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**EU Forest Law Enforcement, Governance and Trade Action Plan creation: dynamics between and beyond EU institutions.**

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Abstract:

This article provides a diachronic study of the creation of the EU Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan (AP). Set up in 2003, the FLEGT AP (and subsequent FLEGT Regulation) aims at tackling deforestation in timber producing countries by ameliorating local forest governance and law enforcement. In turn, countries that adopt a FLEGT bilateral partnership agreement get eased access to EU market. FLEGT AP creation is puzzling in three regards: the discrepancy between EU claimed ‘effective multilateralism’ and adoption of bilateral agreements with timber producing countries; the negotiation burden of negotiating a new political setup in a fragmented context; and the creation of a new setup considering how low politics forests were in early 2000s.

To solve these puzzles, I identified four causes that theoretically contribute to the creation of the FLEGT AP: EU ambition, EU isolation from the international context, EU relative bargaining power and EU internal unity. Relying interviews, and primary and secondary literature, the paper carries out minimalist process-tracing analysis delving power dynamics between and beyond EU institutions. Three causes are confirmed (ambition, relative bargaining power and unity), one is disconfirmed (isolation). Conclusions also dissipate the clouds surrounding the three initial puzzles.

1. Introduction

Entrenched in a vibrant international context striving for sustainable tropical forest management, the EU stepped forward substantively in this issue in 2003, with the adoption of its Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan (AP)[[1]](#footnote-1). The creation of the FLEGT AP is puzzling in several respects. First, there was a vivid interest and consensus on addressing deforestation through better forest governance and law enforcement. The ground was fertile for multilateral progress on sustainable forest management. Forest law enforcement and governance had been discussed by large in different international political locus (that I call venues) in late 1990s and early 2000s. The EU was not isolated in its interests but ended up adopting a bilateral framework to tackle deforestation through better forest governance and law enforcement. EU claimed ‘effective multilateralism’ regarding sustainable forest management was clear at the time of creation of the FLEGT AP. It generates discrepancy between EU discourse and actual policy. Second, the forest regime complex is fragmented. Fragmentation entails the presence of a large number of diverse international institutions (in terms of constituency and functional scope) managing forest issues providing as many possibilities for the EU to carry out external action. It then seems surprising that the EU would create a new external action venue, especially considering the already high negotiation burden brought by regime fragmentation. Third, considering the low political importance of forests at the time of creation of the FLEGT Action Plan, it is noticeable that the EU would engage in creating a new policy.

This article addresses these puzzles and explains why the EU sets up the FLEGT AP (Council, 2005). Recent research on FLEGT Regulation and subsequent voluntary partnership agreements (VPAs) revealed that despite the burgeoning literature on the issue, the puzzle behind the rationale of the creation of the FLEGT Regulation remains unanswered (Derous and Verhaeghe 2019). Derous and Verhaeghe claim that ‘FLEGT-related processes are ‘political in nature in several dimensions and would benefit from an analysis as such’ (2019: 81). Proof is the many FLEGT related articles stemming from technical journals, not political science journals.

Following a rationalist assumption, this papers displays a diachronic study of the creation of the FLEGT AP. Relying on semi-structured interviews[[2]](#footnote-2) with purposefully selected respondents and document analysis, I carry out minimalist process-tracing to dig up the power dynamics between and beyond EU actors and institutions in the decision to tackle deforestation bilaterally and the design of the FLEGT Regulation. I unravel four factors, related to the EU in its international context, contributing to explaining the creation of the venue. Inherent to EU functioning, EU unity is expected to contribute to the creation of the venue. Context-wise, EU ambition as compared to other members of the forest regime complex, EU isolation from other negotiators of the forest regime complex and EU relative bargaining power are also expected to do so.

Section 2 describes in more details the puzzles linked to the creation of the FLEGT AP. Then, section 3 delineates the theoretical framework (four factors expected to define EU venue creation), section 4 the research design (minimalist process tracing as research methodology and causes so-called ‘fingerprints’). In section 5, minimalist process tracing develops the story of the creation of the FLEGT Regulation. Section 6 confronts the narrative with the factors identified in section 3. Section 7 concludes.

1. Puzzles of FLEGT Action Plan creation

First, the FLEGT AP, that sets out the general objectives that are achieved by implementing the FLEGT Regulation, was created in an international context of vivid interest for tackling deforestation through better forest governance and law enforcement (Overdevest and Zeitlin 2015, Interviews 2, 3, 4, 6[[3]](#footnote-3)). Forest law enforcement, governance and related trade was quite a visible forest issue and debated in several political venues (mostly the International Tropical Timber Organisation [ITTO], the World Bank, G8, United Nations Forum on Forests [UNFF]) and transnational NGOs. Still, multilateral paths to tackle deforestation remained at discussion stage. I am wondering why, and whether the EU (which had an interest so clear that it created a bilateral scheme to tackle deforestation) could not have convinced interested international actors in creating a multilateral scheme. This being said, the EU still claimed engaging multilaterally (Overdevest and Zeitlin 2015: 140) despite its obvious bilateral engagement in the matter.

Second, venues discussing issues related to forest governance and law enforcement had different functional scopes and institutional arrangements. FLEG discussions had the potential to lead to fairly different outcomes emanating from these venues. The international forest regime complex is fragmented. Composed of overlapping, loosely coupled, sometimes contradicting sets of rules and principles that co-govern the forest issue area (Alter and Meunier 2009; Biermann et al. 2009; Drezner 2009), the fragmented forest regime complex is a vast environment for EU forest external action. In practice, it is made of several multilateral institutions (under UN umbrella: UNFF, CBD, FAO, UNFCCC, but also the ITTO, Forest Europe, even the World Bank), bilateral agreements and internal measures with extensive extraterritorial consequences (Pirlot et al., 2018). None is overseen by a forest convention to hierarchise and prioritise external action venues and related scope of action. Notwithstanding chaotic appearances and poor reputation (Biermann et al. 2009), fragmentation provides a flexible (Keohane and Victor 2011; Kuyper 2014; Morin and Orsini 2013) and enabling environment for actors to act externally, each venue representing a potential external action locus (Pirlot 2019). It provides the EU, as any external action actor, as many opportunities to engage in international forest politics (Pirlot 2019). Still, the EU created a new policy.

In this context, FLEGT AP creation is particularly puzzling since there already existed a multilateral agreement on forest sustainability and legal logging related to international timber trade. Since 1983, the International Tropical Timber Agreement[[4]](#footnote-4) binds tropical timber producing countries to trade timber harvested in legal and sustainably managed forests. VPA countries are ITTA countries as well (to the exception of Laos, that is not an ITTO member). One could argue that ITTA and FLEGT VPA objectives go in the same direction, questioning the necessity to create the bilateral venue, especially since VPA countries (to the exception of Laos) are also ITTA countries.

Each negotiation necessitates time, resources and commitment, that altogether produce a ‘negotiation burden’ (Muñoz et al. 2009). It comprises preparations, meetings, working groups, and all necessary staff to tackle these tasks over time. Moreover, knowledge and expertise is a prerequisite to participate fully in these negotiations. The fragmented forest regime provides a large array of external action venue, each venue able to tackle deforestation from a specific functional perspective. It is consequently already a negotiation burden, each venue necessitating (slightly or completely) different pace and expertise. The creation of a new venue only rises the negotiation burden of the EU.

Finally, I find intriguing that the EU engaged in the setup of a new external action venue considering how low politics forest governance was in early 2000s as compared to other political issues. One could argue that forest ecosystem services, such as climate change mitigation, biomass production or biodiversity preservation (some of them being salient issues within the EU and internationally, such as climate change mitigation), rely to some extent on forest sustainability. Enforcing good forest governance through legality principles then profits all forest functions. Political issues with a higher profile than forests could be tackled through the FLEGT Regulation, adding substantial value to the creation of the venue. It is nonetheless an idealistic perception of forest management. To put it simply, forests are multifunctional and do provide several ecosystem services, but can not fully serve several specific functions at a time (Bonsina 2011, Cassatella and Seardo 2014). A simple example: while VPAs are in line with reducing carbon emissions from deforestation and forest degradation (as testified by synergies developed by the VPAs and REDD+)[[5]](#footnote-5), forests grown for timber or carbon sequestration are composed of monocultural fast growing trees. These are not fit for preserving biodiversity. Biodiversity preservation necessitates another balance, involving other tree species and a different time perspective on forest growth. Hence, forests are indeed multifunctional, but forests grown for one purpose generally do not serve other forest-purposes. Hence, the EU can not logically rely on the ‘forest multifunctionality’ argument, rising the profile of forests in timber producing countries, to explain the creation of the FLEGT Regulation.

1. Causes, causal expectations and fingerprints

How can we explain the creation of the FLEGT AP? This section develops four theoretical causes (EU ambition, its isolation, relative bargaining power and internal unity) to its creation. The first three causes find their origins in the interactions between the EU and the international forest regime complex (answering more specifically the first and second puzzle). The last cause relates to EU internal power dynamics.

First, I expect that EU ambition contributes to explaining the creation of the EU FLEGT AP. Ambition conveys a will to go beyond existing measures, aiming for political change (Meunier 2000). For instance, the EU was ambitious when it stated a zero-net carbon emission target for 2050 a couple of months ago, as it is more demanding than current carbon emission targets. On the contrary, lacking ambition conveys status quo (Da Conceição-Heldt and Meunier 2014: 947). A good example was the initial refusal of the EU to enlarge carbon accounting to land use, land use change and forestry activities. Its ambition was consequently low on this point of discussion. In this paper, the EU being ambition means that, at the time of creation of the FLEGT AP, it wanted more than what the international forest regime complex offered. I expect that EU high ambition participates in explaining the creation of a bilateral venue, as existing venues would not allow the EU to meet its objectives. Indeed, ambitious preferences must attract the consent of other parties to be adopted (Keohane and Victor 2011: 16). A bilateral setting does not require the EU to appeal to the international community as a whole, only to one partner. Then a high ambition is more likely to be met bilaterally than multilaterally, explaining the creation of a bilateral venue.

Second, I assume that EU isolation on the international scene at the time of creation of the FLEGT AP contributes to explaining the creation of a new EU bilateral external action venue on forests. An external action actor is isolated when other international actors do not share its preference in a given venue. Regarding specifically this paper, the EU is isolated when other international actors do not share its preference for combatting deforestation through regulating forest law enforcement, governance and related trade. Like international institutions that do not operate isolated from one another (Raustiala 2013, Young 1996), external action actors can not operate in isolation from other external action actors. Isolation is not only about individual actors’ preferences. It also occurs within international institutions, where individual negotiators gather and pool their preferences to reach a position. In this regard, EU preference echoing the preferences of a venue does not mean it is echoed in all venues. The EU could be isolated in a given venue, but not isolated in another one, considering their respective membership and functional scope is different. This is particularly true in the forest regime complex, as it is highly fragmented. Isolation in existing venues supposedly contributes to the creation of an external action venue because it does not allow the isolated actor to pursue its preference. The isolated actor would then supposedly find an appropriate alternative venue to pursue its objectives, be it unilateral, bilateral or multilateral. Regime fragmentation has room for ‘small’ venue proliferation (Pirlot 2019). An isolated actor would then create a venue.

Relative bargaining power is the third context-related cause that contributes to explaining the creation of a the FLEGT AP. Bargaining power is understood as the ability of an actor to shape the content of negotiation outcome according to its own preference. Low bargaining power leads to limited results in terms of outreach in international negotiations (Jørgensen 2009, 203-207). In the context of this paper, the EU having a low relative bargaining power in a venue entails that it does not reach out to other negotiators. Alternatively, the EU would shift to an alternative venue, which is plausible in a fragmented regime such as the forest regime complex. But a venue in which the EU has high bargaining power may not exist, explaining the creation of a new venue.

Relative bargaining power has two interconnected dimensions. On the one hand, I contend that EU relative bargaining power is inversely proportional to the number of negotiation partners. As a consequence, the EU has supposedly a lower relative bargaining power in a global venue, where its bargaining power is more diluted, while it has a higher relative bargaining power in bilateral venues. On the other hand, the relative bargaining power of the EU also depends on who these negotiation partners are. Most forests addressed in the international forest regime are tropical forests. It makes tropical forest countries strong interlocutors in international negotiations. Non-forest countries allegedly have a lesser voice by lack of credibility on forest discussions. EU’s interlocutor consequently defines its bargaining power. It is in institutions with more limited membership that the nature of the negotiation partners matters the most to EU relative bargaining power, such as in the conduction of bilateral agreements. The second fingerprint for EU relative bargaining power is consequently the forest cover of the negotiation partner and whether ameliorating forest governance and law enforcement impact their forests, translating whether the forest is at the core of the negotiation stake.

Fourth, institutional unity is the last cause identified in this paper. It refers to the ability of EU institutions to adopt consistent preferences. I expect that unity participates to explaining the creation of a new external action venue. Preference disunity increases the propensity of disagreement between member states (Delreux 2009). As a result, accommodating numerous and potentially diverging interests is difficult, leading to a weak position that is reduced to a lowest common denominator (Bäckstrand and Elgström 2013: 1373; Kissack 2011) to be expressed externally. The internal lowest common denominator is necessarily reflected in a lack of external engagement from the EU (Macaj and Nikolaïdis 2014: 1074; Young 2011), resulting in a demand for status quo (Oberthür and Rabitz 2013: 6). On the contrary, preference unity, do not require member states to make concessions and adjust their preference. I transfer that logic to the EU level, considering EU modus operandi. Pooling EU actors preferences into a unitary preference may be a challenge. EU preference unity enables EU institutions to adopt a unitary approach on a given issue. The greater the number of interests, the harder it is to make a unitary preference (Snidal 1994). The potentially large number of DGs and of interested member states is likely to undermine EU preference unity. I expect that preference disunity pushes the EU remain in status quo, not able to engage in any kind of reform. On the contrary, preference unity allows the EU to agree on more far reaching external action, such as creating an external action venue.

1. Methods, fingerprints and data
   1. Methods: minimalist process-tracing

To unravel the underlying process of the creation of the FLEGT AP, I rely on minimalist process-tracing. Process-tracing aims at unpacking in detail individual cases, proceeding to the empirical chronological mapping of all mechanisms leading from a cause – or four individual causes - to an outcome (George and Bennett 2005: 206-7) – in this case the creation of the FLEGT AP. The analytical value added to process-tracing relies on its strong causal inference on how the unpacked process works. Case understanding ends up deep and sharp. This research relies on minimalist process tracing (Beach and Pederson 2019: 64-9). The intensity of process-tracing is thus limited, as well as the parts of the causal chain that is investigated. To put it simply, only the causes are investigated, let aside all the other parts of the causal chain leading to the outcome (Beach and Pederson 2019: 65-6). The figure below visually represents minimalist process-tracing.

Figure 1 Minimalist process tracing

Once causal links (section 3) and fingerprints (empirical elements that demonstrate the existence of the outcomes and the causes in the real world; section 4.2) are identified, systematic empirical testing relying on fingerprints reveals whether the theoretically-determined causal relation is validated or not (Beach and Pedersen 2016: 324) (section 5). Process-tracing then unpacks the thread from the cause (or a set of four causes in this paper) to the outcome, evaluating whether hypothesised evidences are actually found.

* 1. Fingerprints

This section identifies of the fingerprints of each cause. The outcome, venue creation, is identified relying on ‘trace evidence’ (Beach and Pederson 2019: 172). There mere existence of the FLEGT AP since 2003 provides proof of its creation at that time.

The four hypothetical causes to FLEGT AP creation necessitate fingerprints of another nature. ‘Account evidence’ (Beach and Pederson 2019: 172) accounts for the content of empirical material such as official documents, minutes, negotiations or discussions. EU ambition on a given issue is identified in relation to other international negotiators’ ambitions on the same issue. Knowing the international forest setting, meaning existing venues and their outcome, EU ambition is determined by comparing its position to the ambition of the issues discussed in the international forest regime. The content of international discussions (whatever the negotiation arena) on forest governance and related issues provide evidence for EU ambition. Initiatives in this direction of individual actors are also taken into consideration.

Isolation is observed by comparing EU preference to negotiation partners’ preferences, and by evaluating whether EU preference is reflected in an international institution outcome. Other fingerprints for EU isolation reside in EU’s contacts with its international environment on the FLEGT issue prior to the creation of the Regulation. I predict that in case of isolation, there would not have been carrying out international meetings and event on FLEGT related issues.

Each relative bargaining power dimension has its own fingerprint. The observed fingerprint of the number of negotiators is the number of negotiation partners. This information is found on the list of participants to a negotiation. Then, the second fingerprint for EU relative bargaining power is the forest cover of the negotiation partner and whether ameliorating forest governance and law enforcement impact their forests, translating whether the forest is at the core of the negotiation stake.

Lastly, EU unity is observed by comparing EU actors’ preferences. Preferences among Commission DGs that were involved and consulted, and Member states preferences are investigated. If they do not match, the I consider the unity low. If they are similar, hence not triggering painful debates, I consider EU unity high.

* 1. Sources and data

I rely on three types of sources. First, secondary literature (which constitutes the starting point of my analysis) brought in the main contextual phases of the creation of the FLEGT AP. Their input is however quite limited, revealing the grey zones I delve in this paper. Second, interviews were carried out with selected respondents. They provide an EU insider perspective, but also non-EU perspective on the context of creation of the FLEGT AP. Interviews are valuable because they provide first-hand information about the case, and allow to understand the creation of the FLEGT AP in a nuanced manner. Some stories are striking in unveiling EU processes and dynamics surrounding the FLEGT AP creation. Besides, interviews fill the gap sometimes left by primary and secondary literature. The third set of sources allow for a more objective and systematic data collection. Relying on primary documents, predominantly from the EU (mostly staff working documents and EU legislation), but also from forest-related international institutions and Earth Negotiations Bulletins. The constraint of using such documents is that they are not necessarily kept nor listed, leaving holes in the chronological sequence of the creation of the FLEGT. Overall, the three types of source filled the drawbacks of one another.

1. Empirical analysis

In early 2000s EU was entrenched in a burgeoning context of international initiatives striving for forest sustainability and legality. Some of these initiatives involved the EU, be it through the Commission or its members states, mostly through EU participation to multilateral processes. EU interests for forest sustainability, reformed governance and legal timber trade was embedded in multilateral dialogues from the G8, the International Tropical Timber Council (ITTC), the World Bank, but also in the setup of the UNFF. All were striving (to different extent) for forest sustainability through forest law enforcement and related forest products trade. The several initiatives reveal that the EU was not an isolated actor in its FLEGT endeavour, whatever the international institution or actor examined. Indeed, an isolated position would not have led to such keen interest from the international community, let aside the adoption of forest governance related rules. The EU had been active in these venues and the forest regime complex at large.

At the global level, some venues that could have an interest in forest governance and law enforcement belong to the United Nations realm (be them conventions: UNFCCC, UNCCD and CBD; or institutions: UNFF and FAO). The World Bank was also active on forests, and several global conventions (such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora and the Ramsar Convention on Wetlands) were agreed upon. In global venues, EU bargaining power was quite limited, its efforts being diluted in the mass of participants. Smaller committees also focused on forests, which were more amenable for EU relative bargaining power. The ITTO had 63 participants at the time. EU relative bargaining power turned out higher there. EU successive enlargements proportionally decreased the number of negotiation partners, as new EU member states shifted from negotiation partners to being part of EU numerical weigh. Interviews revealed that EU relative bargaining power ended up enhanced in ITTO and G8, but not in global external action venues, where a few states did not weigh enough to change EU bargaining power. The global nature of a venue eventually limits EU relative bargaining power.

Taking the identity of the negotiation partners into account does not make EU relative bargaining power more important. Forest governance and law enforcement issues are to be addressed mostly in tropical countries, which is a significant drawback to EU relative bargaining power. The argument of breach of sovereignty and subsequent non-tropical forest countries lack of credibility in discussing FLEG issues was stated recurrently (6, 8, 12). As an interviewee explained, tropical forest countries claimed that forests are ‘[their] forests, [their] business’ (8). While combining negotiation partners number and identity, multilateral venues allow tropical forest countries to coalesce, making their voice even stronger, consecutively lowering EU relative bargaining power in the international forest regime, and enabling the EU to reach its goals, eventually leading to the creation of the creation of a bilateral venue.

The first major international breakthrough came from G8 summits (Birmingham, 1998) and following Action Programme on Forest (Rayner et al. 2010: 29). The G8 pin pointed the necessity to identify illegal logging, track timber and prevent illegal timber to be traded. The initiative concerns both timber producing and consuming countries. It was also suggested to provide capacity building to producing countries in order to improve their forest governance. Following, the ITTC (ITTC 31) adopted in 2001 a decision on forest law enforcement to ensure forest production and trade sustainability. In 2002 (ITTC 32), it adopted a decision on forest law enforcement in Africa, for ameliorating forest management, and especially the management of protected areas. At a regional level, the World Bank coordinated regional programmes on forest law enforcement and governance in Asia and Africa (Rayner et al. 2010: 116). The 2001 Bali meeting issued a Ministerial Declaration (Rayner et al. 2010: 116) that is considered a major step forward for EU FLEGT initiative (1, 3, 4, 5, 8, 14). The Bali Declaration, resulting in an Asia FLEG (without a T) Task Force, stated that both producers and consumers had responsibilities in forest crime and that illegal logging and illegal trade can be tackled only by acting on both sides. All these initiatives testify that the EU was not the only actor striving for FLEGT objectives. I even suspect that such external kindling hastened EU process.

The Commission set out its intention to tackle illegal logging and related trade in its Communication towards partnership on sustainable development (COM(2002)82). During the World Summit for Sustainable Development (Johannesburg, 2002) the Commission made its endeavour explicit by presenting it to the international community. Meanwhile, Denmark presidency and the Commission hosted a side event on tackling illegal logging (Commission Staff Working Document 11656/04 Annex 3, COM(2003)251: 11), attesting EU commitment to forest governance related to trade. Timber producers and consumers were both represented. It seems that all participants agreed on the need for the producers and consumers to work hand in hand to tackle illegal logging and related trade (COM(2003)251: 24). The EU eventually adopted the FLEGT AP in 2003.

The involvement of Asian and African countries to the side event, but also of other international actors such as NGOs (Commission Staff Working Document 11656/04 Annex 3), shows that the EU had allies in the international forest regime. At the time of creation of the FLEGT AP, the EU built alliances with countries in a rather consistent manner through external action forest venues, revealing that the EU was not isolated on the international forest regime complex. Interviews indicate that the EU belonged to alliances of like-minded countries in most venues of the international forest regime complex (8, 9, 11, 12, 14, 15), principally the ITTC, the UNFF, the CBD, and Forest Europe to a lesser extent. These countries are consistently the same, that gather under the labels ‘North countries’, JUSCANZ or ‘timber consumers’. In these venues, the EU was also able to reach out to South countries, the most important timber producers, Brazil being a systematic exception (1, 8, 9, 17, ENB). The limit of EU reach out lied in the two bloc dynamic of most international venues on forests. Even if not all issues were shared by all EU allies, but it never isolated the EU. I deduce that EU (lack of) isolation does not contribute to explaining the creation of the FLEGT AP.

Transnational NGOs and the timber industry were also proactive to lead the EU towards the adoption of the FLEGT AP. It was a deliberate effort from NGOs to push the issue to EU’s agenda to take action to combat deforestation and related timber trade (1, 2, 3, 4, 5, 8), not only in the form of an action plan (which is basically a Communication), but mostly though adopting legal instruments to implement it. The ITTO could have been lobbied as well, considering its functional scope and apparent interest in forest law enforcement and governance. It was thought by NGOs to be too close to industry, and had a poor reputation when it comes to environmental standards (1, 4, 17). The Chatham House[[6]](#footnote-6) and Fern[[7]](#footnote-7) adopted in 2000 reports pushing the EU to tackle not only illegal logging, but also timber consumption as drivers of deforestation. As an EU policy officer put it: ‘Timber trade and timber demand [were] identified as part of deforestation problem, therefor they [could] be part of the solution’ (1). The EU being a net importer of tropical timber, this report put the EU in a position of responsibility (2, 4). It was called to do something about the impact of its imports on deforestation. It adopted the same perspective as the Bali Declaration: deforestation linked to timber trade, as opposed to deforestation linked to only illegal logging. Most generally, the FLEGT AP and its VPAs gave a much sharper focus to EU external action on forests. As compared to what existed at the time (under the UNFF, the FAO, the Rio Conventions, the ITTO), the FLEGT AP engaged the EU in a clear and more ambitious manner. The Indonesian Minister for Forestry even paid a visit to Brussels to meet DG Relex, DG Trade and DG Devco, in order to influence EU commitments to FLEGT (3), following UK engagement to tackle deforestation in Indonesia partly from its timber demand standpoint. Stemming from this, DG Relex crystallised EU commitments to tackle illegal logging (3).

DG Relex started as a ‘*chef de fil*e’ (3) in Commission internal negotiations. Antagonisms between DGs Devco, Trade, Industry, Taxud and Customs needed to be streamlined. While DG Taxud showed some scepticism regarding the FLEGT AP initiative, DG Trade disagreed with the initial mandatory character initiative, as proposed by DG Relex. DG Trade preferred a voluntary (yet binding) initiative. An interviewee noticed that the participation of DG Trade in forest-related issue is actually quite rare. The interviewee explained it by the potential impact of the FLEGT AP on EU trade (9). Still, DG Trade was not worried by the FLEGT AP nor in the leading seat. DG Relex organised stakeholders’ participation in a workshop that took place in Brussels in April 2002 (Decision 1600/2002/EC, Commission staff working document 11656/04). Following, DGs Devco[[8]](#footnote-8) and Envi took the lead to complete the Commission initiative (1, 3, 5, COM(2003)251), relying on a network of nationally developed forest projects[[9]](#footnote-9) and complemented that with EU action on trade. The added value of relying on member states initiatives is their flexibility and swiftness in reaction (3). The Commission issued a communication for a proposal on an action plan on FLEGT (COM(2003)0251) to set out mechanisms linking governance reforms in timber producing countries to EU internal market. I suspect the EU to have added a trade component to the initial international FLEG (without a T) discussion to ameliorate its bargaining power and make forest governance and law enforcement appealing. EU market power is at the core of some tropical forest countries’ economies. The EU consequently played its market power to convince negotiation partners to enhance the governance of their forests (Pirlot et. al. 2018). Coordination between these Commission bodies was smooth. The only resistance met concerned technical issues from DG Trade and DG Taxud, dealt with at cabinet level. But their stance was more intrigued by the FLEGT approach than against it. They stood to ‘wait and see’ (1). Overall, Commission preferences was rather unitary.

From the beginning, DG Devco cooperated closely with EU member states (1). It first conceived an ad hoc group that met in an informal manner for resolving political contentions before they could proceed to technical discussions (3). The AP was discussed in the Council working parties on Forestry (WPF), on Environment (WPE) and on Development cooperation (WPDC). The Italian presidency appointed the WPF coordinator (draft Council conclusion 12906/03).

In these groups, along with the Commission, national experts from the UK, France, Germany, Finland, Sweden, Spain and the Netherlands were present (2, 3). EU member states generally indicated enthusiasm regarding the FLEGT AP. They saw the value of working on timber legality and appreciated the signal it sent to the EU and other international institutions. In particular, the UK, Germany, France, Belgium, the Netherlands, Denmark, Finland, Sweden and Poland were vocal enthusiasts (1, 2, 3, 4). Eastern member states showed little interest in the process and remained passive (1). This is due to the fact that the FLEGT Regulation essentially puts a system which other countries have to deal with, but it has no domestic impact when it comes to implementation. Still, Denmark, Finland and Poland expressed reservations. To their views, the EU was moving on too fast, or at least lacked a relevant time frame. Denmark also showed reservations about the voluntary nature of the AP. Their views were taken into account and a time-frame was made explicit in the FLEGT Regulation. It is the only way that the regulation draft were modified. An EU policy officer summarised internal negotiations this way: ‘it actually brought together quite a coalition of the Commission and member states. It aligned trade policy, which is an EU competence, with development in a powerful way. It played to the strength of the EU working as a whole’ (3).

Once the AP was adopted, the FLEGT dynamic was taken forward by the Netherlands (July-December 2004), the Luxembourg (January-June 2005) and the UK (July-December 2005) presidencies (3). The Netherlands and the UK were particularly active in the design and implementation of the FLEGT Regulation (1, 2). Both already had bilateral agreements with timber exporting countries that aimed at ameliorating their forest governance and facilitated their access to respective UK and Dutch market. Once at the presidency, the two countries could engage actively in the FLEGT issue that they were already familiar with. Caught between the UK and the Netherlands, Luxembourg got on board. The ad hoc group completed the process in 2005, adopting a package of three documents: the FLEGT Regulation, the Impact Assessment and a Negotiation Mandate. Overall, EU ad hoc group negotiations were smooth. Nonetheless, I would not call EU preference unitary. The passivity of some member states can be accounted only for tacit support.

Going back to the international scene, other non-EU countries adopted measures aiming at tackling deforestation acting on forest law enforcement, governance and trade. The US amended the Lacy Act, and Australia and Japan initiated forest law enforcement and governance national law aiming at impacting on the way timber logging and forest governance are handled in producing countries. However, the FLEGT Regulation and related VPAs take external action one step further than the rest does. In that sense, the EU is more ambitious and demanding than other international actors that adopted law enforcement and governance actions to tackle deforestation. The main difference lies in the prominence given to partner countries (the involvement of their local communities in VPA design and implementation, and the central place given to national forest law and tackling their implementation gaps) in the case of FLEGT VPAs. Two elements are striking. First, FLEGT VPAs rely on national law compliance. FLEGT licences testify of good forest governance and trade of legal timber, automatically complying with the Timber Regulation requirements[[10]](#footnote-10). Access to EU market then relies on national law enforcement. For their part, other governance and legal timber trade initiatives rely on timber legality under importer law. For instance, US Lacey Act compels non-US timber producers to respect American law for their product to be exported to the US. American standards are too stringent for most timber producing countries, creating imbalance in timber trade, to the disadvantage of timber producers. Second, the European Parliament ensures that local communities are actively participating to VPA negotiation to end up with a deal that suits them (2, 4), which is not the case of other countries initiatives. The EU was also a frontrunner. The Lacey Act was amended in 2008, the Australia illegal logging prohibition act dates back from 2012, and the Japan clean wood act to 2017.

1. Results

The empirical analysis revealed that three out of four causal relations are confirmed. Table 1 summarises the findings. The second line of the table recalls the causal expectations: high ambition, high isolation, low relative bargaining power and high unity are expected to contribute to FLEGT AP creation. The last line summarises the empirical findings about the causes.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Causes | Ambition | Isolation | Relative bargaining power | Unity |
| Theoretical expectation | High | High | Low | High |
| Empirical observation | High | Low | Low | High |

Table 1 theoretically expected causes and actual empirical observations

First, I expected that EU high ambition would participate to explaining the creation of the FLEGT AP. Empirical observations reveal that the EU had high ambitions regarding the creation of the FLEGT. It was clear at the creation of the bilateral scheme. The international context was keen on tackling deforestation through better forest governance and law enforcement, but the EU was particularly active in this regard, and gave a sharper focus on forest governance issues. Besides, the EU was a first mover and only the EU linked it to partner national law, as the comparison with the US, Australian and Japan efforts reveals. The causal expectation is consequently confirmed.

Second, I expected that high isolation from the international scene would contribute to the creation of the FLEGT AP. Empirical observation revealed that EU was clearly not isolated (hence ‘Low isolation’ in the table above) in its effort. Proof is the number of international initiatives that have bloomed since early 2000, and that the EU kept negotiating forest governance issues in multilateral tracks. It consequently does not participate to explaining FLEGT AP creation. The causal expectation is consequently disconfirmed. I assume that the lack of isolation could not offset EU low relative bargaining power, especially regarding who the negotiation partners were. In venues that had potential to endorse an initiative similar to FLEGT AP, the EU shared its views with other ‘North’ countries. Just like the EU, these countries and their forests (when they have forests) do not lack forest law enforcement and governance. The potential FLEGT initiative then would not apply to them, lowering their credibility on the matter. In this regard, I also assume that tackling forest governance issues bilaterally allowed the EU to evacuate the Brazil dissent, that generally blocks international forest discussions. It is also only bilaterally that the EU could provide a trade incentive to reach out to timber producing countries.

Third, EU bargaining power was expected to be low in venues that could have hosted a FLEGT initiative. This was clearly the case when we look at the number of negotiation partners in venues that have discussed FLEGT related issues (ITTO, WB, G8 and UNFF). EU bargaining power is diluted in multilateral venues. This is even amplified by the forest profile of negotiation partners in multilateral venues. Addressing forest issues with frosted countries that can coalesce to strengthen their argument against the EU ended up profitable for forested countries, detrimental to the EU. Addressing these countries one by one allows the EU to adopt tailor made solutions that do not raise concerns among the most forested countries. Besides, blocking countries such as Brazil are left out of the equation, rising the bargaining power of the EU. The causal expectation is confirmed.

Finally, EU unity was also expected to contribute to explaining the creation of FLEGT AP. EU actors was overall united. In the Commission, disagreements were more grounded in perplexity than in real conflict of interest. They were not as different as irreconcilable. In the Council, member states were generally positive about the FLEGT AP. The only dissention was emanating from a lack of interest rather than from conflict of interest.

1. Conclusion

Going back to the initial puzzles, this paper contributes to disperse clouds surrounding the creation of the FLEGT AP. Relying on minimalist process-tracing, the analysis reveals that some causes contributed to the creation of the FLEGT AP (relative bargaining power, ambition and internal unity), another did not (isolation). Despite keen interest from the international community and shared ambitions, the EU did not manage to reach multilateral FLEGT agreement. EU low relative bargaining power in the international forest regime complex was offset by engaging in bilateral trade agreements. The EU engaged in a way it is an interesting partner for forested countries, in two respects. On the one hand, bilateralism enables EU interests not to be diluted in a sea of interests and evacuate the most problematic negotiation partners in multilateral venues. On the other hand, the EU is an important trade partner to most timber producing countries. The EU takes advantage of its market power to incentivise partner countries to better forest governance and law enforcement. Knowing that, it is not surprising anymore that the EU adopted a bilateral path. Its relative bargaining power is higher in bilateral settings, its (trade partner) profile is more convincing, and the negotiation and implementation burden is low. EU well-accepted will to adopt ‘multilateral solutions to common problems’ identity ends up questioned. The analysis also sheds light on the international forest regime complex. It seems that the commonly accepted multilateralism when it comes to solving common problems is not always a road the international community can take. When I look at world forest politics overtime (from the early 90s until today), I notice that multilateral forest negotiations reach ineffective outcomes, and see a shift from large multilateral negotiations to small groups of negotiations, surrounding specific interests or perspective on forests (such as trade, climate), a limited number of actors (such at the FLEGT AP) or geographical acquaintance, that produce more tangible outcomes that the regime in a large sense. Effective policy making ends up solely relying on the most concerned stakeholders, that share a problem or cause a problem. The rest of the international community is left out, which is basically what the EU does while engaging bilaterally under FLEGT.

The idea that the problem of illegal logging was not only emanating from timber producing countries but was also timber importer responsibility changed the political focus of forest law enforcement and governance discussions. Not only timber producers are labelled as cause of the problem of deforestation. Timber consumers are as well. Sharing the deforestation cause load is, to my eyes, an important breakthrough in the international forest regime. I feel that there has been frustration emanating from timber producing countries to be named and shamed for poor forest governance by countries that commercially benefit from it. Even if the FLEGT AP does not constrain the EU in any way, EU involvement through FLEGT actions provided the EU with a clearer partner profile, discharging the EU from its discrediting condescending approach to sustainable forest management.

International FLEGT discussions could have logically taken this path: gathering around the negotiation table timber producers and timber consumers exclusively. The ITTO would seem an appropriate venue to tackle this issue, as its 63 members are divided into two caucuses: timber producers and timber consumers. All parts of the FLEGT issue, and only them, are around ITTO table. Hence, a multilateral venue to tackle FLEGT issues could still be ITTO. This is particularly true sine ITTO actions articulate around specific projects that do not necessarily involve all ITTO members. The EU could have engaged in FLEGT actions with specific countries through ITTO. Still, the EU took a bilateral path. Intuitively, I would argue that this puzzle solution lies in the presence at ITTO of a couple of countries whose interests go against EU interests. It is decisive for two reasons: they can block negotiations, and they can surround themselves and build their own coalition. On top of that, the negotiation burden of creating FLEGT AP was probably less important that the one of engaging actively in overcoming bargaining power shortfall to adopt a similar FLEGT initiative under ITTO or any another umbrella.

Finally, forests were clearly not on top of EU political agenda. The EU created the FLEGT AP anyway. Two points deserve attention. First I consider that the low political importance actually facilitated the EU to adopt the FLEGT AP. Internally, the negotiation burden was not cumbersome, and most EU actors had little interest in its development. What mattered to EU actors was to design something that would not jeopardise EU internal and external policies. The FLEGT AP only applies outside EU boarders (and actually costs nearly nothing to be implemented), so this has not been an issue. On the contrary, constituting my second observation, the EU played its market power card to ensure timber imports and convince at the same time negotiation partners to agree on voluntary partnerships. The focus on trade, which is of high importance for both the EU and negotiation partners, rose the profile of forest governance both within the EU and in the rest of the world. However, it did not aim to contribute as such to forest ecosystem services.

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List of interviews:

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| --- | --- | --- | --- |
| Interviewee | Affiliation | Date of interview | Political venue discussed |
| 1 | EU | 21 Nov 2017 | FLEGT AP |
| 2 | NGO | 5 Dec 2017 | FLEGT AP |
| 3 | EU/International institution | 14 Dec 2017 | FLEGT AP |
| 4 | NGO | 30 April 2018 | FLEGT AP |
| 5 | EU | 24 Nov 2017 | FLEGT AP |
| 6 | EU | 18 May 2018 | FLEGT AP |
| 7 | International institution | 18 Oct 2017 | FLEGT AP |
| 8 | EU | 10 July 2017 | UNFF |
| 9 | EU | 19 sept 2017 | FLEGT AP, UNFF |
| 10 | Non-EU state | Autumn 2015 | UNFF, Forest Europe |
| 11 | EU | 6 March 2019 | ITTO |
| 12 | EU | 5 March 2019 | ITTO, FAO |
| 13 | EU | 14 March 2019 | ITTO |
| 14 | EU | Autumn 2015 | UNFF |
| 15 | EU | 29 March 2019 | Forest Europe, FAO, UNFF |
| 16 | NGO | 20 July 2017 | FLEGT AP, CBD |
| 17 | EU | 28 march 2019 | ITTO |
| 18 | Non-EU state | 5 April 2019 | Forest Europe |

1. The aim of the FLEGT AP is to tackle deforestation by addressing governance and law enforcement in non-EU timber producing countries. The strictly external part of the FLEGT AP is the FLEGT Regulation, that frames the conduction of Voluntary Partnership Agreements (VPA) (Council 2005; European Commission 2008). It is the FLET AP and subsequent FLEGT Regulation that I study here. I use the terminology ‘FLEGT AP’ to refer to the FLEGT approach in general.

   The two VPA objectives are reflected in the two main elements of the policy: trade on the one hand, and governance and law enforcement on the other hand (respectively T and LEG in FLEGT). The VPAs assure that the exported timber from a VPA country to the EU is legal. The EU assists partner countries to tackle illegal logging by improving local governance and national forest policies (Fishman and Obidzinski 2014). VPA partner countries that testify their good forest governance are provided with a licence. In turn, the EU provides eased access to its market to licenced producers.

   Each VPA defines what *legal* timber means, based upon the law of the partner country and reflecting the specificities of local settings. As VPA countries can only export their timber products to the EU if they implement policy reforms and meet EU standards, the rationale behind this bilateral policy venue is that VPA countries will enforce these standards and eventually internalise them (Rametsteiner and Simula 2003; Montouroy 2014: 116; Savaresi 2012: 157). [↑](#footnote-ref-1)
2. Between 2015 and 2019, I carried out 25 interviews with persons from the EU and its member states, 4 with NGOs and 5 with non-EU states. Overall, 8 interviews were specifically focused on the FLEGT Action Plan (that includes the FLEGT Regulation and the Timber Regulation), 9 tackled the international forest regime complex in relation to the FLEGT Regulation. [↑](#footnote-ref-2)
3. From now on, single number (that range from 1 to 18) appearing in brackets refer to the interviews listed after the list of references. For example, interview 1 in the table is referred to as ‘(1)’ in the text. [↑](#footnote-ref-3)
4. The ITTA encourages the development of national frameworks ensuring the sustainable use of forests (ITTA 1983), the trade of sustainably managed forests (ITTA 1994) and legally harvested timber (ITTA 2006) in tropical timber producing countries. [↑](#footnote-ref-4)
5. For more information on FLEGT-REDD synergies, see for example Ochieng 2010, Owusu 2009, Ochieng et al. 2013, Tegegne et al 2014 and Tegegne et al 2017. But also technical reports from the European Forest Institute and the EU FLEGT Facility, or the Analysis of linkages and opportunities for synergies between FLEGT, REDD and national forest programme in Ghana (E. Marfo, E. Danso and S. K. Nketiah, 2013). [↑](#footnote-ref-5)
6. NGO analysing major international issues. [↑](#footnote-ref-6)
7. EU NGO focusing on environmental and social justice specifically in their links to forests. [↑](#footnote-ref-7)
8. This could explain why some VPA countries and potential VPA countries tend to see FLEGT VPAs as development cooperation programmes, while it clearly is a negotiated agreement. [↑](#footnote-ref-8)
9. Some member states had memoranda of understanding with timber producing countries (the UK with Indonesia, the Netherlands with Malaysia and Germany with Cameroon) recognising that EU timber importers were part of the problem of illegal logging, not just the producing country failure to control the supply. [↑](#footnote-ref-9)
10. Which outlaws placement of illegal timber on EU market. [↑](#footnote-ref-10)