

The devil is in the detail: The need for a decolonizing turn and better environmental accountability in global supply chain regulations

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Running title:

accountability of supply chain regulations

Abstract

This synthesis analyzes a *Special Issue* on global supply chain regulations covering human rights and environmental impacts. The papers demonstrate the analytical value of a contextualized governance perspective that studies discreet conditions and causal pathways shaping the dynamics of foreign corporate accountability: the devil is in the detail of due diligence regulations. We identify key findings on: the formative role of civil society groups from the Global North in due diligence rule-making while similar groups in the Global South are often absent from the policy formation process; the institutional complementarities between political-economic contexts of due diligence enforcement; and the failure of mandatory due diligence to deliver effective environmental accountability for foreign corporate practices. We argue for a “decolonizing turn,” that foregrounds the question of agency in producing states and provides a fuller epistemological grasp of global supply chain relationships with negative human rights and environmental impacts.

Keywords: corporate accountability, human rights, environmental responsibility, due diligence, supply chains

Introduction

As demands for “ethical trade” have become more prevalent in the Global North, foreign corporate accountability is increasingly seen as a key to enforcing labor rights and environmental protection in the upstream part of global supply chains. To recall, in this special issue “foreign corporate accountability” denotes the accountability of companies for negative impacts caused abroad by their subsidiaries or suppliers. In today’s interdependent, digitalized world disasters, such as the collapse in 2013 of the Rana Plaza garment factory

building in Bangladesh and the breaches in 2015 and 2019 of the Mariana and Brumadinho tailings dams in Brazil, have both made harms more widely visible and also heightened concerns in consuming (importing) countries about socio-economic and environmental conditions at production sites (Kramarz, 2022). The contributions to this Special Issue (SI) examine a variety of regulatory practices that seek, however incompletely, a *hardening* of foreign corporate accountability (Berning and Sotirov, 2023; Schilling-Vacaflor & Lenschow, 2021); that is, the institutionalization, legal codification and effective implementation of supply chain regulations.

The analytical framework presented by Gustafsson *et al.* (2023) in the introductory paper sets out conceptual markers for the SI contributions. In their categorization of the contextual conditions of foreign corporate accountability, they focus on actor-promoted ideas and discourses, as embedded in relations of power and shifting institutional environments. They distinguish between bottom-up (civil society-led) and top-down (political elite-led) approaches to foreign corporate accountability norms. In this synthesis we analyze some key findings in response to the four inter related research questions set out for the SI (Gustafsson *et al.*, 2023, p. 2):

1. How do different (groups of) actors contest the meaning of foreign corporate accountability and which interests and perspectives prevail in the institutionalization of supply chain regulations?
2. Which institutional design features contribute to foreign corporate accountability by establishing adequate accountability relationships, enabling processes of answerability and fostering the enforceability of the laws?
3. How are supply chain regulations implemented on the demand- and supply-side, and how do different actor constellations and related accountability logics (i.e., mechanisms inducing accountable outcomes) shape these processes?

4. What are the consequences of supply chain regulations? Whose interests and perspectives are enhanced by supply chain regulations and which actors and issues tend to be excluded or are negatively affected?

The papers demonstrate the analytical value of what, in their opening contribution, Gustafsson *et al.* (2023) call a *contextualized governance perspective*—studying the precise conditions and causal pathways that shape the dynamics of foreign corporate accountability: the devil is in the detail of supply chain regulations.

1. Bottom up actors: Civil society matters!

Relationships of accountability in global supply chains are not straightforward: it is not always clear who is accountable to whom and for what. While standard accountability is characterized by a dyadic relationship between accountability holders and power wielders, transnational producers that are regulated by different states tend to be accountable to multiple constituencies, including not only consumers and shareholders, but also stakeholders from both the Global North and South. Accountability holders are those individuals and communities who suffer harms as a consequence of the violation of human rights and environmental standards. Stakeholders can be defined as “any group or individual who can affect or is affected by the achievement of the organization’s objectives” (Freeman 1984, p. 46), including civil society organizations (CSOs), relevant experts, and other potentially relevant groups who can impact or be impacted by the actions of transnational producers. The term “accountability-by-proxy” (Koenig-Archibugi & Macdonald, 2013) describes situations in which stakeholders such as human rights and environmental activists, consumers or importing states in the Global North advocate for the rights of affected groups in producing sites in the Global South and seek to hold companies accountable on their behalf (Kramarz *et al.*, 2023; Partzsch, 2021). With global diffusion of such transnational claim-making, several

papers in this SI cover how different (groups of) actors contest from the bottom up the meaning of foreign corporate accountability for human rights and environmental impacts of supply chains, analyzing the interests and perspectives which prevail as due diligence norms are institutionalized.

As we discuss in greater detail in section three of this paper, not all civil society actors are equally influential with their advocacy work in legislative processes. In line with our own scholarship in this area, some contributors argue that accountability holders and civil society stakeholders in the Global South remain on the margins of meaningful engagements in proxy-led accountability relationships (Kramarz *et al.*, 2023). This is significant because legitimacy and effectiveness deficits emerge in supply chain governance when actors preferences from producing regions are not represented in policy making processes and absent from the design of standards and sanctions that affect their rights and livelihoods. Similarly, actors in producing states may be best positioned to provide monitoring of companies and their record of compliance. Not considering affected actors in the Global South in HREDD policy processes is also an analytical gap and, more broadly, an epistemological omission. Further in this paper, we expand on these implementation effects of HREDD laws, and call for a *decolonizing turn* in scholarship, which means investing agency on the part of those impacted in producing regions by supply chain governance—recognizing and validating their capacity to act.

In the Global North, several of the papers corroborate other scholarship identifying civil society-led coalitions as instrumental in the adoption of due diligence laws in consuming (importing) countries of the European Union (EU) and the United States. *The relatively rapid diffusion of these norms is largely attributable to these advocacy networks spreading out beyond human rights and environmental activists to include business associations and politicians*, though there are significant political divergences over whether supply chain

regulation should be mandatory or voluntary (Gustafsson *et al.*, 2023; Partzsch, 2018; Partzsch & Vlaskamp, 2016; Rajavuori *et al.*, 2023; Weihrauch *et al.*, 2022).

While all broadly sympathetic to constructivist approaches, there are interesting theoretical variations between the papers on norm entrepreneurship and take-up. In their contribution, Weihrauch *et al.* (2022) employ a *discursive agency approach* to show that CSOs and their campaigns were key to the successful cascade of human rights and mandatory due diligence (HREDD) in Germany, evidenced in 2021 by the passing of the German Supply Chain Due Diligence Law. They relate the political and discursive strategies that were instrumental in HREDD supporters successfully institutionalizing their policy preferences in the face of concerted opposition from business organizations and, initially, the German government. Weihrauch *et al.* (2022) chart a complex, shifting domain of political action that would be difficult to explain with a more static theorization of political interests (as found, for example, in rational choice theory). Indeed, the discursive agency approach allows them to capture how the coalition in favor of HREDD conjoined the emotional charge of a human rights story line (delegitimizing “irresponsible” companies) with the objective weight of scientific evidence from a government-appointed monitoring and benchmarking exercise (2016-2020) that showed the failure of German companies to undertake adequate voluntary measures for human rights due diligence. Following publication of these results, civil society actors were able to forge new alliances with companies (notably the German car industry), and gathered support from conservative politicians previously opposed to supply chain regulation. While this created the political momentum to introduce HREDD legislation, the law passed is more limited than supporters hoped; for example, companies only have to include direct contractual partners in the annual risk analysis of their supply chains unless there is clear evidence of possible violations elsewhere.

The papers by Gustafsson *et al.* (2023) and Berning and Sotirov (2023) also employ a constructivist framework to analyze the regulatory uptake of HREDD for European supply chains, highlighting the role of CSOs in crafting broad coalitions for hardening previously soft norms on foreign corporate accountability. To explain the institutionalization of HREDD in France and Germany, Gustafsson *et al.* (2023) draw on a *discourse analytical approach* that, they claim, uncovers the multiple ways ideological power moderated political struggles over the interpretation and adoption of due diligence norms in both countries. This shows how the politics of discursive interaction, driven by competing ideas on state and market authority, can generate distinctive policy outcomes. For example, the French Duty of Diligence Law (2017) emerges from, and embodies, a more “statist” political system than Germany, with greater legal codification of corporate environmental responsibility for foreign supply chain practices. Berning and Sotirov (2023) similarly uncover the strategic, ideational work accomplished by civil society-led political coalitions in shaping the due diligence regulations proposed by the European Commission (published November 2021) to minimize EU-driven deforestation and forest degradation. Here, an *advocacy coalition framework*, focusing on normative and empirical core beliefs, informs their careful mapping of political alliance-building—a study that questions the claim that this approach is theoretically inconsistent with discourse analytical ideas (e.g., Fischer 2003, pp. 94-114). Berning and Sotirov (2023) also draw on *public choice theory* to argue that the political momentum to introduce new EU diligence rules on forest risk supply chains was only possible through a diverse mix of incentives for civil society, corporate and governmental actors. Their novel blend of policy change theories suggests that a contextualized governance perspective can be open and flexible in its conceptual framing, as guided by concrete empirical questions.

At the same time, the SI contributors tend to understand the new due diligence standards as emerging from, and manifesting, deeply politicized domains of governance

concerning the legitimacy of corporate authority. Earlier research has shown that governments, producers and civil society actors from the Global South have largely been excluded from the standard-setting processes for supply chain regulations (Gustafsson *et al.*, 2023; Kramarz *et al.*, 2023; Partzsch, 2021). Rules per se are often not perceived as legitimate and have sometimes aggravated problems on the ground (Autesserre, 2012). Stringent supply chain regulations tend to exclude Southern companies from international markets (McDermott *et al.*, 2015; Du, 2018), with actors in producing (exporting) countries left trying to build congruence between “foreign” norms and local beliefs (Acharya, 2004; Zimmermann, 2016). Contestation over the legitimacy of corporate supply chains highlights the important analytical and political question of constitution, and representation of affected publics.

2. Top down institutional design: Political economies of enforcement in the move from soft to hard law

While civil society campaigns have broadly advocated for a shift from soft standards to hard laws that accompanies new regulations, the contributions in this SI demonstrate that the institutional design varies in terms of scope, procedures and enforceability – generating different logics of foreign corporate accountability. The UN Guiding Principles on Business and Human Rights (UNGPs), as implemented through National Action Plans (NAPs), remain the governance touchstone for the development of HREDD laws. However, this guidance has received different interpretations and translations at the domestic level, such as greater openness to environmental harm in the (1997) French Duty of Vigilance Law and (2021) German Supply Chain Due Diligence Law compared to the more restrictive human-rights scope of supply chain law in the Netherlands (Child Labor Due Diligence Law, 2019) and the UK (Modern Slavery Act, 2015). The contributors to this issue provide new research on the emergence and range of institutional designs that interpret and enact international standards.

The UNGPs, which embody soft law, stipulate that nation-states should adopt a “smart mix” of voluntary and mandatory measures. In this and other regards, supply chain regulations diverge from conventional forms of corporate accountability with their contractual principal-agent relationships (e.g., between shareholders and corporate management). Across the SI, contributors instead unpack institutional practices of due diligence that establish new relationships of answerability and enforceability between companies and accountability-holders. The new supply chain regulations establish a clear obligation to answer for human rights and environmental damages between companies and those countries in which their goods and services are purchased. However, as noted by Gustafsson *et al.* (2023), there remains a fundamental disjuncture between the economic realities of transnationally operating companies and national law, which tends to govern exclusively the separate legal entities operating in each jurisdiction. Although recent due diligence laws tend to be more comprehensive and cross-sectoral (Schilling-Vacaflor, 2021), the institutional structure for monitoring, controlling and sanctioning companies has so far remained underdeveloped.

A common thread across several of the papers in this SI is that *domestic institutional environments, especially legacies in state-market relations, constitute important background conditions for the design of enforcement modalities for supply chain regulations*. This is not simply the assertion that domestic politics influence the institutional design of the scope and enforcement of HREDD; as with, for example, the watering down of the German Supply Chain Due Diligence Law due to the domestic opposition of business associations and leading conservative politicians (Weihrauch *et al.*, 2022) or, conversely, the political momentum for HREDD regulation supplied by the success of Green parties in Europe (Pearson and Rüdiger, 2020). Rather, the theoretical claim is that enduring relations of public and private authority provide institutional conditions (both formal and informal rules) that significantly affect the accountability relationships set by supply chain regulations; in other words, there are

institutional complementarities between political-economic settings (“models”) and the legal operationalization of foreign corporate accountability. We can identify in the findings “state-centric models” (e.g. France), “liberal models” (e.g. UK) and “mixed-models” (e.g. Germany), each favoring particular accountability practices. These categories suggest the influential “varieties of capitalism” approach (Hall and Soskice, 2001), which distinguishes between coordinated (state-steered) market economies and liberal market economies, although this perspective has tended not to theorize human rights and environmental challenges to corporate governance. Also, the contextualized governance perspective that frames this SI strikes us as less economistic in its analysis of political choices.

The three political-economic models match onto the three enforcement modalities presented by Gustafsson *et al.* (2023), while Dehbi & Martin-Ortega (2023) and Weihrauch *et al.*, (2022) confirm these distinctive institutional pathways for foreign corporate accountability:

- France’s statist institutional tradition represents a state-centric model. We can observe the early adoption of HREDD and a salient enforcement model, in the French Duty of Vigilance Law, of civil liability and *legal accountability* (Dehbi & Martin-Ortega, 2023; Gustafsson *et al.* 2022). It is possible in France to hold companies legally accountable for any human rights violations and environmental damages, which is the broadest legal codification anywhere of HREDD enforcement for these concerns.
- In liberal models, where competitive markets and autonomous economic actors largely set the parameters for corporate governance, we can identify *market accountability* modalities of enforcement in which negative externalities in supply chains are corrected by private economic choices. Thus, the UK Modern Slavery Act relies on private reporting, while the Norwegian Transparency Act is based on the public right to publicly request information from Norwegian companies (Dehbi & Martin-Ortega,

2023). In both cases norms of supply chain transparency are assumed to steer company behavior, although enforcement through transparency is rarely effective (Gupta and Mason, 2014; Mason, 2020).

- Germany is emblematic of a mixed-model, with a state that enables and encourages business actors to cooperate. German due diligence law is based on administrative enforcement via competent authorities and *supervisory accountability*. It combines soft measures, such as guidance and support of companies for fulfilling their tasks, and hard measures such as sanctions for non-compliant behavior (Dehbi & Martin-Ortega, 2023; Weihrauch *et al.*, 2022). There are new legal options for unions and CSOs to represent victims of human rights abuse in German courts through international private law. The German law is more comprehensive compared to the UK and Norwegian due diligence regulations. However, unlike France, CSOs cannot pursue civil liability in Germany. Instead, there is administrative enforcement through the German Federal Office for Economic Affairs and Export Control (BAFA). Unions and CSOs can file complaints about human rights violation of a company to the BAFA, effectively creating a second-order accountability.

In all cases studied in this SI, new supply chain regulations were defined and codified by actors in the Global North, with enforcement modalities for HREDD also realized through domestic legislation in importing Northern countries. This corresponds with our research on due diligence laws and mandatory disclosure obligations for North American and European companies operating in the Democratic Republic of the Congo (DRC), where Northern (state and non-state) actors advancing public accountability standards over human rights and environmental risks caused by “conflict minerals” existed in a remote relationship with the affected communities (accountability holders) they claimed to represent on a proxy basis

(Kramarz *et al.*, 2023). Interestingly, we found *greater* interaction between foreign proxy actors and affected communities when gathering information on compliance with external standards on mineral production. As noted by Müller *et al.* (2023), there are particular challenges building up traceability in the complex extraction, transportation and processing of minerals exported from the Global South.

These authors emphasize that supply chain-specific characteristics matter for HREDD institutional design. Comprehensive information on mineral supply chains is often controlled by large corporations—an information asymmetry that strongly restricts the technical and political conditions for foreign corporate accountability. Dehbi and Martin-Ortega (2023) show that inconsistent HREDD obligations compound this responsibility deficit; for example, the contrast between the more comprehensive coverage of supply chains under the HREDD obligations of the French Duty of Vigilance Law and the Norwegian Transparency Act compared to a narrower conceptualization of the supply chain under the German Act on Corporate Due Diligence in Supply Chains. The transnational power dynamics between states involved, at different locations, in mineral supply chains are in large part a struggle over the boundaries of private authority and market-determined transparency.

Finally, in line with our earlier comments regarding the limited policy space for actors in the Global South, an important way to reform current modes of implementing HREDD laws would mean also guaranteeing the inclusion of issues that are significant to accountability holders and stakeholders in producing states, for example access to and protection for land tenure rights. Externally-driven processes of accountability require making transnational corporations accountable for priorities of producer states through clear and legitimate consultations with affected people, as enforced through grievance mechanisms that compel corporate actors to redress and remedy significant harm. As Deva (2023) argues, in the absence of these provisions HREDD laws are merely half-hearted attempts to tame

business as usual, undermining the original justification for hardening soft international standards into mandatory laws.

3. Analyzing sites of engagement: Implementation of supply chain regulations and the need for a “decolonizing turn”

The burden of implementing supply chain regulations generally falls on companies, typically pulling in external auditors, certifiers, and sometimes also industry associations. However, an important contribution of this SI—informed by a contextualized governance perspective—is that, *even when largely excluded from the implementation of supply chain regulations, state actors in producing countries co-produce their accountability dynamics*. The supply-side focus here mirrors the arguments of Tim Bartley (2014; 2022) and Kate Macdonald (2020) on how domestic contexts of legal and administrative governance shape the implementation of transnational sustainability standards. There is a growing academic literature on how divergent interests, jurisdictional competencies, and regulatory competition mediate, and sometimes compromise, the application of Northern supply chain laws to targeted industries and governments in the Global South. This scholarship shows that implementation processes include strong contestations of what foreign corporate accountability means and which purposes it should serve (Autesserre, 2012; Partzsch, 2020; Wijaya and Glasbergen, 2016).

At the root of these contestations are different ideas and legal codifications related to the policy interpretation of foreign corporate accountability norms. In their paper, Dehbi and Martin-Ortega (2023) set out precisely how exporting and importing companies have significant discretion in defining how to comply with the laws along the supply chain. This discretion is most marked, they show, in the (2022) Norwegian Transparency Act and the proposed (2022) EU Directive on Corporate Sustainability Due Diligence. Moreover, while some regulations such as the (2018) EU Renewable Energy Directive rely explicitly on

private certification systems (which need to be approved by the European Commission), in other cases companies chose to outsource compliance to third parties on a voluntary basis. A wide discretionary scope for implementation is also evident in the (2010) US Dodd-Frank Act Section 1502; indeed, Sarfaty (2015, p. 436) criticizes the “chain of outsourcing, involving layers of monitoring and enforcement, and often competing systems of incentive” that diminishes its impact on the ground (see also Partzsch, 2020; Postma et al., 2021).

An accepted claim in the global supply chain literature is that mandatory due diligence requirements incentivize companies to source from “safe” countries, rather than high-risk areas that require more excessive due diligence requirements (Autesserre 2012; Sarfaty, 2015). However, this blanket categorization underplays both the diversity of domestic political contexts in host countries and also their constitutive role in the accountability dynamics of supply chains subject to external scrutiny over human rights and environmental harms. Through their comparative analysis of the characteristics of mineral supply chains (transnational power dynamics, industry characteristics, and private governance mechanisms), Müller *et al.* (2023) make a major contribution to the literature. Variations in political governance between producer countries are crucial explanatory variables, for deficits in foreign corporate accountability can arise from shortfalls in domestic regulatory presence (e.g., DRC, Zimbabwe), enforcement (e.g., Peru) or lack of transparency (e.g., China). These variations significantly affect the perceived legitimacy in producer countries of transnational regulatory interventions, which are more likely to gain domestic political traction if they recruit pro-regulatory coalitions, framing control measures as economically beneficial (Macdonald, 2021; Seck, 2011; Wijaya & Glasbergen, 2016). Bargaining over HREDD implementation practices tends to favor larger companies. For example, compliance costs tend to disproportionately burden small-scale producers, while larger companies are able to turn compliance into a competitive advantage (McDermott et al., 2015; Sarfaty, 2015, p. 448). In

the DRC, adoption of the US Dodd-Frank Act Section 1502 on “conflict minerals” followed CSO campaigns, directed from the Global North, that arguably misrepresented the general conditions and immediate interests of artisanal miners (Autesserre, 2012).

Of course, promoting supply chain regulation to economic interests in producer countries may not correspond with the scope of human rights and environmental protections envisaged by HREDD rule-makers in the Global North. We concur with the argument made by Dehbi & Martin-Ortega (2023) that the involvement of accountability holders (who they label “rights-holders”) and other stakeholders is a necessary condition for the effectiveness and fairness of due diligence implementation. As these authors observe, *engagement in practice by companies with accountability holders has generally been superficial, and European mandatory due diligence laws are at best selective in their consultative norms*. For example, the German Due Diligence in Supply Chains Act requires consultation with those impacted by supply chain due diligence rather than those persons who are actually or potentially impacted by corporate activities as part of due diligence processes. There *are* legal duties in the Norwegian Transparency Act and EU Draft Directive on Corporate Sustainability Due Diligence to consult with affected rightsholders and stakeholders on how adverse impacts from supply chain practices are addressed, although these norms have discretionary application.

There is an important theoretical challenge raised in the paper by Dehbi & Martin-Ortega (2023)—one that speaks to the agency of actors from the Global South. As we have noted throughout, the fact that these actors have been largely absent from HREDD policy-making in Europe (and, we would add, the US), and that the legal application of HREDD rules maintains this marginalization, invites a “decolonizing turn” in our epistemological and analytical work on these asymmetrical supply chain relationships. Such a decolonizing turn would entail agency on the part of the governed, and what Epstein (2018) referred to as a

capacity to act. To do so, Dehbi and Martin-Ortega (2023) turn to *Third World Approaches to International Law* (e.g., Anghie, 2006; Gathii, 2011; Lichuma, 2021), which critique the extraterritorial regulation of global value chains by “First World” legislation. As several contributions to the SI show, civil society groups and activist coalitions in the Global North have been at the forefront of claim-making over foreign corporate accountability for supply chain practices. If the accountability dynamics of transnational supply chain regulation are co-produced, albeit unequally, by actors in producing countries, then a critical interrogation of these practices may open up greater understanding of their agency and adaptive responses under conditions of economic asymmetry. Inducing governance measures in importing countries that would not otherwise have taken place, these new rules generate questions about the legitimacy of their authority and their (un)intended consequences.

4. Consequences: Persistent asymmetries and environmental harm

New supply chain regulations promise, in principle, to contribute to greater respect of human rights and environmental sustainability in international trade. Initiatives such as the CorA network in Germany present themselves as pioneering such change and having the potential to positively influence importing companies and their suppliers at often distant sites (Weihrauch *et al.*, 2022). Moreover, the contributions to this SI confirm scholarship identifying the re-entry of the state in supply chain governance (Bartley, 2014), including the extra-territorial steering of private actors by EU regulation (Partiti, 2022). However, *the hardening of foreign corporate accountability represented by the adoption of HREDD does not necessarily lead to the reduction of power asymmetries in global supply chains*. The devil is in the detail.

Before the new laws were adopted, domestic companies emphasized additional costs of production and warned against losses in global competitiveness (Partzsch, 2018; Weihrauch *et al.*, 2022). In the case of the EU Conflict Minerals Regulation, compliance costs

were estimated at 3-4 billion USD upfront, and 200 million USD per year thereafter (European Commission, 2014). Koch and Kinsbergen (2018), examining Section 1502 of the Dodd-Frank Act, reveal that negative unintended effects of the new minerals supply regulations were exaggerated (notably, the human development costs of a de facto trade embargo). However, at least for the DRC, they provide data on human rights-related improvements in mining practices (before the COVID-19 pandemic).

At the same time, many countries of the Global South interpret HREDD measures as a form of hidden protectionism. Due diligence requirements are seen as a means for Western states and companies to retain their dominance in global trade (Du, 2018). Studies of forestry certification have demonstrated that HREDD indeed favors large-scale producers from the Global North (McDermott *et al.*, 2015). In other fields, while alleviating consumers' concerns about circumstances of production, sustainability certification is argued to have provided little benefit to poor producers (Levidow 2013; Postma *et al.* 2021). Papers in this SI give weight to the assessment that the trade effects of transnational supply chain regulations have not reduced economic asymmetries between importing and producer countries (Berning & Sotirov, 2023; Dehbi & Martin-Ortega, 2023; Gustafsson *et al.*, 2023). Moreover, as Dehbi & Martin-Ortega (2023) note, the procedural shortcomings in HREDD rule-making are evident in the marginalization of Global South governments, accountability holders and stakeholders from relevant policy processes in Europe. Whatever gains in foreign corporate accountability may be facilitated by the details of due diligence requirements, this wider governance deficit calls into question their legitimacy for those parties locally harmed by supply chain practices.

There is also concern, expressed in several papers, that *HREDD laws have failed to lay effective regulatory grounds for the environmental accountability of foreign corporate practices* (Berning & Sotirov, 2023; Dehbi & Martin-Ortega, 2023; Rajavuori *et al.*, 2023).

Part of this relates both to the issue selectivity of some HREDD laws—restricted, for example, to modern slavery (UK) and child labor (Netherlands)—or, within general HREDD laws, the requirement that environmental harm breaches a human rights threshold, as in the French and German laws on due diligence in supply chains. The new EU Regulation on deforestation-free supply chains, agreed by the European Parliament and Council in December 2022, is the only HREDD law solely focused on environmental due diligence. According to Dehbi & Martin-Ortega (2023), the proposed EU Directive on Corporate Sustainability Due Diligence, which combines human rights and ecological obligations, is compromised as a mechanism of foreign corporate accountability: it covers only adverse environmental impacts narrowly defined under selected international environmental treaties.

Climate change impacts do not make the cut, subsumed instead under a general obligation on applicable companies to transition to a sustainable economy. Rajavuori *et al.* (2023) note more generally that the human rights primacy of HREDD laws militates against foreign corporate accountability for climate-related harm, finding more scope for answerability in climate risk disclosure rules (e.g., by the US Securities and Exchange Commission) or, more bluntly, climate change litigation against corporations. Without a deeper and wider integration of ecological and climate change impacts in HREDD, their environmental scope will remain constricted. Finally, although climate action has both global and local impacts, decolonizing HREDD laws requires specific provisions that prioritize local environmental problems. For example, companies need to be held to account for pesticide pollution, clean water access, or locally valuable biodiversity in addition to those issues that are more prevalent in the international environmental agenda, such as deforestation.

5. Conclusion

This SI adopts a contextualized governance approach in order to conceptualize and explain the emergence of new forms of foreign corporate accountability, notably European HREDD laws targeting the human rights and environmental impacts of supply chains. Due diligence regulation operates through a dynamic, multi-scalar interplay of public and private authority, articulating new domains and logics of corporate accountability. We find a fruitful entry point in the original analytical framework that focuses on the interaction between accountability dynamics and contextual conditions (Gustafsson *et al.*, 2022)—a framework that enables a systematic study of the devilish regulative details that plague foreign corporate accountability.

Our commentary on the papers cannot do justice to the fullness of their insights and empirical depth. However, we select several key findings to the four research questions set out in the introductory paper (Gustafsson *et al.* 2023):

1. Alongside their well-known advocacy practices on foreign corporate accountability, *civil society groups from the Global North are salient political actors in HREDD rule-making over the human rights and environmental impacts of supply chain practices*, typically in alliance with supportive state and corporate actors. Partial authorship of rules affecting investment and livelihoods in producer countries necessarily generates questions about legitimacy and puts the effectiveness of this type of proxy accountability governance at risk. CSOs in Europe can hardly represent affected people at production sites in the Global South.
2. *There are significant institutional complementarities between the enduring political-economic (state-centric, liberal and mixed) contexts of HREDD enforcement and the legal operationalization of foreign corporate accountability*. This generates political contestation over appropriate public constraints on private authority, because different state and corporate actors are

involved, at different locations, in the regulated supply chains. For example, the German car industry, which needs to enforce due diligence on its suppliers around the world, influenced the policy process through an alliance with CSOs. The German law now demonstrates a “mixed model” that combines soft measures, such as guidance and support of companies for fulfilling their tasks, and hard measures such as sanctions for non-compliant behavior (Dehbi & Martin-Ortega, 2023; Weihrauch *et al.*, 2022).

3. *While formally excluded, in large part, from the implementation of supply chain regulations, state actors in the Global South co-produce their accountability dynamics.* Variations in political governance between producer countries—for example, regulatory culture, enforcement capacity, (lack of) transparency—significantly affect the effectiveness and perceived legitimacy of transnational regulatory interventions. For example, deficits in foreign corporate accountability can arise from shortfalls in domestic regulatory presence (e.g., Zimbabwe), or lack of transparency (e.g., China) (Müller *et al.* 2023). Furthermore, the discretionary nature of consultative norms within HREDD laws has generally allowed *engagement by implementing companies with accountability holders (affected people) to remain performative and superficial.*
4. *The “hardening” of foreign corporate accountability, represented by the adoption of HREDD laws in Europe and the US, has not reduced asymmetries between importing and producer countries.* In a neo-colonial manner, European countries are adopting laws to be implemented by transnational corporations in countries of the Global South (Dehbi and Martin-Ortega, 2023). Moreover, *HREDD laws have failed to lay effective regulatory grounds for the*

environmental accountability of foreign corporate practices. To be sure, the papers in this SI did not focus on the trade effects of the relevant supply chains, but without importing conditions favorable for producer states, there are alternative, growing markets (e.g., China, India) that may either follow the regulative ‘race to the top’ by formulating own requirements for importers, or displace and dilute the effects of transnational HREDD regulation.

If, with the onset of HREDD laws, “the rules of the game have fundamentally shifted” (Weihrauch *et al.*, 2023, p. 15) for foreign corporate accountability, then there is a burden on rule-makers and implementers to demonstrate how, across the full range of their (un)intended effects, the interests of people in producer countries—above all, those affected communities who are the putative beneficiaries of the regulation—are truly being served. The persistence of deep power asymmetries, created and reflected in international terms of trade, are mirrored in HREDD laws. From a democratic point of view, there is no way around a “decolonizing turn” and greater representation in regulative processes of accountability holders and their socio-ecological interests.

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