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A political economy of the European Union's timber regulation: Which member states would, should or could support and implement EU rules on the import of illegal wood?

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ABSTRACT

In 2010 the EU Timber Regulation was passed into law supported by a large majority of EU member states. The stated purpose of the Regulation was to prohibit the placement of illegally produced timber within EU markets and thereby promote more sustainable management of the world's forests. Drawing on sixty interviews and written records from nine member states across the EU, we identify variables to explain differences in the levels of political support, and formal and practical implementation of the Regulation. Through systematic assessment, we find that countries that are relatively wealthy, are significant importers of high risk wood, and that have active civil societies were most likely to support the Regulation and to implement its requirements in a timely manner. In contrast the poorest countries least engaged in high risk imports face the greatest challenges with compliance, suggesting an unequal distribution of costs relative to responsibilities.

1. Introduction

The EU Timber Regulation (EUTR) is part of a suite of international initiatives that aim to promote sustainable forestry and forest industries by removing illegal timber from global supply chains. These illegal logging initiatives have gained widespread support among environmentalists, industry and governments (Sotirov et al., 2017), and thereby raised hope of internationally coordinated action in a sector historically plagued by stalemate (Humphreys, 2006). The EU is a key player in these efforts, and passed the EUTR in 2010 to prohibit the placing of illegal wood on EU markets. The EUTR entered into force in March 2013.

The literature cites a number of reasons for the growing political momentum behind illegal logging initiatives like the EUTR. Their early roots can be traced to global concern over the loss of tropical forests, which reached a peak of 16 million hectares per year between 1990 and 2000 (FAO, 2011). While much of this loss was due to agricultural expansion, timber harvest has played a facilitating role (Meyfroidt et al., 2010). In the 1990s, efforts were made to launch an international forest convention to stem forest loss, but decades of debate failed to produce agreement (Dimitrov, 2005). Meanwhile, in the early 2000s, international attention began to shift towards the more narrowly

defined issue of “legality”. Estimates emerged that nearly half of the logs harvested in some of the world's most forested countries were felled illegally (Lawson and MacFaul, 2010), leading to conclusions that addressing illegality would be an effective way to improve environmental and social sustainability (e.g. EC, 2010; Kleinschmit et al., 2016).

As the new illegal logging initiatives emerged, they differed in several important ways from earlier international strategies. In addition to their narrower focus on legality rather than sustainability (Sotirov et al., 2017), they set narrower political boundaries at national or regional rather than global levels, thus making it easier to reach common agreement (McDermott, 2014). Rather than challenge sovereignty through demands to meet a binding global agreement, they focused on helping states reinforce their own laws. These efforts also uncovered shared interests between industry and environmentalists – timber companies that could easily verify their legality held a competitive interest in squeezing out illegal timber; while environmentalists saw new leverage to protest destructive forest practices (McDermott, 2014; Sotirov et al., 2017).

But just how widely shared are these interests, and what similarities and differences among countries and stakeholders emerge in the process of translating the broad concept of ‘legality’ into particular sets of

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binding requirements and practices? The EUTR, as outlined in Regulation No. 995/2010, is distinguishable among the growing range of illegal logging initiatives, in that it is a unitary supranational regulation devised and governed by the EU. As such, it requires shared responsibility and multi-lateral cooperation among the EU institutions and the twenty-eight EU member states. Similar to national initiatives in the US (the 2008 amendment to the Lacey Act) and Australia (the Illegal Logging Prohibition Act), the EUTR imposes a ban on the market entry of wood produced in a way that violates the laws of the country of origin. Likewise, the EUTR is binding in its entirety and directly applicable to all EU member states. But unlike the US and Australian national initiatives, the implementation of the EUTR requires that all of the twenty-eight EU member countries translate and enforce it within their particular national legal and policy contexts. It is therefore possible to examine the power and interest dynamics that differently shape levels of support, formal and practical implementation across diverse EU countries (Sotirov et al., 2017). Is there a confluence of interests and consensus at the level of EU member states, similar to those observed in the US, for example (Cashore and Stone, 2014)? What factors have shaped EU member state support for the EUTR, as well as the timeliness of its formal implementation and effectiveness of practical enforcement? And finally, what are the implications regarding the overall efficacy or equity of the EUTR? We argue that these larger questions of efficacy and equity are particularly timely given the ‘win win’ rhetoric surrounding the illegal logging movement (McDermott, 2014), coupled with growing debates over equity within the EU (e.g. Asteriou et al., 2014, Busemeyer and Tober, 2015) and beyond (e.g. (McDermott et al., 2013)).

The literature on Member State support for and compliance with EU regulations has varied in its emphasis on power and interest dynamics versus more technocratic or cultural explanations. A large body of work involves comparisons of the institutional ‘fit’ of EU policies with Member States’ domestic institutions, hypothesizing that the comparative cost or ease of domestic implementation explains state differences (e.g. (Knill and Lenschow, 1998, Borzel and Risse, 2003)). Similarly, theorists have argued that ‘command and control’ approaches, which characterize the EUTR’s ban on the market placement of illegal timber and its various institutional requirements, often result in less institutional change and cross-national convergence in implementation than alternative ‘communicative’ or ‘competitive’ approaches, owing to their relative costs of compliance (Knill and Lenschow, 2005).

While these assessments of institutional fit and associated costs provide important insights, their failure to consistently explain differences among Member States has spurred calls for more attention to the power and interest dynamics that shape state response (Mastenbroek, 2005). Accordingly, our paper adopts a political economy approach, drawing on literature that identifies various market and political factors shaping state and industry support for environmental policies in the EU (e.g. (Borzel, 2000, Bailer et al., 2014), and globally (e.g. Cashore et al., 2004; Humphreys, 2006)). We recognize that domestic politics hold sway across all phases of the policy process. Hence we compare Member State actions in relation to the EUTR holistically across multiple policy stages: from initial political support or opposition to the regulation (i.e. votes for or against the EUTR in the formulation stage), to formal implementation (i.e. the transposition/specification of EUTR rules into national legislation, additional national provisions in relation to procedure and enforcement) and practical implementation (i.e. the application of resources and actions to put rules into practice, monitoring and enforcement of target group behavior).

In the process of identifying variables that might affect the likelihood that a country *would* effectively implement the EUTR, meaning that they face the strongest incentives to do so, we also consider the relevance of the EUTR to a particular country, i.e. the degree to which they *should* implement it, that is the degree of their responsibility for bringing illegal wood into the EU. We hold that countries who import the largest volumes of illegal wood are responsible for the majority of

the ‘problem’ this trade imposes worldwide. While major importing countries will likely face higher implementation costs due to the size of their imports, countries with low levels of imports are still burdened with the significant costs of establishing and maintaining an effective EUTR infrastructure. Finally, by including relatively poor countries from Southern and Eastern Europe, we highlight the issue of governance (i.e. regulatory and industry) capacity, i.e. the degree to which they *could* implement the EUTR. We conclude by arguing for the importance of would, should and could questions in understanding the formulation and multi-level implementation of EU policy outcomes.

2. The analytical framework

There is a large and growing body of research explaining differences in support for, and implementation of, regulations and standards across EU countries (Borzel, 2000; Knill and Lenschow, 2005; Falkner and Treib, 2008; Bailer et al., 2014) and the forest sector (Cashore et al., 2004; Humphreys, 2006; Overdevest and Zeitlin, 2014). This paper’s analysis draws, in particular, on the work of Cashore et al. (2004), Borzel (2000) and Bailer et al. (2014), who identify specific market and political variables that we argue are of particular relevance to the EUTR. Cashore et al. (2004) have focused on the global uptake of forest certification, a non-state, market-driven system of environmental standard-setting, auditing and labeling. For example, they consider how a country’s import or export dependence shape industry receptiveness to certification. In a complementary manner, Borzel (2000) and Bailer et al. (2014) have examined variables that explain differences in Member State support for EU legislation, including policy salience and the costs of adoption for governments and domestic industries.

While a review of the literature suggests that certain market, political and structural logics may influence state regulations and market-based certification in similar ways, mandatory state-based instruments are unique in holding the sovereign authority to enforce compliance across an entire sector. This raises unique normative as well as strategic issues. In particular, it highlights the question of which countries bear the greatest responsibility or “should” support and implement the EUTR from the perspectives of equity and effectiveness. The core goal of the EUTR is to ensure that wood sourced from illegal logging is not placed on the EU market (EC, 2010). As such, it stands to reason that those EU countries involved in importing the greatest amount of wood which is considered at ‘high risk’ of illegality, i.e. originates from a country where illegal logging is widespread (EC, 2016),¹ would be most responsible, both strategically and ethically, for ensuring that the EUTR achieves this goal.

While this generally suggests that import dependent and relatively wealthy countries who are most responsible for the problem ‘should’ support and implement the EUTR, there are additional reasons why perhaps they ‘would’. Firstly, their leading role in importing high risk products increases the domestic policy salience of the EUTR, and hence the likelihood of domestic mobilization and pressure to address the issue through compliance (Borzel, 2000). Secondly, and as argued by Cashore et al. (2004) in the context of forest certification, domestic forest industries are relatively less influential in import-dependent countries, and hence hold less power to resist civil society pressures on their industry.

In contrast, export dependent countries and/or countries with relatively strong domestic industries might be more likely to resist international regulations that could threaten their access to external markets.

Of course the perceived levels of such threat will depend, to some

¹ The cited European Commission guidance document lists several other factors that determine levels of risk, including the reputation of the companies involved and the complexity of the supply chain. However, and as further outlined in our methods section, the focus of this paper is on the primary, national-level dynamics that may predict a Member State’s support for, and compliance with, the EUTR.

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