Protecting "First world" markets and "Third world" nature: The politics of illegal logging in Australia, the European Union and the United States

Sina Leipold[a,*], Metodi Sotirov[a], Theresa Frei[a], Georg Winkel[a,b]

[a] Forest and Environmental Policy Group, Institute of Environmental Social Sciences and Geography, University of Freiburg, Tennenbacherstr. 4, 79106 Freiburg i. Br., Germany
[b] European Forest Institute, Yliopistokatu 6, 80100 Joensuu, Finland

ABSTRACT

Global forest governance has recently seen the emergence of a timber legality regime. In an aim to regulate global timber trade flows, the US, the EU and Australia adopted laws prohibiting illegally harvested timber from entering their markets. While some view this as a milestone for environmental and social stewardship in the global forest sector, the effects of the regime remain contested.

In order to better understand likely effects of the regime, we apply the Discursive Agency Approach to analyze discursive dynamics of policy making among the stakeholders involved in the creation of each law and their effects on governance design and implementation.

Based on 120 interviews in the US, Australia, the EU and with global organizations/institutions, as well as 19 informal conversations, 300 documents, and participant observation data, our results show that legality is a powerful concept in forest governance. Drawing attention away from sustainability, it enables discursive divides between the global North and South as well as between wood producers and importers. These divides were crucial for the emergence of the legality regime. While some forest industry groups perceived the new laws as an opportunity, others saw them as a threat. In all three regions this led to coalitions between supportive industry factions and environmental groups. These coalitions were based on a complementarity of goals; environmentalists aimed to protect "Third World" forests while industry groups aimed to protect "First World" markets against growing competition from these former regions. Yet each coalition was composed differently and employed distinct – albeit related – discursive strategies in policy making. This affected the design of each law and its implementation. The shift from sustainability towards legality re-surfaces prominently in implementation. Stakeholder discussions range from coercive "threatening" to more learning-oriented "educating" approaches. We conclude by discussing the effects these discursive struggles in Australia, the EU and the US have on the global timber legality regime.

© 2016 Elsevier Ltd. All rights reserved.

1. Introduction

Illegal logging is often associated with deforestation and societal conflicts in tropical countries. The issue has been high up on the global forest policy agenda since the late 1990s, spurring global policy initiatives aimed at improving law enforcement and governance in countries producing (and exporting) tropical hardwood by promoting voluntary private governance and soft law (Humphreys, 2006). Since 2008, however, global attention has gradually shifted away from such voluntary governance schemes in "producer countries" towards legally binding policies in "consumer countries". In 2008 the US amended the 1900 Lacey Act with the adoption of the Legal Timber Protection Act (LTPA). This was quickly followed by the European Union's Timber Regulation (EUTR) in 2010 and the Australian Illegal Logging Prohibition Act (ILPA) in 2012.

All three policies prohibit placing timber harvested in contravention to the laws of the country of origin on the respective market. To ensure compliance, the policies require economic operators to exercise due care (LTPA) or due diligence (EUTR, ILPA). All three policies aim to restructure the global wood (products) trade for environmental and social benefits by closing off key markets for illegal wood; hence they are portrayed as jointly

* Corresponding author.
    E-mail addresses: Sina.Leipold@ifp.uni-freiburg.de (S. Leipold),
Metodi.Sotirov@ifp.uni-freiburg.de (M. Sotirov), Theresa.Frei@posteo.de (T. Frei),
Georg.Winkel@efi.int (G. Winkel).

constituting an emerging "timber legality regime" (Bartley, 2014; cf. also Overdevest and Zeitlin, 2014).

The importance and effect of this regime are subject to controversial debates. Some portray the regime as potentially compensating for an up-to-date missing global forest convention, with some scholars expecting an enhanced promotion of "environmental and social stewardship in the forest sector" (Cashore and Stone, 2012: 1) or the reinforcement of forest certification (Overdevest and Zeitlin, 2013; Kistenkas, 2013; Cashore and Stone, 2012). Others, however, point out the narrow perspective of legality (instead of sustainability, Bartley 2014) or indicate possible adverse effects such as "disproportionate burdens on smallholders" (McDermott et al., 2015: 8) or incentives for "governments to weaken their laws" (Bartley, 2014: 105).

According to Overdevest and Zeitlin (2014): "[t]he keys to evaluating the effectiveness of such regime complexes lie in whether progress is made towards achieving the desired performance goals [. . .]" (p. 44). As the global timber legality regime emerges from three distinct (supra-)national policies (LTPA, EUTR, ILPA), performance goals are likely to vary across policies and jurisdictions. Such goals and their link to governance and implementation, however, have yet to be systematically analyzed. We argue that without understanding the specific goals of the three distinct policies (in Australia, the EU and the US) that constitute cornerstones of this emerging global regime, and the underlying worldviews and strategies of the involved stakeholders, one cannot assess possible effects of the regime.

The academic literature on the LTPA, the EUTR and the ILPA is dominated by legal studies (Saltzman, 2008; Pryce 2012; Levashova, 2011; Tanczos, 2011; Waite, 2011; Brack et al., 2012; Fishman and Obidzinski, 2014). Political science literature on illegal logging policies focuses on previously launched soft-law initiatives, such as the EU Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan, their effects in "producer countries" (e.g. Brack, 2005; Attah et al., 2009; Marfo and Mckeown, 2013; Van Heeswijk and Turnhout, 2013; Overdevest and Zeitlin, 2013; Wiersum et al., 2013; Carodenuto and Cerruti, 2014; Nathan et al., 2014; Tegegne et al., 2014; Nurrochmata et al., 2014; McDermott, 2014; Carodenuto and Ramcilovic-Suominen, 2014; Wodschow et al., 2016) and their domestic interaction with forest certification (Gavrilut et al., 2016). Few studies engage with the policy-making processes in the regime's countries of origin. Those who do, focus on the US LTPA (Tanczos, 2011; Cashore and Stone, 2012, 2014; Leipold and Winkel, 2016b). To fill this research gap, this paper poses three distinct questions:

1. Who are the agents that pushed or opposed the new illegal logging policies in Australia, the EU and the US, and how do they compare across the three regions?
2. How do policy discourses, and the discursive and governance strategies of supporters and opponents of the respective policies, compare across the three regions?
3. What can we learn from comparing the emergence and implementation of illegal logging policies in the US, the EU and Australia regarding the effects of the new global timber legality regime?

Hence, this papers aims to complement the emerging literature on the effects (or influences, cf. Bernstein and Cashore, 2012) of the legality regime, which has so far largely focused on perspectives of the "Global South" (cf. Bartley, 2014; McDermott et al., 2015; Lesniewska and McDermott, 2014; Cashore and Stone, 2014, for a wider regime-perspective cf. Giessen 2013). We offer a comprehensive analysis of the policy-making and emerging implementation in the countries/regions where the regime was constituted.

2. Analytical framework

This paper applies the Discursive Agency Approach (DAA) (Leipold and Winkel, 2013). This approach is rooted in the tradition of interpretive policy analysis (cf. Fischer and Forester 1993; Yanow, 2000) and, more specifically, interpretive discourse analysis. The DAA is an analytical heuristic that partly draws on existing concepts such as Maarten Hajer's concepts of discourse and discourse coalitions (Hajer, 1995, 2006). In contrast to what can be largely observed in the research practice of interpretive policy discourse analysis (Winkel, 2012; Leipold, 2014), however, the DAA emphasizes agency in discursive politics instead of focusing predominantly on discursive structures. For this purpose, it offers a comprehensive set of analytical concepts to make agency accessible for empirical analysis.

In line with other interpretive discourse approaches, the DAA understands policy making as a process of agents struggling to establish their particular political truth. Political truth is formed and expressed through policy discourses, which contain problematizations, (policy) solutions and responsibilities. With this emphasis on agents' discursive means of policy making, the DAA may build a bridge towards critical rationalist approaches to policy analysis, similar to efforts made by Arts and Goverde (2006) or Winkel and Leipold (2016). To participate in a policy discourse, it is essential for actors to shape and take up specific subject (speaker) positions offered by the discourse to justify why they should have a voice in the matter. Subject positions are closely linked to a certain interpretation of the issue at hand, i.e. the particular political truth reproduced through discourses. Stakeholders create coherent story lines through which they interpret issues and ascribe certain characteristics to agents (themselves and others). In these story lines, agents are defined via a set of characteristics and their strategic practices. Politics, then, is about gaining or losing ground as a relevant speaker in a struggle over interpretations. Being perceived as a relevant speaker offering a relevant political truth in a policy discourse is what is understood as discursive agency. Discursive agency is thereby conceptualized as being "trialectic", i.e. agency unfolds through the dialectic interplay of (discursive) structures and actors while being interpreted by the researcher (cf. e.g. Foucault, 1982; Laclau and Mouffe, 1985, 1990; Fairclough, 2003, 2005). The DAA hence analyzes policy making through the eyes of involved stakeholders and attempts to understand how their interpretations develop a collective logic and dynamic – the discourse – that shapes political outcomes and implementation practices. This discourse on policy outcomes and implementation, in turn, influences perceptions of governance effectiveness.

To achieve discursive agency, agents strategically engage in the management of political debates (Leipold and Winkel, 2013). They engage in a discourse by ascribing particular (individual and/or positional) characteristics to themselves and others, thereby creating subject positions. In doing so agents employ distinct strategic practices to create and institutionalize their preferred political truth and their associated policy identity. First, coalition building refers to the strategic alignment of different agents through shared story lines. Second, discursive strategies encompass all language and symbol-bound activities that aim to create (or prevent) the need for (specific) policy intervention. Finally, governance strategies (and the closely related organizational strategies) target a restructuring of governance arrangements, including the organization of the state and bureaucracy to the perceived advantage of a specific agent (cf. Leipold and Winkel, 2016a, for a comprehensive list of strategies see Leipold and Winkel, 2013; an early version can be found in Winkel 2013).