

The European Commission's Discourses on Sustainable Development in 'Trade for All': An Argumentative Perspective

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The Transatlantic Trade and Investment Partnership (TTIP) negotiations triggered unprecedented contestation over the European Union's (EU's) domestic policy space for sustainable development. Whilst extant studies reveal the conflicts between norms and institutions of EU trade politics on sustainable development, and highlight the significance of sustainability in countering neoliberalism, they seldom analyse the incremental steps toward sustainable development achieved by the contestation of TTIP. This article addresses that gap by drawing on an analytical framework that regards political discourse as argumentation for action, which is both constrained and enabled by institutional context (I. Fairclough & N. Fairclough, Political Discourse Analysis: A Method for Advanced Students (Routledge, 2012a)). Based on a textual analysis of policy documents on 'Trade for All', there are two significant findings: (1) the public contestation on TTIP triggered the European Commission's (the Commission) practical arguments on sustainable development in 'Trade for All' trade strategy; (2) the Commission adapted its original proposal of measures on sustainable development in light of other actors' criticisms in the implementation of 'Trade for All'. Taken more broadly, this innovative analytical framework, and my empirical findings, will make a contribution to a research agenda which clarifies obstacles and opportunities for alternative, counter-hegemonic trade policies.

Keywords: European Commission, Sustainable Development, TTIP, Trade, Political Discourse, Practical Argument

1 INTRODUCTION

Since 2014, European Union (EU) trade policy has experienced unprecedented popular opposition.¹ Thousands demonstrated against the proposed Transatlantic Trade and Investment Partnership (TTIP) between the EU and the US, and in the slipstream of this, further protests followed against the Comprehensive Economic

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¹ A. R. Young, *Not Your Parents' Trade Politics: The Transatlantic Trade and Investment Partnership Negotiations*, Rev. Int'l Pol. Econ. (2016); N. Gheyle, *Trade Policy with the Lights on: The Origins, Dynamics, and Consequences of the Politicization of TTIP* (Doctoral dissertation, Ghent University 2019).

and Trade Agreement (CETA) between the EU and Canada.² At the heart of these protests was the concern that TTIP/CETA threatened the basis of the EU's values and regulatory standards, especially those concerned with sustainable development and levels of social and environmental protection.³

The literature on the EU's trade-sustainable development nexus tend to conform with three main perspectives, respectively stressing the ideational, institutional and critical dynamics behind EU trade policy. These perspectives have made a valuable contribution to understandings of sustainable development as a norm, the institutional constraints to promoting it, as well as to critical readings of the hegemonic status of neoliberal trade policy. In particular, the critical perspective has shown how the contestation over TTIP challenged current EU trade governance as the best choice to realize sustainable development. What they cannot explain, however, is the incremental changes toward sustainable development brought about by this contestation.

Taking a critical realist approach from discourse analysis, this article explores the explanatory deficit in the extant literature by closer analysis of the discursive spaces within EU trade policy. Despite the discursive turn in EU trade studies, this approach is still relatively uncommon. Nevertheless, it has the advantage of providing analytical toolkits that are capable of unlocking the dialectical relations between structure and agency. The analytical framework employed here was primarily developed by Fairclough and Fairclough,⁴ who generated an original structure to analyse practical argument in political discourse. Building on this structure, they provide a framework to examine how the institutional context both constrains and enables political discourse through 'deontic powers', as well as how political discourses can lead to decisions that ground transformative actions. This allows for a considerably more nuanced understanding of the obstacles and opportunities to change neoliberal trade policy towards sustainable development.

The empirical foundation to this research is based upon the Commission's discourses on sustainable development in the 'Trade for All'⁵ strategy. This strategy was the Commission's direct response to the contestation over the TTIP negotiations. As a result, it is an appropriate text to analyse the Commission's argument on sustainable development, as well as the deontic powers conferred on the

² C. Roederer-Rynning, *Parliamentary Assertion and Deep Integration: The European Parliament in the CETA and TTIP Negotiations*, Cambridge Rev. Int'l Aff. (2017); K. Hübner, A. S. Deman & T. Balik, *EU and Trade Policy-Making: The Contentious Case of CETA*, J. Eur. Integ. (2017).

³ F. De Ville & G. Siles-Brügge, *Why TTIP Is a Game-Changer and Its Critics Have a Point*, J. Eur. Pub. Pol'y (2016).

⁴ I. Fairclough & N. Fairclough, *Political Discourse Analysis: A Method for Advanced Students* (Routledge 2012a).

⁵ European Commission, *Trade for All: Towards A More Responsible Trade and Investment Policy* (2015).

Commission from the institutional context, and the follow-up actions coming from the interaction between the Commission and other key EU trade actors.

The article is structured as follows. First, the scholarly debates on sustainable development and different discourse analysis approaches will be considered in the context of EU trade studies. Secondly, an analytical framework on political discourse, inspired by a critical realist philosophy, will be introduced before offering a justification of the methodology used, and the policy documents chosen, for textual analysis. Thirdly, the Commission's practical arguments on sustainable development in 'Trade for All' are discursively reconstructed, before the analysis turns to how the institutional context shaped the premises of the Commission's arguments, and how far its proposal of measures on sustainable development changed by virtue of criticisms from other actors. The conclusion summarizes the findings and suggests avenues for further research.

2 LITERATURE REVIEW

The notion of sustainable development first gained political authority and widespread recognition after the publication *Our Common Future* in 1987 by the World Commission on Environment and Development (WCED). The report defined sustainable development as: 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs'.⁶ Following this, sustainable development has been progressively mainstreamed through a series of international conferences and declarations under the auspices of the United Nations (UN).⁷ In 2015, the UN published its Sustainable Development Goals (SDGs), in which all UN Member States committed to: 'achieving sustainable development in its three dimensions – economic, social and environmental – in a balanced and integrated manner'.⁸

Notwithstanding the normative appeal of sustainable development in the international community, it is difficult to apply this conception into practice. The reason for this is that policy makers tend to explain sustainable development in terms which are 'favourable to themselves' and challenge others' claims.⁹ As Haughton and Counsell put it: 'it is necessary to recognize the multiplicity of sustainability and to analyse the ways in which these are shaped and mobilized in political discourse'.¹⁰

⁶ World Commission on Environment and Development, *Our Common Future* (1987).

⁷ The main ones are: the Rio de Janeiro UN Convention on the Environment and Development of 1992 (The Earth Summit); the Johannesburg UN Summit on Sustainable Development of 2002; In 2012, United Nations Conference on Sustainable Development (Rio+20).

⁸ The United Nations, *Sustainable Development Goals* 6 (2015).

⁹ J. S. Dryzek, *The Politics of the Earth: Environmental Discourses* 146 (Oxford University Press 2005).

¹⁰ G. Haughton & D. Counsell, *Regions, Spatial Strategies, and Sustainable Development* 72–73 (Psychology Press 2004).

Since the introduction of a separate trade and sustainable development (TSD) chapter¹¹ for all new trade agreements from 2006, sustainability¹² has attracted much scholarly attention in EU trade studies. Besides, an increasing scholarship on discourse analysis has emerged in EU trade studies. The following examines the extant scholarship on sustainability with regard to EU trade, which reveals the puzzle of the neglected incremental changes, before considering the merits of the literature associated with the discursive turn which might help to unpick narratives which can solve the puzzle of incremental changes.

2.1 THREE PERSPECTIVES ON SUSTAINABLE DEVELOPMENT IN EU TRADE

Three main interpretations of sustainability are evident within the EU trade studies scholarship: the ideational, the institutionalist and the critical schools of thought. Scholars identified as ideational contend that values, such as sustainability, play an important role in EU trade policy.¹³ The most powerful conceptualization of this group is ‘normative power Europe’. Manners uses this term to differentiate the EU from a traditional state actor by virtue of its external relations, which are informed by a catalogue of norms.¹⁴ Similarly, Van den putte and Orbie build on the concept of a life-cycle of norms to explain the rise of labour provisions in EU bilateral trade agreements. They argue that the notion of social trade has become an ‘unobjectionable norm’ within the EU.¹⁵ In the same vein, the Commission prefers a dialogue-based soft approach in TSD chapters to shape its normative role in global trade governance.¹⁶ This approach can be interpreted as a desire to deal

¹¹ In 2006, the Commission published its ‘Global Europe’ strategy to start a new generation of trade negotiations. In 2011, the EU–Korea trade agreement is the first one in the new generation to include a separate TSD chapter. This practice has become a convention to be applied to other trade agreements in the new generation trade negotiations. In the TSD chapters, the EU frames social and environmental provisions under the same umbrella of sustainable development, rather than deals with them separately. See F. De Ville, J. Orbie, & L. Van den Putte, *Sustainable Development in TTIP: A Highest Common Denominator Compromise*, Eur. J. Risk Reg. (2016).

¹² Some scholars distinguish between the narrower environmental meaning of ‘sustainability’ and the wider economic-social meaning of ‘sustainable development’. But this has not generally been followed by others. Sustainability now tends to be used effectively as an abbreviation of sustainable development.

¹³ A. Van den Hoven, *European Union Regulatory Capitalism and Multilateral Trade Negotiations*, in *Values and Principles in European Union Foreign Policy* (S. Lucarelli, & I. Manners eds, Routledge 2006); S. Lightfoot & J. Burchell, *The European Union and the World Summit on Sustainable Development: Normative Power Europe in Action?*, J. Com. Mkt. Stud. (2005).

¹⁴ I. Manners, *Normative Power Europe: A Contradiction in Terms*, J. Com. Mkt. Stud. (2002).

¹⁵ L. Van den Putte & J. Orbie, *EU Bilateral Trade Agreements and the Surprising Rise of Labour Provisions*, Int’l J. Comp. Lab. L. & Indus. Rel. 263 (2015).

¹⁶ In the TSD chapters, EU has taken an original and distinctive approach to promote social rights and environmental principles. It excludes this chapter from the agreements’ general dispute settlement provision and takes a dialogue-based approach in its implementation, emphasizing civil society participation. TSD chapters establish civil society mechanisms that take the form of a domestic

with the root causes of labour rights violations, rather than with the symptoms, much like the US does by having a binding dispute settlement system' for labour violations.¹⁷

The institutional perspective is attentive to the institutional constraints upon the EU's normative objectives on sustainability in trade. According to this view, it is difficult for the Commission to develop a common position regarding labour and environmental standards, while social and environmental policy still lies within the competency of the Member States.¹⁸ From this perspective, scholars explain why the EU chooses a soft approach in TSD chapters.¹⁹ Young and Peterson, for example, have shown that the conflict between the liberal-oriented Commission and the more protectionist Member States, tends to result in the watering down of the normative provisions for sustainability in the trade agreements concluded by the EU.²⁰ Or, rather, as Orbie has suggested, there is a gap between the EU's expectations of its normative power and its limited competences on the social and environmental pillars of sustainability.²¹

The final perspective gives a far more critical reading of the EU's current trade policy. There is a widely accepted view that neoliberalism has played a strong role in EU trade since the mid-1990s.²² Neoliberalism can be uncontentionally characterized as the notion that human well-being can best be advanced by liberating individual entrepreneurial freedoms and skills within an institutional framework

advisory group (DAG) including representatives of business, trade unions and non-governmental organizations, with the DAGs of the two parties meeting together on an annual basis in civil society forum (CSF) along with other civil society representatives on the sustainable development aspects of trade relations between the Parties. The complaints and disagreements of TSD chapters are dealt with by government consultations and expert panels. See J. Orbie, D. Martens, M. Oehri & L. Van den Putte, *Promoting Sustainable Development or Legitimizing Free Trade? Civil Society Mechanisms in EU Trade Agreements*, Third World Thematics: A Third W. Q. J. (2017); J. Orbie, D. Martens & L. Van den Putte, *Civil Society Meetings in European Union Trade Agreements: Features, Purposes, and Evaluation*, Centre for the Law of EU External Relations (2016); O. Elgström, *Outsiders' Perceptions of the European Union in International Trade Negotiations*, J. Com. Mkt. Stud. (2007).

¹⁷ L. Van den Putte, *What Social Face of the New European Union Trade Agreements: Transcripts* (2015).

¹⁸ J. Orbie, H. Vos & L. Taverniers, *EU Trade Policy and a Social Clause: A Question of Competences?*, *Politique européenne* (2005); B. Kerremans & J. Orbie, *Social Dimension of European Union Trade Policies*, *Eur. Foreign Aff. Rev.* (2009).

¹⁹ T. Leeg, *Negotiating Sustainable Trade: Explaining the Difference in Social Standards in US and EU Preferential Trade Agreements*, *Contemporary Politics* (2018); A. R. Young, *Liberalizing Trade, Not Exporting Rules: The Limits to Regulatory Co-ordination in the EU's 'New Generation' Preferential Trade Agreements*, *J. Eur. Pub. Pol'y* (2015).

²⁰ A. R. Young & J. Peterson, *Parochial Global Europe: 21st Century Trade Politics* (Oxford University Press 2014).

²¹ J. Orbie, *Promoting Labour Standards Through Trade: Normative Power or Regulatory State Europe?*, in *Normative Power Europe* (Palgrave Macmillan 2011).

²² C. Crouch, *The Strange Non-death of Neo-liberalism* (Polity 2011); G. Siles-Brügge, *Resisting Protectionism After the Crisis: Strategic Economic Discourse and the EU-Korea Free Trade Agreement*, *New Political Economy* (2011); G. Siles-Brügge, *The Power of Economic Ideas: A Constructivist Political Economy of EU Trade Policy*, *J. Contemp. Eur. Res.* (2013).

characterized by strong private property rights, free markets and free trade.²³ In trade policy, neoliberalism agitates for the opening of both domestic and third country markets, and supports limited government power.²⁴ The role of a neoliberal state is not to pursue collective goals, but to facilitate the private goals of individuals, or foster competition through the promotion of mutual trade concessions with other states.²⁵

The critical perspective takes sustainability as an alternative to challenge the Commission's neoliberal trade policy. According to Orbie, there is a kind of overconfidence in the neoliberal logic of the EU's free trade agenda. This logic thinks that 'normative results should be seen as a side effect of the realization of free trade'.²⁶ As Ford observes, the Commission has an implicit neoliberal assumption that trade is the engine of economic growth, and economic growth strategies are 'the unquestioned solutions' to 'social or ecological' crises. Ford further questions whether the EU is actually able to 'square current neoliberal trade policy with the preservation of ecological and social diversity'.²⁷ From a critical historical institutionalist perspective, De Ville argues that competitiveness has embodied an 'explicit prioritization' over social justice and environmental protection in EU trade since 2006,²⁸ and that the emphasis of competitiveness reached its 'culmination' in the TTIP negotiations.²⁹

The TTIP negotiations demand special attention because they triggered contestation over the EU's domestic policy space for sustainability.³⁰ This is illustrated by considering the Investor State Dispute Settlement (ISDS) in the TTIP investment chapter. This raised concerns about 'lowering' the levels of the EU's social and environmental protections,³¹ similarly limiting 'the EU's regulatory policy

²³ D. Harvey, *A Brief History of Neoliberalism* (Oxford University Press 2005).

²⁴ P. Holden, *Neo-liberalism by Default? The European Union's Trade and Development Policy in an Era of Crisis*, J. Int'l Rel. & Dev. (2015).

²⁵ S. Lang, *World Trade Law After Neoliberalism: Re-imagining the Global Economic Order* (Oxford University Press 2011).

²⁶ J. Orbie, *Europe's Global Role: External Policies of the European Union* (Ashgate Publishing, Ltd. 2009).

²⁷ L. Ford, *EU Trade Governance and Policy: A Critical Perspective*, J. Contemp. Eur. Res. (2013).

²⁸ F. De Ville, *The Promise of Critical Historical Institutionalism for EU Trade Policy Analysis*, J. Contemp. Eur. Res. 625 (2013).

²⁹ F. De Ville & G. Siles-Brügge, *The Role of Ideas in Legitimizing EU Trade Policy: From the Single Market Programme to the Transatlantic Trade and Investment Partnership*, in *Handbook on the EU and International Trade* 250 (Edward Elgar Publishing 2018).

³⁰ De Ville & Siles-Brügge, *supra* n. 3; L. J. Eliasson & P. G. D. Huet, *Civil Society, Rhetoric of Resistance, and Transatlantic Trade* (Springer International Publishing 2019); F. De Ville & G. Siles-Brügge, *TTIP: The Truth About the Transatlantic Trade and Investment Partnership* (John Wiley & Sons 2015); E. Postnikov, *Unravelling the Puzzle of Social Standards' Design in EU and US Trade Agreements*, *New Political Economy* (2018); H. P. Garcia-Duran & L. J. Eliasson, *Supporters' Responses to Contested Trade Negotiations: The European Commission's Rhetoric on the Transatlantic Trade and Investment Partnership*, *Cambridge Rev. Int'l Aff.* (2017).

³¹ F. De Ville, *Regulatory Cooperation in TTIP: A Risk for Democratic Policy Making?*, FEPS Policy Brief (2016).

autonomy' in social policy and environmental protection,³² or bringing 'less safe' or 'more environmentally harmful' products to European markets.³³ As summarized by De Ville and Siles-Brügge, TTIP triggered a 'normative critique' of the EU's free trade agenda.³⁴ This is because trade politics in agreements with deep trade agendas, such as TTIP, are less about a 'distributive trade conflict' between different business interests, and more about a 'normative trade conflict' between business interests and social/environmental organizations.³⁵ In other words, they focus more on value-based questions, such as what goals are worthy of pursuit in trade, are they based upon economic interests, social justice or environmental protection, and what is the best means to achieve them?³⁶

Even though critical scholars have shown that the neoliberal understandings of sustainability were contested during the TTIP negotiations, they tend to treat sustainability as an accompanying 'paradigm' that the Commission deploys to legitimize the neoliberal core of its trade policy.³⁷ Thus, they fail to explain incremental changes toward sustainability in EU trade matters brought about by the contestation over TTIP.

Dryzek once noted that the way 'in which issues relating to sustainable development are constructed, interpreted, discussed and analysed' holds significant consequences for the type of policies that will emerge.³⁸ Thus, in seeking to explain gradual policy shifts that have changed neoliberal trade policy toward sustainability, I need a discourse analysis approach which can accommodate and unpick the discourses on sustainable development directly.

2.2 A DISCURSIVE TURN IN EU TRADE STUDIES

Discourse analysis is more than just a method; it has theoretical value of its own. As summarized by Jorgensen and Philipps, discourse does not 'neutrally reflect our world and social relations', but 'play[s] an active role in creating and changing them'.³⁹ There are three main discourse analysis approaches that can be discerned from the EU trade studies literature. One regards discourse as the means by which everything is decided. Another treats discourse as a strategic choice of actors to

³² A. R. Young, *Two Wrongs Make a Right? The Politicization of Trade Policy and European Trade Strategy*, J. Eur. Pub. Pol'y (2019).

³³ Sierra Club, *The Transatlantic Free Trade Agreement: What's at Stake for Communities and the Environment* (Washington 2013).

³⁴ De Ville & Siles-Brügge (2015), *supra* n. 30, at 63.

³⁵ *Ibid.*, at 519.

³⁶ *Ibid.*, at 613.

³⁷ De Ville & Siles-Brügge, *supra* n. 29, at 244.

³⁸ J. Dryzek, *The Politics of the Earth* (Oxford University Press 2005).

³⁹ M. W. Jorgensen & L. J. Phillips, *Discourse Analysis as Theory and Method 1* (Sage 2002).

fulfil their policy aims, whilst the third shares the narrow understanding of discourse with the latter, but gives greater emphasis on the structural constraints that are placed on actors' discourses.

The first approach derives itself from the post-structuralist tradition where society is completely discursive and therefore inherently fluid, volatile and contingent.⁴⁰ From this perspective, social structures like the trade institutions, are discursive in nature, because their existence is determined by how people think or talk about them.⁴¹ The idea that social structures are discursive does not mean that they do not exist. Rather, that they are a discursive battlefield where agents struggle for hegemony.⁴²

In analysing the neoliberal hegemony in EU trade, scholars have taken this approach to explain its continuity.⁴³ De Ville and Orbie, for example, have argued that trade Commissioners have adapted their discourses to legitimize a neoliberal trade policy.⁴⁴ In this respect, they refuse to see discourse as being instrumentally used by Commissioners, because discourse and policy 'are mutually constitutive'.⁴⁵ This means that whenever Commissioners make trade policies, discursive structures are simultaneously activated irrespective of the agents' motivations.

Following this understanding of discourse and policy as co-constitutive, Jacobs suggests that the contestation over neoliberal hegemony between 2013 and 2016 has affected members of European Parliament (MEPs)' perception of their ability to influence trade policy. He argues that there has been a shift in the dominant opposition to the neoliberal hegemony away from 'economic antagonism' to 'democratic antagonism'. While the former focused on critiquing EU trade policy as representative of the interests of capital and the multinationals,⁴⁶ the latter focuses on governance, including 'transparency, accountability and the procedures of policy-making'.⁴⁷ Economic antagonism does not necessarily contest MEPs'

⁴⁰ *Ibid.*; E. Laclau & C. Mouffe, *Hegemony and Socialist Strategy: Towards a Radical Democratic Politics* (Verso 2001).

⁴¹ T. Jacobs & J. Orbie, *Discourse Theory as a Novel Approach for Critical Research on EU Trade Policy*, in *Handbook on Critical EU Studies* (Ben Rosamond et al. eds, Routledge 2020).

⁴² T. Diez, *Constructing the Self and Changing Others: Reconsidering Normative Power Europe*, Millennium (2005).

⁴³ J. F. Morin & C. Carta, *Overlapping and Evolving European Discourses on Market Liberalization*, Brit. J. Pol. & Int'l Rel. (2014).

⁴⁴ J. Orbie & F. De Ville, *The European Union's Trade Policy Response to the Crisis: Paradigm Lost or Reinforced?*, Eur. Integ. Online Papers (2011); F. De Ville & J. Orbie, *The European Commission's Neoliberal Trade Discourse Since the Crisis: Legitimizing Continuity Through Subtle Discursive Change*, Brit. J. Pol. & Int'l Rel. (2014).

⁴⁵ De Ville & Orbie, *supra* n. 44, at 154.

⁴⁶ T. Jacobs, *The Post-Marxist Political Economy of EU Trade. A Discourse-Theoretical Analysis of the Construction of Political Agency in the European Parliament* 33–34 (2020).

⁴⁷ *Ibid.*, at 34; N. Gheyle & F. De Ville, *How Much Is Enough? Explaining the Continuous Transparency Conflict in TTIP*, Politics & Governance (2017); F. De Ville & N. Gheyle, *The Unintended Consequences of the Transatlantic Trade and Investment Partnership Negotiations*, Int'l Spectator (2019).

ability to govern trade policy, but rests content with accusing them of 'governing on behalf of the wealthy' instead of the workers.⁴⁸ In contrast, practices of democratic antagonism question the MEPs' ability to 'govern and enact change in the global economy'.⁴⁹ This research illustrates the added-value of post-structuralist discourse analysis by diagnosing the obstacles to changing neoliberal trade policy, and moreover, shows that the contestation brought about by TTIP negotiations was a window of opportunity to counter neoliberal hegemony.

The second approach sees discourse as a strategic choice of political actors,⁵⁰ by focusing primarily on how EU trade actors use discourse to respond to the uncertainty of the trade environment,⁵¹ and how their discursive interaction leads to trade policy changes.

From this perspective, the discursive strategy is indispensable to the 'reflexive intelligence' of political actors.⁵² For example, Heron and Murray-Evans argue that the success of the Economic Partnership Agreements rested on the congruence between the 'discursive strategies' of EU policy actors, and the institutional norms within which these 'discursive strategies' were deployed.⁵³ In the same vein, Siles-Brügge shows that the strategic invocation of external economic constraints – 'globalization' – enabled the Commission's Director-General (DG) of Trade to sell the free trade package in the financial crisis.⁵⁴ In terms of the transformative effects of discursive interaction among trade actors, Niemann, who draws heavily upon Habermas' theory of 'communicative action' to study the role of argument and deliberation, utilizes the explanatory potential of such communication.⁵⁵ This approach is useful in analysing the transformative effects brought about by political actors' discourses.

The third approach adopts the critical realist perspective that society consists of both discursive and non-discursive dimensions.⁵⁶ For example, in this view, the physical practice that is involved in the construction of a bridge is primarily non-discursive, whereas practices such as journalism and public relations are discursive.

⁴⁸ Jacobs, *supra* n. 46, at 34.

⁴⁹ *Ibid.*

⁵⁰ C. Hay & B. Rosamond, *Globalization, European Integration and the Discursive Construction of Economic Imperatives*, J. Eur. Pub. Pol'y (2002); V. A. Schmidt, *Trapped by Their Ideas: French Elites' Discourses of European Integration and Globalization*, J. Eur. Pub. Pol'y (2007).

⁵¹ A. Van den Hoven, *Assuming Leadership in Multilateral Economic Institutions: The EU's 'Development Round' Discourse and Strategy*, West European Politics (2004).

⁵² J. S. Dryzek, *Deliberative Global Politics: Discourse and Democracy in a Divided World* (Polity 2006).

⁵³ T. Heron & P. Murray-Evans, *Limits to Market Power: Strategic Discourse and Institutional Path Dependence in the European Union-African, Caribbean and Pacific Economic Partnership Agreements*, Eur. J. Int'l Rel. (2017).

⁵⁴ Siles-Brügge (2011), *supra* n. 22; Siles-Brügge (2013), *supra* n. 22.

⁵⁵ A. Niemann, *Between Communicative Action and Strategic Action: The Article 113 Committee and the Negotiations on the WTO Basic Telecommunications Services Agreement*, J. Eur. Pub. Pol'y (2004); A. Niemann, *EU External Trade and the Treaty of Lisbon: A Revised Neofunctionalist Approach*, J. Contemp. Eur. Res. (2013).

⁵⁶ Jørgensen & Phillips, *supra* n. 39, at 65.

In Holden's study of the EU's trade policy,⁵⁷ he argues that the non-discursive dimension – the altered geo-economic landscape – has shifted the Commission's discourses on trade and development from a globalist neoliberal perspective to a more differentiated geo-economic outlook that maintains the hegemony of neoliberalism.⁵⁸ Influenced by neo-Gramscian theory, Holden emphasizes the non-discursive dimension of underlying material drivers. Later however, Holden draws on Carsten and Schmidt's discursive institutionalist framework,⁵⁹ which does assume that the 'ideational/discursive' power cannot be definitively separated from its 'institutional' setting.⁶⁰ Holden suggests that the discursive power of civil society organizations (CSOs) are ineffective in influencing EU trade policy because of their limited institutional power.

The third approach differs from the first by its differentiation of discursive and non-discursive dimensions, which narrows the scope of discourse from including everything, to more nuanced 'ways of representing' the world through language.⁶¹ This finer grained approach to discourse allows for the recognition of transformative effects consequent upon actors' discourses on policy, similar to the second approach, but adds the recognition of the powers of institutional constraints in shaping actors' discourses.

For the purposes of this research, sustainability is treated as a trajectory which entails 'a balanced and integrated' relationship among its three dimensions, and discourse is seen through the lens of the both the constraining power of structures on discourses of sustainability, as well as their transformative effects. In this way, I can provide a more nuanced understanding of the obstacles and opportunities for changing current neoliberal hegemony. The following outlines in greater detail the analytical framework to enables this.

3 ANALYTICAL FRAMEWORK: POLITICAL DISCOURSE AS AN ARGUMENTATION FOR ACTION

Following Fairclough and Fairclough's framework of political discourse, itself built on a philosophy of critical realism⁶² that perceives a dialectical relation

⁵⁷ P. Holden, *Tensions in the Discourse and Practice of the European Union's Aid for Trade*, *Contemp. Pol.* (2014); Holden, *supra* n. 24.

⁵⁸ Holden, *supra* n. 24.

⁵⁹ M. B. Carstensen & V. A. Schmidt, *Power Through, Over and in Ideas: Conceptualizing Ideational Power in Discursive Institutionalism*, *J. Eur. Pub. Pol'y* (2016).

⁶⁰ P. Holden, *Finding Common Ground? European Union and European Civil Society Framing of the Role of Trade in the Sustainable Development Goals*, 57(5) *J. Com. Mkt. Stud.* 13 (2019).

⁶¹ Jørgensen & Phillips, *supra* n. 39; N. Fairclough, *Analysing Discourse: Textual Analysis for Social Research* 138 (Psychology Press 2003).

⁶² *Critical Realism: Essential Readings* (M. Archer, R. Bhaskar, A. Collier, T. Lawson & A. Norrie eds, Routledge 2013); R. Bhaskar, *Reclaiming Reality: A Critical Introduction to Contemporary Philosophy* (Routledge 2010).

between agency and structure, the following analytical framework adopts a position that traverses between agents' discourses and social structures.⁶³ This enables, on the one hand, an understanding of how the institutional context both constrains and enables political actors' discourses through deontic powers, whilst on the other, sees political discourses as having transformative effects on institutional contexts where practical arguments stand up to criticisms and lead to decisions.⁶⁴

Fairclough and Fairclough draw from the concept 'deontic power' provided by Searle.⁶⁵ In his seminal book on *Making the Social World*, John Searle gives a clear account of how language creates 'institutional facts'.⁶⁶ For Searle, institutions are created by 'speech acts of declaration', such as constitutions. Such declarations are consciously created by discursive interaction and collective agreement among people. People, however, will gradually lose sight of this process, because they grow up assuming the existence of such institutions, and their hierarchies can be internalized by them as knowledge without the consciousness of following external rules.⁶⁷

Declarations, then, assign 'status functions' to people or organizations, which carry 'deontic powers' from the institutional context.⁶⁸ For example, in the political domain, becoming a Prime Minister (status function) entails many deontic powers, including rights, obligations or prohibitions. The Prime Minister has rights to take measures which s/he cannot do as a citizen, but there are also obligations to take certain reasons into account, or abide by prohibitions to never do something.⁶⁹ As such, even though the institutional context is socially constructed through language, once constructed, it can both constrain, and enable, the actors by providing them with reasons for action through deontic powers.

⁶³ L. Chouliaraki & N. Fairclough, *Discourse in Late Modernity: Rethinking Critical Discourse Analysis* (Edinburgh University Press 1999); N. Fairclough, *Critical Discourse Analysis: The Critical Study of Language* (Routledge 2013).

⁶⁴ I. Fairclough & N. Fairclough, *Argument, Deliberation, Dialectic and the Nature of the Political: A CDA Perspective*, *Pol. Stud. Rev.* (2013); N. Fairclough, *CDA as Dialectical Reasoning*, in *The Routledge Handbook of Critical Discourse Studies* (Routledge 2017).

⁶⁵ Fairclough & Fairclough, *supra* n. 4, at 47.

⁶⁶ J. R. Searle, *Making the Social World: The Structure of Human Civilization* (Oxford University Press 2010); see also J. R. Searle & S. Willis, *The Construction of Social Reality* (Simon & Schuster 1995); J. R. Searle, *Mind, Language and Society: Philosophy in the Real World* (Basic books 2008).

⁶⁷ V. A. Schmidt, *Discursive Institutionalism: The Explanatory Power of Ideas and Discourse*, *Ann. Rev. Pol. Sci.* (2008).

⁶⁸ Searle (2010), *supra* n. 66, at 146.

⁶⁹ I. Fairclough, *Deontic Power and Institutional Contexts: The Impact of Institutional Design on Deliberation and Decision-Making in the UK Fracking Debate*, *J. Arg. Context* (2018).

Political discourse can be defined literally; as language used by political actors engaging in political processes and events.⁷⁰ Fairclough and Fairclough further differentiate political discourse from other types of discourse, such as media discourse, by the nature of politics. For example, in both the *Rhetoric* and the *Nicomachean Ethics*, Aristotle explained the nature of politics as: action in pursuit of the highest good, based upon decisions, which arise out of deliberation.⁷¹ This is a view of politics in which the fundamental question is how one arrives at decisions about what to do.⁷² Grounded in this view of politics, the distinctive feature of political discourse is its argumentative nature.⁷³

In *Political Discourse Analysis*, Fairclough and Fairclough propose a structure of practical argument in political discourse.⁷⁴ An argument is a set of statements (explicit or implicit), one of which is the conclusion (claim) while the others are the premises. A practical argument answers questions like ‘what should be done’, by seeking to persuade or convince audiences that a certain course of action is the best choice.

As shown in Figure 1, my structure, adapted from Fairclough and Fairclough, includes four premises and a claim for action. The circumstantial premise (**C**) is the current state of affairs, composed of both the natural facts, such as what the problems are, and institutional facts, such as what can (or cannot) be done according to the actors’ status function. The value premise (**V**) outlines the normative reasons that motivate political actors to deal with the prevailing circumstance. It should not be equated with what the actors truly believe, but should include what they ought to believe, such as the obligations conferred on them by the political institution. The goal premise (**G**) refers to a future state of affairs that the actors envisage, compatible with their value concerns, whilst the means premise (**M**) is a conjecture that could presumably change the state of affairs from circumstances to goals. ‘Presumably’, in this respect, is taken to mean that based on the information that is available, the measures are reasonable solutions. In complex modern political environments, decisions often need to be made in conditions of incomplete information and under time constraints. Thus, those provisional measures are subject to defeat as new information comes in. The four premises compose a practical argument which claims for an action (**A**).

⁷⁰ T. A. Van Dijk, *What Is Political Discourse Analysis*, Belgian J. linguistics (1997).

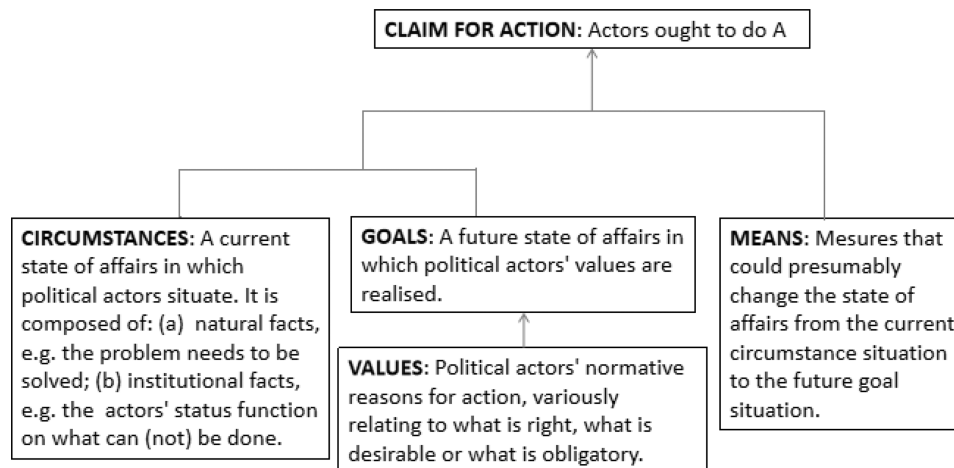
⁷¹ Fairclough & Fairclough, *supra* n. 4, at 20–21.

⁷² C. Hay, *Why We Hate Politics* (Polity 2017); R. Garner, *The Nature of Politics and Political Analysis*, in *Introduction to Politics* (P. Ferdinand, S. Lawson eds, Oxford university press 2009).

⁷³ N. Fairclough & I. Fairclough, *Analysis and Evaluation of Argumentation in Critical Discourse Analysis: Deliberation and the Dialectic of Enlightenment*, Argumentation et analyse du discours (2012b).

⁷⁴ Fairclough & Fairclough, *supra* n. 4, at 42–43.

Figure 1 The Structure of a Practical Argument in Political Discourse



Source: Adapted from Fairclough and Fairclough (2012a:48)

Within this structure, actors' representations of reality enter the process as the premises for practical arguments about what to do. Different actors will describe the premises in different ways, dependent on their different, or unequal, positions in political institution.⁷⁵ They may also define the circumstance (C) in different ways depending on their knowledge and evaluative (including ideological) orientation (V) towards this circumstance, equally they may set goals (G) in different ways, in relation to different and often incompatible concerns (V), and consequently, they may disagree on the right action (A) to take.

In this sense, argumentation involves a dialogical exchange of moves between two or more interlocutors, justifying their own and/or criticizing others' arguments.⁷⁶ An argument can lead to decisions, and further to actions, if it can stand up to a critical evaluation of its premises. This is not a one-time dialogue, but a process of 'open-ended critical dialogue'.⁷⁷ As noted above, in complex modern societies, political decisions are often taken in the absence of complete information and under conditions which demand immediate responses

⁷⁵ *Ibid.*, at 93.

⁷⁶ Fairclough & Fairclough 2013, *supra* n. 64, at 340; F. H. V. Eemeren, *Argumentation Theory: A Pragmatic-Dialectical Perspective* (Springer 2018).

⁷⁷ I. Fairclough, *Deliberative Discourse*, in *The Routledge Handbook of Critical Discourse Studies* (Routledge 2017).

to problematic situations. In such cases, political actors are usually forced to go ahead with a conclusion which is only provisionally accepted.⁷⁸ When actors realize they need to take other goals or values into account, or when they realize the proposal will have unforeseen and undesirable consequences, a proposal for measures should therefore change.⁷⁹ In such a case, even if a proposal for action is provisionally accepted and implemented, it will still be subject to critical objection as the action unfolds. Thus, this structure can provide a discursive trail of how decisions and the process of their making, can have transformative effects on social reality.

4 METHOD AND DATA

Textual analysis is essential to discourse analysis.⁸⁰ In political discourse analysis, written texts such as policy documents are important first-hand data. With the analytical framework articulated above, the construction of practical argument in political texts will lay the foundation for further analysis of the dialectical relation between political discourses and their institutional context.

This research focuses on the discourses of the European Commission on matters relating to sustainability. According to the Lisbon Treaty, the Commission is the executive of the EU's treaties and policies, and in trade policy, the Commission has certainly been the agenda-setter and remains the central actor. On 7 October 2015, a petition signed by three million people against TTIP was handed to the Commission. As a direct response to the contestation over TTIP, on 14 October 2015, the Commission published a new trade strategy – 'Trade for All'. Moreover, this strategy was published in the wake of the '2030 Agenda for Sustainable development', adopted by the UN in September 2015.⁸¹ In 'Trade for all', the Commission was anxious to stress the value of sustainable development in trade agreements, compared to its previous trade strategies.⁸² This makes the strategy an appropriate text to analyse the Commission's practical arguments on sustainable development in response to the contestation brought about by the TTIP negotiations.

⁷⁸ D. Walton, *Fundamentals of Critical Argumentation* (Cambridge University Press 2006).

⁷⁹ Fairclough & Fairclough, *supra* n. 73, at 9.

⁸⁰ Fairclough, *supra* n. 61.

⁸¹ C. Birkbeck & K. Botwright, *The Future of the Global Trade and Investment Architecture: Pursuing Sustainable Development in the Global Economy: Overview of Issues, Challenges and Debates* (Geneva: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum 2015).

⁸² F. De Ville & G. Siles-Brügge, *The Role of Ideas in Legitimizing EU Trade policy: From the Single Market Programme to the Transatlantic Trade and Investment Partnership*, in *Handbook on the EU and International Trade* (Edward Elgar Publishing 2018).

'Trade for All' was sent to the Council, the European Parliament (the EP) and the European Economic and Social Committee (EESC). According to the Lisbon Treaty,⁸³ the EP must give its consent to all international trade agreements along with the Council.⁸⁴ Notwithstanding this, the EESC plays an important coordinating role among economic, social and environmental CSOs in the implementation of TSD chapters. In November 2015, the Council gave its opinions on the 'Trade for All' strategy. In April and July of 2016, the EESC and the EP published their reports on 'Trade for All' respectively.⁸⁵ These three documents provided different views on sustainable development in EU trade policy making, and in September 2017, the Commission published its report on the implementation of 'Trade for All'.⁸⁶ This document will be used to test whether the Commission's practical argument on sustainable development in 'Trade for All' was put into practice, as well as whether the other institutions' critical views were taken into consideration.

5 THE COMMISSION'S PRACTICAL ARGUMENT ON SUSTAINABLE DEVELOPMENT IN 'TRADE FOR ALL'

In reconstructing the Commission's practical argument on sustainable development in the form of four premises and one claim for action (Figure 2), I will begin with the **circumstantial** premise. The communication described the climate around matters of trade thus: 'in recent years we have seen an intense debate about trade across the European Union'. This rising intensity included two circumstantial premises related to sustainable development. On the one hand, the EU's new competence in investment negotiations was regarded by some as 'a threat to the EU's social and regulatory model'. Because investment used to be the competence of Member States, this change brought about concerns about how the rights of the EU, and its Member States, to regulate

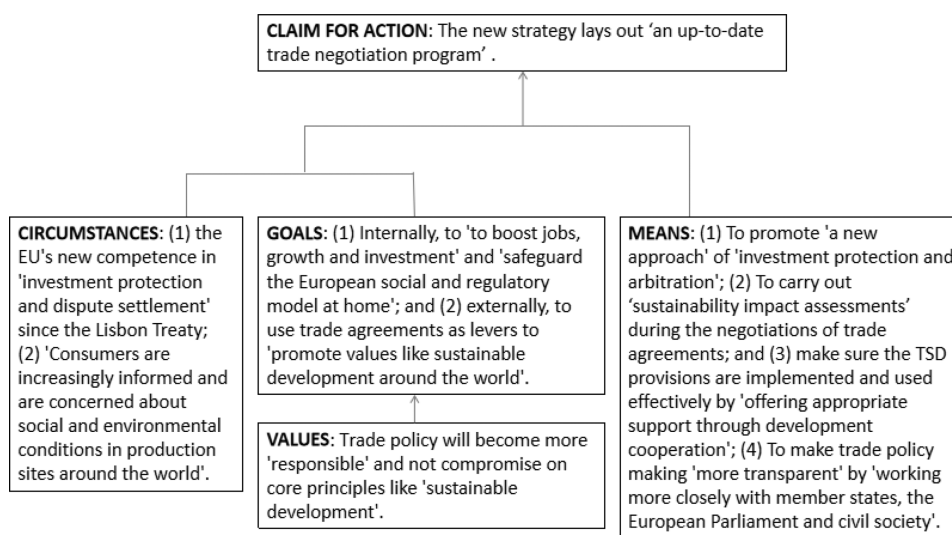
⁸³ The consolidated versions of the Treaty on the Functioning of the European Union (TFEU) and the Treaty on the European Union (TEU) [2010] OJ C83/1, are jointly referred to as the Treaty of Lisbon.

⁸⁴ TFEU Art. 218 (6) (a) (i)-(v), see A. Niemann, *Conceptualizing Common Commercial Policy Treaty Revision: Explaining Stagnancy and Dynamics from the Amsterdam IGC to the Treaty of Lisbon*, Eur. Integ. online Papers (2011).

⁸⁵ For the three documents, <https://eur-lex.europa.eu/procedure/EN/1043111> (accessed Oct. 2020).

⁸⁶ European Commission, *Report on the Implementation of the Trade Policy Strategy Trade for All Delivering a Progressive Trade Policy to Harness Globalisation* (2017), <https://www.europarl.europa.eu/legislative-train/theme-a-balanced-and-progressive-trade-policy-to-harness-globalisation/file-trade-for-all-strategy> (accessed Oct. 2020).

Figure 2 The Commission's Practical Argument on Sustainable Development in 'Trade for All'



public services, including social and environmental standards, as shown in the anti-TTIP/CETA protests, was being undermined. However, on the other hand, the documents assert that 'consumers are increasingly informed and are concerned about social and environmental conditions in production sites around the world'. Because the EU had set high internal standards in health and safety, consumer protection, labour and environmental areas, but in an open global economy, 'products are produced along value chains that criss-cross developed and developing economies' where the EU's high standards may not be met. These two circumstances posed a challenge for the Commission in achieving a balance among economic, social and environmental pillars of sustainable development in trade policy.

In terms of **values**, the Commission was allegedly committed to make trade and investment policy 'more responsible', which can be taken to mean to benefit society as a whole. It argued that 'trade benefits people most when creating economic opportunity'. The title of this new strategy was 'trade for all-towards a more responsible trade and investment policy'. While pursuing open markets, the Commission was also committed to 'not compromise core principles, like human rights and sustainable development'. With regard to the latter, the Commission argued that the EU 'has been leading in integrating sustainable development objectives into trade policy and making trade an effective tool to promote

sustainable development worldwide'. Furthermore, it claimed a continuance of its long-standing commitment to sustainable development in its trade policies, 'contributing to the newly agreed global SDGs under the 2030 Agenda for Sustainable Development'.

Guided by these values, the Commission set two **goals**. Internally, the Commission required trade policy to 'be consistent with the principles of the European model' while simultaneously delivering 'growth and jobs'. It emphasized several times that:

EU trade agreements do not and will not prevent governments, at any level, from providing, supporting or regulating services in areas such as water, education, health, and social services, nor will they prevent policy changes regarding the financing or organization of these services.

Externally, the EU needed to take lead in 'using trade policy to promote the social and environmental pillars of sustainable development'. The Commission argued that a new approach of trade and investment policy would involve using trade agreements as levers to 'promote values like sustainable development and human rights around the world'.

To achieve these goals, the Commission proposed a series of **means**. Regarding its new competence in investment, the Commission proposed to promote 'a new approach' of 'investment protection and arbitration'. This can be interpreted to mean the placing of 'stronger emphasis on the right of the state to regulate' in bilateral agreements by transforming 'the old investor-state dispute settlement' into a 'public Investment Court System'. Meanwhile, they also proposed to engage with partners to build a consensus for the 'permanent International Investment Court' and to incorporate investment rules into the WTO in the future.

In seeking to meet consumers' concerns about social and environmental conditions in trade partners, the Commission proposed to carry out 'sustainability impact assessment' (SIA) during the negotiations of trade agreements. This was perceived to allow a more in-depth analysis of the potential economic, social and environmental impacts of trade agreements, including those on small to medium sized enterprises, consumers, specific economic sectors, human rights and on developing countries. Moreover, it also proposed to implement the TSD provisions more effectively by 'offering appropriate support through development cooperation'. This was because of the difficulties some countries may experience with respect to labour and environmental commitments in TSD chapters. Thus, the Commission proposes to 'assist trading partners to improve the situation' with aid and cooperation programmes.

Similarly, to better respond to people's concerns about trade policy, the Commission also proposed to ensure that the policy making process was made

‘more transparent’ by ‘working more closely with Member States, the European Parliament and civil society’. In so doing, the Commission acknowledged that ‘the lack of transparency undermines the legitimacy of EU trade policy and public trust’. Likewise, it was argued that the implementation of the sustainable development dimensions of Free Trade Agreements (FTAs) ‘should be a core component of the enhanced partnership with Member States, the EP and stakeholders on FTA implementation, as well as dialogue with civil society’.

Thus, these were the four premises lead to the claim for **action**: ‘an up-to-date trade negotiation program’. In other words, this meant the prioritization of major ongoing projects, like TTIP, CETA, the EU-Japan free trade agreement and the EU-China investment agreement, along with new trade initiatives in the Asia-Pacific region, Latin America and Africa.

6 ANALYSIS OF THE COMMISSION’S ARGUMENTATION ON SUSTAINABLE DEVELOPMENT IN ‘TRADE FOR ALL’

The following applies the dialectical analytical framework between institutional context and political discourses to my case. I will first analyse the causal power of institutional context on political discourse through deontic powers, before analysing the causal power of political discourse on the institutional context through dialogical argumentation.

6.1 DEONTIC POWERS BEHIND THE COMMISSION’S PRACTICAL ARGUMENT

The Commission’s institutional ‘status’ is derived from the European Treaties. In particular, the Lisbon Treaty, as a ‘speech act of declaration’, restricts the Commission’s freedom to take certain considerations into account (obligations) or act in certain areas (prohibitions), as well as giving it the power to do certain things (rights). These deontic powers have shaped the Commission’s premises in its practical argument on sustainable development in ‘Trade for All’ (Table 1).

Table 1 Deontic Powers Behind the Commission’s Premises of Argument

	<i>Value</i>	<i>Goal</i>	<i>Circumstance</i>	<i>Means</i>	<i>Action</i>
Obligation	√	√			
Prohibition		√			
Rights			√	√	√

First, the Commission has an obligation to obey certain principles and objectives, which defines its value premise and external goal premise. Article 3 of the Treaty on European Union (TEU) is the source of the common values that the Union is built on. For example, Article 3(1) states: 'This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and *as closely as possible to the citizen*'.⁸⁷ Article 3 (3) states: 'The Union shall establish an internal market. It shall work for the *sustainable development* of Europe ...'. And Article 3(5) states: 'In its relations with the wider world, *the Union shall uphold and promote its values* ... It shall contribute to ... the *sustainable development* of the Earth ...'.

In addition, Article 207 (1) of the Treaty on the Functioning of European Union (TFEU) requires that 'the common commercial policy shall be conducted in the context of the principles and objectives of the Union's external action'. The objectives of EU external action are listed in the Article 21 (2) of TEU, which enjoins the EU to: 'foster *the sustainable economic, social and environmental development of developing countries* ...'; and to: 'help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure *sustainable development*'.

According to the EU Treaties, then, the Commission is obliged to be more responsive to the needs of people and to safeguard 'sustainable development' both internally and through external trade policies. Such obligations are reasons for action that the Commission must take into account. As shown in the above section, they shape the Commission's value and external goal premises.

Secondly, the Commission faces some restrictions on setting the social and environmental standards in the EU. Article 4 of TFEU states that: '*social* policy, for the aspects defined in this Treaty'⁸⁸ and '*environment*' belong to the 'shared competence between the Union and member states'. As such, in its internal goal premise, the Commission commits itself to ensuring that 'no trade agreement will ever lower levels of regulatory protection' and promises to safeguard 'the right of the EU and its Member States to regulate'. Here, the Commission considers the prohibition in interfering Member States' autonomy in the social and environmental areas.

⁸⁷ All italicized references from the Lisbon Treaty are the author's own emphasis.

⁸⁸ Article 153 of TFEU elaborates the scope of social policy: '(a) improvement in particular of the working environment to protect workers' health and safety; (b) working conditions; (c) social security and social protection of workers; (d) protection of workers where their employment contract is terminated; (e) the information and consultation of workers ...'.

Thirdly, Article 3 (1) of TFEU states that the EU has ‘exclusive competence’ on common commercial policy, while the Lisbon Treaty brings foreign direct investment under the umbrella of common commercial policy.⁸⁹ The Commission’s rights on investment policy is one of the circumstantial premises in its practical argument. According to TEU Article 17 (1), ‘the Commission shall promote the general interest of the Union and take appropriate initiatives to that end’. The term ‘appropriate initiatives’ gives the Commission a certain level of autonomy to propose the means premise, leading to its final claim for action. In the means premise, the Commission proposes to reform investment provisions in trade agreements, to reassure those who worried about the deterioration of European social and environmental standards. It also proposed to use the ‘SIA’ tool more effectively and implement TSD chapters with greater success to ensure the consequences of trade agreements remained in line with the value of sustainable development. Reasoning from this premise, the Commission can appeal for an up-to-date trade negotiation program because it is capable of dealing with the possible negative consequences brought about by trade and investment agreements. Nonetheless, whether the proposed measures prove effective enough to alter the situation from the circumstance to the goal, will elicit various answers from different EU trade actors.

6.2 ACTIONS BROUGHT BY THE COMMISSION’S ARGUMENTATION

It is revealing to compare the responses of the Council, the EP and the EESC to the Commission’s proposed measures on investment and TSD chapters. Doing so will bring to light how far their criticisms have been taken into consideration by the Commission in its implementation of ‘trade for all’ (Table 2).

With regard to the Commission’s measures in investment, the Council welcomed the Commission’s commitment to ‘respect the right of governments to regulate’ in its new ‘Investment Court System’ proposal. Both the EP and the EESC, however, were critical of the Commission for failing to have held a proper consultation with stakeholders prior to putting forward this new approach. More specifically, the EP argued that it, ‘regrets that the Investment Court System (ICS) proposal does not include an investors’ obligation provision’. Similarly the EESC expressed regret that:

⁸⁹ Article 207(1) of TFEU, ‘The common commercial policy shall be based on uniform principles, particularly with regard to changes in tariff rates, the conclusion of tariff and trade agreements relating to trade in goods and services, and the commercial aspects of intellectual property, *foreign direct investment* ...’. See D. Kleimann, *Taking Stock: EU Common Commercial Policy in the Lisbon Era*, CEPS Working Documents (2011); S. Woolcock, *EU Trade and Investment Policy Making After the Lisbon Treaty*, Intereconomics (2010).

Table 2 Criticisms of and Actions Brought About By the Commission's Proposed Measures

	<i>Council</i>	<i>EP</i>	<i>EESC</i>	<i>Commission's Action</i>
Investment	welcomes the Commission's new approach	(1) Demand a publish debate on a new investment approach (2) Include investor obligation provision	(1) Demand a public debate on a new investment approach (2) Criticize the ICS approach	(1) Include ICS in CETA and EU-Vietnam trade agreements (2) Open negotiations on multilateral investment court (3) Carry out Impact Assessment and public debates on investment policy in February 2017
TSD chapter	Not mention	(1) Include gender perspective (2) Make TSD chapters more binding with financial sanctions as a last resort	(1) Include COP 21 (2) Stress the role CSOs in TSD chapters (3) Criticize a lack of implementation report on TSD chapters	(1) Carry out studies and assessments on gender in trade (2) EU-Japan trade agreement explicitly supports COP 21 (3) Publish implementation reports on FTAs, including TSD chapters (4) Open a public debate on TSD chapters in July 2017

these proposals, which have been widely opposed by a broad range of civil society organizations as not being substantially different from the ISDS mechanism ... have now been included in the EU-Vietnam FTA and revised CETA texts

In 2017 report of the implementation of 'Trade for All', the Commission responded to the criticisms made by the EP and EESC, outlining that it had carried out an impact assessment as well as a stakeholder meeting with CSOs on investment policy in February 2017. However, its new ICS proposal still exists in trade agreements with Canada and Vietnam, although with the support of the Council, they began to negotiate with trade partners on a Multilateral Investment Court.

Regarding the Commission's measures in its TSD chapters, the EP focused on the social pillar of sustainable development and criticized the Commission for not addressing 'gender' issues to ensure equality between women and men in trade liberalization. The EP also argued for TSD chapters to become 'binding', with 'financial sanctions' embedded as a last resort to address disputes. Moreover, the EP pointed out that 'labour and environmental standards are not limited to TSD Chapters, but must be effective throughout all areas of trade agreements'.

The EESC, however, focused on the environmental pillar of sustainable development, arguing for the EU to incorporate 'the 21st Conference of the Parties (COP 21)'⁹⁰ into TSD chapters. They also asserted the salience of CSOs to the implementation of the TSD chapters, and critiqued the lack of their role in potential developments.

In its 2017 report on the implementation of 'Trade for All', the Commission responded to the above criticisms. In seeking to address the issue of gender equality, the Commission published a study on women's participation in exports, along with an Impact Assessment, SIAs and ex post evaluations of the impacts of trade actions on gender equality. On the issue of climate change, the EU-Japan trade agreement became the first to explicitly support the implementation of the Paris climate agreement. For the implementation of TSD chapters, the Commission undertook to publish Reports of Free Trade Agreements with details on the implementation of TSD chapters. In addition, in July 2017 it sparked a debate with Member States, the EP and with stakeholders on how far the current TSD chapters were meeting expectations, and what could be done to improve them.

As summarized in Table 2, while the Council was relatively supportive of the Commission's proposal, the EP and the EESC criticized the Commission's proposals in investment and TSD chapter areas. Most of their criticisms were taken into consideration by the Commission in its implementation of 'trade for

⁹⁰ At the Paris climate conference (COP21) in Dec. 2015, 195 countries adopted the first-ever universal, legally binding global climate deal.

all', such as opening a debate on investment policy, including gender perspectives and COP 21 in trade negotiations, as well as publishing implementation reports on EU FTAs. Nevertheless, in response to the EP's requirement of making TSD chapters more 'binding' with financial sanctions as a last resort, the Commission's willingness to compromise only extended to opening a public debate on TSD chapters, which led to a continuation of the current dialogue-based approach. This action was largely in line with the Commission's third proposed means in 'trade for all', to enhance partnership with the Council, the EP and CSOs.

7 CONCLUSION

In this article, incremental changes in trade towards sustainable development, especially those instigated by contestation in TTIP negotiations, are explained by using an innovative analytical framework based on the reading of political discourse as argumentation for action, and the institutional context as both facilitator and constraint on change. Drawing on Fairclough and Fairclough, whose argumentative perspective on political discourse, combines an understanding of the structural constraints political actors face from deontic powers and the transformative power of political discourses through dialogical argumentation.

My case study focused on the Commission's discourses on sustainable development in 'Trade for All' and has two principal findings. First, the public contestation of TTIP since 2014 certainly triggered the Commission to make a complete practical argument on sustainable development. The unprecedented anti-free trade protests posed a thorny problem for the Commission: can free trade safeguard the EU's social and environmental regulatory model, especially when the EU has the competence to negotiate investment provisions? To solve this problem, the Commission proposed a series of measures, including a new approach to investment, better implementation of TSD chapters and enhanced partnership with the Council, the EP and CSOs.

Secondly, three types of deontic power were seen to have shaped the Commission's premises in its practical arguments on sustainable development in 'trade for all'. The point here, is that the Commission was not fully constrained by institutional obligations and prohibitions, rather it was enabled to propose certain measures which it regarded as 'appropriate'. In response to criticism from the EP and the EESC, the Commission later adapted its original proposal to take different views into consideration in the implementation of 'trade for all'.

In EU trade policy, there used to be a voice that ‘the old is dying but the new cannot yet be born’.⁹¹ While there is much criticism of the EU’s neoliberal trade policy,⁹² a coherent research agenda has not yet developed that clarifies and explains the obstacles and opportunities for alternative, counter-neoliberal policies, to take root. This research suggests a potential way forward. First, it revealed the normative obligations or competence prohibitions faced by political actors in particular institutional contexts. Secondly, as an analytical framework drawn from critical realism, it was able to analyse the opportunities brought about by critical dialogue among political actors, which can be associated with changes of action.

Whilst the focus here has been the discourses of the Commission on sustainable development in trade, I have shown that different and significant voices came from both the EP and the CSOs. At the time of writing, the debate proposed by the Commission on improving implementation and enforcement of TSD chapters has concluded. The Commission summarized fifteen points from this debate, which do not include the request, from both MEPs and CSOs, on moving toward a sanction-based enforcement mechanism for TSD chapters.⁹³ With the EP’s empowerment in trade matters since the Lisbon Treaty, and the CSOs institutionalized in TSD chapters, a further research agenda might well consider their arguments and analyse the obstacles and opportunities for the EP and CSOs to challenge neoliberal hegemony in trade.

⁹¹ Orbie & De Ville, *supra* n. 45, at 15.

⁹² F. De Ville, *Understanding EU Trade Politics After TTIP, Trump and Brexit*, Comp. Eur. Pol. (2019); De Ville & Brugge, *supra* n. 29.

⁹³ European Commission, *Non-Paper on Feedback and Way Forward on Improving Implementation and Enforcement of Trade and Sustainable Development Chapters in EU Free Trade Agreements* (2018).