

Making Markets Through Coalitions: The European Union and the Debate Over Ukraine's National Resources

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Abstract

This article studies how the European Union (EU) influences the dynamics between supporters and opponents of market liberalization in partner countries. We focus on Ukraine's attempts to safeguard timber trade and agricultural land sales from international markets through moratoria before 2022. We find that the EU intervenes in domestic debates both directly and through domestic pro-market coalitions to frame these moratoria as expressions of 'vested interests' and instances of state weakness. The EU effectively linked the free trade argument with protecting the environment (as the moratorium tolerated illegal logging) and human rights (as the land moratorium denied landowners their property rights). The EU thus fostered discourses and coalitions prioritizing liberalization over protectionist interests and environmental concerns. This article implies that the EU should encourage debates around market liberalization rather than de-legitimize opponents, as reconstruction in Ukraine following Russian aggression will require both EU assistance and broader internal coalitions.

Keywords: constructivism; discursive institutionalism; external economic relations; international political economy; single market and monetary union; trade and investment policy

Introduction

Scholarship on the genesis of trade agreements emphasizes participating states' interests, the norms they share, the powerful hegemon's role or the negotiation dynamics that empower certain actors to demand and expand such agreements (Kentikelenis and Babb, 2019). Issue linkages, for instance, between supporters of free trade and environmentalist groups, were found to play an important role in broadening support coalitions and thus increasing the adoption chances of trade agreements (Davis, 2004; Jinnah and Lindsay, 2016; Maggi, 2016). These actors also play an important role in the context of the European Union's (EU's) free trade agreements (FTAs), some of which became heavily contested within the EU as they affect domestic standards and industries (De Bièvre and Poletti, 2020; De Ville and Orbie, 2014; Dür, 2008; Siles-Brügge, 2011). Contestations of FTAs have left their mark also on the design of agreements, often leading to the inclusion of social and environmental clauses (Lechner, 2016; Morin et al., 2019; Postnikov, 2018).

However, as Europe-wide mobilizations against controversial FTAs such as the EU–Mercosur treaty have shown, FTAs often cause contention not only within the EU but also in 'partner' countries or regions. Despite the impressive development of EU trade policy scholarship over the last decades, the strong focus on FTA design and the design process

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itself has distracted attention from the 'receiving side' of these agreements and their after-life. Beyond studies focusing on public attitudes towards international trade (see, e.g., Spilker et al., 2018), research on the external perception of the EU in the domain of foreign policy analysis (Chaban and Elgström, 2021) or studies interested in the diffusion of ideas in some trade-related policy fields (Kourtellis, 2021; Roccu, 2018), comparatively little research addressed the role of domestic actors in the 'partner' countries implementing EU FTAs and the mechanism the EU uses to promote market liberalization.

We argue that a focus on actors' interests and discourses in partner countries offers valuable insights into the practices of trade and market liberalization. This is important because there is a notable gap in our understanding of how actors in recipient nations advocate for their interests, particularly when these conflict with fundamental free trade principles. Specifically, our knowledge is limited regarding EU strategies for promoting trade liberalization beyond FTAs. Existing attention often remains limited to issues directly relating to FTAs and leaves untouched the aftermath of FTA adoption and the larger landscape of pertinent trade and power relations. Consequently, there is a need for a more comprehensive understanding of both pre- and post-FTA adoption domestic drivers of contestation in partner countries. This contribution provides remedy by suggesting that the EU's external liberalization impetus encompasses more than just FTA promotion. FTAs often remain contested after the ink of the signature on an FTA has dried. Accordingly, this article focuses on how domestic stakeholders react to the EU's trade liberalization agenda and how the EU responds to stakeholders' arguments in partner countries. We are interested in how the EU reacts to protectionism and 'resource nationalism', the latter understood as a discourse linking state sovereignty and territory to citizen rights and privileges, turning state territories into national markers serving 'national' interest and development (Koch and Perreault, 2019, p. 612). As we will show below, EU-triggered policy liberalization can lead to defensive reactions of developmentalist domestic elites, calling to exempt 'national resources' from liberalization and exclude foreign actors from taking hold of these.

We illustrate our argument using two cases of EU influence on market liberalization in Ukraine before the Russian invasion in 2022. Ukraine is an important example of advanced but differentiated integration with the EU (see Buzogány, 2013; Dimitrova and Dragneva, 2023; Rabinovych and Egert, 2023; Tyushka, 2022). It is also a country that experienced domestic conflicts related to FTA because of the controversies and mobilization surrounding the Association Agreement (AA; Raik, 2019). Before the war, Ukraine's political elite tried to balance opening up to EU markets and investments with protecting national businesses from EU and international competition through moratoria that limited foreign companies' market access. The EU advanced its free market position through issue linkages and discursive de-legitimization of opponents, framing their arguments as expressions of 'vested interests', 'oligarchic influence' or outright corruption. The argument made in this contribution does not deny the existence of vested and oligarchic interests or corruption in pre-war Ukraine. These were – as we will show – particularly evident in the timber moratorium loopholes that allowed Ukrainian timber to reach EU markets unprocessed. Paradoxically, however, the EU's argumentation has hardly been about closing those loopholes. Following a standard free market discourse, the European Commission insisted on portraying acts of the Ukrainian Parliament – the moratoria – as illegitimate expressions of 'vested interests' standing in the way of free trade.

Our case contributes to a larger literature on the role of ideas and scriptwriting by international organizations (Kentikelenis and Seabrooke, 2017) and, more specifically, by the EU (De Ville and Orbie, 2014; Jacobs et al., 2023; Nessel and Verhaeghe, 2022; Welfens and Bonjour, 2023). We connect this constructivist perspective with critical studies dealing with effects of trade agreements that pay attention to discursive struggles taking place at the ‘receiving side’ of FTAs, including cases as varied as the Zapatista contestation of the North American Free Trade Agreement in Mexico or Egyptian bureaucrats contesting EU policy templates (Duina and Bok, 2014; Montessori, 2019; Roccu, 2018). More recently, this literature has started highlighting the crucial role of international organization in countries hit by conflict, suggesting that conflicts might provide windows of opportunities for policy change (Dolan-Evans, 2022; Mathers, 2020).

The Russian invasion of Ukraine in February 2022 shows the necessity to rethink EU trade and neighbourhood policies (see also Burljuk et al., 2023; Rabinovych and Egert, 2023). The post-war reconstruction in Ukraine will require both the involvement and agency of local businesses *and* the EU’s assistance (Rabinovych et al., 2023). This applies also to sectors critical for the country’s revenues, such as agriculture and food, Ukraine’s main export-based source of wartime income. At the same time, as the price increases following Russia’s blockade of the Black Sea and the destruction of Ukrainian transport and storage infrastructure have vividly demonstrated, Ukraine’s wheat exports also have global significance for preventing food crises and hunger (Parasecoli and Varga, 2023). The lessons learnt with the management of accession and post-accession democratic backsliding in Eastern Europe suggest that the EU is well advised to facilitate different developmental policies and more open debates around the reforms it pursues rather than to de-legitimize opponents (Bruszt and Vukov, 2017; Meyerrose, 2020).

This article proceeds as follows. In the next section, we summarize the literature discussing how trade policies impact countries involved in FTAs. Section II presents our empirical approach. Sections III and IV present the two case studies of EU-backed market reforms in Ukraine, showing how the EU sought to overcome moratoria on timber exports and agricultural land sales. The last section concludes by discussing the EU as a market-liberalizing force and identifies further research trajectories.

I. Fields of Free Trade

Promoting free trade has been historically part of the EU’s DNA and is a central paradigm shaping its relations with third countries. In the context of the EU’s FTAs, constructivist scholarship has studied how ideas and norms related to free trade influenced the EU’s approach to trade policy (Jacobs and Orbie, 2020). This includes the shift from ‘free trade’ to ‘fair trade’ or the way the EU presents itself as a normative actor promoting liberal values (De Ville and Siles-Brügge, 2018). The overwhelming part of the literature focuses on the EU level and analyses the use of ideas and of knowledge production by EU institutions and other actors, including business groups, think tanks or social movements (De Ville and Orbie, 2014; Jacobs et al., 2023; Siles-Brügge, 2011; Welfens and Bonjour, 2023).

This Brussels-centred literature is complemented by ‘external governance’ scholarship (Lavenex, 2004), which is interested in local contexts but remains EU-centred by focusing explicitly on the transfer of EU norms to third countries via conditionality, functional co-operation via transnational policy networks or through empowering domestic civil

society. In third countries, the EU offers trade benefits for specific interest groups, export-oriented business actors, pro-Western civil society or pockets of public administration. Whilst this literature assesses how domestic conflicts relate to EU conditionality (see, e.g., Wetzels, 2011), the focus remains on actors in the EU, with little attention given to how domestic actors gain legitimacy by shaping discourses on various issues, including trade, borders and identities (but see Kourtellis, 2021).

Following calls to 'decentre' EU-centred perspectives and to take a more detailed look at domestic contestation of EU-backed reforms on the ground (Onar and Nicolaïdis, 2013), we focus on discourses produced within Ukraine's emergent 'knowledge regime' (Campbell and Pedersen, 2014). Knowledge regimes include networks of professionals (like scholars, public intellectuals or policy experts) from think tanks, universities or research centres. Research in this tradition has mostly focused on how political systems in the EU or the United States have filtered neoliberal (or illiberal) ideas (Buzogány and Varga, 2018; Mudge, 2018). Nevertheless, it can also be used in other contexts that feature reasonable democratic openness and public debate. With its well-developed think tank sector, Ukraine arguably fulfils this criterion (Samokhvalov and Strelkov, 2022).

We use field theory to conceptually map organizational change, approaching actors as being embedded in societal fields marked by tensions between incumbents and challengers (Fligstein and McAdam, 2011; Martin, 2003). Incumbents – in our case, proponents of trade moratoria – maintain their position by deploying certain ideas about performing best in their field. Fligstein and Mara-Drita (1996) term these ideas 'conceptions of control'. Anti-moratorium actors attempt to challenge incumbents by developing alternative ideas. When developing new conceptions, actors often build upon or reinterpret familiar models that seem to function elsewhere. As organizational theory highlights, such adaptation processes often occur in tightly networked spaces of organizational fields and foster 'interpretative struggles' over institutional solutions (Zilber, 2002). Resourceful actors play central roles by 'creat[ing] a whole new system of meaning that ties the functioning of disparate sets of institutions together' (DiMaggio, 1988, p. 14). Their preferences and interactions are crucial for institutionalization processes surrounding the establishment of economic (FTA) arrangements. This framework underlines how the 'construction of an identifiable and attractively "packaged" form or idea' (Djelic, 2008, p. 13) proceeds through the agency of the various participating actors, forming a 'dense ecology of carriers [of ideas] and mediators of all kinds'.

From this perspective, the EU's market-building efforts are inseparable from the coalitions of actors promoting their arguments and challenging the arguments of protectionist opponents. The EU depends on these coalitions of local actors and international organizations to claim the legitimacy of its positions and to point at the lacking legitimacy of opponents. In short, market-making means discourse-making and coalition-building, de-legitimizing opponents by discussing less the latter's actions and more how unacceptable those actions are (Reyes, 2011, p. 783). De-legitimization can undermine action by sidestepping discussions about the action's content or intent (Van Leeuwen, 2008). What the EU de-legitimizes in our cases is Ukraine's use of moratoria to restrict foreign access to markets, depicting moratoria as illegitimate outcomes of 'vested interests' (the timber moratorium) or 'unlawful' protectionism (the agricultural land sales moratorium), despite the EU's own long history of agricultural protectionism (Lewis, 2009; Wodak and Boukala, 2016).

II. Empirical Approach

Our case studies concern two areas where the EU exerted pressure on Ukraine to liberalize market access: the opening of the Ukrainian timber trade and agricultural land markets before the 2022 Russian invasion of Ukraine. Although very different, the two areas show similar patterns of sectoral contestation. This resulted in both cases in a mix of liberalizing regulations and free trade exemptions. Forestry and agriculture are subject to the EU's AAs, the Deep and Comprehensive Free Trade Agreements (DCFTAs) and Economic Partnership Agreements. These seek to remove or reduce customs tariffs in bilateral trade. In both cases, post-2014 Ukrainian governments enacted or prolonged moratoria banning trade or sales, triggering conflict with the EU and International Financial Institutions (IFIs). The two fields differ in how relevant they are for Ukraine's economy. Agriculture has been the rising star of Ukraine's export potential, whilst the forestry sector had a more muted presence yet fundamentally impacted the country's sustainability goals. The EU's liberalizing impetus encouraged Ukrainian pro-reform constituencies, relying in the forestry sector on domestic supporters of its demands and in the agricultural sector on a combination of domestic constituencies and international organizations. Table 1 summarizes the differences and similarities between our two cases.

Methodologically, we use sources of 'communicative evidence' (Jacobs, 2015, p. 54) to process-trace the EU's discourse and coalition-building efforts and establish a chronology of key events and statements. Combining different sources of qualitative evidence relying on in-depth interviews, anthropological field notes and document analysis, we use exploratory process-tracing and case study chronologies to establish 'what happened' in a particular case rather than variable-centred process-tracing approaches testing alternative hypotheses (see also Abell, 1987 as a locus classicus for the distinction between variable-centred and event-centred approaches; Bengtsson and Ruonavaara, 2017).

Table 1: Differences Between the Agricultural Land Sales and Timber Moratoria.

	<i>Timber export</i>	<i>Agricultural land ownership</i>
Moratorium	On log trade Since 2015, until 2027	On land sales Since 1992 but enacted in 2001 – until 2021
Political salience	Low	High
Mentioned in the FTA?	Yes	No
External actor working against moratorium	EU	EU, World Bank, IMF, OECD, EBRD
Support coalition for the moratorium	Developmentalist politicians Furniture industry Some environmentalist groups	Large domestic companies and small farmers who remain de facto owners; large cross-cleavages of political coalitions
Support coalition against the moratorium	Forestry policy community Liberal think tanks	Coalition of 22 companies and NGOs
EU strategies to change moratorium	External: arbitration	Domestic: legal change
Outcome	Moratorium remains de facto in place	No moratorium as of 2021, but no market access for foreign companies

Abbreviations: EBRD, European Bank for Reconstruction and Development; EU, European Union; FTA, free trade agreement; IMF, International Monetary Fund; OECD, Organisation for Economic Co-operation and Development.

Our case study chronologies seek to establish how the EU intervenes in debates between moratorium proponents and opponents. Our sources include (1) around 40 official EU, Ukrainian, and World Bank and International Monetary Fund (IMF) documents; (2) 20 policy documents, including position papers, research briefs or research documents produced within the domestic 'knowledge regime' and in particular by local think tanks, and 10 interviews with policy experts and international advocacy network representatives, carried out between 2015 and 2019; (3) 10 media and NGO reports; and (4) fieldwork in one Ukrainian region (Chernivetska). The analysed period stretches from adopting to repealing the two moratoria (roughly 2014–2020/2021 and an additional focus on the initial parliamentary debates in 2001–2002 for the land sales moratorium). In both moratorium cases, the discussions about abolishing the moratoria peaked during the presidency of Volodymyr Zelensky (Viedrov, 2022). Our focus has been to identify the legal changes, the policy process and the emerging 'pro-reform' coalitions and 'pro-moratoria' counter-coalitions and their discourses used to justify policy decisions (Boltanski and Thévenot, 2006).

Fieldwork – including around 30 interviews with local informants – focused on rural communities involved in agriculture and forestry in Western Ukraine's Chernivetska Oblast (region) and was carried out via repeated annual fieldwork rounds between 2014 and 2019. The region is particularly well suited for capturing trends in the forestry and agricultural sectors. It has one of the country's largest state forestry industry complexes administered by the State Forest Resources Agency of Ukraine, and it features an agricultural landscape in which all major Western Ukrainian agricultural landowning and processing companies are present. These co-exist with some of Ukraine's largest relative numbers of smallholding family farms (for a broader discussion of the empirical material, see Varga, 2023).

Interviews with informants active in the two fields were used to explore patterns of land use and timber exploitation. Interviews in both areas suggested that despite the moratoria, local businesses had found numerous ways to evade regulations and constitute informal agricultural land and timber markets. Rather than selling land, local actors practised formal or informal lease arrangements; and set up illegal schemes through which timber from protected areas could be placed on the Ukrainian market and undercut the prices of legal commercializers. The interviews provided evidence of how timber flows were redirected westwards to reach processing plants owned by Austrian companies on the EU side of the border (see also Earthsight, 2018, 2020).

Our first case study, presented in Section III, focuses on the wood processing industry, which has successfully lobbied for a moratorium on raw material exports. The timber moratorium became a major source of conflict with the EU, leading to the first arbitrage procedure with a partner country in the EU's history of bilateral treaties. The timber case is contrasted in Section IV with another moratorium that the EU took issue with, even though its object – banning agricultural land sales – does not fall under the scope of the AA. Both moratoria are relevant as they concern domestic development policies – enacted under resource-nationalist and environmental slogans – *against* external pressures and influences, despite the EU's decisive impact on Ukraine's resource-nationalist attempts (Koch and Perreault, 2019). Our analysis of the discourses of EU experts and the wider pro-EU epistemic community shows that whilst the EU's discourse essentially portrays itself as a principled normative actor acting out of the need to stabilize its

neighbourhood, it depicted Ukraine as having weak or failing institutions and as largely taken over by ‘vested interests’.

III. Timber Export Moratorium

The first case study deals with the timber-processing supply chain and its export activities into the EU. Due to its size and proximity, the EU timber market is central to Ukrainian exports (Earthsight, 2018; Timber Trade Portal, 2018). Article 294 of the AA between Ukraine and the EU signed in June 2014 underlines the necessity of co-operation in sustainable forest management, including forest law enforcement and governance. Article 35 of the AA also prohibits any export restrictions, essentially opening the Ukrainian timber market for the European forestry industry. Adding to this, Ukraine is also subject to the EU’s Timber Regulation (EUTR) (995/2010), a due diligence legality regime that allows only legally harvested timber and timber products to be placed on the EU market and requires traders to provide evidence of product traceability. For the Ukrainian logging and wood processing industry, the EUTR made regulatory changes particularly pressing because timber exports required up to one fifth of the production costs to ensure compliance with EU norms (Buzogány, 2016; ECORYS, 2007).

Ukraine introduced a 10-year moratorium on all types of raw log exports in 2015 (Reg. No. 1362 of 2015). In 2017, the export prohibition was extended to unprocessed timber. Ukraine justified the timber moratorium on ecological and protectionist grounds and called for a more sophisticated and higher value-added domestic wood processing industry. The moratorium was initiated by Viktor Halasyuk, the Chair on Industrial Policy and Entrepreneurship Committee of the Ukrainian Rada (Parliament), and MP Ostap Yednak, a former Maidan activist, together with a cross-party coalition of MPs. The pro-moratorium coalition was supported by the domestic wood processing industry, including furniture manufacturers and the Ukrainian League of Industrialists and Entrepreneurs, which feared increasing wood prices for domestic producers and timber shortages due to international demand (Interview, Ukrainian Forest Policy Expert, 4 December 2016, Kyiv).

The moratorium was met with strong criticism within the country’s dominant knowledge regime, parts of the forest policy community and market-liberal groups within think tanks and universities that were generally critical of state intervention in the economy (Mylovanov, 2015). Critics argued that the moratorium violates the Deep and Comprehensive Free Trade Area (DCFTA), the AA (Article 35) and the standstill obligation included in Regulation 374/2014, granting autonomous trade measures for Ukraine (De Micco, 2015). Other important moratorium opponents – arguing that it foments corruption, fails to protect forests and should therefore be abolished – included liberal think tanks such as the Institute for Economic Research and Policy Consulting (IER), the EU’s strategic partner in the field of civil society support (Anhel, 2021), or the think tank Better Regulation Delivery Office (BRDO, 2016), which has been active in the field of deregulation with a focus on policy implementation.

Whilst the export moratorium led to heated political debates, Ukraine also introduced sectoral reforms to make the timber supply chain EUTR-compliant. These measures included splitting the controlling and economic functions of the State Forest Resources Agency into different government agencies to reduce corruption risks (ENPI FLEG, 2015).

The State Forest Resources Agency has also introduced the system using unique barcodes for logs and electronic wood auction schemes to make timber trade more transparent (Davidescu and Buzogány, 2021).

Allegations of rampant corruption surrounded Ukraine's forestry sector, with environmental NGOs and the press delivering mounting evidence that Ukrainian timber continues to illegally enter the EU market despite the log export moratorium after being misclassified as firewood or as 'sanitary felling' used to prevent diseases from spreading in natural parks (Earthsight, 2018; Spets Kor, 2013). Unlike the think tanks mentioned above, the environmental NGOs' criticism of Ukraine's moratorium did not translate into calls to abolish the moratorium but to close existing loopholes. In an influential report, the London-based NGO Earthsight (2018) presented a detailed study about illegal logging and the massive ongoing deforestation in the Ukrainian Carpathians. Based on 2 years of intensive research in Ukraine and abroad, Earthsight accused Ukrainian forestry authorities and EU-based timber companies of being involved in illegal transactions themselves and linked the ineffective EU timber legality regime to the weak capacities of the member states to control timber exports at the EU–Ukraine border.

Our fieldwork respondents also detailed and helped periodicize the workings of such often-used loopholes in the legislation (both prior to and after the moratorium) as the misuse of sanitary logging. They traced many loopholes back to practices emerging in the late 2000s and connected these to the emergence of wood processing plants on the EU side of the border. Sanitary felling and other practices of misqualifying timber allowed the felling and also the export of 'low-quality' timber throughout the 2010s and also after the Rada adopted the moratorium. According to our respondents, including one who himself participated in such forms of logging and theft from state forestry, the misuse of sanitary logging intensified in 2010–2011, with the coming to power of Viktor Yanukovich (president of Ukraine from 2010 to 2014). According to respondents, the local representatives of Yanukovich's Party of Regions 'purged' the State Forest Resources Agency of local staff, replacing it with proteges that turned timber trade into a more lucrative source of personal revenue. One was fired after failing to come up with the €25,000 asked from him to be allowed to keep his job (interviews with two former forestry engineers, Chernivtsy, August 2016). Nevertheless, they described the problem in broader systemic terms – not only related to the Party of Regions – highlighting that already around 2008, Ukrainian authorities were implementing legislation doubling the amount of timber allowed to exit the state forestry. They were taking advantage of exporting opportunities to a nearby wood processing factory opened in 2008 by Austria's Egger company on the EU(–Romanian) side of the border (Interviews with two former forestry engineers, August 2016, and interview with a former director of a timber-processing plant, Chernivtsy, August 2015).

In line with the EUTR, the European Commission claimed to support Ukraine's efforts to reach sustainability goals and protect the environment and repeatedly accused the Ukrainian forestry management of corruption in its reports on illegal felling and deforestation in Ukraine (Commission Expert Group on EUTR, 2020). Claiming that Ukraine breaches the AA, the Commission also insisted that Ukraine *renounce* the moratorium. The Juncker Commission has made macro-financial aid and later visa-free travel conditional on abolishing the ban (Interview, European Commission, Kiel, 29 April 2015). Notably, the European Parliament has taken a different position,

mentioning ‘that any liberalization of trade in wood should be conditional on the setting-up of a legal framework on the prevention and prohibition of illegal exports’ (European Parliament, 2017).

The EU and Ukraine opened an arbitration case, with the first hearing held in September 2020. To de-legitimize the log moratorium as inefficient, the European Commission relied on the Earthsight report, but unlike the NGO, the Commission called for getting rid of the moratorium altogether, and not for closing the loopholes. The EU–Ukraine arbitration was the first trade dispute the EU pursued under a bilateral preferential trade agreement, even though it would have qualified for a World Trade Organization (WTO) dispute settlement. The arbitration resulted in a decision emphasizing Ukraine’s obligations to respect AA stipulations. These stipulations conceded the Ukrainian authorities’ right to protect endangered wood species and emphasized the importance of electronic timber tracking for preventing illegal logging. As the arbitration unfolded, Ukrainian government members have started questioning the moratorium’s legal basis (Davidescu and Buzogány, 2021). Yet whilst several bills replaced the moratorium in 2021, Ukrainian authorities resisted key EU demands. The Ukrainian Rada adopted Law No. 4197-d ‘On the Timber Market’ as a basis but excluded from it the provision on lifting the moratorium on timber exports (Interfax, 2022). The new law bans timber exports from areas where forest coverage falls below ‘established standards’, with estimates indicating this being the case for all Ukrainian forested territory. Whilst prohibiting exports, the law did not ban felling for domestic markets, which will likely cause further conflict with the EU (Panchenko, 2021). New voices and a new parliamentary majority in Ukraine’s political landscape kept defending the moratorium. Using state developmentalist arguments, the Rada’s Chair of the Economic Affairs Parliamentary Committee, Dmytro Natalukha, justified the November 2021 pro-moratorium vote by underlining its protectionist logic: ‘Since 2016, during the moratorium, the investment index in the wood industry has grown by 69%’ (Krotovska, 2021). It is also important to note that during the arbitration procedure, the EU side ignored the conclusions of the EU’s TAIEX mission to Ukraine, which explicitly warned that timber imports from Ukraine are very likely to originate in illegal logging and raised doubts about Ukraine’s capacity to minimize illegal logging through electronic solutions (EU TAIEX expert mission, 2018).

The Commission continued de-legitimizing the moratorium by claiming that it expresses corrupt ‘vested interests’ rather than recognizing legitimate domestic commercial and environmental concerns of parties represented in the Ukrainian Rada. Already in 2016, the EU Delegation to Ukraine claimed that the moratorium ‘simply serves the needs of vested interests in the wood processing industry, allowing them to get exclusive and unrestricted access to forestry resources in order to exploit them for themselves’.¹ In 2018, another statement repeated that ‘the EU encouraged Ukraine to continue fighting vested interests to improve the business and investment climate and swiftly eliminate trade irritants, such as the wood export ban’.² The EU stressed that it supports protecting

¹EU External Action (EUEA) document from 2016, https://eeas.europa.eu/topics/drugs/16584/all-you-need-to-know-about-the-eus-stance-on-the-wood-export-ban_en

²The quote is from a ‘Joint press statement following the 5th Association Council meeting between the EU and Ukraine’, <https://www.consilium.europa.eu/en/press/press-releases/2018/12/17/joint-press-statement-following-the-5th-association-council-meeting-between-the-european-union-and-ukraine/>. It was repeated verbatim in the press statements of the following Association Councils. See also the analysis of Henrik Larsen (2021), a political advisor of the EU on Ukraine.

the natural environment but claimed that its stance stems from Ukraine's failure to uphold free trade principles and that it would support 'a ban on *all* logging' (our emphasis, see the 2016 EUEA document cited in footnote 1). By the time of the arbitration, the EU even questioned that Ukraine faces a deforestation problem, arguing that 'no concrete evidence shows the existence of intensive deforestation in Ukraine' (Final Report of the Arbitration Panel, 2020, p. 106), even though the EU's TAIEX mission and numerous media outlets have highlighted the severity of Ukraine's illegal logging problem (detectives.ua, 2019; DIE ZEIT, 2020; Earthsight, 2018, 2020).

However, a total ban is not what the EU has demanded ever since. Nor did it demand closing the loopholes syphoning out wood to the numerous EU-based companies that have opened massive wood processing facilities close to the Ukrainian border precisely to take advantage of such loopholes (Interviews with former staff of the State Forest Resources Agency, Chernivtsy, August 2015 and August 2016; see also Earthsight, 2020). Instead, the EU consistently demanded the complete repeal of the moratorium, proving that its main concern was hardly environmental and had more to do with the moratorium favouring *domestic* actors instead of opening the market for external ones.

IV. Land Sales Moratorium

Ukraine's agricultural sector differs from the timber (forestry and processing) sector as up until the 2022 war, it represented the country's prime export success story. Production rates of large local companies called *agroholdings* have grown since the early 2000s, making Ukraine a world-level food producer with exports peaking in grain, maize and seed oil production. The AA has helped Ukraine strengthen its position on EU markets, overtaking most competitors by 2019, except for the United States and Brazil. Only 2 years before, in 2017, Ukraine-to-EU exports were only at a third of their 2019 volume, and Ukraine was not even amongst the top 10 (Directorate-General for Agriculture and Rural Development, 2020). In contrast to the EUTR's disruptive effect on Ukraine's logging and wood processing industries, for Ukraine's food processing industry, it seemed that EU regulations could not turn into an issue and that there would be no pressing regulatory changes for Ukraine to enact.

Yet there was also a moratorium in place, one that did not deal specifically with production or exports but directly concerned agricultural land status. Ukraine is the only post-communist country to have had a moratorium on agricultural land sales (leaving out Belarus) for as long as three decades after the fall of communism. Unlike the wood exports moratorium, the land sales moratorium had a well-established presence in Ukraine's political economy. Going back to regulations introduced in 1992, in its later form, the moratorium reflected a 2001 decision to limit the dismantlement of former collective farms (*kolkhozy*) and was a lobbying effort of regional state administrators and directors of former collective farms (Allina-Pisano, 2008). Moratorium supporters in Parliament constituted a wide and varied front, ranging from Petro Simonenko's Communist Party to the moderately nationalist People's Movement of Ukraine (*Rukh*). The arguments used in the debate ranged from defending 'Ukrainian soil' against the IMF (Simonenko) to the fight against 'the emergence of latifundia' (*Rukh*-MP Valeriy Asadchev). The moratorium was initiated by the late MP and former *kolkhoz* director

Volodymyr Arabadzhi, back then a member of the Agrarian Party of Ukraine (afterwards the People's Party, not participating in elections since the early 2010s).³ Ever since, an increasingly well-organized 'developmentalist' informal coalition of political parties and *agroholding* owners has coalesced around defending the moratorium from international criticism as the basis for Ukraine's successes in augmenting its exporting capacity. Fieldwork respondents in the Chernivetska region also defended the moratorium, but the argument, particularly amongst smallholders and also entrepreneurial farmers with land holdings of up to several hundred hectares, was a concern that access to funds for land purchases would be unequal and skewed in favour of larger farmers, regardless of their nationality (focus group with four farmers in Novoselytsia Raion, 2015, and individual interviews with five entrepreneurial farmers, Novoselytsia, July 2015 and August 2016). They would have welcomed a reform of the moratorium that still prohibits the formation of even very large landholdings across Ukraine but allows flexibility at the local level, giving farmers – and only farmers – the right to make the first price offer for local agricultural land (Interviews with four farmers, Hlyboka Raion, August 2015 and August 2016).

Ukraine's moratorium earned repeated criticism from the EU, the IMF, the World Bank, the European Bank for Reconstruction and Development (EBRD) and the Organisation for Economic Co-operation and Development (OECD, 2015). The rise of local capital, the *agroholdings*, appeared suspect and was regularly depicted by international organizations as slowing market development (Deininger et al., 2013), particularly concerning the functioning of the agricultural land market. World Bank experts claimed *agroholdings* to be the main beneficiaries of the moratorium, at the expense of roughly seven million landowners who were deprived of their constitutional right to dispose of their property (Deininger and Nizalov, 2016). They portrayed the moratorium as a subsidy to these large companies, forcing small farmers to lease their land at grossly below-value prices. Furthermore, because of their alleged support for the moratorium, *agroholdings* were accused of stalling the country's economic development and costing Ukraine a fortune lost in revenues from agricultural land sales. As of 2012, the EU used precisely this line of argumentation – citing at length from World Bank studies – in its assessment of Ukraine's agriculture, highlighting the 'incomplete land reform' as a 'weakness' of Ukraine's rural economy, decreasing 'investment opportunities for farmers' (The European Union's Neighbourhood Program, 2012). Criticism of the moratorium intensified after the 2014 change in political power. Most importantly for the Ukrainian debate on land reform, in 2018, after two landowners sued Ukraine, the European Court of Human Rights (ECHR) ruled that the moratorium violated 'human rights' as it prohibited local farmers from freely managing their property. This ruling allowed moratorium opponents to give weight to their arguments by relying on the ECHR's decision.

The EU Delegation to Ukraine also took up the same argument: by turning economic liberalization into a human rights issue, it de-legitimized the moratorium as 'unlawful' and evaded discussions about its protectionist economic rationale. In 2018, the EU launched a 5-year programme called 'Ukraine – Transparent Land Resources Management

³See the transcript of the parliamentary debate in the Ukrainian Rada (<https://ipol.rada.gov.ua/meeting/stenogr/show/3422.html>).

Support' together with the World Bank. It was headed by Dennis Nizalov, an outspoken critic of the moratorium, who was voicing his criticism in his earlier publications co-authored with the World Bank's top land reform expert and chief economist Klaus Deininger (Deininger and Nizalov, 2016). Hugues Mingarelli, the Head of the EU Delegation to Ukraine, commented on the Land Resources programme's creation as follows: 'The EU's cooperation with the Government of Ukraine and the World Bank will create the preconditions for effective rule of law and *respect to every land owner's and user's rights* as a precondition for improved agricultural productivity and effective decentralization' (EU Delegation to Ukraine, 2018).

The year 2018 was decisive in preparing the land moratorium's end. Not only was this the year of the ECHR's decision, but it also marked the emergence of a strong pro-reform constituency, calling the then President Petro Poroshenko to 'give freedom to the peasants'. Moratorium opponents formed an initiative that included 22 human rights and watchdog NGOs, investment companies, businesspeople, media outlets and numerous politicians – but no peasant or smallholder organizations. The coalition addressed open letters to the president asking him to abolish the moratorium and explicitly referenced the ECHR's decision, arguing that it demonstrates the moratorium's unlawfulness, as well as earlier EU and World Bank arguments, about the 'seven million landowners' deprived of their property rights (see above) or about the moratorium blocking agricultural credit and investment (Ekonomichna Pravda, 2019). In a MATRA (Dutch)-funded development project called 'Advocacy for Land Reform and the Creation of a Free Land Market in Ukraine by Changing Public Opinion and Increasing Political Will', coalition members presented the ECHR's decision as evidence that Ukraine violates EU principles, with one policy expert declaring that 'Ukraine wants to join the European Union and that is why [the moratorium] strangely correlates with the desire of Ukrainians to restrict the free movement of capital (land sales to foreigners), as this is one of the fundamental principles of the EU' (Reanimation Package of Reforms, 2019).

Whilst President Poroshenko promised to repeal the moratorium, he did little to keep his promise, eventually prolonging it three times, the last time in 2018. President Volodymyr Zelensky also made the repeal of the moratorium a key promise in his political programme. The repeal came in spring 2020, at the height of the COVID-19 pandemic's first wave. It was part of a larger deal with the IMF, with the IMF conditioning an US\$8 billion aid package to counter pandemic effects upon Ukraine, on repealing the moratorium and making other legislative changes. The EU and World Bank made further funds conditional on Ukraine accepting IMF conditions. The public response largely echoed pro-moratorium arguments from the early 2000s, culminating in violent street protests and an unprecedented (but short-lived) political front, from the far right to the pro-Russian Opposition Platform 'For Life', Poroshenko's 'European Solidarity' and former Prime Minister Yuliya Tymoshenko's *Batkivshchyna* party.

Despite public opinion also opposing the reforms, the Rada repealed the moratorium in 2020, and a new law replaced it in 2021. International organizations criticized the 2021 law's 'watered down' form. As with the timber moratorium, the new regulations still gave Ukrainian citizens and companies an advantage vis-à-vis foreigners. The new law included restrictions on who could buy agricultural land and how much could be bought. The maximum size of individual land ownership decreased from 200,000 to only 100 ha, with an intended increase to 10,000 ha only in 2024 (*The Ukrainian Weekly*, 2020).

Foreigners and foreign companies were banned from participating in land deals. Such restrictions contradicted EU, World Bank and IMF recommendations for facilitating investments in Ukraine's agriculture. Conversely, the law facilitated the use of agricultural land for obtaining credit, a key World Bank and EU argument against the moratorium.

Conclusion

Whilst few countries have actually sought to keep or introduce protectionist measures when seeking to sign AAs with the EU, Ukraine did differently. Since the 2014 Euromaidan, an important segment of Ukraine's political elite has tried to strike a balance between opening up to EU markets and investment and protecting national capital from EU and international competition. The two moratoria prohibiting timber export and agricultural land sales became a target of EU pressure and growing coalitions of domestic and international actors.

The two cases underline the EU's role and resolve in promoting the market access of EU economic actors. The EU's participation in domestic public debates – either directly or through 'pro-market' coalitions – was critical to determine the contours of economic arrangements with Ukraine (beyond the concrete stipulations of FTAs). Direct pressure also mattered, as ultimately, the EU helped Ukraine on condition of eliminating the moratoria. It made liberalizing the visa regime conditional on liberalizing timber exports, whilst together with the IMF and World Bank, the EU conditioned aid to Ukraine's COVID-19-embattled economy on liberalizing agricultural land markets.

Both moratoria – on timber exports and land sales – proved ineffective in closing the access of foreign economic actors to Ukrainian timber and land. As documented by NGO reports and the media, Ukrainian timber exports continued to supply Western European companies defying the moratorium. Not coincidentally, in the 2010s, most major EU timber processing companies built plants close to the EU–Ukrainian border despite the existence of the moratorium. And despite the moratorium on agricultural land sales, the Ukrainian leasing market was thriving, allowing international investors to lease land indirectly or through joint ventures with Ukrainian companies (Kuns and Visser, 2016).

These developments cast doubt on EU, World Bank and IMF claims that the moratoria prevented Western access to Ukrainian land and timber and that eliminating them would contain further wealth concentration. However, this very claim became the crux of EU and pro-market domestic arguments. The EU effectively 'issue-linked' (Davis, 2004) the free trade argument with two other issues: violating environmental standards (as the moratorium tolerated illegal logging) and violating human rights (as the land moratorium denied landowners their property rights). In both cases, creating these issue linkages facilitated the emergence of local pro-reform coalitions, giving their arguments the legitimizing weight of EU and other international organizations.

At the same time, the case studies also carry more problematic implications as well. The EU sought involvement in sensitive areas by de-legitimizing domestic actors that regard timber and agricultural land as unalienable national resources; the EU directly supported liberalizing coalitions presenting moratoria defenders as expressing oligarchic 'vested interests'. In turn, liberalizing coalitions claimed to be true expressions of 'civil society'. The pro-EU side could bet on legitimacy gains as the large public perceives pro-EU positions as synonymous with national survival, particularly in a war-torn country.

However, such involvement effectively narrows the scope of political debate. It can breed resentment vis-à-vis EU-inspired policies as seen in *post festum* East-Central Europe. Learning from the lessons of democratic backsliding (see Bruszt and Vukov, 2017; Meyerrose, 2020), the EU is well advised to facilitate deliberation around the reforms it pursues rather than de-legitimizing critics. Post-war reconstruction will require both the involvement and agency of national capital and EU assistance for Ukraine.

Our analysis reveals how the EU influences the dynamics between supporters and opponents of its trade instruments during the implementation of FTAs in partner countries. We highlight how the EU actively promotes liberalizing reforms by using two types of interventions into public debates. First, the EU engages directly in public discussions, advocating through its officials, local representatives and publications for policies that encourage openness, market access and economic liberalization. The second type of intervention is through interactions with domestic pro-reform coalitions, meaning that the EU's arguments circulate through the networks of pro-reform groups within partner countries often involving think tanks and institutes that have a history of co-operation with the EU (in research and implementation of various projects). By doing so, the EU fosters coalitions that prioritize liberalization over protectionist interests and environmental concerns. Concerning both the trade literature and EU external governance research, we argue that a focus on FTAs only misses significant instances of how the EU acts as a trade liberalizer in partner countries via the two forms of intervention we discussed in this article. These involve discursive fields of conflict, with the EU effectively linking trade and market access issues with human rights and the environment to widen reform coalitions.

Further research should thus look beyond the concrete stipulations involved in FTAs and into how FTAs use issue linkages to combine various argumentative strains (Davis, 2004). Our research suggests that understanding economic arrangements involves looking beyond the specific provisions of FTAs. Instead, we must consider how the EU, in collaboration with other international organizations, shifts the domestic power balance between local coalitions supporting or opposing market liberalization. We thus provide evidence that domestic reactions and their impact on economic arrangements with the EU are critical for understanding the EU's liberalizing power towards partner countries.

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