

Speaking in Tongues: Change and continuity in the European Commission's Trade and Sustainable Development discourse from 1989-2021

I. INTRODUCTION

Equity in trade is a complex issue. In the news and on the streets, trade union representatives are demanding better protection for domestic workers in sectors struggling due to global competition; labour activists are rallying against exploitative and undignified labour conditions, including the issue of child labour, many places around the world; while environmental groups are voicing concerns over deficient environmental and climate action both at home and abroad, all under the banner of fairness. The notorious 'Battle in Seattle' (1999), a dramatic public protest with an estimated 50,000 participants, was in many ways a hodgepodge of these disparate concerns (Trebilcock 2021; Burgoon 2004). What all these actors can agree on is the existence of 'unfair' trade. Yet, they profoundly disagree on what makes trade 'fair' and to a large extent this depends on the normative basis upon which their claims are made and their chief objective (Miller 2017). Civil society groups and interest organizations are however not the only actors advocating fairness in trade. In the European Union (EU), with the advent of the Lisbon Treaty (2009), one of the main objectives of the EU is to promote 'free and fair trade' in its external relations (Article 3.5 TEU). Moreover, the treaty restructured the EU's trade policy, placing it in the context of its general principles and objectives, thereby *de jure* broadening the trade agenda to objectives beyond the economic realm, such as sustainable development of the earth, solidarity, human rights, etc. (Gstöhl and De Bièvre 2018). Consequently, questions on how best to balance these different trade objectives, including trade liberalization, trade protectionism, and so-called non-trade goals¹, has been pushed to the forefront (Jaremba, Kanetake, and Koning 2019).

Through discourse analysis this paper examines the European Commission's trade and sustainable development (TSD) communication and policies from 1989-2021, relying on a discursive institutionalist approach (Schmidt 2008; 2010). We seek to track changes and continuities in the EU's trade and sustainability discourse relying on three key indicators. First, longitudinal change and continuity across Commissions, starting with the Delors Commission II and ending with the current von der Leyen administration. Second, across trade fora and instruments, focusing on inter-governmental TSD avenues where foreign governments (and their policies) are the primary target of EU TSD efforts, *inter alia*, through negotiations at the World Trade Organization (WTO), the EU's Generalised Scheme of Preferences (GSP) and the Union's preferential trade agreements, in particular Trade and Sustainable Development chapters. Initiatives led or directed at market actors, such as fair trade labelling schemes, corporate social responsibility (CSR), and supply-chain-specific legislation, are thus not the focus of attention (see instead Martens and Orbis 2018). Third,

¹ Values promoted in non-trade multilateral regimes such as human dignity, decent work, and environmental viability, for example in the UN and ILO.

the paper will be attentive to the Commission's prioritization of the three dimensions of TSD – economic, social, and environmental – within different trade instruments, avenues and through time.

The paper is structured as follows. In section two, we will elaborate on the three dimensions of TSD. In section three we will dive into different conceptualizations of fairness in trade, which the EU might rely on in its TSD discourse based on existing trade and EU literature. Section four will zoom-in on the Commission and investigate its communicative discourse and policies from 1989 to present day focusing on the trade-sustainability nexus. The corpus, which has been manually coded, consists, *inter alia*, of 49 official documents including trade strategies, white/green papers, and communication from the Commission to the Council and European Parliament depicting the 'formal' TSD discourse of the Commission. Adding to this, 1.023 speeches, press releases and statements by trade commissioners and the Commission are included to sheet light on more informal, day-to-day developments in the framing of TSD policies. The final section zeros in on the current von der Leyen Commission and its 2021 trade strategy and discusses and problematizes the juxtaposition of the Commission's sustainable development discourse with other – perhaps disparate – policy aims, such as the strong enforcement agenda and economic fairness concerns, which *prima facie* allows the Commission to appeal to different audiences, interests, and policy objectives within the EU. However, at the same time, it may challenge both the institutional effectiveness of EU trade instruments and the normative appeal and persuasiveness of the EU's trade and sustainable development agenda *vis-à-vis* current and future trading partners.

II. WHAT IS SUSTAINABLE DEVELOPMENT IN EU TRADE POLICY?

The EU's definition of sustainable development is taken from the United Nation (UN) Brundtland report (1987), which defines sustainable development as 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs' (Commission 2001c; 2005c). More specifically in the case of trade, the reconciliation of economic development with the protection of a social and environmental balance. In line with EU discourse, trade and sustainable development is defined as consisting of three inter-related dimensions: economic, environmental, and social dimension (Commission 2022).

On the social dimension, EU efforts are predominantly directed towards the improvement of labour standards by requiring trading partners to ratify and implement the core labour standards (CLS) of the International Labour Organization as set out in its Declaration of Fundamental Principles and Rights at Work (1998), which are: i) freedom of association and the right to collective bargaining; ii) all forms of forced and compulsory labour; iii) abolishing child labour, and iv) discrimination in the workplace (International Labour Organization 1998; Commission 2022). Also belonging to the social pillar is a commitment to support human rights. There is considerable overlap between the EU's labour and human rights

commitments due to the many parallels between the ILO's CLS and the UN's human rights regime.

Turning to the environmental dimension, the EU support environmental protection and climate mitigation by mainly pushing for ratification and implementation of environmental rules as set out in Multilateral Environmental Agreements (MEAs). The final dimension, economic development, is not as clear cut as the other two. Most often, economic development refers to the support of developing countries, *inter alia* through (a)symmetrical trade agreements and schemes, with the aim of supporting export-led growth in these countries thereby (hopefully) reducing poverty and support overall economic welfare (source).

III. TRADE AND SUSTAINABLE DEVELOPMENT PARADIGMS

3.1 The ethical TSD paradigm

Trade and sustainable development (TSD) policies may stem from ethical or moral sentiments, i.e., being endorsed for their intrinsic value. Arguably, such policy holds “normative reference points external to the trading system” (Trebilcock, Howse, and Eliason 2013, 661) Miller (2017) describe this viewpoint as ‘the ethics of trade’, defined as when one considers “conditions under which it becomes no longer ethical to be involved in trade relations with particular states” (Miller 2017, 259). For example, if the EU trades with a country and thereby (unintentionally) contributes to human or labour rights violations or deterioration of the local environment. In short, the ‘ethics of trade’ suggest a negative duty to ‘do no harm’ to the people or the environment when engaging in trade exchanges. With the EU’s inter-linkage of trade policy with its general principle of external action in the Lisbon Treaty, as elaborated on in the introduction, the Union’s seems to have gone beyond that by taking upon itself a positive duty to promote sustainability. In this context, some speak of an EU ‘constitutional conscience’ in trade policy, which provides the EU with a unique legal mandate, compared to other trade powers, to promote social and environmental issues in trade relations (Larik 2015).

This argument echoes previous debates on the EU as a ‘normative power’ (NPE), i.e., a ‘force for good’ in international relations owing to its unique multi-level institutionalist context and the values and principles enshrined in its founding treaties (Manners 2002). In this regard, the juxtaposition of trade and sustainability in EU trade policy has been argued to be a manifestation of its idiosyncratic normative identity (Manners 2009). The concept and theory of NPE is long in tooth (celebrating its 20-year anniversary this year) and has met heavy criticism from its interpretation (Sjursen 2006). It should however receive due credit for the introduction of a neo-normative turn in EU studies (Whitman 2013), providing scholars and practitioners with a conceptual toolbox to better grasp (and judge) the ‘normative ethics of the EU’ (Manners 2008). In our investigation of language on EU ethical TSD, emphasis will be put on whether TSD is presented as benefitting (i) the citizens and local environment of trading partners, or (ii) the *global* human right or labour agenda as well as to protect the environment and climate as global commons. Ehrlich (2010) similarly

emphasizes that altruistic concerns should be directed at affairs outside the EU's jurisdiction. He argues that 'sincere fair traders', as he calls them, "are expressing sincere beliefs that trade should be somehow limited or regulated [...] in order to prevent harm to foreign workers or the environment", which, as will be highlighted in the next paragraphs, makes them "fundamentally different from protectionists" (Ehrlich 2010, 1014). In short, the EU's TSD policies are presented as being derived from benevolent considerations and directed *outward*; trading partners or international society are presented as the main beneficiaries of TSD policies.

3.2 The protectionist TSD paradigm

A different source of concern is that of European commercial competitiveness. Some argue that countries that export goods into the EU produced under circumstances where internationally recognized labour and environmental standards are not complied with are *de facto* 'dumping' their products on the EU's market, allegedly engaging in a form of unfair competition, depriving European producers in compliance with these standards of their 'legitimate' market share (M. J. Trebilcock, Howse, and Eliason 2013, 719). Calls for action against 'social and environmental dumping' is in many ways a replica of arguments related to economic dumping, a phenomenon disciplined under WTO law. Economic dumping is when either a foreign company is engaging in unfair pricing practices² or when a foreign government (or public body) is unfairly subsidizing its domestic producers. In both cases, it provides foreign entities with an unfair advantage vis-à-vis European market actors. As mentioned, the institutional locus for these (un)fairness concerns is the WTO. According to the WTO Agreements, if the EU is experiencing unfair pricing or subsidization, it may seek to off-set the negative impact of such measures by respectively imposing anti-dumping duties or countervailing duties on the imported products. There is a third instrument, the WTO safeguard clause, which may be used in the case of an unforeseen, sharp, and sudden surge of imports. This instrument is however of a different nature in comparison to the previous two, as its invocation does not depend on a transgression³ of WTO rules but instead serves as an emergency break⁴. Still, all three trade instruments share the common narrative of belonging to the EU's trade *defense* toolkit, which aims to "defend European industry against unfair trade practices", i.e., trade practices in breach with WTO rules (Commission 2021a, 1)

Social and environmental dumping is the result of disparities in countries' level of social and environmental protection, caused by the absence of an international social and environmental 'level playing field' (Kerremans and Orbie 2013; Trebilcock, Howse, and

² When a foreign company is exporting goods into the EU's market at a price below the 'normal value'. The normal price of a product is most often either understood as (i) the price of the product in the home-market; or (ii) the production costs of a product as well as a reasonable revenue for the producer.

³ While countervailing measures can be activated by a breach of WTO subsidization disciplines, the WTO agreements does (and can not) regulate the actions of companies engaged in "dumping". Instead, WTO rules allows for governments to react to dumping. In other words, WTO law sets out guidelines for anti-dumping actions.

⁴ This instrument is both less important for the present argument, in addition to being much less used by WTO member states in comparison to the two other trade remedies.

Eliason 2013). From a European point of view, lax social and environmental standards in foreign countries, or the ineffective enforcement of existing standards, presumably leads to lower production costs. Arguably, providing countries and their companies with a comparative advantage vis-à-vis EU's producers that are subject to higher standards. Level playing field supporters advocate for an 'equalization' of competitive advantages stemming from low(er) social and environmental regulation by making foreign countries raise their standards to a level approximating that of the EU. The purpose is thus to protect (or 'defend') the competitiveness of the single market and European jobs from 'unfair' foreign competition. The rationale is thus almost identical to that of economic dumping, albeit no WTO rules are currently in place on trade-related aspect of social and environmental policy. In conclusion and in simplified terms, proponents of protectionist TSD paradigm are concerned with the impact on European industry of differential costs of production caused by dissimilar levels of environmental and social protection. Hence, in principle, they are not concerned with the environmental or social conditions of other countries (beyond its potential trade distorting effect) or the global human rights or environmental agenda. Importantly for the present argument, TSD policy is presented as being *inward* focused with European industry and workers as the referent object and motivated by material self-interest.

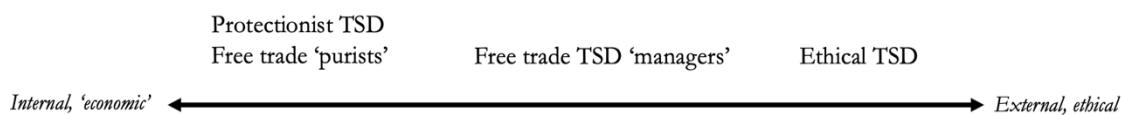
3.3 The free-trade TSD paradigm

Since the completion of the single market in the 1990s, the EU has obtained the reputation as perhaps the strongest proponent of international free trade. The Union's external trade policy has undergone a significant and systemic liberalization since the late 1980s, even in highly sensitive sectors, with only few new trade barriers being introduced (Hanson 1998). This development has similarly played out at WTO, where the EU has gone from being a 'defensive neo-mercantilist trade power', to taking on a proactive leadership role in recent decades (Ladefoged Mortensen 2009). It is widely accepted that since the mid-1990s, the Commission have internalized neoliberal (free trade) ideas – that even appear to have increased in strength over recent years (Siles-Brügge 2011; Bollen, De Ville, and Orbie 2016). Generally, many in the Commission believe that the main aim of trade policy to be the narrow promotion of European economic interests and not the advancement of so-called 'non-trade' issues. Hence, 'trade purism' is a strong ideological force to be reckoned with in trade policy circles, and according to Bossuyt et al., this privileged position is further upheld by the institutional and ideological divide between the trade and foreign policy domains of EU external action (Bossuyt, Orbie, and Drieghe 2020).

As touched on in the introduction, trade policy has today become a composite policy due to the gradual inclusion of deep trade topics dealing with behind-the-border regulation, such as state's social and environmental policies. This expansion of the trade agenda has challenged "the ability of states to set their own rules, to define their own regulations on a whole array of issues" (Kerremans 2011). Importantly, this has activated a wide crowd of European societal actors and interests, which now pay considerable attention to the trade policy choices of the EU, thereby contributing to the politicizing of the field (Young and Peterson 2006)).

In this context, businesses are subjects of increased public scrutiny and stressed to pay greater attention to trade-related social and environmental issues (source). Many companies are thus engaging in sustainable development activities (Battering and Masurel 2020), and the maxim of sustainable development⁵ has been broadly adopted by European business, appearing prominently in many firms branding strategies (source). Arguably, a similar reasoning can be found in EU trade policy among free trade advocates: that a certain degree of ‘embeddedness’ (Ruggie 1982; Abdelal and Ruggie 2009) or ‘management’ (Meunier 2007; Orbis 2008) of trade is needed to be able to continuously push for trade liberalization. As argued by Martens & Orbis (2018): “sustainable development discourse [...] are just palliative measures which help to legitimate the neoliberal trade policy” (Martens and Orbis 2018, 293). In sum, on the question of TSD policies, free traders may be divided into two camps: the strong ‘free trade purists’ that are against the adoption what they perceive as ‘non-trade’ issues onto the trade agenda ((Bossuyt, Orbis, and Drieghe 2020) and the ‘free trade managers’ that accept the need to include TSD issues to make EU trade policy edible to European interest groups, the European Parliament - that has always shown high interest in the matter (Feliu and Serra 2015) - and trading partners. See figure 1. for an overview of the different TSD paradigms on a continuum of their (directional) aim and motivation: whether internally, at the European economy, jobs, and growth, or externally, on the sustainable development of trading partner and international society. On a final note, one should of course keep in mind that all three paradigms are simplifications and ideal types, hence, one will rarely find a Commission whose discourse on sustainable development will neatly fit into one.

Figure 1. Summary of TSD paradigms



III. COMMISSION’S TSD DISCOURSE FROM 1989-2021

4.1 Andriessen (1989-1992): The Single Market, a Political Community and accompanying environmental and social policies

Andriessen’s term as European Commissioner for External Relations and Trade Policy (1989-1992) was characterized by tectonic changes in Europe and its neighborhood. Internally, the European Council had adopted the Single European Act (SEA) that set out two main aims: to establish a ‘Political Community’ among member states and to complete the integration of the single market by 1992. For this purpose, the Commission proposed a seven-year work program that would remove physical, technical, and fiscal barriers to trade within the European Community (EC), thereby establishing the ‘four freedoms’⁶. This was

⁵ Sometimes also known under the name of ESG (Environmental, Social and Corporate Governance), however, mostly within the financial realm, and less so in the commercial sphere.

⁶ The free movement of goods, capital, services, and people

no simple task, however, the ambition of building a “great European Market”⁷ provided a common narrative. The single market program was in many ways a manifestation of the increasing popularity of neoliberal ideas that saw liberalization and deregulation as crucial means in helping the EC move beyond periods of economic recession that had hunted the European economy in the 1970s and 1980s (source). As neatly put by Andriessen “[l]iberalisation is the order of the day”⁸. Concurrently with internal liberalization, the Community was pushing for external liberalization at the Uruguay Round (1986) in the General Agreement on Tariffs and Trade (GATT), the predecessor to the WTO, which was the most ambitious trade round to date with the inclusion of new trade topics such as services and intellectual property and a strong focus on dismantling non-tariff barriers to trade that had increasingly become an issue (M. J. Trebilcock, Howse, and Eliason 2013).

Closer to home, the fall of communism in Central and East European countries (CEECs) meant tailoring a new type of relationship between the EC and CEECs, which became a key priority of Andriessen. The Community’s engagement with the CEECs was mainly in the form of humanitarian and technical assistance in addition to the conclusion of six trade agreements with political components, the so-called ‘Europe Agreements’. These agreements were in many ways a consolation price, compared the CEECs desire for membership of the Community, something the European Council was first reluctant to promise (source)⁹. Interestingly, the ‘Europe Agreements’ contained dedicated cooperative articles on both environment and labour protection¹⁰. These were – unlike recent EU trade agreements – not linked to international conventions but to the approximation to Community standards. Not surprising, as they were concluded in a context of possible future membership of the EC and thus the adoption of the *acquis communautaire*. Still, trade-social-environmental linkages existed in the ‘Europe Agreements’, despite the Community not having a position or policy on such linkages yet (Orbie, Vos, and Taverniers 2005). Keeping in mind, this was still relatively early heydays for the EC as a political community; the ‘social dimension’ of the single market was mainly about regional redistribution within the Community¹¹, while its environmental policy looked into water and air quality and protection (source). The SEA provided the first legal basis for a common environment policy, a fact often highlighted by Andriessen, who on many occasions emphasized the importance of environmental policy¹² and argued that as the Community’s competences increased so would “the development, slowly but surely, of European policies in the field of the environment.”¹³ Still, on both social and environmental question, the Commission’s focus was largely internal, on the development of Community

⁷ 1989.06.09 and 1990.04.09

⁸ 1990.04.09

⁹ At the European Council meeting in Copenhagen in 1993, the possibility of future EC membership for the CEECs was cemented.

¹⁰ For example, see art. 80 and 87 in the EC-Poland association agreement and art. 79 and 88 in the EC-Hungary association agreement

¹¹ Through the EC’s Structural Fund. The European Social Rights Charter had just been adopted in 1989.

¹² 1991.06.19; 1991.10.18; 1992.03.24; 1992.09.07

¹³ 1991.05.17

policies, while externally directing most of its political resources towards stabilizing its immediate neighborhood¹⁴.

4.2 Brittan (1993-1999): The neoliberal agenda, civil society demands and the dawn of TSD policies

It was during Leon Brittan's time in office as Trade Commissioner that the Delors III and Santer Commissions adopted a position on the social and environment aspects of trade. This took place in the context of the Community's establishment of a common foreign and security policy (CFSP) with the Maastricht Treaty (1993) and the general strengthening of its role as a 'world partner' (Commission 1988). On the policy side, an 'essential element' human right clause was introduced in the Community's 'Europe Agreement' with the Czech Republic in 1993. This practice would later be institutionalized with the Commission's 1995 strategy on human rights (Commission 1995). On the occasion of finalizing the trade agreement with the Czech Republic, Brittan's approach to the inclusion of the human rights clause was one of pragmatism, emptied of any inspirational language:

"Following a general reexamination of its policy on human rights the Commission has decided that it must systemically include respect for human rights as an essential element of every new agreement the Community signs with third countries. This will be built into the new agreement with Czech Republic"¹⁵.

Overall, human rights – or more broadly TSD policy – was not a key priority of Brittan. His principal aim as Trade Commissioner was the advancement of a neoliberal agenda, promoting both internal and external liberalization with the purpose of defending the EU's economic stronghold. This strategy was embodied in the Commission's White Paper on 'Growth, Competitiveness and Employment' (1994) and its successor, the Market Access Strategy (1996). This nucleus of market liberalization did not come out of nowhere. In the early 1990s, the European economy was hit by an economic recession, worsening the already high unemployment rate – peaking at 10.4 pct. in 1993 (Blanchard 2006) – while European industry and the public increasingly felt (or perceived to feel) the pressure of global competition, especially from newly emerging economies in Southeast Asia and Latin America. Against this background, the Commission's Market Access Strategy (1996) introduced a more offensive European trade policy, focused on liberalization and reciprocity while explicitly linking European growth and jobs to foreign market access: "Together we will provide a potent force for liberalization worldwide. We must ensure our rights *vigorously*, and give our companies an equal chance to compete [...] Once barriers have been identified, they must be *attacked* and removed (emphasis added by author)¹⁶. In sum, the post-1992 agenda was directed at the full implementation and enforcement of single market rules within the EC, while the Market Access Strategy was to work for similar conditions abroad, mainly

¹⁴ With the exception of Canada with whom the EC signed a declaration on environmental cooperation in 1991 (1991.05.17)

¹⁵ 1993.03.12

¹⁶ 1996.11.12 (see also 1996.02.12)

through a more aggressive approach to market access in emerging economies such as China, Hong Kong, and South Korea. Brittan's dedication to the open trade agenda was particularly evident at a Jean Monnet lecture in 1993, where he speaks of an 'economic morality' and in this context places open trade on par with democracy and human respect¹⁷.

The increasing environmental and social awareness of European citizens started to manifest itself. The first time he officially addressed the social-trade linkage was at a hearing in the European Parliament in 1994, where he established the Commission's positive attitude towards linking trade and social policy objectives in future WTO negotiations. In his speech, he relied on ethical, moral language, such as stating: "Pursuing the enforcement of ILO obligations worldwide is a long-held European priority. We pursue it because it is in principle *right to do so* [...] Europe is not looking at the social issue as a source of increased protectionism, but as an area where international action is *good in itself*"(emphasis added by author)¹⁸. Similarly, when speaking of the trade-social linkage over the following years, Britten often linked labour protection to human rights: "we regard core internationally recognized labour standards as essential human rights" and "it is reasonable to insist on, and want to protect, certain basic human rights for the workforce of any country participating in a multilateral economic system"¹⁹.

Brittan was still first and foremost a free trader manager²⁰. In Brittan's introduction of the social-trade linkage in 1994, he did not hide the fact that the Commission had deliberately avoided addressing the issue until the completion of the Uruguay Round (that was finalized with a five year delay), clearly demoting the social issue to the trade-furthering topics in the round²¹. In the following years, when addressing the trade-social-environmental linkage, he – almost without exception – explained that the chief motivation behind the Commission's promotion of TSD policies was to address the concerns of the European public, who might otherwise lose faith in the EU's neoliberal agenda:

"there is still a perception among sectors of the European public that the European Union is not doing enough to bring working practices worldwide up to internally agreed standards. If these concerns are ignored, the perception will be – wrongly – that trade liberalisation is the problem and not the solution"²².

In this regard, it is hardly surprising that he was often referred to as a "free trade bulldog"²³. His preference for free trade management is similarly visible in his strong focus on TSD 'safeguards' that would try and prevent protectionist abuse: "[i]t is crucial that such

¹⁷ 1993.03.19

¹⁸ 1994.03.29

¹⁹ 1996.12.13 and 1997.02.03, respectively (see also 1996.07.24; 1997.02.03 1999.07.08)

²⁰ The speech delivered to the European Parliament in 1994 is seemingly the most emphatic speech he has delivered on the social dimension of trade.

²¹ 1993.09.14; 1993.11.15; 1994.03.29

²² 1996.07.24 (see also 1994.11.03; 1994.11.10; 1994.11.10; 1995.10.23; 1996.04.01; 1997.02.03; 1998.03.23; 1998.12.09; 1999.07.08)

²³ 1993.09.14

safeguards against abuse be written into any new policy initiative from the start”, and as such, “[i]n social matters as in the case of the environment, the emerging EU position is for action but against protectionism”²⁴. On the environmental dimension, he often cautioned against ‘green protectionism’²⁵ and pitted the EU’s approach against that of the United States, bluntly stating: “that it is not our objective to use environmental concerns as a cover for protectionist action. Indeed, we have already been in the forefront in trying to stop other countries, notably the United States, from using environmental legislation in a way that impedes legitimate trade”²⁶. At the WTO, a Trade and Environmental Committee (CTE) was established following the Marrakesh Ministerial Meeting (1994) on EU, USA, and Canadian initiative (source). In the following years, the Committee’s worth was questioned due to “widespread concerns at the lack of concrete results”²⁷. Still, the Commission continued to promote the committee’s work, *inter alia*, by publishing a paper on the trade-environmental linkage in 1996 (Commission 1996a) and organizing a WTO High Level Symposium on Trade and the Environment in 1999²⁸. On the social dimension, the Commission tried to establish a working committee, similar to the CTE, in the lead up to the Singapore Ministerial Meeting (Commission 1996b). The EU managed to get a weak reference included on social issues in the Singapore Declaration, but no working committee was established. Subsequent efforts²⁹ was neither successful due to fierce resistance from especially developing countries believing a social-trade link to constitute ‘protectionism in disguise’ (source). In the lead up to the Millennium Round, the Commission despondently conceded that “the Commission recognizes that there is no realistic prospect of consensus for the establishment of a working group within the WTO” (Commission, 1999: 22).

4.3 Lamy (1999-2004): Harnessing globalization, legitimacy and putting developing countries front and center

If we can agree that the TSD agenda perhaps sneaked up on Brittan and his neoliberal vision for Europe, then Trade Commissioner Pascal Lamy on the other hand fully embraced it. He repackaged TSD policies into a larger vision on globalization³⁰, rallying the public and policymakers around the concept of ‘harnessing globalization’³¹. It offers a positive view on globalization³² but at the same time warns of ‘unharnessed, unchanneled, and uncontrolled globalization’ – a favorite phase of Lamy³³ – in need of management through global rulemaking, i.e., global governance, as: “globalization essentially amplifies and reinforces the

²⁴ 1994.03.29

²⁵ 1993.02.08; 1993.02.17; 1993.03.19; 1993.05.28; 1999.03.15

²⁶ 1994.03.29

²⁷ 1996.12.13

²⁸ 1999.03.15

²⁹ 1998.11.17; 1998.12.09

³⁰ During his tenure, Brittan also delivered a speech dedicated to the subject of globalization entitled ‘Globalisation: Responding to new political and moral challenges’ at the World Economic Forum in Davos in 1997 (1997.02.03)

³¹ A term inspired by the French *l'économie sociale de marché* (2004.06.22)

³² 1999.10.14

³³ 2000.03.06 (see also 2000.06.09; 2000.11.08; 2000.02.17)

strengths, but also the contradictions of market capitalism”³⁴. As such, the notion of ‘harnessing globalization’ share many similarities to the concept of ‘embedded liberalism’ that has been used to describe the compromise of the postwar economic order, where a free-market ideology coexisted with state-intervention in support of domestic welfare policies (Ruggie 1982). ‘Harnessing globalization’, on the other hands, proclaims that with globalization now being an all-encompassing force, interventionism is needed but should take place at a global level through international institutions such as the WTO³⁵. In terms of more concrete policy, the approach promoted multilateralism, trade liberalisation, regional integration, and sustainable development policies (Meunier 2007; Orbis 2008; Jacoby and Meunier 2010; Abdelal and Meunier 2010). Lamy became Trade Commissioner just a few months before the beforementioned Millennium Round to be launched in Seattle (to become the ‘Battle in Seattle’). On the EU’s agenda for the Millennium Round, Lamy said:

“we are looking for a new type of Round, which takes into account not only global developments in the economy, but also widespread concerns about the relationship between trade and environment [...] and between trade and core labour standards [...] [i]f there is one phase which sums up what the new Round should be about it is sustainable development”³⁶.

Sustainable development became the *lomotif* of the Prodi Commission that published the Union’s first strategy for sustainable development, emphasizing it as a global objective with the EU playing a “key role in bringing about sustainable development, within Europe and also on the wider global stage” (Commission 2001c, 2). Within its first two years, the Prodi Commission published, *inter alia*, communication on human rights and democracy; core labour standards and social governance; fair trade labelling; corporate social responsibility; and on the world summit on sustainable development (Commission 2001b; 2001d; 1999; 2001e; 2001a). In addition, in the lead-up to Seattle, the Commission initiated for the first time a so-called Sustainable Impact Assessment (SIA) that would look into the possible implications of the round on trade liberalisation and sustainable development³⁷. Since then, SIAs have become a favored instrument of the Commission in trade negotiations.

In Seattle, Lamy delivered a speech to the International Confederation of Free Trade Unions relying on a strong ethical framing of the trade-social linkage; coupling core labour standards to human rights and underlining their universal nature both in regard to content and support: “what we are talking about is far more fundamental: it concerns respect for basic human rights at the workplace” and “the seven ILO Conventions are unanimously accepted as an important component of basic human rights by the international community. These values are common to all (or nearly all) WTO members”. In the same speech, he designated ‘values’ as a central component of the EU’s trade approach and distinguished these from traditional trade-furthering topics: “What we want is commitment to the implementation of core labour

³⁴ 2001.02.08

³⁵ 2001.02.08

³⁶ 1999.10.14 (see also 1999.11.30)

³⁷ 1999.11.22

rights, because trade is also a matter of values, not economics only”³⁸. In the Commission’s 2001 strategy on CLS and social governance, three factors are underscored as the main drivers behind the EU’s push for social protection in trade: the universal nature of CLS; how the EU itself rests on the respect of fundamental human and workers’ rights; and finally, the European public’s high interest in the matter (Commission 2001d). All in all, an ethical outline of the Union’s motives. Throughout his time in office, Lamy also consistently called attention to the issue of legitimacy in global governance and thus a need for TSD policies³⁹ - in contrast to Brittan, who spoke of TSD as necessary to maintain ‘popularity’⁴⁰. On the policy side, CLS was strengthened in the EU’s 2002 revision of its Generalised Scheme of Tariff Preferences (GSP) that offers asymmetrical trade preferences to developing countries⁴¹. Environmental protection was rarely addressed by Lamy in as grand language as the social dimension, perhaps because the topic had already been included on the WTO’s agenda through the establishment of the CTE. Still, Lamy, at a later occasion, saw it necessary to proclaim that “[t]he environment is a global issue not an EU hobbyhorse”⁴².

The Millennium Round was in many ways a ‘perfect storm’. The EU proposed the establishment of an ILO/WTO forum⁴³ that would be tasked with facilitating a dialogue on the trade-labour linkage, while on environment, the Union suggested that environmental consideration become an integrated part of negotiations and tackle issues such as the relationship between WTO rules and Multilateral Environmental Agreements (MEAs), environmental labelling schemes, and the precautionary principle (Commission, 1999)⁴⁴. However, upon arriving in Seattle, the negotiators faced fierce public demonstrations and strong resistance from most developing countries towards the many new topics the EU wanted included on the negotiation agenda, including labour and the environment. Among the developing countries there was a widespread feeling of having missed out in the Uruguay Round and thus a need to resurrect this by focusing the discussions on agriculture and other traditional trade issues (source). Adding to this, the negotiations were further complicated by a proposal from the United States introducing the idea of sanctions in the trade-labour debate (Trebilcock, 2001), which the EU – and most developing countries – opposed as sanctions were seen to have protectionist connotations⁴⁵ (Commission, 2001). All in all, a failure in making.

With the collapse of the Millennium Round, the Commission changed its communication strategy, starting to heavily emphasize the needs of developing countries⁴⁶, especially Least

³⁸ 1999.11.29 (see also 2001.11.08; 2003.02.04; 2003.09.09)

³⁹ 2000.06.22; 2001.02.01; 2001.02.08; 2001.03.09; 2001.11.26; 2002.01.18; 2002.01.45; 2004.01.27; 2004.09.15

⁴⁰ 1995.10.23

⁴¹ 2001.06.12; 2001.12.10; 2002.01.01

⁴² 2001.11.09 (see also 2001.11.11 and 2002.04.19)

⁴³ A safer suggestion than a WTO working committee as it was proposed as a joint effort, maintaining the competence with the ILO as the institutional locus of social questions.

⁴⁴ 1999.11.30

⁴⁵ 1999.12.02

⁴⁶ This was also a priority for the EU in the lead-up to the Millennium Round, however, no near as forcefully as during DDA.

Developed Countries (LDCs), whose needs were rhetorically put center stage by the Commission in the following – and still unfinished – round of multilateral negotiations, the so-called ‘Doha Development Agenda’ (DDA). Increasingly, EU trade policy was framed as being at the service of developing countries in their pursuit of economic growth and poverty eradication. Meanwhile, CLS and the environmental dimension were pushed further in the background. As Lamy declared: “Trade is not an end in itself, but a means to an end – it can be a very powerful tool for development if we get the conditions right”⁴⁷ or put even simpler: “development is the goal, and trade the instrument”⁴⁸. In this context, three EU initiatives deserve highlighting. First, the EU’s ‘Everything But Arms’ (EBA) scheme approved in 2001 that grants duty-free and quota-free access for all products except arms from LDCs⁴⁹. Second, the EU’s role as *demandeur* at the WTO on the issue of securing developing countries’ access to medicine⁵⁰. Finally, the Cotonau agreement (2000)⁵¹ that sets out a strategy for concluding so-called ‘Economic Partnership Agreements’ (EPA) between the EU and the African, Pacific and Caribbean states (ACP). The EPAs were introduced as “instruments for development”⁵² that would “integrate poor countries better into the global economy and to fight poverty through trade and economic cooperation”⁵³. The Commission even went as far as describing itself as a benign partner in the context of EU-ACP EPAs: “The EPA can actually deepen the benefits of such efforts by introducing a powerful but benign third party, namely the EU”⁵⁴. In contrast to the Commission’s self-image, the EPAs have proven highly controversial and received significant criticism from NGOs and scholars for being mainly market-access tools (Faber and Orbis 2009) or even having neo-colonial connotations (source).

Lamy’s normative, development-focused TSD narrative was always framed as congruous with trade liberalization. On the issue of offering flexibilities to developing countries, or in WTO jargon ‘special and differential treatment’ (SDT), Lamy proclaimed: “we are sympathetic to the aims [SDT], but we are determined to conclude agreements which are trade creating and most importantly, work towards the inclusion of the WTO and the global economy”⁵⁵. Moreover, in speeches to the American Chamber of Commerce and the German Economic Institute, in an endeavor to rally business support for the DDA, he emphasized that “[w]hat matters in the end is that we achieve the goal of continued free economic expansion and a strengthened rule-based system, reflecting the new economic realities of today’s globalized

⁴⁷ 2002.04.18

⁴⁸ 2003.02.04

⁴⁹ 2001.02.26

⁵⁰ 2001.03.30; 2001.06.19; 2001.11.30; 2002.03.05; 2002.06.24; 2002.10.30; 2002.11.29; 2003.05.26; 2003.08.30; 2004.04.21; 2004.10.29

⁵¹ The successor to the Yaoundé (1964-1975) and Lomé Agreements (1975-2000) that provide preferential treatment to the African, Pacific, and Caribbean countries, all former colonies of EU member states.

⁵² 2002.04.09 (see also 2003.10.06 and 2004.02.05)

⁵³ 2002.09.27

⁵⁴ 2004.04.16

⁵⁵ 2003.01.20

world”⁵⁶. Finally, during DDA negotiations, the Commission ended up agreeing to significant concessions regarding its social and environmental agenda in its effort at moving the trade negotiations along; accepting the continued exclusion of trade-labour talks,⁵⁷ while scaling down environmental ambitions by accepting that discussion would only focus on political commitments, instead of more technical solutions to the trade-environmental conundrum⁵⁸. In conclusion, Lamy’s ‘harnessing globalization’ discourse still, overall, relied on a strong ethical framing of EU TSD policies; in DDA at the service of developing countries, and more widely in support of the international community: “Trade opening cannot simply be an end in itself: it must have a purpose: namely to improve the lot of mankind”, as such the purpose was “harnessing globalization in the interest of all”⁵⁹. At the failed Cancun Ministerial Conference in 2003, the Commission even published a communication entitled: “EU determined to make trade work for all”⁶⁰, a phrase that would become the mantra of Trade Commissioner Malmström 10 years later.

4.4 Mandelson (2004-2008): Global Europe, progressive trade liberalization, and preferential trade agreements

The following Barroso Commission placed liberalization – both internal and external – firmly back in the front seat. A new trade strategy was presented entitled ‘Global Europe: Competing in the World’ (2006)⁶¹ which stressed European market competitiveness as the overarching challenge of the day in the protection of European growth and jobs. Internally, the strategy set out to make the single market more competitive by further exposing European market actors to external competitive pressures while strengthening EU capabilities in high-value products and services. Externally, the Union’s trade policy was to be directed at pursuing offensive market opening abroad through the DDA but also by negotiating a ‘new generation’ of preferential trade agreements with emerging economies, such as China, India, and Brazil. This marked a shift in the Commission’s approach; from putting all its eggs in the multilateral basket under the Prodi Commission, the EU would now also pursue so-called ‘competitiveness-driven’ preferential trade agreements (Commission 2006b).

Peter Mandelson served as Commissioner for Trade *and* the International Aspect of Europe’s Competitiveness under the Barroso Commission. He baptized his trade approach ‘progressive liberalisation’, which was the pursuit of greater market access for European companies whilst considering the needs of developing countries in allowing them flexibilities

⁵⁶ 2000.02.29 and 2000.03.15. (also, the exact same wording was used in a third speech in New Delhi, but then adding “in an effort to harness globalization for sustainable development” (2000.03.06))

⁵⁷ During Lamy’s tenure, WTO discussions of the trade-labour linkage was sidetracked, *inter alia*, to the World Commission on the Social Dimension of Globalization established by the ILO in 2002.

⁵⁸ 2003.09.24; 2004.01.19; 2004.01.14; 2004.01.13; 2003.11.26; 2003.10.28

⁵⁹ 2004.06.22

⁶⁰ 2003.09.04

⁶¹ This was part of the Lisbon Strategy (2000) and its 2005 review, also known as the EU’s Growth and Jobs Strategy.

and offering development assistance⁶². In other words, “pro-growth in Europe and pro the poor in the world”⁶³. Mandelson thus adopted Lamy’s development-focused discourse, and in this context particularly stressed the aim of poverty reduction⁶⁴. Selling the EU’s Economic Partnership Agreements with the ACP countries proved to be a particular hurdle for Mandelson, but he continued to strongly support the EPAs: “I inherited these agreements [...] [b]ut I am wedded to them”⁶⁵. Within his first year in office, he sought to address the much criticism of the EPAs by introducing a ‘monitoring mechanism’ that would ensure that the EU “really do put development first”⁶⁶. According to Mandelson, this highlighted his commitment to the economic development agenda, as he: “inject[ed] a greater development focus to the EPAs”⁶⁷.

At the WTO, Mandelson promised continuity in the Commission’s approach: “Delivering development has been the core of the EU’s approach to the Doha-Round. I may be the new pilot, but I can guarantee to continue to steer this course”⁶⁸. While on another occasion, he spoke of development as a lodestar for his tenure: “I have a strong commitment to Trade and Development policies [...] I would be happy if my period as Trade Commissioner came to be remembered for that”⁶⁹. To the European Parliament’s Trade Committee, he similarly affirmed: “You all know my strong commitment to the development dimension of DDA”⁷⁰. Yet, two important elements differentiated Mandelson’s DDA approach from that of Lamy’s. First, Mandelson underlined to a larger extent the need for the DDA to be ‘balanced’, meaning not only (or mostly) to the benefit of developing countries but also the EU and other more established economies: “But the Round – and I must stress this – also has to benefit other participants too. We must make sure that the agenda [...] remains balanced and ambitious”⁷¹. Adding to this, President Barroso, on the occasion of the WTO’s 10 years anniversary, pointed out “that we all have to give in order to also take”⁷². Compared to previous Commissions, Mandelson also strongly highlighted the principle of differentiation between developing countries; that they should not all be grouped into the same developing category:

“advanced developing countries must be aware that they can not be granted the same advantages and privileges as ‘weak and vulnerable’ countries. If a Doha deal is to be done, they will have to contribute significantly to the package”⁷³.

⁶² 2005.01.13; 2005.03.17; 2005.03.18; 2005.05.26; 2005.06.22; 2005.06.28; 2005.07.06; 2005.09.13; 2005.11.10; 2006.01.23; 2006.03.21; 2006.05.04; 2006.05.15; 2006.05.17; 2006.06.23; 2006.10.09; 2006.12.19

⁶³ 2005.02.04

⁶⁴ 2005.01.13; 2005.02.04; 2005.03.15; 2005.03.17; 2005.06.22; 2005.09.26; 2005.11.10

⁶⁵ 2006.10.19 and 2005.06.16

⁶⁶ 2005.01.20 (see also 2005.01.06; 2005.01.20; 2005.03.17; 2005.04.19)

⁶⁷ 2005.05.23

⁶⁸ 2004.12.01

⁶⁹ 2004.08.12

⁷⁰ 2005.03.15

⁷¹ 2004.11.23 (see also 2004.12.01; 2004.12.02; 2005.01.13)

⁷² 2005.04.20

⁷³ 2004.12.01 (see also 2004.11.13; 2004.12.01; 2004.12.02; 2005.01.13; 2005.02.04)

Specifically in regard to China, who had been member of the WTO for a couple of years, Mandelson spoke of there being no “free lunch”⁷⁴. On the policy-side, the EU reformed its GSP scheme, reducing the number of GSP arrangements from five to three,⁷⁵ but more importantly reduced the number of countries eligible to receive GSP preferences. On this occasion, Mandelson highlighted that the GSP “will focus EU trade preferences on the countries most in need”⁷⁶. In sum, as the Global Europe strategy propelled forward the agenda on market opening in WTO+ and WTO-X (topics partly or not covered by WTO rules)⁷⁷, the Barroso Commission in congruence pushed for securing a more ‘balanced’ and ‘differentiated’ round in the WTO, thereby to some extent weakening the strong developing-country-focused framing of the Prodi Commission and moving the Barroso Commission closer to a free trade management paradigm.

During the Barroso Commission the social dimension of trade policy was – perhaps more than with any other Commission – linked to internal discussions within the Union on the creation of a ‘Social Europe’⁷⁸. Since the launch of Lisbon Strategy in 2000 and its 2005 review, the Commission had received criticism for having pushed its neoliberal agenda too far, neglecting social issues: “Since we took office, the Barroso Commission has been at fault in not articulating that balance and failing to make the social justice case for economic reform”⁷⁹, Mandelson affirmed. Hence, even though the Commission had indeed proposed a ‘social agenda’ together with the Lisbon strategy (Commission 2000; 2005a), an imbalance was still perceived to exist. Consequently, social policy became one of the chief issues of the Barroso Commission, and as highlighted by Mandelson: “if Europe must have a stronger social dimension so should its trade policy”⁸⁰. Since the labour-trade linkage continued to be excepted from WTO negotiations, the Commission highlighted its efforts through the GSP+ arrangement⁸¹, a new category within the reformed GSP scheme, which provide beneficial access to the EU’s market for ‘vulnerable’ developing countries that have ratified and implemented, or in the process of implementing, 23⁸² international conventions relating to human rights, social and environmental protection and drug production and trafficking⁸³. Also, the EU withdrew preferences from a GSP beneficiary country, Belarus, due to a breach with core labour rights⁸⁴. Finally, as part of the Global Europe strategy, the Commission set out to promote its sustainable development agenda in its future preferential trade

⁷⁴ 2004.12.09; 2005.03.15

⁷⁵ The GSP previously had five categories: standard GSP, social incentive clause, the environmental incentive clause, the special measure for combating drug trafficking, and the Everything But Arms (EBA) for LDCs. The new GSP scheme had three: standards GSP, GSP+ (social and environmental incentives), and the EBA.

⁷⁶ 2005.06.23

⁷⁷ Services, intellectual property, investment, competition, and public procurement.

⁷⁸ 2005.05.26

⁷⁹ 2005.06.13

⁸⁰ 2005.06.23 (see also 2005.05.26)

⁸¹ 2005.06.23

⁸² Today, the GSP+ scheme requires the ratification and implementation of 27 international conventions.

⁸³ 2005.12.21

⁸⁴ 2006.12.05

agreements⁸⁵: “In considering new FTAs, we will need to work to strengthen sustainable development through our bilateral trade relations” (Commission 2006b, 9). The TSD agenda was thus envisioned to become an incorporated part of the Union’s new generation of trade agreements. In 2006, the Commission published a ‘Decent Work Agenda’, where it promised that it would “put more of its commercial weight behind efforts to promote social standards and decent work in bilateral and multilateral trade negotiations” (Commission 2006a, 8) Nonetheless, in the Global Europe Strategy, the Commission stressed that its new bilateral trade agreements would first and foremost serve the economic interests of the Union:

“We should continue to factor other issues and the wider role of trade policy in EU external relations into bilateral trade developments. But in order for trade policy to help create jobs and drive growth, economic factors must play a primary role in the choice of future FTAs” (Commission 2006b, 9).

4.5 Karel De Gucht (2010-2014): Crisis, competitiveness and free trade agreements

The European financial and debt-crisis re-directed the focus of trade policy while TSD policies were pushed further in the background. Trade policy was now first of all an instrument in helping Europe get past the crisis and back on its feet [Under revision]

4.5 Malmstrom: Values, transparency and the TTIP

The value-warrior, as some called her. During Malmstrom’s tenure a new trade strategy was proposed: ‘Trade For All’, supposedly a more ‘responsible’ trade policy that would place the EU’s ‘value’ agenda (i.e. TSD) on equal footing with trade-enhancing goals [Under revision]

IV. THE VON DER LEYEN COMMISSION: AN OPEN, SUSTAINABLE AND ASSERTIVE TRADE POLICY

More than five years would pass before the Commission presented a new trade strategy to replace ‘Trade for All’. The Von der Leyen Commission’s ‘Open, Sustainable and Assertive Trade Policy’ (2021) orbits around the concept of ‘strategic autonomy’ consisting of three dimensions: resilience and competitiveness; sustainability and fairness; and assertiveness and rule-based cooperation (Commission 2021b). It is perhaps the most ambitious, or wide-ranging, trade policy to date pushing for both trade liberalisation, assertiveness, geopolitics and sustainability (source). On sustainable development, the strategy remarks: “Making globalisation more sustainable and fairer should be the underlying driver of trade policy, delivering on the expectations of Europeans and other people around the world. EU trade policy should use all the tools at its disposal to support social fairness and environmental sustainability”. A TSD narrative not far from that of Trade Commissioners Lamy and Malmström. Yet, unlike them, the new trade strategy groups the Union’s sustainability objective together with concerns over economic fairness, arguing that “[a]t the same time,

⁸⁵ According to the Commission, sustainability concerns were already a part of the EU’s trade agreements with Chile, South Africa and the Cotonou agreement with ACP countries (2005.06.23)

there is a need to ensure that the rules respond to current economic realities and are well equipped to respond to competitive distortions and ensure a level playing field” (Commission 2021b, 10).

This juxtaposition may prove highly problematic for several reasons. First, as section three underlined, the ethical and competitiveness-centered TSD paradigms rely on hugely different rationales and aims. While the first aspires to promote normative change in the world to the benefit of trading partners and international society, the second seeks to narrowly defend European commercial interests with the purpose of supporting European producers and workers. Consequently, they are positioned at different ends of the spectrum in figure 1. Second, as the analysis has highlighted, concerns over protectionist abuse of TSD policies has remained a consistent theme since the 1990s at the dawn of TSD linkages. Postulations that TSD policies might in fact be ‘protectionism in disguise’ has proved a brute barrier to the inclusion of social and environmental issues in WTO negotiations. Today, the issue of social protection in relation to trade is still absent from the WTO’s mandate, while environmental discussions proceed in the CTE committee, which however, has yet to prove its worth (source). The Commission has recently co-sponsored tree initiatives in the CTE: (i) a trade and environmental sustainability initiative; (ii) an initiative on fossil fuel subsidy reform; (iii) and a plastics pollution and sustainable plastics initiative.⁸⁶ Whether these will contribute to progress in CTE discussions are too early to tell.

Another important point is that while continuously having been a target of protectionist accusations, the Commission has continuously denounced it and firmly separated talk of European competitiveness – of the lack thereof – with its TSD agenda. Even under the first Barroso Commission and its ‘Global Europe’ strategy, Trade Commissioner Peter Mandelson unswervingly avoided linking Europe’s economic troubles at the beginning of the new century with claims of social and environmental undercutting in developing countries. Instead, he insisted that the economic strength of the single market was not to be found in labour-intensive and low-wage products, but instead in capital and entrepreneurship intensive export: “We know Europe faces a race not to the bottom, but to the top.”⁸⁷ With the Von der Leyen Commission’s juxtaposition of social and environment protection with concerns of economic fairness (for Europe), the Commission might find itself in troubled water. Adding to this, as part of the new strategy, the Commission has heightened its focus on enforcement and appointed a Chief Enforcement Officer, whose office has published its first report on the implementation and enforcement of EU trade agreement – both its trade and ‘non-trade’ components, i.e., Trade and Sustainable Development Chapters. These chapters, in combination with the EU’s GSP scheme, are today some of the Union’s most important TSD instruments. In explaining the rationale behind the report, it is stated:

“the global trade policy landscape has changed very substantially in the last few years, with new challenges emerging. This includes structural

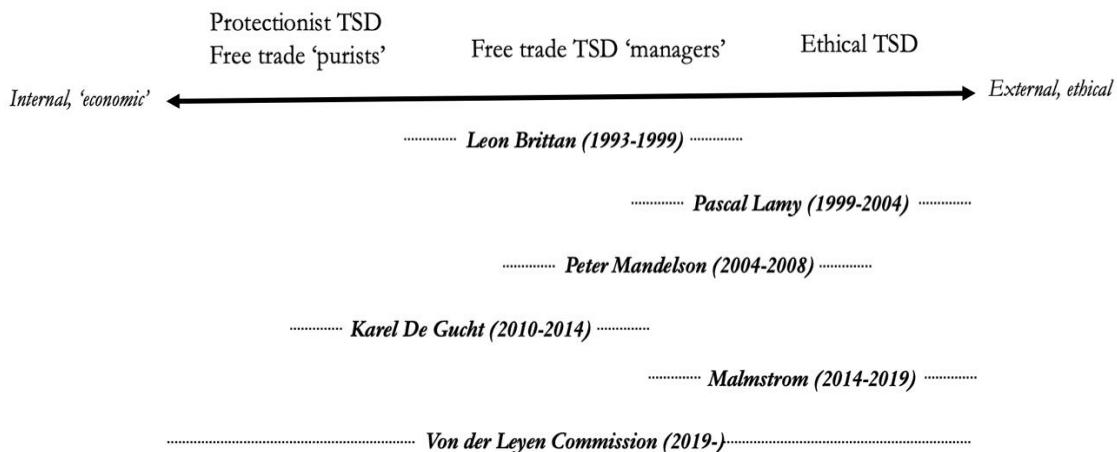
⁸⁶ 2021.12.15

⁸⁷ 2006.09.18

imbalances, level playing field and market access issues, and the political use by EU trading partners of unjustified restrictive unilateral measures or even economic coercion, all of which the EU must address more assertively” (Commission, 2021: 2).

Gone is any notion of normativity; the necessity of pushing labour rights for their intrinsic value; as part of the EU’s human rights agenda; or the global call for environmental protection and climate change mitigation in the protection of common goods. [To be elaborated]

Figure 2. TSD paradigms and European Commissions



V. CONCLUSION

[To be elaborated]

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