

Winning Hearts, Losing Minds

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Winning hearts, losing minds: politicisation and the contestation of expertise in the context of TTIP negotiations

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Abstract

Expertise in policymaking can have multiple functions: gaining access to policymakers, increasing the legitimacy of an actor or policy, or informing the broader public about an issue. Lobbying groups can provide policymakers with expertise in exchange for access, or they can politicise an issue by making their message appeal to their members and the public. This chapter examines the latter of these choices – namely, how politicising an issue affects how NGOs and other actors contest expertise in the policy process. We examine the case of TTIP, where NGOs' use of outside strategies to create politicisation and gain public support lost them legitimacy in the eyes of Commission and business groups. However, certain NGOs were also granted more access to the policymaking process. This indicates that while politicisation can make contestation more polarised, it may also lead to effects whereby more moderate groups are given access and a platform for their claims. Politicisation and expertise-based lobbying may therefore be seen as complements rather than a trade-off.

Introduction

Expertise plays an important role in policymaking. It can provide legitimacy to institutions and policies; providing expertise can thus be a means for actors to gain authority and access to the policymaking process. On the one hand, research has noted a trend towards technocracy, which 'depoliticises' policymaking and sets it squarely in the domain of expert knowledge (Maasen & Weingart 2009). On the other hand, there has been a turn towards the 'democratisation of expertise' in the EU, calling for stakeholder and public participation as a means of creating public policy (European Commission, 2002). This focus on policymakers' and institutions' knowledge dependencies fits with resource-based theories of lobbying (e.g. Bouwen 2002), which conceive of lobbying as the exchange of expertise between interest groups and policymakers. Lobbying, therefore, is about the expertise that groups can provide, and factors such as the type of expertise a group provides and how they do so are important in earning or maintaining legitimacy and gaining access to institutions. Yet lobbying can also be about contesting other groups' expertise, particularly for groups with less structural power who aim to get their message heard by a wider audience.

This chapter examines how politicisation affects how expertise is contested during lobbying and policymaking, including who contests it and how those in power perceive their legitimacy. We examine one specific, recent case: the highly public policy debate surrounding the Transatlantic Trade and

Investment Partnership (TTIP). This case, quite an exception in the breadth and scale of civil society engagement across the EU, reflects how expertise can be contested when any policy issue is highly politicised. Moreover, the scale of the movement against TTIP means that the case can provide us with the means to examine how various groups used and contested expertise during their campaigns. During and after the debate, the Commission and businesses accused NGOs of using simplistic narratives and spreading myths and lies to provoke emotional responses. While this may reflect a typical ‘shooting the messenger’ strategy used by the losing side (Tansey 2017), it also highlights a potential risk in choosing to use strong outside strategies to politicise a debate: the simplifying frames used to mobilise the public are an easy ‘straw man’ target of opponents’ criticism. Such criticism, while it brushes over the expertise that groups did provide, shows the loss of legitimacy of (some) NGOs in the eyes of institutions and opponents.

While we discuss the possible tensions between the different strategies that groups use, we also explore their complementarities. The use of simplifying strategies can have negative consequences, including the loss of legitimacy, but may also be necessary for groups or a movement to create radical change. Politicisation polarises the debate, widening the gap between those on either side and potentially alienating parts of the population. However, more radical efforts to politicise a topic may complement the broader movement’s goals and ultimately lead to the inclusion of more moderate groups in policymaking.

Our contribution to this edited volume discusses not only the role of the contestation of expertise in lobbying, but also examines how the type of contestation changes when an issue is politicised. As highlighted in the introduction to the book, expertise is a double-edged sword which can be contested on a structural or epistemic level or drawn into the realms of politics. Nowhere is this more evident than in a discussion of the role and use of expertise in lobbying – particularly in TTIP, where high levels of politicisation and a public debate shifted discussion from the level of expertise to contestation based on framing and public opinion. By examining the strategies used by NGOs and the institutional reaction, we nuance the choice between conveying expertise and politicising an issue – rather than being a trade-off, they may work together. Finally, we contribute to the discussion of different types of contestation. During TTIP, NGOs used both structural and epistemic forms of contestation to argue against TTIP, but (once the issue was drawn into the politicised sphere) their claims were subsequently contested by both business groups and the Commission, who questioned the NGOs’ expertise and legitimacy.

This chapter is structured as follows: we begin with an introduction of previous research and theories of the role of expertise in policymaking and lobbying, before discussing NGOs in particular and the conflicting choices they may face. We then examine the case of TTIP, based on a review of the significant extant research on the topic and original interviews. We conclude with a more general discussion on the process of politicisation and how it can affect who contests expertise.

Expertise and policymaking

The struggle for control over expertise in policymaking is longstanding. Expertise provides public actors with authority that justifies their decisions, converting policymaking from a political negotiation to a technical process with which it is impossible to argue (Robert 2012). In a way, therefore, recourse to expertise can be seen as a way of depoliticising policymaking, with ‘objective’ knowledge raised above political negotiation (Hay 2007; Radaelli 1999). Barnett and Finnemore suggest that bureaucracies or organisations such as the EU rely on Weberian legal-rational authority, which stems from expertise; however, this only seems neutral or depoliticised, as the expertise chosen is always based on cultural values and hidden assumptions (1999, p.708).

Indeed, choosing whether and when to provide expertise can be a strategic exercise in itself for both public actors and external organisations. For instance, the European Commission uses expertise to improve its standing vis-à-vis the other EU institutions and legitimise its own actions (Saurugger 2005). In this sense expert knowledge can be used as a ‘commodity’ to ‘shape the political agenda’, rather than being produced only when requested by an institution (Maasen & Weingart 2009). The use of expertise for strategic reasons also applies to non-institutional actors: think tanks are perhaps the best example of organisations which use ‘objective’ expertise to pursue their political goals (Plehwe 2014). As we discuss in the following section, though, providing and exchanging expertise is part of lobbying for all groups.

Although recourse to expertise aims to depoliticise and “technocratise” policymaking, the use of scientific knowledge can in fact lead to contestation and politicisation when the image of scientific objectivity is broken. Nowotny (2003) claims that the inherently transgressional nature of expertise - crossing disciplinary boundaries and speaking to a diverse public - make it vulnerable to contestation, while others suggest that contestation becomes more likely under certain circumstances. For instance, expertise may lead to controversies if the public loses trust in the ‘authority’ of the experts, particularly if a certain decision turns out to be false (Munnichs 2004), or when experts disagree on the best route to take in a certain situation (Nelkin 1975; Pellizzoni 2011). This is partly due to the “hidden side” of science and expertise: although they appear objective on the surface, they ultimately hide value judgements and assumptions beneath scientific language and jargon (Sarewitz 2004). If these values are brought into the light and contested, politicisation can result, removing the façade of independence and depoliticisation which is created by using expertise. Politicisation can thus be the *result* of expertise, but also affects how expertise can be used and contested.

In sum, although expertise is often perceived as objective and used to provide authority and legitimacy, it is inherently linked to the politicisation of politics through its contestability and the controversies it can cause. This is clear in an evaluation of the links between lobbying and expertise.

Lobbying and expertise

Although bureaucracies may see advantages in holding onto expertise, “democratising expertise” by including other actors in the policymaking process can help to build public trust in the process and the policies produced. In the EU, the European Commission’s White Paper on Governance (2001) introduced this idea, aiming at ‘socially robust knowledge’ by explicitly trying to increase (public) interest groups’ and civil society’s participation in policymaking (European Commission 2002; Nowotny 2003). The technical and social knowledge that these groups provide improve not only input and output legitimacy, but also ‘throughput’ legitimacy by ensuring that policy is based on a broad range of knowledge and multiple points of view (Greenwood 2007; Schmidt 2013).

This idea of the role of groups in providing expertise in policymaking is echoed in resource-based theories of lobbying. Resource exchange theory sees lobbying as an exchange of knowledge: groups trade their expertise as a “currency” to gain access to institutions (Bouwen 2002; Chalmers 2012). Groups can provide two different types of expertise: technical expertise and social or political knowledge, i.e. knowledge about the political sentiment or the ‘encompassing interest’ of their members (Bouwen 2004). These two types of knowledge have also been identified in studies of groups’ involvement in expert advisory groups (Robert 2010). Recent research has indicated that both NGOs and business groups provide both types of knowledge, and that the type of knowledge provided rather depends more on the channel through which the information is being provided (with social or political knowledge more likely to be provided to parliaments or through the media) (De Bruycker 2016). When lobbying, groups can therefore provide two broad types of information: social knowledge or technical expertise.

Moreover, groups can choose different channels to convey this information, using either inside or outside strategies. Inside strategies refer to strategies where groups have direct contact with policymakers, either through meetings, advisory groups or personal letter-writing. Outside strategies, on the other hand, aim to mobilise the public in favour of a topic through actions such as petitions, protests and social media campaigns (Beyers 2004). Following resource exchange theory, these strategies are often used by groups with less expertise or fewer resources, or who choose to reject the institutional route. Kollman (1998) labels the two roles of outside strategies ‘conflict expansion’ and ‘signalling’: groups first aim to increase the salience of an issue, before showing policymakers what the public think about an issue, essentially warning them of the opposition and potential backlash they risk if they (do not) support a particular policy. The two have a mutual relationship: conflict expansion and increasing issue salience mean that outside strategies become more effective, creating an ‘attention cascade’ – drawing policymakers’, media and public attention to the issue – which further increases public awareness of the topic (Dür & Mateo 2016). Of course, the risk in widening the scope of conflict

is that drawing attention to the debate will encourage counter-mobilisation by including actors who would otherwise have not participated.

Inside and outside strategies: complementary or contradictory?

While inside and outside strategies are often discussed as being clear-cut or a once-off decision, defining them in such a crisp way is oversimplifying the issue, as most groups use combinations of strategies to achieve their policy goals. These mixes of strategies have different effects on the way groups are perceived. Inside strategies may seem to be the more advantageous choice but can be less interesting for member-based NGOs. For these groups, outside strategies send a clear message to members that the group is taking action on a topic, as well as providing them with a way to participate by signing a petition, writing a letter or attending a protest. Similarly, previous research has shown that citizen-based groups use outside strategies to curtail the power of business lobbying; in contrast to businesses, NGOs are able to use outside lobbying to prove their legitimacy (Trumbull 2012) and by creating “noise” they make it harder for businesses to lobby on regulations behind the scenes (Culpepper, 2011).

However, these strategies also involve a trade-off: for some policy issues, it is necessary to get public attention onto a topic to swing the debate, but this may come at the expense of a nuanced debate and risks oversimplifying the message. Outside lobbying is therefore primarily used to communicate social knowledge, as technical details are difficult to convey through a slogan or a banner. Politicisation may swing the balance in favour of outside strategies, making them more feasible (as public attention is drawn to the issue) and more effective (as policymakers are unable to ignore the weight of public opinion).

Existing theory answers the question of how strategies may work together or against each other in different ways. Resource exchange theory – approaching the issue on an individual group level – highlights the possibility that groups which use particularly radical or combative outside strategies may see themselves denied access in future policy debates, due to fears that they will turn against institutions (Beyers 2004, Trapp & Larsen 2017). Moreover, if a group uses many outside (and thus simplifying) strategies, they may be perceived as having less useful expertise than groups who limit themselves to technical policy or position papers. However, empirical evidence for this is contradictory or scarce, with many studies showing that the majority of groups do mix strategies and are still able to gain access to policymakers (Binderkrantz 2005).

On the other hand, radical flank theory from the study of social movements underlines the interdependencies and even reliance of one type of strategy on another on a more systemic level. While these can be negative, if a movement’s reputation is damaged by a radical faction’s highly disruptive or violent actions, positive radical flank effects are also possible. These occur because more radical groups provide a ‘foil’ against which more moderate groups appear reasonable; or they create ‘crises’

or situations from which the moderate groups can benefit (Haines 1984). In this way, when one branch of a movement puts public pressure on policymakers using outside strategies, they can force policymakers to include the movement (in the form of more moderate groups) in the policymaking processes – or at the very least, heed some of their demands. Of course, it is not impossible for both effects to happen in some way – groups using more radical strategies may lose legitimacy or be excluded, while other groups are included.

The complementarity of different strategies is thus not a given, and the effects unknown. We will draw upon both of these theories in our discussion of NGOs' campaign against TTIP. However, we first turn to a discussion of current work on the role of NGOs in EU trade policy. This will provide the background to our discussion of TTIP in more depth.

NGOs' role in trade policy in the EU

The majority of research on the role of expertise in policymaking and its contestation focuses on risk regulation, especially hotly debated environmental issues such as climate change and GMOs, because of the prominent role of scientific advice and knowledge in these fields. Nonetheless, trade is a highly technical field of policymaking in which expertise is important for two reasons: firstly, for the regulation of these same risks (e.g. protecting public health and the environment in trade agreements); second, for analysis of the economic consequences of free trade agreements (FTAs). These equilibrium models, used in trade impact assessments to justify beginning negotiations, have been criticised by NGOs and academics alike for inaccurately predicting the economic effects of previous trade agreements (including NAFTA and the EU's Single Market) and for their dependence on the expectations run through the models (De Ville & Siles-Brügge 2015; 2016). This highlights the contestation of previously 'objective' expertise when the underlying values and expectations are brought to light; however, groups have also been unable to provide significantly better alternatives to the current models.

Like other policy areas, EU trade policy has seen a democratisation of expertise. Preparations for the EU's White Paper on Governance highlighted the possibility of integrating non-market concerns into the assessment of FTAs in order to appease anti-globalisation voices (European Commission 2002, p.299). As a result, the social and environmental consequences of EU FTAs are now assessed through sustainability impact assessments (SIAs). Unlike economic impact assessments, however, SIAs are conducted during negotiations rather than beforehand, and thus have been criticised for not informing the negotiating mandate (European Commission 2015b). Civil society has also been institutionally included in EU trade policymaking since 2002 through the Civil Society Dialogue mechanisms, although criticisms abound that this is more of a 'briefing' than a 'dialogue', and NGOs appear to have had little influence through this channel (Dür & De Bièvre 2007). Despite this, outside mobilisation has generally been limited on trade policy within the EU – previous work has showed that NGOs used

similar strategies to business groups on trade at the EU level, despite having contrasting policy positions (Jarman 2008). The large-scale public mobilisation against the Anti-Counterfeiting Trade Agreement (ACTA) in 2013 was surprising because of how exceptional it was (Dür & Mateo 2014).

TTIP, a trade and investment agreement between the two largest economies in the world, is an exception. The agreement has attracted an unprecedented amount of public attention and debate, particularly in Germany and Austria – a fact that some have attributed to the work of NGOs both on- and offline (Bauer 2016b). While in a technical field of policy, TTIP was therefore at the same time highly politicised. As a contentious and prominent set of negotiations, it marked a change from the ‘normal’ type of campaigning and ways of contesting trade policy and is thus a useful case study for examining the links between lobbying and politicisation.

NGOs’ campaigns against TTIP

Negotiations for TTIP began in 2013, and with them came the first wave of opposition. Opposition centred around several themes, notably the transparency of negotiations and investor-state dispute settlement (ISDS) – to be discussed further below – but also concerns of a ‘race to the bottom’ in environment and consumer regulation, labour rights and data privacy (Armanovica & Bendini 2014).

As noted above, TTIP was exceptional for both the sheer weight of opposition to the agreement and the breadth of groups involved (Gheyle 2016). Opponents included not only anti-globalisation and environmental NGOs that had been working on trade for years, if not decades (such as Attac, Greenpeace and Friends of the Earth) but also NGOs that had not previously been involved in trade policy. For example, the generally moderate European Consumers’ Association (BEUC) is ‘supportive of free trade in principle’ but held reservations about TTIP (BEUC 2014). In 2014, a coalition of almost 230 NGOs from 23 EU countries launched a ‘Stop TTIP and CETA’ European Citizens’ Initiative (ECI); however, this was rejected by the European Commission on institutional grounds. As a result, the groups began their own EU-wide petition, which gathered over 3.25 million signatures in one year and reached the country quorum in 23 countries (Stop TTIP 2015). The Stop TTIP coalition now counts over 500 member organisations.

The group of NGOs campaigning against TTIP used a wide range of strategies, including protests and petitions, TTIP-free zones, leaks of negotiating texts and technical reports. Below we discuss how politicisation affected the contestation of expertise in two of the main subjects of the anti-TTIP campaign: transparency and ISDS.

Structural contestation: Transparency in TTIP

A significant proportion of NGOs' criticism of TTIP was the lack of transparency surrounding the trade negotiations, accused of taking place 'behind closed doors'. NGOs claimed that the policymaking process was biased in favour of business interests and called for changes in the way trade policy was made and the inclusion of other groups in the process, questioning the legitimacy of trade policymakers and institutions in the EU (Gheyle 2016). As mentioned above, while EU trade policy provides for NGO input in the form of Civil Society Dialogues, these are widely regarded as box-checking and more a forum for the Commission to inform NGOs than for real input or discussion.

NGOs' calls for transparency took place mainly through outside strategies, by raising public awareness about the trade agreement and mobilising public opinion to pressure policymakers into increasing transparency around the negotiations. Stop TTIP justified its use of the ECI as an instrument with its perceived exclusion from the process, claiming that 'TTIP and CETA are prepared behind closed doors...the European Commission is in charge of negotiations and finalisation of the treaties' (Stop TTIP 2015). Protests in Brussels and other European capitals as part of Europe-wide action days against TTIP similarly focused on the lack of transparency in the negotiation process. These were supported by research by transparency-focused organisations such as Corporate Europe Observatory, compiling Commission data showing the numbers of meetings between Commissioners and different lobby groups during the negotiations (CEO 2015).

Another outside strategy used notably by Greenpeace was the 2016 leak of 248 pages of the EU's negotiating texts, accompanied by press releases and factsheets explaining the leaked documents (Greenpeace 2016). Many of the leaked texts were outdated or already available online thanks to the Commission, which had been providing textual proposals and factsheets of chapters in the negotiations since 2015 (Coremans 2017). Nonetheless, the leaked documents highlighted the discrepancies between the official elite discourse on the positive state of negotiations, and the real mismatch between the two parties' red lines. Furthermore, the leak created negative publicity around the negotiations and was framed by Greenpeace as 'breaking through' the opacity of the negotiation process. However, these leaks may have widened the rift between the Commission and campaigning groups, with Commissioner Cecilia Malmstrom issuing a blog post the day after the leaks highlighting the 'misconceptions' promoted by NGOs (European Commission 2016). The leaks seemed to confirm that groups would continue to antagonise the Commission throughout the negotiation.

Despite this, however, groups saw some of their demands met. In January 2014, the Commission created the TTIP Advisory Group, which included industry and civil society representatives, to advise negotiations; this included representatives from NGOs BEUC, Transport and Environment and the

European Environmental Bureau (European Commission 2014).¹ Furthermore, as previously mentioned, the Commission moved towards a more proactive public transparency standard by allowing access to different negotiating texts and plain-English explanatory factsheets as part of its new ‘Trade for All’ strategy (Coremans 2017). Previous studies have shown that pressure from civil society was one of the factors which led to the Commission’s substantive increase in transparency initiatives and the amount of publicly available information (Gheyle & De Ville 2017). So while groups’ outside strategies were labelled as ‘misconceptions’ and misleading the public, they eventually saw some success and were included in the policymaking process. This indicates that politicising an issue and making enough “noise” can also be a helpful factor in *gaining* access to the policymaking process. Below, we discuss how a similar pattern occurred in the field of ISDS in TTIP.

ISDS: politicisation and technical expertise

Investor-state dispute settlement, which provides the regulatory framework for foreign investors to sue states for allegedly discriminatory practices, is included in bilateral treaties with many individual EU states. The Treaty of Lisbon gave the EU the competence to negotiate on foreign direct investment and thus to include ISDS in all new trade agreements, which it has done in the EU-Vietnam and EU-Canada (CETA) agreements. Given their previously relatively obscure profile and technical nature, it is surprising that ISDS became one of the most important issues in TTIP: so that in 2015 Commissioner Cecilia Malmström stated that ‘ISDS has become the most toxic acronym in Europe’ (VPRO 2015). As a consequence of NGOs’ focus on the issue, up to 40% of online media coverage of TTIP between June and November 2014 was on ISDS, with the next highest subjects 13% on GMOs and 10% on transparency (Bauer 2015). Although this was helped (particularly in Germany) by the publicity surrounding the Vattenfall case, a Swedish company suing Germany for changing nuclear energy targets, the outcry and swift change in public opinion was also due to NGOs’ own strategies. NGOs active in the Seattle to Brussels (S2B) network, a transatlantic network working on trade policy, had been studying the implications of the EU’s new competence for negotiating on investment in preparation for the TTIP negotiations (De Ville & Siles-Brugge 2016; Bollen 2018).

Thanks to this preparation, NGOs published detailed research about ISDS in the EU, analysing not only the proposals made in negotiating documents but also previous and ongoing lawsuits against EU states. For example, Friends of the Earth Europe published a peer-reviewed database of all ISDS lawsuits against European governments and their outcomes (FOE EU 2014b). In addition to longer research reports, NGOs produced sources in plain English and accessible formats like factsheets and videos (CEO 2014a, 2014b). NGOs’ modus operandi during the anti-TTIP campaign mirrored those used to

¹ In 2017 the Advisory Group was institutionalised to create an Expert Group for trade policy for future negotiations.

protest the Multilateral Agreement on Investments (MAI) in the 1990s, including ‘MAI-free zones’); NGO networks like S2B were important not only for information-sharing but for strategic planning (Bollen 2018, interview with CEO representative, December 2017). Interviewees highlighted that the NGOs which had been working on investment and trade prior to TTIP took the lead in producing research, training and capacity-building for other NGOs (interview with CEO representative, December 2017; interview with Nature et Progrès representative, March 2017). In short, because many people were generally unaware of even the existence of ISDS, let alone what it was, NGOs’ first step was to inform each other and the public in order to prime the ground for public opposition. This in turn allowed NGOs to emphasise the aspects of the issue that they considered important for their campaign; in contrast to business groups, NGOs were active very early on ISDS, and were thus able to shape public debate on the issue.

At the same time as informing the public through reports and research, NGOs worked to politicise the issue of ISDS using strong symbolism and framing. Indeed, ISDS provide a good combination of ‘politicisable’ features: they are relatively unknown (for many people, this was the first time they had heard of ISDS); they feature large sums of money and corporate power; and they link to issues of democracy. A recurring image throughout the campaign was that of TTIP as a ‘Trojan Horse’, with hidden dangers that would only become apparent after the agreement entered into force. This referred particularly to the risk of regulatory chill posed by ISDS and regulatory cooperation. Notably, Friends of the Earth Europe took an eight-metre high inflatable horse on tour across the EU in 2014-2015 to raise awareness and publicity of TTIP in different countries, and similar horses appeared at protests in Brussels, Vienna and Paris. Although this symbol was used by EU and national NGOs, it is worth noting that this too related to the sharing of expertise by NGOs: the Trojan Horse symbol was used by Canadian NGOs to describe CETA as far back as 2011 (The Council of Canadians 2011).

Perhaps the most evident example of the potential drawbacks of combining inside strategies (particularly providing technical information) and outside strategies is the public consultation on ISDS of 2014. When the European Commission suspended negotiations to hold a public consultation on ISDS, NGOs organised a mass response to the consultation, in which members of the public could submit a pre-written response to the consultation through NGO websites. These pre-written responses were developed and checked with the help of NGOs with higher technical expertise on trade (representative from Nature et Progrès Belgium 2017, representative from CEO, interviews with author). The high number of responses led to the consultation website crashing and an extension of the response deadline. Out of the 149 399 responses to the consultation, 97% were against ISDS, and 131 352 (88% were submitted through the online platform set up by Friends of the Earth Europe and other groups (FOE EU 2014a). These automated responses fell into different batches: 70 000 were from 8 different NGOs, with each ‘batch’ containing similar answers to all 13 questions; 50 000 were submitted by one NGO, where questions 1-12 were answered with ‘no comment’, followed by individual answers

to the last question; 25 000 replies only answered question 13, the ‘own comments’ question (European Commission 2015a).

In short, NGOs used a tool which was originally created to ‘democratise’ expertise by getting the input of civil society groups and other stakeholders, to expand conflict, generate public debate and further politicise the topic of ISDS. They complained that while these consultation mechanisms are labelled ‘public’ and are an opportunity for citizens to participate in the policymaking process, the questions that they ask – and the expertise they seek – limit the ways that the public can participate. For example, the consultation did not ask *whether* ISDS should be included in TTIP but were limited to the technical aspects of how ISDS should look in the agreement. By ignoring the aim of the consultation and responding using mass mechanisms and opinion-based answers, NGOs rejected this format.²

While NGOs did have the technical expertise required to contribute to the public consultation – indeed, almost all of the groups also submitted their own individual responses to the public consultation, which contained more technical details – the point of the mass response to the public consultation was not to provide any sort of expertise, otherwise the responses would not have read ‘no comment’. Rather, the aim of the response was to signal the strength of public opposition to TTIP to policymakers, and to further politicise the issue. This led to strong criticism of groups’ ‘hijacking’ of the contribution process, with then-Commissioner for Trade De Gucht labelling the mass responses as an ‘outright attack’ (Jarvinen 2014). This underlines the risk involved in using politicising strategies, particularly the possibility of being cut out of the political process or losing legitimacy in the eyes of policymakers. The semi-hostile, contemptuous relation between the Commission and (certain) NGOs would continue throughout the TTIP negotiations.

Ultimately, however, NGOs were quite successful on the ISDS issue, with the European Commission scrapping the original ISDS plan when the acronym proved too toxic and creating a new ‘Investment Court System’ – although many NGOs agreed that this was ‘ISDS under another name’ (Cingotti et al 2016). This seems counterintuitive: NGOs were strongly criticised by both the Commission and other TTIP proponents, yet were still successful, highlighting the possible benefits of using outside strategies. In the next section we continue our discussion by reflecting on the flipside of the situation – the Commission’s contestation of *NGO’s* expertise – before a broader discussion of what this case can tell us about the choices groups have between politicisation and technical expertise.

² Of course, this leads to normative questions about whether the public *should* have a say in highly technical issues, and to what extent public consultations are a useful format for this type of topic – questions that are beyond the scope of this chapter.

Contesting the legitimacy of NGOs

While we have so far examined the strategies that NGOs used during TTIP negotiations, particularly how they contested the structure of policymaking and politicised the issue, it is interesting to examine the reaction of Commission and pro-TTIP groups, which retaliated by questioning NGOs' legitimacy and capacity to provide expertise. As we have mentioned, throughout the negotiations the Commission and other pro-TTIP groups accused NGOs of spreading myths and misconceptions about TTIP, generally referring to the frames that certain NGOs used to politicise TTIP and to gain a public following – emotive frames such as chlorine-washed chicken, hormone-fed beef or GMO maize making their way onto European supermarket shelves.³

Current Commissioner for Trade Cecilia Malmström, for example, declared in a speech that 'the price of admission to a discussion as important as this is that you base your arguments on facts, not distortions' – an at least implicit accusation of NGO falsehood (Malmström 2015). Other TTIP advocates went further in their reports and position papers, accusing NGOs of 'simplistic narratives on TTIP' and 'provoking emotional responses among citizens by spreading lies, myths and anti-TTIP hate speech on the Internet and beyond' (Bauer 2016b, p.207) or using 'catch phrases...based on myths, fear-mongering and creative guesswork' (Bauer 2016a, p.14). The breadth and quantity of these accusations was significant enough for Corporate Europe Observatory to write a report detailing (and refuting) the claims (Tansey 2017).

Another development linked to the politicised campaign against TTIP was the suggestions in the European Parliament's Budgetary Committee's own-initiative report on EU funding of NGOs. The most controversial paragraph of this text suggested that the European Parliament fund only NGOs which 'argue by means of verifiable facts', and 'reject any funding of organisations which demonstrably disseminate *untruths* and/or whose objectives are contrary to the fundamental values of the European Union, democracy, human rights and/or strategic commercial and security-policy objectives of the European Union Institutions' (European Parliament 2017). While this had been planned and prepared since before TTIP, MEP Tomáš Zdechovský (EPP), who helped in drafting the report, specifically mentioned NGO lobbying on TTIP as an example of situations that the regulation would prevent (Michalopoulos 2017). This shows that highly politicising campaigns like TTIP contributed to other actors' contestation of the legitimacy of (some) NGOs and their ability to produce expertise and participate in the policymaking process, essentially the culmination of the anti-NGO sentiment which grew throughout the TTIP negotiations.

Yet, as discussed above, NGOs have now been permanently included in the Expert Group on EU trade agreements, and they were, by all accounts, quite successful in changing TTIP. In the final section, we

³ See e.g. the Commission's *The top 10 myths about TTIP: separating fact from fiction* (available at http://trade.ec.europa.eu/doclib/docs/2015/march/tradoc_153266.pdf).

discuss why this might be and reflect on the broader lessons it can show us about the link between politicisation, expertise and contestation.

Anti-TTIP campaigns, politicisation and the contestation of expertise

NGOs had both technical expertise and the ability to frame TTIP to draw public attention to and politicise the issue, and they used both types of strategies, as discussed above. This led to some choices which can be seen either as a trade-off or as complementary.

As we have highlighted, each time a group lobbies it faces a choice between aiming to draw public attention to an issue and to provide their expertise directly to policymakers (although the two are not necessarily mutually exclusive). Both may have advantages: providing technical expertise is a means to gain access to policymakers, but politicising an issue may be important for smaller groups or minority groups with less structural power to have their voice heard, particularly in issues traditionally dominated by larger or more resourceful business groups. Moreover, while inside strategies are useful for incremental change such as changing details of a proposal, they are not as useful for disruptive change such as rejecting or stopping the proposal altogether. For this sort of change outside strategies may be necessary to show that ‘public’ opinion supports change and to break with the status quo.

When choosing to politicise an issue, however, groups also face drawbacks: using outside strategies to politicise an issue may make future inside strategies and technical expertise more difficult as a group loses legitimacy in the eyes of policymakers – seen in the TTIP debate by the reactions from the Commission and pro-TTIP groups questioning NGOs’ legitimacy because of the ‘myths’ and narratives that the NGOs were using. Moreover, once an issue is politicised, the debate moves to a public level and a larger scale with more simplified messages, again contributing to a potential loss of legitimacy due to the move away from technical expertise.

While NGOs’ legitimacy was questioned during the TTIP campaign, they were also successful on several fronts. Specific aspects of TTIP – such as the ISDS chapter explored above – were blocked and eventually fell through, and the TTIP negotiations had stalled even before the US elections at least partly because of public resistance. Moreover, NGOs were included in the policy process through the TTIP Advisory Group. As we have already highlighted, this has been institutionalised beyond TTIP into the Expert Group on EU Trade Agreements, in which 10 of the 28 members are NGOs and 4 are trade unions. While we cannot expect to see the same broad mobilisation in all trade negotiations, the institutionalisation of civil society’s participation and the 50/50 split between civil society and business indicates at least an outward shift in approach towards future trade agreements.

What can this tell us about how politicisation and NGOs’ contestation of expertise more generally? First, TTIP shows the importance and utility of politicising an issue for groups with less structural power. Certain groups such as CEO and the TNI had been working on multilateral investment

agreements for decades and had thus gained expertise in working on these topics; however, prior to the ‘hijacking’ of the public consultation and the emergence of ISDS as an issue in the public sphere, the Commission could more easily ignore the submissions of these groups. Politicising the issue and creating public debate made their message impossible to ignore, as it meant that their members and followers were essentially following what the Commission would do. Moreover, as we discussed in the section on ISDS, politicisation seems to have been the only way to create more radical change (i.e. removing or radically altering ISDS from the proposal), as the public consultation mechanism in itself only asked about technical details. Using outside strategies thus helped groups to create radical change.

Second, TTIP seems to provide some evidence for a radical flank effect. Despite pro-TTIP parties’ criticisms of NGOs, NGOs were included in the TTIP Advisory Group and are now in the Expert Group on Trade Agreements. However, the groups included in these advisory bodies tend to be more moderate groups, which do not generally run strong outside campaigns and did not do so during TTIP. For example, the TTIP Advisory Group included BEUC, Transport and Environment and the European Environmental Bureau – three NGOs with high levels of technical expertise, a history of working with the institutions’ advisory bodies and of (generally) avoiding outside strategies. The groups which led the Stop TTIP coalition (notably Friends of the Earth Europe, TNI and CEO) and whose pressure on issues of transparency led to the creation of the group were not included in the advisory group.

The public debate that more radical groups generated around (transparency in) TTIP meant that the Commission was essentially forced to increase transparency and civil society participation in the policymaking process, leading to more moderate groups’ inclusion. Politicising the issue was thus structurally beneficial for the anti-TTIP movement as a whole, even if more radical groups’ legitimacy vis-à-vis policymakers was undermined. However, these groups have less to lose from this, as their legitimacy in the eyes of institutions may be less important than legitimacy in the eyes of their members. This reiterates previous findings that groups for whom members are more important choose strategies with not only policymakers but also the public in mind.

Conclusion

In the introduction to this book the editors suggest that expertise can be contested in three ways: epistemically, through a discussion of the facts; structurally, by drawing attention to how the facts were created; or politically, through strategic framing and rhetoric. This chapter has shown the contradictions and complementarities involved in NGOs’ use of these three forms of contestation during their campaigns against TTIP. Their calls for transparency were based on structural critiques of the actors involved in creating trade policy, while they simultaneously politicised issues within TTIP, using strong symbols to play upon the public’s emotions and draw attention to the topic. Finally, NGOs also contested standard expertise on trade policy, contributing to consultation and drawing upon their own

past and ongoing research. An analysis of the case of TTIP has shown that rather than being mutually exclusive or detrimental to each other, these types of contestation complemented each other.

Providing and contesting expertise is a vital part of lobbying, and when an issue is politicised it can affect the types of strategies that groups can use. Politicising an issue can be a powerful way to draw public attention and change policy, particularly when social media and the ‘echo chamber’ effect lends itself to polarising opinions. In TTIP, the politicisation of technical issues like ISDS made the NGOs’ message unable to be ignored, and ultimately successful. However, these effects seem to have taken place among different groups in the coalition: more radical groups put pressure on policymakers, drawing public attention to the issue and creating the possibility for more moderate groups to be included in policymaking (in the Advisory Group on Trade) as a way to appease the movement’s demands. Nonetheless, choosing to politicise an issue also has its risks. In TTIP, it seems to have led the Commission and business groups to attack NGOs’ legitimacy by calling into question their expertise, proving that there is a fine line between providing information to citizens and providing strategically-framed information to convince people to participate in a campaign. Thus, while taking a political route to contest expertise may be effective for a group with less structural power, it is also risky.

Of course, TTIP is rather an extraordinary case, so a discussion of the external validity and generalisability of this case is warranted. TTIP was almost unprecedented in the EU for the amount of public attention that it drew and also for the fact that it was the first time that there had been such an EU-wide movement, as highlighted by interviewees and shown by the size of the Stop TTIP coalition. Nonetheless, there is no reason to think that the mechanisms at play here would not also apply to other trade agreements – and indeed to other policy debates involving expertise – *if* groups are able to politicise the issue. This condition, however, is quite a difficult one to fulfil, as most policies and trade agreements do not contain the right elements to become politicised and capture public attention for long enough for this sort of campaign. Other FTAs being negotiated at the same time as TTIP, such as EU-Japan and EU-Singapore, did not reach the same level of public attention. While this is partly because they are economically smaller countries than the US and because the trade agreements themselves were not as deep (De Ville & Siles-Brügge, 2017), it is also because of the “perfect storm” of issues involved in TTIP, from fears of the US to big business and regulatory laxity (Gheyle 2016). Interviewees pointed out that even CETA, which was subsequently drawn into the debate on ISDS, was only really politicised after the debate began on TTIP. Thus, while it is relatively rare for policies to face the same level of politicisation as TTIP, there is no reason for the relation between politicisation and contestation of expertise to be any different. Indeed, past politicised debate over GMO authorisation and the recent reauthorisation of glyphosate in the EU shows that similar mechanisms apply in more scientific policies as well.

Furthermore, while we have referred to the stalling and ‘failure’ of TTIP and attributed this partly to public campaigning by NGOs, we should be wary of attributing success too quickly. There were many contributing factors to TTIP’s demise, including internal issues – election year in the US and the ‘Brexit’ vote in the UK meant that both negotiating parties had other priorities. Moreover, concerns about the level of business lobbying in the US led to reluctance from certain EU countries and slowed negotiations. We can, nonetheless, point out that without NGOs’ “noise” during the negotiations, it is likely that certain compromises would have been reached, which became impossible after the public campaign. Certainly in the case of ISDS, for example, NGO campaigning was a decisive factor in preventing the chapter’s conclusion. While it is important to take any declarative claims of success with a grain of salt, NGOs certainly did have some impact on bringing these issues to public attention and, ultimately, in holding up the negotiations.

In this chapter we have worked towards a deeper understanding of the role of politicisation in the contestation of expertise in a non-typical case study, trade, which can nonetheless highlight the importance of expertise in a broad range of policy areas. Understanding politicisation’s effects on the ways that expertise is contested, including how it can include the public, is important in today’s highly polarised political atmosphere for various actors. Policymakers should be aware of public opinion and the potential pushbacks against their actions when issues are highly politicised. NGOs and other lobby groups should realise how politicisation may help (or hinder) their cause and lead to success – but also other groups to contest their legitimacy. Finally, researchers should continue researching the processes of politicisation, including the factors that make politicisation more likely, how it plays out in real policy debates, and the ways that politicisation and expertise interact.

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