "states' rights." The Federalist Society is a conservative legal movement largely devoted to limiting federal power (Teles, 2008). It is an outgrowth of the core Republican coalition that consolidated around Ronald Reagan, who personified an alliance between two reactions against progressives' expansion of federal authority in the mid-20th century: pro-market, "neoliberal" rejections of expanded federal economic and regulatory action, and "state's rights" rejections of federal intervention in civil rights in the American South (Nash, 1976; Carmines & Stimson, 1989; Feinstein & Schickler, 2008). For our purposes, the key point is that most American conservatives who consider themselves champions of markets understand their regulatory agenda to center on shrinking federal regulatory authority—not invoking federal authority to promote interstate commerce. As one of our interviewees put it—a longtime policy official (and Federalist Society leader) who served Reagan and both Bush presidencies—"Our [regulatory] target was always the federal agencies themselves. They were doing too much. That was it." This same official knows the EU well, but was dismissive when asked whether he and his colleagues ever considered any regulatory steps that would be more similar to the Single Market 1992 agenda: "That's totally different. They have a different system. We have a system in which the states have these powers. That's all there is to it."

One of the most fascinating aspects of these powerful pro-state, anti-federal views among American conservatives is that they do not perceive business (especially big business) as friendly to their agenda. While the Republican Party is classically seen as tightly tied to business interests, leaders of the Federalist Society frequently describe big business as dangerously inclined to prefer single federal rules over fragmented state regulation (Greve, 2001; Teles, 2008, p. 68-88). Our interviewee who described resistance to "Hamiltonian pro-industry conservatives" underscored the same point, and observed that across his years in regulatory agencies, the pattern was that "Only occasionally does business break through Republican resistance to federal action." This is not the dynamic we see, admittedly, in construction services: AGC of America seems to share the view that most regulatory powers should be left to the states. But our interviewees note that in many other sectors—cars, insurance, wine, lately pork producers—even

powerful business interests struggle to persuade Republican allies to support federal authority over the states. In the current SCOTUS case regarding California's animal-welfare law, the most conservative justices (Thomas, Gorsuch) are widely seen as likely to uphold "states' rights."[16]

Where do these preliminary and impressionistic observations leave us? What would be the upshot if our ongoing research shows more systematically that 1) firms in both the EU and the US experience significant interstate barriers, but that 2) European firms frame these barriers as calling for public action more than American firms do, and that 3) institutional mandates and political beliefs at the EU and federal levels assign powerfully different priorities to reduction of interstate barriers? For this conference's focus on evaluating the European Single Market, we think the key implication is that Europeans' and Americans' seemingly different thinking about interstate barriers may matter for analyzing the economic effects of EU-led regulatory change. Not only have we shown that the US is not a barrier-free comparative baseline against which EU flows can easily be interpreted, but our ongoing work at least hints that Americans and Europeans factor interstate barriers differently into their economic choices. In other words, our work suggests both that measuring the *level* of barriers in the EU and the US is more complex than is usually understood, and that the *relationship between a given level of barriers and economic behavior* may vary across them. Our conclusion sketches some implications for how to move toward better answers to the questions that animate this conference.

[16] Another striking example of these views came from a different Bush '43 regulatory official who has been especially involved in policy discussions about professional licensing. The classic conservative-economic view of licensing, for which Milton Friedman was a touchstone, is that it should simply be abolished. All licensing is a guild-like restraint of trade. We asked our interviewee: given that simply abolishing professional licensing is extremely unlikely, might conservatives be interested in EU-style mutual recognition, which at least decreases some of licenses' costs in terms of geographic mobility? He replied that this seemed appealing to him personally, but that if he proposed EU-style arrangements in his political circles—with federal-level *requirements* over the states for mutual recognition—"half the people in the room would need CPR." He noted that Congress clearly has the authority to pass such legislation, but could not imagine Republicans supporting this exercise of federal authority.

V. Conclusion: Political Contrasts and the Interdisciplinary Evaluation of Single Markets

From our perspective as political scientists, the most obvious takeaway from comparison of the EU and US single markets is that they reflect distinctive political projects that do not map in straightforward ways onto economic considerations and behavior. Long before the rise of modern regulatory governance, Americans tasked their federation with preventing the most egregious protectionism between states, but otherwise institutionalized a profound decentralization of economic authority. In the 20th century, after the progressive New Deal coalition expanded federal authority for modern regulatory tasks, powerful reactions to that agenda upgraded anti-federal themes in American conservatism. The result was a polity with circumscribed central authority for internal openness, and where the most vocally pro-market political forces are explicitly disinclined to exert that authority. Meanwhile, on a radically more diverse continent, postwar Europeans conceived a project that assigned huge political ambitions to the instrument of economic openness. Beyond hoped-for economic payoffs, strong commitments to openness would deliver social integration, reflexive cooperation, and peace. Broadly-written commitments appealed in a 20th-century context of rapidly expanding regulation, and also, we suspect, because the EU's founders could hardly imagine that Europe's powerful nation-states would deeply implement this agenda. In the 1980s, concerns about relative economic decline gave it new life, institutionalizing a powerful complex of supranational policymaking that elicited mobilization of supportive societal interests. The result was a polity where unprecedented central authority for internal openness and its mobilized societal allies wrestle perpetually with the diversity of robust member-states.

Though this paper makes no direct effort to demonstrate that single-market governance in these polities is decoupled to some degree from economic behavior and incentives, we think that conclusion is almost obvious from the evidence we have presented. One way to see this decoupling is to consider the expectations for EU and US single-market governance generated by influential theories in political economy that hypothesize precisely that economic governance *does* correspond strongly to underlying economic conditions. On European integration, both the "liberal intergovernmentalist" theory of Andrew Moravcsik (Moravcsik, 1998) and its older rival, the "neofunctionalist" tradition of Ernst Haas (Haas, 1958; Sandholtz & Stone-Sweet, 1998), posit that the EU's central rules arose mainly because interest groups who profited from

cross-border flows encouraged states to negotiate deals to amplify them. The key driver of European integration, says Moravcsik (1998, 496), is "underlying trade flows." Similar theories exist in U.S. scholarship, like Samuel Beer's explanation of the growth of federal regulation: "…as the flow of interlocal and interstate benefits and costs increases, coalitions tend to form in the national political arena seeking action by the central government" (Beer, 1973, p. 64; also Bensel, 2000). *But by this logic, the US should clearly have stronger single-market rules and more pressure to eliminate interstate barriers than the EU.* Interstate trade is a substantially larger part of US GDP than of EU GDP (Pacchioli, 2012), US interstate mobility is far higher than in the EU (European Commission, 2020b), and the US economy features far more large-scale businesses than Europe's (European Commission, 2016). Americans' higher interstate flows mean that they should incur more costs from interstate barriers than lower-flow Europeans, and should perceive stronger incentives to eliminate such costs. Relative to these theories' economically-driven baselines, then, the US pays too little attention to interstate barriers, and the EU too much. This, we believe, is due to the political projects sketched above.

Outside of certain schools of European integration theory, it should not be shocking news that the political project of the European Single Market is not merely functionally designed to respond to economic incentives. There is no conspiracy here: the political nature of Europe's openness project has been loudly explicit, and celebrated, since its founding. As we have noted, many benefits of that project can be understood in political ways that are independent from their economic effects. Europeans may want the right to live and work freely across the continent even if most of them do not exercise that right. As we have also noted, however, contestation around the trade-offs carried by those political goals makes their economic effects especially important. For Europeans to believe that the "four freedoms" are worth the costs they bring for national regulatory autonomy and choice—making Austrians accept eggs from their neighbors' less comfortably-raised hens, while Californians do not—it is politically important to be able to point to the measurable economic benefits of these single-market rules.

In our view, the evidence presented here suggests that measurement of these economic benefits will improve with more interdisciplinary methods than have so far been brought to bear. Econometric gravity models (or related alternatives, like Santamaria et al, 2021) can offer important evidence for EU effects by using panel data to compare intra-EU flows to themselves over time, but struggle to address deeper analytical questions about baselines for interpreting the

magnitude of such in-context changes: are the rising flows we see in Europe very impressive, and perhaps even nearing a state of "completeness," given what we could expect on a heterogeneous continent? We could answer this question well if we had another "complete" single market for comparison, as Head and Mayer propose, but as we have seen, that option does not actually exist. Rather than a barrier-free arena that provides fairly clean leverage on how far the EU has come, the United States's single market is *incomplete in different ways* from Europe's—with many interstate barriers (varying goods standards, pervasive "double burdens" in authorizations and qualifications, discriminatory state aids and procurement, etc.) between far more similar subunits. Overall, the comparison seems to have too many moving parts to usefully interpret with a single border-effect term and a dummy variable for language differences.

Our interviews with construction firms also hint that baseline expectations for single-market completeness may need to factor in heterogeneous elasticities of trade or mobility (the degree to which people's propensity to trade or move is sensitive to barriers). When we compare the EU to the US, not only are we comparing single markets with different bundles of barriers, we may also be comparing populations who factor border costs differently into their economic choices. When American builders say that it is ultimately the firm's responsibility to navigate different states' rules, that seems to imply that such arrangements do not deter them very strongly from pursuing business opportunities. We do not currently have data that allows us to judge directly if Americans do business across barriers that Europeans would see as sufficient deterrents, but we know of other examples that further suggest low American sensitivity to some border costs. Our favorite comes from our own sector: higher education. U.S. public universities typically charge out-of-state students roughly triple the tuition of in-state students. In Europe, single-market rules ban differential tuition for EU citizens. Nonetheless, by our calculations, Americans pursue out-of-state degrees at almost 50 times the rate of Europeans.[17] A great deal of that contrast is about subunit heterogeneity—language and culture matter hugely in education, obviously—but it is also true that Americans seem remarkably insensitive to dramatic price discrimination for this service.

In the absence of contrasts to a barrier-free single markets, and given reasons to suspect heterogeneous elasticities of trade and mobility, it seems that any robust measurement of economic completeness in the EU Single Market will need to do two things that economists have

[17] Based on data from Eurostat and US National Center for Education Statistics.

reasonably avoided due to their methodological difficulty. First, we need to create empirical measures of barriers, rather than trying to infer them from flows. The OECD's Product Market Regulation measures and Services Trade Restrictiveness Index take steps in these directions.[18] In construction services, for example, the STRI tracks a composite index of 53 potential barriers. Given its focus on fairly "normal" international trade, however—not specifically within single markets—many of the barriers included are cruder than those within the EU or the US (like, say, outright bans on land ownership by foreigners). The European Commission has supported some finer-grained studies in the EU, like the reports in 2016-2018 by the consultant Ecorys that identified barriers to cross-border market access in construction services (Commission 2014, 2018). But these remain preliminary efforts, focusing on a subset of barriers and ultimately drawing on only two firm-level interviews in each of several member-states. A good deal more qualitative legal-regulatory and interview research would be necessary to identify and then measure a fuller range of potential barriers, even in a few sectors, to produce indexes that could compare the EU, the US, and possibly other single markets (like Canada and Australia). This would be hard work, but it seems necessary to untangle barriers' effects from other relationships.

The second step is to measure whether firms and individuals in these single markets are similarly sensitive to regulatory barriers. The most obvious way to do this, as far as we can see, is to field original surveys of firms in some selected sectors, ideally with help from professional associations, that would gather enough firm-level data to support both some objective leverage on their apparent sensitivities (how do firms' economic activities vary with barriers?) and on their subjective views (how much do they think they are sensitive to barriers?). With some luck, we might also gain some leverage on heterogenous elasticities from natural experiments around instances of regulatory change, or with comparative case studies of closely comparable firms over space and time.

It is certainly daunting to envision all this work to compile regulations and interview and survey economic actors across several sectors, and across the US and the EU, and then to work with econometricians to build the data thereby generated into models for estimating economic effects. But in our view, that is where the scholarly challenge of evaluating single markets leads.

[18] See https://www.oecd.org/economy/reform/indicators-of-product-market-regulation/ and https://www.oecd.org/trade/topics/services-trade/.

Given the political importance of creating this knowledge—above all for Europe, but also for the US and perhaps other single markets—we are hopeful that this agenda will move forward.

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