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## The Saga Continues: contestation of EU trade policy

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### ABSTRACT

Trade policy constitutes a significant part of the European Union's (EU) foreign policy. The EU's emphasis on global trade liberalization in the 21<sup>st</sup> century is most evident through its ever increasing number of modern, deep, bilateral trade agreements. However, aspects of EU trade policy and bilateral agreements are hotly contested. We examine this by comparing the rhetoric employed by European civil society organizations from 2013 through 2020. While the focus of contestation and the rhetorical strategy remained fairly consistent, the effects of contestation (politicization, institutionalization of new processes) changed, largely due to the presence or absence of negotiations on a deep trade agreement with an economic and political equal perceived to have greater bargaining power. This study contributes to the literature on norm contestation and politicization by providing empirical evidence that mere contestation is insufficient for politicization, and by showing show that perceived bargaining strength influences trade politicization.

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## 1. Introduction

The European Union (EU) pursues bilateral and regional preferential trade agreements (PTA) with both developing and developed economies, where most negotiations with developed countries focus on new generation, “deep” trade agreements that address primarily “behind-the-border”, regulatory and normative issues, such as intellectual property, labour and environmental standards, procurement, competition, investment protection, and various kinds of regulatory compatibility or convergence. The EU insists that deep agreements are both compatible with, and help promote, multilateralism (meaning a rules-based international trade system, European Commission, 2006, 2015a), and has also employed geopolitical arguments to boost support for its trade agreements, insisting they can help counter geopolitical challengers, fight climate change, defend democratic values, manage globalization and promote better governance (European Commission, 2014a, 2014b, 2014c, 2014d, 2014e; 2015a; 2017, p. 7,9; Lecocq and Zubek this issue). Trade policy, in particular trade agreements, is therefore not only part of the EU's external action agenda but also the larger EU foreign policy toolbox,

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and thus needs to be included when assessing contestation of EU foreign policy (Introduction, this issue; Puglierin, 2019).

The widening scope of trade agreements has attracted the attention of many European civil society organizations (CSOs), and while their concerns have not been the strategic use of trade policy, they have increasingly argued that the EU's trade policy generally, and especially specific agreements, contain threats to European norms and values (DeVilleville & Siles-Brügge, 2015; Eliasson & Garcia-Duran Huet, 2019; Gheyle, 2019). These concerns were on full display during the 2013–2016 negotiations on the Transatlantic Trade and Investment Partnership (TTIP) with the United States (US), and during Member States' domestic approval process of the Comprehensive Economic Partnership Agreement (CETA) between the EU and Canada, in 2016 (Gheyle, 2019; Young, 2017a). CSOs intensified their engagement and amended traditional lobbying techniques by harnessing new technologies and media, which in turn enabled greater activism and helped facilitate public awareness (Bauer, 2016; Gheyle, 2019). While some ideologically left-leaning political parties across Europe have long opposed liberalization through trade because of its perceived anchoring in neo-liberal globalization (cf. Bauer, 2016), the “permissive consensus” that had largely reigned over EU trade policy (Hooghe & Marks, 2009) ended with TTIP.

The “why and how” of politicization over TTIP and CETA, as well as its impact on EU trade policy, have been the subject of several special issues (De Bièvre, Garcia-Duran, Eliasson, & Costa, 2020; Laursen & Roederer-Rynning, 2017; Young, 2017b), books (DeVilleville & Siles-Brügge, 2015; Eliasson & Garcia-Duran Huet, 2019; Gheyle, 2019; Young, 2017a) and individual articles (e.g. De Bièvre, Gstöhl, & Van Ommeren, 2018; Fabry, Garbasso, & Pardo, 2014). This literature shows that contestation was mainly internal to the EU, and that the focus of contestation was on “deep” provisions of the proposed agreements, rather than the removal of traditional, at-the-border, trade barriers. Politicization of trade policy occurred mainly due to three factors (none of them sufficient on their own): CSOs activism, the depth of the agreements, and the perception of the US as having superior bargaining power and being a country dominated by corporate interests. Since there was little contestation of other trade agreements negotiated during this time period (e.g. with Vietnam and Japan, De Bièvre et al., 2020), the debate is whether the politicization surrounding TTIP (and by extension CETA) was particular and unique (Eliasson & Garcia-Duran Huet, 2019; Gheyle, 2019; Young, 2017a).

This article contributes to this debate by assessing what happened after politicization peaked. We show that CSOs continued to contest trade policy in the period 2017–19. There was similar contestation in both periods, one with politicization (2013–16) and one without (2017–2019), indicating that negotiating a deep trade agreement with a political and economic equal that is perceived as having greater bargaining power is a politicization trigger (De Bièvre & Poletti, 2020, call for research on triggers).<sup>1</sup> The next section presents our theory and methodology. The third and fourth sections cover the two periods of contestation, 2013–2016 and 2017–2019, revealing significant continuity in rhetorical contestation. While in 2017–2019 mass popular mobilization was conspicuously absent, social media campaigns dwindled, and mainstream media rarely discussed the pros and cons of specific EU agreements (except Brexit-related trade), we find continued contestation by CSOs on certain issues, and an elevation of others; disappointment with the impact achieved on many issues, but also acceptance of some of the

changes made by the Commission. The fifth section discusses the implications of these findings.

## 2. Theory and methodology

To better understand internal contestation of EU trade policy (and how it relates to EU external relations), we assess the rhetorical contestation of EU trade policy by three CSOs both during TTIP negotiations (2013–2016) and the following three years (2017–2019).

### *Contestation, politicization, and rhetorical strategies*

Contestation, Wiener (2014) explains, is “a way to voice difference of experience, expectation and opinion” (p. 11), for the purpose of defining “the meaning-in-use of the norms that govern a political community” (p. 10). This implies the right to contest fundamental norms (e.g. human rights, democracy) as well as standardized procedures, such as rules, technical standards, and processes (cf. Wiener, 2014 in Johansson-Nogués, Vlaskamp, & Barbé, 2020, p. 6). Laursen and Roederer-Rynning (2017) characterize twenty-first century trade policy as “contentious market regulation”, which entails continuous interactions between societal actors and regulators. Contestation is thus embedded in debates on trade policy.

However, contestation is not the same as politicization. Contestation is associated with acts of contention over specific norms, while politicization implies a combination of competing policy preferences (polarization), increased salience and an expansion and mobilization of the number of participants for the purpose of affecting policy (Zürn, Binder, & Ecker-Ehrhardt, 2012, p. 71; cf. De Wilde, 2011; De Wilde, Leupold, & Schmidtke, 2016; and Gheyle, 2019). Hutter, Grande, and Kriesi (2016) specifically emphasizes that “politicization finds its expression in decidedly public, mainly mass-mediated debates”. (p. 346). We place particular emphasis on the expansion and mass mobilization of participants, including public engagement, as a crucial link between contestation and politicization. Contestation (competitive claims) is thus part of, but can also occur without, politicization.

Rhetoric, a type of argumentation, is the art of persuasion; of making competitive claims aimed at third parties. When doing so a person or group often uses specifically chosen phrases and words, making rhetoric “primarily an awareness of the language choices we make” (Purdue, 2018; cf. Grube, 2016, p. 534). Rhetoric, written or spoken, can also be used to “... encourage each other to understand things from one another’s perspectives”. (Purdue, 2018). As a distinct theory and practice of persuasive communication, rhetoric is not a discussion, nor a dialectic; when the target audience is a third party – the public – rhetoric becomes a counterpart to dialectic (Finlayson, 2013, p. 317ff). Dür (2019) finds that interest groups can shape public opinion in line with their preferences via well-structured arguments. Arguments are statements supportive of specific ideas, which “can change others’ beliefs, and the weight they give to these ideas” (cf. Dür, 2019, p. 516).

Humans are also more receptive to messages from groups they trust, and more receptive to fear-based, rather than positive, messaging; later-in-time information also remains more relevant than earlier information (Franck, 2014; Kensinger, 2011). CSOs generally

enjoy higher public trust than the EU, national governments, or corporations, placing them in a better position to shape public opinion (Edelman, 2012; Eurobarometer, 2013, 2014a, 2014b). Finally, making an issue salient to the target audience is critical for mobilization. Thus, the messaging must tap into and appeal to cultural and societal norms and existing beliefs in order to generate the desired response (cf. Buffet & Heuser, 1998; Möller-Jensen, 1988). Rhetorical argumentation, as applied in this paper, is thus the verbal or written manifestation of preferences and ideas for the purpose of persuading a third party.

Rhetorical success requires a strategy, and Hirschman (1991) identifies three rhetorical strategies useful to opponents of a proposed change or reform.<sup>2</sup> The “perversity thesis” holds that the proposed change would only “serve to exacerbate the condition one wishes to remedy...” (p. 7) because there will be unintended consequences or side-effects due to imperfect foresight. The “futility thesis” is the argument that attempts at social transformation would fail to change society because the basic structures of society are unchangeable, thus “... human actions pursuing a given aim are nullified” (p. 72). Finally, the “jeopardy thesis” is an argument where “the cost of the proposed change or reform is too high because it endangers some previous, precious accomplishment” (p. 7); while the proposed change may be desirable, it involves unacceptable costs (p. 81). The jeopardy thesis is based on the assumption that there are high, often unacceptably high, costs associated with losing the perceived benefits of the status quo, with the latter seen as the result of “older hard-won conquests or accomplishments” (p. 84).

In sum, effective rhetorical contestation requires a strategy, with messaging aimed at shaping third party (public) opinions and eliciting its support. Assessing contestation through the lens of a rhetorical strategy helps us understand why CSOs feared trade negotiations with certain partners would entail unacceptable compromises and costs, and why trade policy generally should not be allowed to undermine existing norms and values.

### ***CSOs selection and qualitative content analysis***

CSOs played a vital role commencing contestation over TTIP and CETA and were pivotal to the politicization that ensued (Bauer, 2016; DeVille & Siles-Brügge, 2015; Gheyle, 2019; Siles-Brügge, 2017). The opposition groups whose rhetoric we most closely examine include Friends of the Earth (FOEE), the European Consumer Organization (BEUC), and Corporate Europe Observatory (CEO). They were chosen because they have a widespread support-base, possess experience with trade issues, were present at stakeholder sessions held during TTIP negotiating rounds, and are among the most active CSOs in Brussels; BEUC and FOEE are two of the 10 most active CSOs in Brussels (Bauer, 2019), and CEO’s budget and staff nearly matches that of FOEE. Moreover, between the three they cover the reformist-rejectionist spectrum.

BEUC is reformist, meaning support for trade agreements is contingent on the inclusion of guarantees on protecting human and plant health, the curtailment of corporate power and regulatory convergence, and removal of investor protection, all in order to prevent a “race to the bottom” on standards. Reformists also tend to engage in insider lobbying and participate in public debates with trade supporters; they assume a less confrontational social media campaign than rejectionists (cf. Gortanutti, 2016). Rejectionist

CSOs (FOEE and CEO) oppose modern trade agreements under nearly all circumstances, premised on arguments that modern trade policies are the manifestation of exploitative globalization, neo-liberalism and a threat to sovereignty (cf. Hopewell, 2015).

We recognize that groups other than CEO, BEUC, and FOEE were active. For example, Greenpeace (rejectionist) contributed to street protests in 2013–2016 and has subsequently continued to contest trade policy. We claim only to have a representative sample of CSOs. Nevertheless, research citing activities and statements of other CSOs that would fall within the reformist and rejectionist groups reveal they espoused arguments very similar to those of our chosen CSOs (Bauer, 2016; Buonanno, 2017; Gheyle, 2019).

To analyse these CSOs' rhetoric we apply a qualitative content analysis. This method allows us to identify CSOs' main arguments and possible variations both within and between the two periods under analysis. In the words of Zhang and Wildemuth (2005, p. 1), "Qualitative content analysis goes beyond merely counting words or extracting objective content from texts to examine meanings, themes and patterns that may be manifest or latent in a particular text" (cf. Kohlbacher, 2006). For our assessment of CSOs we used four randomly selected speeches, press releases, and communiques with "TTIP", "transatlantic trade", "EU-US trade", "ISDS (Investor-State Dispute Settlement)", "trade agreement" or "investment court" in the title from each organization, every year for the years 2013 through 2016. This represents 37.2% (16/43) of BEUC's press releases, public statements, or reports on trade; the figure for CEO is 34% (16/47), and for FOEE 14.54% (16/110). For the years 2017–2019 we used four randomly selected speeches, press releases, or communiques per year, per CSO, with "trade" "trade policy", "trade agreements", "CETA", "Investment", or "Investment court" in the title, plus a 2018 joint statement on EU trade and democracy, signed by all three CSOs.<sup>3</sup> This represents 41.3% (12/29) of BEUC's press releases, public statements, and reports in 2017–2019; the figure for CEO is 27.9% (12/43), and for FOEE 40% (12/30). This totals 85 documents (the list is available on figshare). Each document is referenced by organizational abbreviation, year, a letter (A-E, representing the first through fifth document), and page (where applicable). The texts were read by two people, and in both time periods we looked for arguments using any of the rhetorical theses. Very few arguments fit the perversity or utility thesis; the overwhelming majority fit the jeopardy thesis, which dominated CSOs' rhetorical contestation.<sup>4</sup>

### 3. 2013–2016 contestation and politicization

As soon as TTIP negotiations were announced in 2013 there was a steadily rising chorus from CSOs claiming that an agreement with the US would undermine EU standards and safety regulations, as well as governments' abilities to regulate in the public interest. The issues on which they chose to campaign partly reflected past experiences (campaigning against investor treaties and globalization), recognition that food and food standards are important to EU citizens (Echols, 1998; Eurobarometer, 2010; Personal Communication, Brussels, 9 May, 2016), and the need to use an effective rhetorical strategy. Notwithstanding local differences (e.g. Gheyle, 2020; van Loon, 2020), the rhetorical contestation of TTIP and CETA entailed constructing a trans-EU rhetorical strategy penetrating domestic and supranational levels (cf. Siles-Brügge & Strange, 2020).

CSOs needed topics, issues, and associations that could, in the context of TTIP negotiations, be made salient to a large European population. As one CSO representative said “something to raise fears and capture attention” (Personal Communication, 9 May, 2016). To this effect, groups such as Campact provided anti-TTIP groups with slogans, key words, and, importantly, effective issue associations, generated through queries to targeted emails from their own expansive list (Personal Communication, Brussels, 16 May, 2016 & Berlin, 7 June, 2016). This helped shape CSOs’ rhetorical contestation, which came to focus primarily on three issue areas: standards (in particular regarding food), investor protection, and transparency (the lack thereof). CSOs would never directly target the norm of free trade, or the EU’s bilateral approach; they never advocated for a shift to exclusive multilateralism, nor for protectionism. Open and fair trade, and free trade itself, remain popular with Europeans (Eurobarometer, 2019). Instead they intended to convey a particular interpretation of the negotiations, and the potential results thereof. As we show, CSOs focused on the rhetoric of fear; fear of losing precious European achievements, and endangering the hard-won benefits of the status quo (i.e. a jeopardy thesis). As such, CSOs did not take a stand on the geopolitical benefits espoused by the European Commission.

## Standards

CSOs consistently paired big business or corporations with something negative, implying that the Commission was unable to withstand American pressure, thus jeopardizing European standards, “the official language talks of ‘mutual recognition’ of standards or so-called reduction of non-tariff barriers. However, for the EU, that could mean accepting American standards in many areas, including food and agriculture, which are lower than the EU’s” (CEO, May 22, 2013). This would be the tone for the next three years. BEUC insisted that the Commission must support EU food standards, and FOEE declared regulatory convergence a “... massive threat to environment, social and consumer standards” (FOEE, 2013c).

American corporations were said to be challenging EU regulations, deeming them too demanding. The implied message was that officials could not withstand the pressure from corporations, and even though the Commission’s stated policy was to not compromise EU regulations when pursuing trade liberalization (European Commission, 2015a, p. 4), and had been for nearly two decades, the Commission would now cave to the mightier Americans because

what is termed ‘regulatory coherence’ ... means convergence around the lowest existing standards in both the EU and the US, treating democratically determined rules on food safety, local food systems and environmental protection as mere ‘barriers to trade’ to be removed or sidestepped. (FOEE, 2013b).

American negotiators and corporations were said to be using negotiations to push open EU fields to GM crop and circumvent EU restrictions, “TTIP offers the perfect vehicle to bypass overwhelming opposition to GMOs by EU citizens ...”, “EU GMO safety standards are much stricter than in the US”, but TTIP would “... open the floodgate to GMOs” (CEO, 2013a, 2013b; FOEE 2013b).

Raising public salience on food became primarily an issue of presenting – in a simplified and understandable fashion – the specifics of potentially altered sanitary and phytosanitary standards (SPS) as a threat to Europeans’ health, because American standards were said to be lower, threatening existing (higher) EU SPS standards (BEUC, 2014a, 2014b). Chlorinated chicken soon substituted for GMOs as the main danger stemming from the lowering of standards. By summer 2014, BEUC insisted that “It is not without reason that chlorinated chicken has emerged as a symbol of the detriments European consumers might face if a TTIP deal is signed ... [t]he European approach to meat safety is more efficient in protecting public health”, and “... the American approach is ‘[t]he easy fix’ to make up for poor farming and slaughter hygiene” (BEUC, 2014d). FOEE, having argued from the start that TTIP would allow politics and profits to guide food standards, called for a total secession of TTIP talks because “... pressure from US trade officials and the US factory farm industry is already leading to a reduction in food standards ... [...] TTIP is a bad deal for people and planet” (FOEE, 2015b, cf. CEO, 2015a).

In 2016 BEUC continued attacking regulatory cooperation as a means of eroding European standards to the benefit of lower American standards: “The regulatory ‘philosophies’ informing chemicals legislation on either side of the Atlantic are too different ... The focus on reducing nontariff barriers thus in short raises concerns that TTIP will be used as a backdoor mechanism to reduce protections” (BEUC, 2016a). By April, CEO and FOEE argued that “the leaked TTIP text confirms that the United States [is] trying to export its failed regulatory model ... [regulatory cooperation] represents a direct attack on democracy and the triumph of the ideology that what is good for big business is good for society” (CEO, 2016d; BEUC, 2016c). TTIP was continuously framed as ensuring, and legitimizing, the erosion of European food standards, thus sacrificing European values and standards by jeopardizing the status quo (BEUC, 2016b; FOEE, 2016b; cf. CEO, 2016c).

### ***Investor protection***

Investor-state dispute settlement (ISDS), is a process by which foreign investors can seek apolitical redress in private tribunals when governments breach the terms of investment agreements. CSOs framed ISDS as enabling American companies to sue European governments over any public policy that could reduce corporate profits, such as the precautionary and Polluter Pays principles, or new environmental or public health laws (BEUC, 2013b). ISDS was presented as evidence of corporate favouritism since “U.S. and EU property rights laws and courts are robust, there is no pretext for granting foreign investors superior rights to domestic firms or subjecting our judicial systems to tribunals empowered to raid our Treasuries” (CEO, 2013c; FOEE, 2013c).

Assertions that ISDS was “Allowing corporations to sue governments in secret courts over policies they don’t like” and “threatening public services” quickly became mantras, continuously repeated in protests and panel discussions, as well as in YouTube videos, tweets, position papers, reports, and press releases (Eliasson & Garcia-Duran, 2018). Throughout 2014–2016, CEO and BEUC published policy papers opposing ISDS; its inclusion in TTIP meant “privileging foreign companies” and “threatening public policy”, “granting of exorbitant rights to foreign corporations”, sending a message that

it would cost the public dearly (BEUC, 2013d; CEO, 2013c; BEUC 2015d, 1; FOEE, 2015a).

Even after the Commission's 2015 proposed modernization of ISDS (with extensive curtailments on how, when, and where investors could challenge government decisions, and later a permanent court, as part of an Investor Court System, (ICS)), CSOs argued it still "attacked consumer safeguards" and "threatened public policy measures" because "different reservations and exemptions in CETA and TTIP are inadequate ..." (CEO, November 17, 2015; BEUC, January 22, 2016, 15; CEO, February 22, 2016).

### **Transparency**

Most citizens are unaware of how negotiations transpire, and even though the textual proposals in previous trade negotiations had never publicized, asserting a lack of transparency in these particular negotiations allowed for a number of inferences. Thus, "they [The Commission] must be hiding something", "what are they afraid of?", "they are circumventing democracy", quickly became part of the common rhetoric of opposition CSOs (BEUC, 2014a, 2016d; CEO, 2013b, 2013d; FOEE, 2013d, 2014c; Personal communication, Brussels, 9 May 2016). As with the other two issues, there is consistency in the rhetoric. CSOs continued asserting that secrecy benefitted corporations, and that the Commission was vague, unclear, and – notwithstanding the Commission's unprecedented step of releasing its negotiating mandate – "a barrier to transparency" (BEUC, 2014c, p.3; CEO, 2015b). CSO continued insisting that "information was withheld from reaching the public", and that leaked negotiating texts (by Greenpeace in 2016) meant the public could not trust the Commission's reassurances that EU standards would remain unaffected (BEUC, 2016a, p. 15; cf. FOEE, 2016a).

In sum, despite the EU halting negotiations on ISDS and the Commission publishing its own negotiating texts, the jeopardy thesis dominated, with CSOs presenting similar arguments that the "secretly negotiated" TTIP would lower food safety standards, benefit large firms, and weaken or remove safety regulations. The CSO campaign led to increased public salience, polarization and unprecedented mass mobilization (Deutsche Welle, 2015; Schroeder, 2017, p. 1; cf. Young, 2019), seen in, for example, a European Citizens Initiative to stop TTIP garnering over 3 million signatures; nearly 3 million people protesting against TTIP and CETA on the streets of Europe in 2014 and 2015, and more than one anti-TTIP event being held every day in Germany in 2015 (Bauer, 2016). CETA was politicized because, as CSOs argued, it was a "backdoor" for American companies into the EU.

CSOs dominated social media and search engine results. 90% of Twitter and Youtube posts were anti-TTIP (Ciofu & Nicolae, 2016), and European Google searches on TTIP peaked around the time of negotiating rounds and opposition-led street protests (100% of Austrians who received their information primarily online opposed TTIP, Eliasson & Garcia-Duran, 2019), all of which helped generate mass mobilization against TTIP. EU wide public support for TTIP dropped from 59% in 2014–51% in 2016, when it was 17% in Germany and 30% in Austria; support stood at 49% in Italy and France. Surveys asking about specific issues, such as food safety, also showed a clear majority opposing an agreement with the US (Eurobarometer, 2016; Pew, 2014; Yougov, 2015). The mobilization against TTIP was the largest in EU history; millions marched and protested against

TTIP across Europe in 2015 and 2016. A number of European governments called for abolishing ISDS in CETA by late 2014, and thereafter began questioning TTIP, with France calling for a cessation to negotiations by mid-2016, referencing protests and concerns expressed by CSOs (Barbière, 2015; Nguyen, 2016). CSOs' ability to shape the debate was further evidenced by Commission staff who expressed disappointment with governments' lack of advocacy and support for the Commission when negotiating TTIP (Personal Communication, Brussels and Berlin, April and June 2016.)

In late 2016 the Commission had moved from heralding its “progressive trade agreements” (CETA) to presenting them as means of “managing globalization”, where “shaping globalisation is also about ensuring that people in Europe feel they have influence over the global rules that are affecting them” (European Commission, 2016, p. 1). The Commission wanted to assure sceptics that the EU's new trade strategy, *Trade For All*, addressed the “widespread concern that trade policy is more about the large companies and the investors than about individual European citizens”, and that it was “a trade policy which is in tune with European values” (European Commission, 2015b, pp. 4–5). Aside from removing ISDS in TTIP and CETA, the Commission also enhanced the civil society dialogue, began publishing negotiating texts, reaffirmed its dedication to upholding EU food, health, and safety standards, and made upholding European values a key part of EU trade policy (Eliasson & Garcia-Duran, 2019; European Commission, 2015a). However, contestation and politicization did not stop the EU from pursuing deep bilateral agreements with others partners who, while powerful, were not perceived by CSOs as economic and political equals.

#### 4. 2017–2019 contestation post-politicization

After TTIP negotiations were “frozen” due to politicization and growing political scepticism in Europe – along with diminished interest in the US – the focus of CSOs' contestation shifted to trade policy broadly speaking, while also raising concerns with some specific trade agreements and ongoing negotiations. CETA remained a target during its domestic ratification processes,<sup>5</sup> and the agreement with Japan (negotiations commenced in 2012, and the EU-Japan Economic Partnership Agreement entered into force in February 2019) was now also contested by rejectionist CSOs. Negotiations with Australia and New Zealand (which began in 2019) raised concerns, as did the return of “TTIP Light”, as CSOs branded a July 2018 agreement between Commission President Juncker and US President Trump to “work on” a trade agreement to abolish some non-tariff measures, subsidies, and all non-auto industrial tariffs (Pop, Salama, & Davies, 2018).

While BEUC recognized the Commission's willingness to embrace change in how it negotiates trade agreements (2017a), it remained critical of many aspects, and other CSOs instead insisted that “... the widespread public resistance to TTIP and CETA has made it clear that European citizens want a change in trade policy. [because] Trade and investment should not primarily serve economic interests...” (FOEE 2018a, p. 9; CEO 2017d) [instead] “..[agreements] should focus on how trade and investment can contribute to a healthy environment, decent work, a sustainable economy as well as food and energy security...” and that to this end food protectionism was deemed justifiable (FOEE 2018a, p. 23; cf. CEO, 2017a; cf. CEO 2019a). In other

words, CSOs deemed “appropriate” non-trade issues such as labour and environmental protection suitable for inclusion in trade agreements. In 2018 BEUC, CEO and FOEE joined more than 100 CSOs in a public statement on how to democratize EU trade policy, arguing that trade agreements must

contribute to public interest objectives such as tackling climate change, securing decent jobs, protecting citizens’ health, ensuring tax justice and financial stability. [and] support the fulfilment and achievement of human rights and other treaties and agreements such as the Paris Climate Treaty, ILO Standards, the Biodiversity convention, the Sustainable Development Goals. (Civil Society Statement, 2018).

The Commission continued insisting that it sought “An open, progressive, trading system, [but] without compromising standards or values”, where constituencies would be served and EU foreign policy strengthened by harnessing the benefits from, and manage the negative aspects of, globalization through trade policy (European Commission, 2017, p. 2, 4, & 2020). The Commission became “more conscientious” of its communication as a result of TTIP (Personal communication, 22 May, 2018), and EU trade policy was said to be a tool to manage and shape globalization (Garcia-Duran, Eliasson, & Costa, 2020). However, CSOs were disappointed with their ability to influence policy through the civil society advisory panel established in 2017 (Personal communication, May, 2017; Drieghe, Orbie, Potjomkina, & Shahin, 2020), and contestation on the same issues (standards, investor protection and transparency), with the addition of environmental concerns, were clearly evident during the three years after TTIP.

### **Standards**

One legacy of the politicization of TTIP was visible in CSOs’ consistent emphasis in 2017–2019 that regulatory convergence should be shunned, and that dialogues on “product and services safety and enforcement” should occur outside of trade agreements (BEUC, 2017d; cf. BEUC 2018a, p. 6; BEUC 2017a p. 3, 4). CETA (signed but not ratified in 2017) was used by CSOs to explain how “elements like ‘regulatory cooperation’ ... will make it more difficult for politicians to make laws in the public interest” (FOE 2017c; FOEE 2018a, p. 13). CEO informed the public that under preferential trade agreements “big business will have the opportunity to weaken citizens’ environmental, social, and financial protections by claiming that the latter are unnecessary burdens to trade” (CEO 2017d, p. 3). When, after Trump and Juncker’s 2018 announcement, the Commission indicated it would only discuss regulatory cooperation with the US where existing levels of protection were similar, and where each side’s regulations would be fully respected, civil society responded that “The EU needs to guarantee to its citizens that it will not start negotiating on Europe’s food safety standards with the US” (FOEE 2018d; cf. CEO 2019a). Though CSOs feared that even in a sectoral agreement “Many of the ‘TTIP’ worries remain valid for the current EU-US negotiations and new ones are emerging” (CEO, 2019c), the Commission was never given a mandate to negotiate agricultural access or SPS standards, and no formal negotiations commenced.

While there was some CSO recognition of the EU’s response to demands during TTIP negotiations, the period 2017–2019 included consistent emphases that preferential trade agreements include only regulatory cooperation, not convergence; that agreements ensure that “... the protection of public health and consumer interests shall be

considered as legitimate reasons to regulate”, and that such guarantees be cross-referenced throughout all chapters on goods and services (BEUC 2017a, p. 3; CEO, 2017a; CEO 2019d, p. 6; cf. CEO 2019b).

### **Investment protection**

A 2017 ruling by the Court of Justice of the European Union (CJEU) declared investor protection and portfolio investments a shared (Member State-EU) competence, leaving the Commission to negotiate with Japan and others going forward without ISDS and portfolio investments (CJEU, 2017); these would now be covered in separate agreements.

There was some initial CSO recognition that the proposed ICS, including a Multilateral Investment Court (MIC), was an “improvement” to ISDS (FOEE, 2018a), and “a step in the right direction” (BEUC, 2017b), but there were also calls for “clear provisions on carve outs of public interest measures” (BEUC, 2017b), and lingering questions of the need for a “parallel dispute resolution system for trade agreements with partners that have a well-functioning judicial system and respect the rule of law” (BEUC 2017b p. 2; cf. FOEE, 2018a). CEO called the ICS provisions included in CETA “largely unchanged” from ISDS, containing “by and large the same far-reaching corporate privileges” (CEO 2017b. p. 10), while FOEE (2017b) criticized CETA for providing “VIP rights to corporations while failing to address defining challenges of our time such as rising inequalities and runaway climate change” (cf. CEO, 2017d). Just like ISDS, ICS and MIC were said to result in “regulatory chill” by allowing companies to “threaten governments with lawsuits” (BEUC 2018b p. 2; cf. FOEE 2018a), undermining the democratic right to legislate for the public good.

CSOs targeted investor protections in ongoing negotiations with Australia (“... such mechanisms should be excluded from any investment deal between the EU and Australia”. BEUC 2018a, p. 5), Japan (“There is no need for such court, when both Europe and Japan have well-developed and functioning legal systems” BEUC 2018c) and Indonesia (“Granting unjustified privileges to corporations and harming local economies and small-scale farmers, the EU-Indonesian deal proves yet again that the EU is putting profits over people in its trade strategy” FOEE 2018b)

The Commission hoped that a 30 April, 2019 CJEU opinion affirming the compatibility of ICS with EU law would neutralize the investor protection issue (European Commission, 2019). However, contestation continued. “The EU is also pushing for a world court for corporations, a kind of ISDS for the entire globe!” “ICS is the same as ISDS ...” (CEO 2019b; FOEE 2018c; cf. FOEE, 2019a). Criticism of the EU-Vietnam agreement (signed in 2019) nicely sums up the prevailing sentiments over the three years

... the EU persists in pushing ISDS, re-branding it as the Investment Court System and pursuing its extension under the guise of the Multilateral Investment Court, which could lead to many more cases of gravely unjust compensation claims by corporations that harm the public interest. From Europe to Africa and from Latin America to Asia, ISDS has been used as a corporate weapon against the public interest (FOEE 2019d).

### **Transparency**

CSOs’ continued contestation of “secretly negotiated trade deals”, where “Big companies are driving the negotiations, shaping the rules for global trade however they need to

maximise profits” (BEUC 2017b; CEO 2018d), was mixed with contained recognition of improvements through the Commission’s transparency initiatives (e.g. BEUC, 2017a). BEUC and FOEE acknowledged progress on inclusion when demanding “further” democratization of both trade negotiations and regulatory dialogues (BEUC 2017d, p. 2), including “better use of the civil society forum” for dialogue, discussion and adoption of recommendations from stakeholders, and the involvement of “all stakeholders” (BEUC 2017c, p. 8; BEUC 2017a, p. 5; FOEE 2018a). CEO remained critical. Referencing “TTIP-light” it argued “It is provoking to see EU negotiators once again keeping their moves in the dark. There is even less transparency around the current negotiations than there was around TTIP” (CEO 2019a, 2019c; cf. CEO 2018a). Thus, CSOs remained largely unsatisfied with adjustments undertaken by the EU.

Contestation of trade policies from 2017 through 2019 did not lead to mass mobilization. A CSO trade representative acknowledged in 2016 “we can’t get any of our national offices interested in other agreements”. (Personal Communication, 16 May, 2016). Hosuk Lee-Makiyama of the European Centre for International Political Economy found that, “Most NGOs, among them several of the big ones, specifically told me, ‘Don’t contact us unless it’s about TTIP,’” (in von der Burchard, 2016). During TTIP there was powerful rhetoric about how the US threatened the EU, and how “the EU operates on a higher plane than its cousin – the US is a nation-state characterized by unfettered capitalism, weak social protections, low environmental protections [and] selective human rights’ standards” (Buonanno, 2017, p. 98). While contesting trade policy, CSOs did not actively mobilize and organize massive protests during negotiations with other countries, for example over ISDS with Vietnam, agriculture and food imports from Japan, or the total lack of transparency in all negotiations but TTIP. The European Parliament’s international trade committee told us they received only “a handful” of inquiries about negotiations with Japan and Canada, compared to hundreds about TTIP, and one CSO told us “they were not our focus” (Personal communication, 9 June, 2015 & 29 May, 2016). There was no citizens’ initiative, nor lobbying of the European Parliament; there were no large-scale social media campaigns, nor any significant street protests against either agreement.

## 5. Conclusion

When looking at contestation through the lens of a rhetorical strategy, we find continuity in the internal contestation of EU trade policy from 2013 through 2019, and that CSOs continuously demanded that trade policy not be allowed to undermine existing norms and values. The jeopardy thesis used in 2013–2016 was premised on an asserted asymmetrical transatlantic relationship, with the US being perceived and presented by CSOs as both more powerful and extremely neo-liberal. To ensure that this was what the public believed, CSOs employed a jeopardy thesis as their main strategy. A successful strategy, the jeopardy thesis was still present in 2017–2019, when contestation focused on preserving European standards, norms and values, despite the lack of negotiations with the US, and certain reforms introduced by the Commission.

There is now greater transparency in trade negotiations and more Commission meetings with stakeholders; the new investment court system and bilateral investment provisions are now negotiated separately, meaning trade agreements only require approval by the Council of Ministers and the European Parliament. While EU trade

policy always included a degree of social purpose, the 2015 trade strategy *Trade For All*, and a subsequent assessment of this strategy (European Commission, 2017), places European values and democracy on the same level as economic interests, thus cementing trade's role in furthering geopolitical goals as part of EU foreign policy. The Commission also now insists that all trade agreements will include policy space to preserve and expand social objectives.<sup>6</sup>

Our research contributes to the literature on norm contestation and politicization in two ways, both addressing De Bièvre and Poletti's (2020) research note on the theory of various triggers of politicization. First, we add empirical evidence that contestation is not a sufficient condition for trade politicization. While internal contestation of EU trade policy appears regularized and permanent, politicization is not; there is no public engagement, and CSOs have not called for large public protests or attempted a pan-European mobilization since 2016. Far-right nationalist sentiments grew strong in many parts of Europe during the period 2013–2019, yet support for free trade and globalization rose (they should have fallen if causally related to politicization). The second contribution refers to the importance of the US factor. We show that perceived bargaining strength matters for politicization. In 2017–2019 there were no direct negotiations with an economic and political competitor perceived as having superior bargaining power, where the potential costs (e.g. threats to environmental, social, product, and/or labour standards) of an agreement would be perceived as too great. While the EU-Japan PTA is the largest the EU has signed, there was no mass mobilization (the intermediate link to politicization), because the agreement was not very deep (cf. Suzuki, 2017), and Japan was not perceived as a threat to EU norms.

The key issue is thus not whether the partner is an economic or political competitor, or whether trade policy should be used to achieve geopolitical objectives, rather, the key finding is that CSOs can be expected to resist deep trade agreements with those perceived to have more bargaining power. Hence, we should expect mass mobilization, and thus politicization, if/when the EU negotiates a new generation, deep, agreement with a partner perceived as having more bargaining power (currently the USA and China), but not when negotiating with others.

Eurobarometer data (2019) also lends credence to CSOs' continued contestation. Ensuring that EU health and environmental standards are upheld, and that trade rules apply equally to everyone, are two of the three most chosen responses (jobs is number one) when asked about the purpose of EU trade policy, and support for these rose substantially from 2010–2019 (Eurobarometer, 2010, 2019). Slightly more than half of EU citizens now believe that the EU conducts trade in a transparent fashion, while taking into account social, environmental and human rights, but Europeans remain divided on whether trade agreements hurt or benefit the EU (Eurobarometer, 2019). It is clear that preserving European values, norms and standards remains important to Europeans, and an important part of trade policy.

## Notes

1. This also implies that trade policy contestation may challenge certain foreign policy objectives, especially when working with partners perceived as having more bargaining power than the EU.

2. While originally developed to explain domestic ideological argumentation, the rhetorical theses, the strategies Hirschman presents, are themselves ideologically neutral, and sufficiently developed conceptually to be utilized in different contexts, to explain other developments.
3. We are interested in contestation over an extended time period, not reactions to crises, therefore the choice of random speeches and press releases.
4. Arguments that fit the jeopardy thesis include those that conveyed “jeopardizing our norms”, “lowering standards”, “costs outweigh benefits”, or “threatening existing values and standards”.
5. Since 2009 trade agreements require approval by the Council of Ministers and the European Parliament. But if deemed a “mixed agreement” by the Commission, it also requires ratification in all EU Member States.
6. This indicates that the Commission interpreted the jeopardy thesis of CSOs as a demand for preserving embedded liberalism (i.e., of a compromise between liberalism and social demands, cf. Ruggie, 1982) rather than as a demand for protectionism.

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## Supplementary information

The 93 civil society documents used in this study are listed and available in figshare, at [10.6084/m9.figshare.12954557](https://doi.org/10.6084/m9.figshare.12954557).

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