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She'll Be Right: Some Observations on Diffused European Union Standards in a New Zealand Context

HENRIETTA McNEILL
University of Canterbury
henrietta.mcneill@canterbury.ac.nz

Abstract: *Due to their technical and rather specialist nature, standards are often overlooked as a form of influence over third states, yet they form an important and expanding role in the emerging global legal order. Usually developed outside of formal legal processes, regulatory standards nevertheless have hard impacts upon national and international legal frameworks. This paper examines the EU's advancement of its regulatory agenda: producing global and domestic legal standards that are diffused to third states through multiple channels of communication. Using New Zealand as a case study, this paper draws on research to examine the success of extending the EU's standards beyond its borders. While the extent to which adoption of EU standards by New Zealand has been varied, there is clear evidence that Europe's regulatory reach extends far beyond its borders. The colloquialism "she'll be right" gives a flavour of New Zealand's approach to the adoption of EU standards in many contexts.*

Keywords: Diffusion, standards, normative power, New Zealand, regulatory Europe

Introduction

Within wider literature on international organisations shaping third states' domestic policy, there is a growing body of work featuring the European Union (EU)'s diffusion of normative values.[1] Diffusion is used to explain the EU's normative power promotion: influence over third states' laws is seen empirically in the way the EU widely spreads standards and regulation policy externally. The extent to which the EU has influenced third states' norms can sometimes seem difficult to quantify; the influence of standards can be difficult to track. Legal influence is not often cited as a normative power mechanism; however, it is occurring globally, as many economic and political actors establish rules through law. Orbie suggested the EU's influence on labour standards created a 'regulatory Europe', alongside the 'normative power Europe' that is often discussed in EU literature.[2] It is this regulatory Europe that this paper discusses through regulatory product standards. In focussing on EU standards and how they have influenced New Zealand (NZ) standards, there is tangible evidence that the EU has strong legal influence on small third states.

This paper examines the relevance of diffusion literature to the case study of NZ acquisition of EU standards, and the channels of communication by which this occurs: market communication, a power struggle between global actors for influence in different ways, and

[1] K. Linos, 'Diffusion through Democracy,' *American Journal of Political Science,* Vol. 55, No. 3, 2011.
[2] J. Orbie, 'Promoting Labour Standards Through Trade: Normative Power or Regulatory Power,' R. G. Whitman (ed.), in *Normative Power Europe: Empirical and Theoretical Perspectives*, *Palgrave Studies in European Union Politics*, New York, Palgrave MacMillan, 2011.

Europe's strength in information and expertise. The common NZ idiom "she'll be right" seems to describe the attitude NZ takes to adopting EU standards: because a bigger and more experienced partner has applied these standards, they will be acceptable to the NZ import and export markets.[3]

Standards

Standards have long been a part of the EU's global promotion of norms: Bangemann, the European Commissioner for Industrial Affairs in the 1990s, illustrated this when his working group stated the EU should create a global framework for regulation.[4] He also stated that the European Community "must assume a leading role in developing international standards," showing that encouraging global legal influence is important for the EU, and has been for over a decade.[5] In fact, one of the initial *raisons d'être* of the EU has been standardisation: when the EU formed, standards harmonisation was crucial for newly integrating countries connected through coal and steel, as they required standardised trade mechanisms, and railroads in particular. The EU's regulatory agenda has proved successful, as the CEO of General Electric stated: "almost ninety-nine per cent of regulation will come from the EU over time."[6]

Different stages of EU growth have added complexity to the EU's normative role as a standards producer: diffusion theory accounts for many mechanisms of standards promotion because it allows for innovation to be spread through multiple mechanisms within a social system. The mechanisms within diffusion are forthwith defined as 'channels of communication.'[7] EU standards have diffused to smaller third states: this article examines how this has occurred in New Zealand, through the diffusion channels of market communication, European information and expertise. It also accounts for the efforts Europe is taking in standards creation as part of the legal power struggle between global powers.

Standards apply to most areas of the production and consumption of everyday products, including food, health and safety, and technology. Standards are important factors of sovereign regulation as they encompass citizens' everyday life; therefore, standards agenda-setting is a significant part of any state's power through global normative and legal influence. A standard in this context is defined as a "document approved by a recogni[s]ed body, that provides for common and repeated use, rules, guidelines or characteristics for products or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method."[8] NZ standards are usually directed by issue-specific agencies:[9] producers and professionals using products have to adhere to these standards, but they are often not legislated. Regulatory standard influence herewith examined, is the "the ability of a jurisdiction to define and implement a

[3] A loose translation for "she'll be right" is "everything will be okay."
[4] High Level Group on the Information Society (1994) *Recommendations to the European Council: Europe and the Global Information Society* sourced from <http://vecam.org/IMG/pdf/bangemann.pdf> accessed 7 September 2014
[5] M. Bangemann, *There is no alternative to a European Federal State*, 1993, European Commission, sourced from <http://europa.eu/rapid/press-release_IP-93-98_en.htm> accessed 7 September 2014.
[6] F. A. Manuele, 'Global Harmonization of Safety Standards,' *Professional Safety* Vol. 50, No. 11, 2005, p. 1.
[7] E. M. Rogers, *Diffusion of Innovations*, New York, Free Press, 1983, p. 5.
[8] World Trade Organisation, 'Agreement on Technical Barriers to Trade (WTO) 1868 UNTS 120,' (1994). Annex 1 (Terms and their Definitions for the Purpose of this Agreement).
[9] The main examples used in this paper are Medsafe, Food Standards Australia New Zealand (FSANZ), and Occupational Health and Safety.

set of market rules and to monitor firms' compliance with them."[10] This delimits intellectual property issues. *De facto* standards are adopted by third states, signalling the legal influence regulatory Europe has internationally.

Harmonisation is a method of creating compatibility between countries in standards, either specifically, or by closely approximating a standard, and is either accomplished through law (*de jure*) or adopted and recognised (*de facto*). *De jure* harmonisation is often through international standards treaties, or legal standards decided upon and implemented into legislation. The food standards agreed by Food Standards Australia New Zealand (FSANZ) is a good example of this. It is difficult to track the influences larger actors have upon standards in third states that are *de jure*, as the standards are established and recognised as the third country's, within their own law. *De facto* harmonisation of standards through the adoption of another states' standards may be the copying of external standards directly, adjusting external standards to meet local requirements, or although not specifically acknowledging a standard, local producers nonetheless meet the external standard.

De facto harmonisation happens via the diffusion of standards to third states, through multiple channels of communication: often the channel of communication will determine how *de facto* harmonisation takes place locally. The impact of EU influence is seen more vividly in *de facto* harmonisation of standards; influence by proxy is evidence of significant underlying influence. This article, while including some EU standards that are written into NZ legislation, principally examines EU *de facto* standards harmonisation and demonstrates the extent of the EU's underlying influence.

This article examines the empirical evidence of EU influence from an objective standpoint and does not make recommendations that NZ should or should not use EU standards. However, it is of interest that not all standards have had a beneficial outcome for NZ. NZ does not regulate medical devices, but instead relies on foreign regulators to determine whether a device is able to be used: a 2012 investigation showed flaws within the system the EU uses to approve medical devices such as hip implants.[11] The investigation caused EU-regulated hip implants in NZ to be recalled. This highlights the problems of reliance for small states. Transplanted standards may not be specific to NZ conditions, or may be aimed at supporting manufacturers rather than consumers of the product. An investigation into whether smaller countries are following European standards because they are better, or just that they are perceived as better by smaller third countries is an area for future research.

Models of Diffusion

Börzel has noted many examples of diffusion from the EU to a variety of areas, including towards potential Member States and third states.[12] The literature suggests main four mechanisms of EU influence: influencing importers through EU directives, encouraging producers and manufacturers to comply with the EU directives to maintain trading; enforcing international standards of compliance through multilateral partnerships; conditionality, and incentives for enlargement; and third states using EU standards to solve

[10] D. Bach and L. N. Abraham, 'Governing lipitor and lipstick: Capacity, sequencing, and power in international pharmaceutical and cosmetics regulation,' *Review of International Political Economy: RIPE,* Vol.17, No. 4, 2010, p. 1.
[11] Radio New Zealand, 'Hip implant probes sparks call for better NZ standards,' Radio New Zealand, <http://www.radionz.co.nz/news/national/119160/hip-implant-probe-sparks-call-for-better-nz-system>accessed 7 January 2013.
[12] T. A. Borzel and T. Risse, 'From Europeanisation to Diffusion: Introduction,' *West European Politics,* Vol. 35, No. 1, 2012.

domestic problems. Schimmelfennig and Sedelmeier suggest three similar models based on diffusion theory to explain the institutionalisation of EU regulatory standards in non-Member States.[13] Their first model is known as 'rationalist bargaining power,' where the EU "sets its rules as conditions [that third states] have to fulfill in order to receive EU rewards;" in other words, the ability to set standards conditions within other agreements provides the EU with power in the negotiating process if their incentives are credible.[14] Third countries will do a cost-benefit analysis to determine whether the EU incentives are greater than the cost of adopting EU standards.[15]

The second model is the 'social learning model', where states are incentivised by values and norms: the EU justifies its existence with a collective identity of common values and norms that create rules, which gain legitimacy as more states and groups are party to those rules.[16] Third countries are likely to become party to these rules if they resonate with their own existing standards. The well-known model of conditionality is in play here: EU candidate states have to implement European standards bodies' guidelines, a process which legititmises European standards.[17]

The third model, the 'lesson drawing model,' is the most pertinent when examining NZ acquisition of EU standards, as NZ is not seeking to become part of the EU community through conditionality or identity. The lesson drawing model describes how third states acquire regulatory standards with neither incentives nor persuasion. This model is usually expressed when a state is dissatisfied with the incumbent domestic regulatory standards, and expects another state's standard to effectively deal with the policy causing dissatisfaction.[18] The lesson drawing model may explain why third states undertake some EU regulatory standards in their own legislation, but not others, and also how their interpretation may differ to that of the EU. Börzel has legitimised why the EU promotes EU values though diffusion: rationality and cost-benefit analysis, normative reasoning, and providing a validity of norms to states that may challenge particular norms and values.[19] While Börzel's examination of the situation may explain the EU's reasons for direct influence on agenda-setting in the legal realm, this paper specifically analyses the outcome of the influence. Schimmelfennig and Sedelmeier explain the reasoning behind third states adopting EU norms and standards, whereas diffusion theory discusses the channels of communication by which norms influence third states. [20] It is these channels of communication that are further applied to the NZ acquisition of EU standards.

Before analysing why different channels of communication have led to a stronger EU influence on third states' standards, it must be acknowledged that some standards are internationally recognised. Often NZ and the EU align in standards because global issues require harmonisation. For example, electromagnetic compatibility affects all products that use electricity (such as electric drills, televisions and garage door openers), despite voltage differences across countries. Because electromagnetic radiation generated by these products may affect other users, electromagnetic compatibility standards are parallel in many states.[21]

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[13] F. Schimmelfennig and U. Sedelmeier, 'Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe,' *Journal of European Public Policy,* Vol. 11, No. 4, 2004.
[14] Ibid., p. 671.
[15] Ibid., p. 671.
[16] Ibid.
[17] 'EU uses standards to increase market influence: 5 Edition.'
[18] Schimmelfennig and Sedelmeier, op. cit., p. 676.
[19] Borzel and Risse, op. cit.
[20] Ibid.
[21] Roland Gubisch, The Engineer's Guide to Global EMC Requirements: 2007 Edition, sourced from <http://www.ieee.li/pdf/essay/guide_to_global_emc_requirements_2007.pdf> accessed 7 September 2014

A global standard in this case means aligning with the EU (or any state) is not only a logical response for third countries, it is a necessity. International Standards Organisation (ISO) standards are recognised by 114 states. For the EU to have influenced ISO standards provides legitimacy to EU standards. It would be a point for significant future research to see how European standards have been incorporated or turned into ISO standards, reflecting the EU's legal influence globally. Some examples of European standards becoming ISO standards, and by proxy, NZ standards are EN1050 (risk assessment for machinery) which became ISO14120 in 1999, and EN292 (machinery safety) became ISO12100-1 and ISO12100-2 in 2003.[22]

The following diffused channels of communication of EU legal influence have been seen in a preliminary mapping exercise undertaken in 2012: market cooperation, global legal power promotion through creation or stronger implementation of standards, and European information and expertise.

Market Communication

The EU utilises its single common market power in many external activities, including the diffusion of standards, a process referred to as 'market communication.' The EU has a large influence on third states through market communication due to its large global market share for many products and services. The obvious global influence the EU has in standardisation is the Conformité Européene (CE) marking, which is required on products sold in the EU. This allows the exporting state to judge if the product meets EU standards before export.[23] EU standards are thus important to NZ for market retention: the EU ranked as NZ's third largest trading partner (after Australia and China).[24]

The EU and NZ have a Mutual Recognition Agreement (MRA) on standards, so NZ companies have competency to put the CE marking on products if they meet European standards. As products are made for international markets, NZ exporters understand that they have to meet the standards of large markets to access them and profit from their product. Therefore, exporters conform to various internationally-recognised standards. This is particularly true for NZ dairy exporters meeting EU standards in their products, regardless of NZ standards.[25]

A prime example of NZ voluntarily adopting standards to comply with the EU standards is wine production. European influence on the international wine market is significant, and as a result, NZ deems its Overseas Market Export Requirements as complying with EC regulation 479/2008.[26] While compliance in this area seems thorough, when EC regulation 203/2012 was introduced (involving the production of organic wine), the NZ-EU MRA did not cover labeling wine as 'organic,' causing difficulties for NZ organic wine producers and

[22] Manuele, op. cit., p. 42.
[23] European Commission, 'Trade: New Zealand,' <http://ec.europa.eu/trade/creating-opportunities/bilateral-relations/countries/new-zealand/>, accessed 9 December 2012.
[24] Ibid.
[25] Dairy NZ, 'Strategy for New Zealand Dairy Farming 2009/2010,' Hamilton, Dairy NZ, 2009.
[26] Ministry for Primary Industries, 'Overseas Market Export Requirements (OMARs) for wine,' New Zealand Government, <http://www.foodsafety.govt.nz/industry/sectors/wine/exporting/grape/market-access.htm>, accessed 9 December 2012.
European Council, 'The common organisation of the market in wine, amending Regulations (EC) No 1493/1999, (EC) No 1782/2003, (EC) No 1290/2005 and repealing Regulations (EEC) No 2392/86 and (EC) No 1493/1999,' in *Council Regulation (EC) No 479/2008,* European Union (ed.), Brussels: Official Journal of the European Union, 2008.

exporters. NZ's organic certification agency expects these regulations to be upgraded for the 2014 export year.[27]

A second example of EU market communication of standards also comes from the wine industry. NZ has structures in place for laboratory testing of wine, despite the EU being the only wine market to require laboratory testing, showing the importance of the EU wine market to NZ producers.[28] NZ certification agencies changing their standards to comply with new EU standards demonstrates the influence access to the European market has on small third state standards.

Thirdly, NZ wine producers are more likely to comply with more stringent EU standards to be able to retain their market access: for example, NZ producers follow EU standards requiring them to use 100% of the stated grape variety, rather than NZ law which only requires 85% of the stated grape variety.[29] This complements claims that stricter standards creates compliance and therefore influence by those that set the standards, such as the EU.

A fourth example shows that for the same reasons, NZ wine growers also comply with the EU standard on wine-labeling, requiring NZ wine labels to include mandatory information in one field of vision, and be written in British English.[30]

While standardisation can be as overt as setting product standards to allow market entry, more normative standards (such as the spelling of everyday words) can also be enforced by large markets on smaller, dependent markets. NZ has taken a "she'll be right" attitude in all of these examples, and adopted Europe's standards due to their immense market influence.

As previously mentioned, NZ has a common standards agency with Australia, FSANZ. However, large EU market pressure has also influenced NZ's decision to ignore FSANZ standards. For instance, to retain European market access, NZ declined the FSANZ standard to change labeling on olive oil and olive-pomace oil, as it would deter Mediterranean imports, which make up 95% of NZ olive oil sales.[31] While a larger market like Australia could feasibly enforce such a standard, the same standard would create barriers to NZ trade.[32] NZ's market dependence on larger more powerful markets can be seen here: the EU is an important market for NZ (particularly in olive oil), and so in special cases, influences standards more than NZ's most important trader: a state with whom NZ shares a standards agency.

While the influence of the EU as a market is still strong currently, as emerging markets such as China grow powerful, the influence that they have on standards in export-dependant states, such as NZ, should be carefully noted by those watching the impact of law on global normative power.

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[27] N. Leneneu and J. White, 'Guide for Wine labelling, ingredients and market access,' BioGro, <http://www.biogro.co.nz/mm_uploads/Wine_notification_N01_21_11_12_ver4.pdf>, accessed 9 December 2012.
[28] New Zealand Food Safety Authority, 'New Zealand Grape Wine Export Code,' Wellington, New Zealand: New Zealand Food Safety Authority, 2006.
[29] Wine of the Week, 'About New Zealand Wine, with Statistics,' Wine of the Week, <http://www.wineoftheweek.com/regions/aboutnz.html>, accessed 9 December 2012.
[30] New Zealand Trade and Enterprise, 'Exporter Guide: Wine in the United Kingdom: Market Profile,' op. cit.
[31] C. Cord, 'New Zealand Says "No Thanks" to New Olive Oil Standards,' Olive Oil Times, <http://www.oliveoiltimes.com/olive-oil-business/australia-and-new-zealand/new-zealand-no-new-olive-oil-standards/18547>, accessed 9 December 2012.
[32] Ibid.

Global Power Struggle

As in politics and economics, there is an ongoing power struggle between leading actors in legal structures. Bach and Newman observed that the motives have changed for those who create standards: "the form of governance has shifted from occasional international spill-over of domestic rules to first deliberate extraterritorial imposition of domestic laws and subsequently to transgovernmental cooperation aimed at policy harmonization." [33] Eeckhout claimed the Lisbon Treaty allowed EU law to make a "competence creep" in expanding its reach and scope in many areas.[34] External actors have noticed this competence creep: the US was formerly the leader in standard creation, now the EU is showing leadership in this area.[35] The Lisbon Treaty gave the EU extra competences, which combined with a stronger market access and technical expertise has led the EU to having a stronger control of global market forces and standardisation. [36] The distinctiveness between American and European legal systems is well-known, and the competition between these global leaders in standards provides an empirical explanation of this ongoing power struggle.

The power struggle currently is mainly between the US and the EU. Despite China emerging as a political and economic power, it has yet to emerge as a legal leader in the regulatory standards field. China may be unable to be a leader in international standards creation due to the fact that the EU and US have created many standards first, requiring China to adopt these standards. It has been claimed that China will become a dominant regulatory standards creator in the next decade.[37] Standards creators on all sides of the global power struggle, continue to create standards in the knowledge they will be adopted easily by third states.

Meanwhile, the US and EU are diffusing standards onto third states, such as NZ. It is said that if the two major global actors (EU and US) agree on a standard, it becomes the *de facto* global standard, because smaller markets have to abide by the rules of the market leaders; whereas if they disagree, the market is stuck with rival regulatory standards and smaller states are faced with a choice. [38] In keeping with this concept, much of the literature surrounding the Transatlantic Trade and Investment Partnership negotiations suggests the proposed trading relationship between the US and the EU will determine standards that China has to follow to retain market access in many areas.[39] This is an area to keep following.

It seems that the regulatory standards influencer 'wins' the power struggle because the 'loser' is not a strong enforcer of standards and is not always the first to produce standards in that area. The US has 'won' the global power struggle for standards when the EU has not been clear and coherent in its own standards. This has resulted in third states adopting US sta.ndards or creating their own. Smaller states are more likely to adopt the EU's standards if one standard is available for all of Europe (part of the proposed 'Kissinger Effect').[40] This is particularly true for food standards, where NZ and Australia developed FSANZ due to a lack of leadership and coherence from the EU. Early in the EU's standard creation role, many EU Member States did not agree on standardisation for food products and food safety and

[33] Ibid., p. 1.
[34] P. Eeckhout, 'The growing influence of European Union law,' *Fordham International Law Journal,* Vol. 33, No. 5, 2010.
[35] Bach and Abraham, op. cit.
[36] Ibid.
[37] Panel discussion at European Union Studies Association Asia Pacific Conference, 17-18th May, 2013.
[38] Bach and Abraham, op. cit.
[39] C. James, "Europe, the forgotten continent," *Otago Daily Times,* November 12th 2013.
[40] Ibid.

created their own moratoriums and rules: without coherence, the EU did not become a global leader in this area.[41] Slowly, as larger food safety scares have occurred (Bovine Spongiform Encephalopathy and Avian Flu), the EU's competence has grown with united EU directives on food regulations affecting the entire single market. Because the EU was a latecomer, EU food product and safety regulations are not globally accepted, whereas the US's Food and Drug Administration (FDA) has become a respected body due to their long-standing coherent standards.[42] A weak model from the EU on food product standards has shown that coherence and unity is essential to becoming a global standards leader.

To be a standards leader, a state has to have both the credibility (often gained by market power) and an enforced set of regulations that are more thorough than another state's standard. The US has a strong regulatory body for pharmaceuticals, the FDA. International pharmaceutical producers often take the view that if their products satisfy the FDA, they are able to satisfy requirements by less strict countries.[43] Industry observers suggest that if the FDA takes on European-influenced ISO standards as aforementioned, the FDA will lose their power in creating and maintaining global influence over standards.[44] In 1997 the EU and US signed an MRA, sharing pharmaceutical certifications and findings, to eliminate overseas inspections. The US failed to adequately certify exports and research, meaning that the EU was regulating both their own pharmaceutical companies and US companies, giving the EU larger influence over global pharmaceutical standards. EU domestic audits are said to be more thorough in this area and harder to pass than US audits.[45]

In the area of cosmetics the EU is the standard agenda-setter, because the US did not have sufficiently detailed or thorough standards.[46] By way of example, in recent changes to NZ cosmetics standards, the proposed standards recognised and substantially copied wording from the EU Cosmetic Regulation Art. 19, under the presumption that "NZ considers changes in regulatory requirements of other major markets for adoption in their own jurisdictions," even if there is no global agreement on these standards, such as an ISO standard. [47] Part of this adoption is due to similarities in definitions: NZ tends to adopt EU cosmetics standards because both the EU and NZ define sunscreen as a cosmetic, whereas the US and Canada define sunscreen as a medicine, and Australia defines sunscreen as both a medicine and a cosmetic under different circumstances.[48] Therefore, smaller actors such as NZ are more likely to follow EU standards in pharmaceuticals and cosmetics, because US standards were not imposed as strictly on the global market and were not accurate or harmonised enough to have market credibility.

Standards leaders are those who create standards before any other state or organisation does so. The first standard to be developed embeds the local market. This is particularly crucial for the EU in toy safety standards, which NZ has adopted. The EU has taken a leading role in toy safety standards, introducing a new directive banning carcinogens in toys that are

[41] S. Milmo, 'European food safety faces regulatory reform,' *Chemical Market Reporter,* Vol. 259, No. 26, 2001.
[42] Ibid.
[43] D. Hairston, 'Hunting for Harmony in Pharmaceutical Standards: Common standards would reduce the cost of getting pharmaceuticals to market,' *Chemical Engineering,* Vol.104, No. 20, 1997.
[44] Ibid.
[45] Bach and Abraham, op. cit.
[46] Ibid.
[47] Johnson & Johnson NZ Ltd, 'Johnson & Johnson NZ Ltd Interest,' New Zealand Environmental Protection Authority, 2012, p. 1.
[48] Ibid.

harmful to children.[49] NZ took this change to the directive very seriously, seeking to "align AS/NZS Standards with International and European Standards," within an ongoing project.[50] When NZ manufacturers produce toys for the European market, they now must establish an EC Declaration of Conformity.[51] The EU toy safety directive was launched in 2011 to ensure safe toys for EU consumers. [52] This influenced big brands who sell to Europe, many of whom are based in China: this in turn forced Chinese exporters to update their safety and risk assessment procedures for the continuation of toy sales to the EU.[53] To retain market access, NZ has followed European requirements. This is a clear instance of they way that the EU is able to enforce standards by virtue of being a strong market. By pioneering toy safety standards, the EU has become the leading standard creator in toy safety.

The EU and US are currently standards agenda-setters through credible markets, stronger application of standards, and being the initial standard creator in an area. Smaller states such as NZ are adopting these standards to retain access to the market, without question, in a "she'll be right" kind of way.

European Information and Expertise

As a large economy, made up of many Member States, the EU has considerable bureaucratic and research competence. It is this information and expertise that has led the EU to become a standards leader. Smaller states such as NZ borrow from this expertise, as they do not have sufficient financial or personnel resources. In true "she'll be right" fashion, NZ copies the standards. As a small nation, NZ does not have full facilities to do so. There are two main explanations for this phenomenon.

Firstly, the ability for European standards to be adopted entirely (word for word), is likely to be due to the transparency of EU decision-making: background information is readily available, and the EU institutions justify their arguments for a standard to become legislation to lobby groups, Member States and other EU institutions. Many third states use EU transparency and information to have a greater comprehension of the standard. The New Zealand Building Code was changed to include the European standard EN14604, which allows certain types of fire safety devices to be used in New Zealand buildings, was copied almost exactly from an EU standard, and gave the same justification.[54]

When a standard is adopted in NZ which creates controversy, the competent authority (depending on the matter) often uses EU rulings to provide more information for producers or consumers in New Zealand. Due to the credibility of EU expertise, NZ often uses EU rulings to justify adoption. In the case of food colourings, FSANZ requires producers to undertake a safety assessment before being used in food products; however, FSANZ backs this ruling up with evidence from the European Food Safety Authority, who published six

[49] Standards New Zealand, 'Draft Standards on toy safety available now for public comment,' <http://www.standards.co.nz/news/Media+archive/July+-+Sept+07/Toys+and+safety.htm>, accessed 9 December 2012.
[50] Ibid.
[51] Standards New Zealand, 'European Toy Safety Directive Changes For First Time in 20 Years and a New BS Toy Standard Published,' <http://www.standards.co.nz/touchstone/Issue+30/Consumer+Safety/European+toy+safety+directive+changes+for+first+time+in+20+years+and+a+new+BS+toy+Standard+published.htm>, accessed 9 December 2012.
[52] SGS-CSTC Standards Technical, 'China Takes Toy Safety Standards Seriously - Interview with SGS's Toy Business Director in China,' SGS, <http://www.sgs.com/en/Our-Company/News-and-Media-Center/News-and-Press-Releases/2012/09/China-Takes-Toy-Safety-Seriously.aspx>, accessed 24 November 2012.
[53] Ibid.
[54] Cavius, 'CAVIUS Latest News,' <http://www.cavius.co.nz/category/latest-news/>, accessed 9 December 2012.

opinions on based on scientific evidence done in the EU.[55] FSANZ notes that the EU requires some colours to have warnings on them, as food colouring has been thought to cause hyperactivity in children.[56] NZ may not have the resources to afford duplicate this research, despite local expertise being strong under a shared standards agency.

Secondly, the EU creates ready-made solutions for NZ to adopt (a classic example of the 'lesson drawing model'). In comparison to other decision-makers, EU decision-making is accompanied by very detailed and justified legal discourse, which is available on the Internet. While a large bureaucracy can sometimes mean slow decision-making, its standards come with legal assurance. Ready-made justifications create 'instant' standards acceptable to third states, who justify these standards to their constituents with predetermined EU arguments. It is also notable that Medsafe seeks to comply with EU standards when updating the Code of Good Manufacturing Practise for Manufacture and Distribution of Therapeutic Goods.[57]

By 28 Member States having to follow the same standards under the acquis communitaire, more legitimacy is given to European standards as international standards.[58] NZ then tends to follow European decisions in their pharmaceutical standards: NZ withdrew medicines with dextropropoxyphene in them after the EU and Singapore withdrew the medicines.[59] Similarly, after bufexamac-based medicines (for dermatitis) were banned in Europe, a review was undertaken in NZ. [60] Medsafe then revoked consent to sell bufexamax-based products in NZ based on scientific studies in NZ and in Europe showing both inefficacy and harm.[61] For many medicines, overseas testing by some agencies is appropriate (including European Medicines Agency) and is then accepted in NZ, as illustrated in the case of inadequate hip implant standards. This reliance on other parties to create standards and assess products without NZ input not only shows the level of confidence NZ has in European standards and the pitfalls of a "she'll be right" attitude, but also the strong global legal influence the EU has on smaller third states.

Conclusion

Empirical evidence shows the EU has been a significant regulator by proxy in NZ through diffusing standards through many channels of communications. There are many simultaneous factors that should be considered when explaining why small countries rely on European standards and many of the channels of communication suggested are intertwined in reality. The EU as a global market power has been influential in standard adoption by NZ, as it seeks to retain market access to the EU, particularly in its strong trading items such as wine and olive oil. The EU and the US are currently in a power struggle over standards,

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[55] Food Standards Australia New Zealand, 'Food Colours,' Food Standards Australia New Zealand, <http://www.foodstandards.gov.au/scienceandeducation/factsheets/factsheets/foodcolours.cfm>, accessed 9 December 2012.
[56] Ibid.
[57] Medsafe, 'Proposed update to the New Zealand Code of Good Manufacturing Practice,' New Zealand Government, <http://www.medsafe.govt.nz/hot/consultation/gmp%20review.asp>, accessed 9 December 2012.
[58] P. L. Willert, 'Assessment of the pharmaceutical market in Poland after accession to the European Union,' *The European Journal of Health Economics,* Vol. 8, No. 4, 2007.
[59] Medsafe, 'Paradex and Capadex will be withdrawn from New Zealand market on 1 August 2010,' New Zealand Government, <http://www.medsafe.govt.nz/hot/media/2010/paradexandcapadexmarch2010.asp>, accessed 9 December 2012.
[60] Medsafe, 'Summary of data on the benefits and risks for bufexamac-containing medicines indicated for the relief of dermatitis, rash and hives,' <http://www.medsafe.govt.nz/profs/adverse/Minutes145Bufexamacattachment.pdf>, accessed 9 December 2012.
[61] Ibid.

where the 'winners' are the stronger regulators, the first to write standards, and have market credibility.

To create credibility and respect for EU standards, the EU created an information and expertise-based approach to standards, where the standard has to be justified to all member-states. Creating an individual justification for a standard can be expensive and difficult for small states such as NZ; therefore, the adoption of EU standards by NZ is attractive and contributes to de facto standards harmonisation. Among Schimmelfennig and Sedelmeier's three main models, NZ's "she'll be right" approach to standards seems to best fit their lesson drawing model, as NZ takes on global leaders' standards when their own standards are dissatisfactory: as in the case of olive oil. The lesson drawing model has explained why third states would take on EU standards, by diffusion and the channels of communication that diffusion utilises theoretically explains why the EU has provided these standards for third states to draw upon the lessons of. The NZ context offers validity to both the 'lesson drawing model' and diffusion theory when discussing regulatory standards and the way EU standards influence third states' law.

While this study is empirical and uses examples to state what is seen in NZ currently with the "she'll be right" attitude, it is likely that these channels of communications will continue to be seen, no matter who the standards leader is. There are many fields of research to draw on from this preliminary mapping exercise: the EU's institutional influence on ISO standards, creating a larger sample of dependent economies and third states, and the de jure influence the EU has on third states' standards. While regulatory Europe seems prominent currently, the emergence of China as a global power over the next decade will be vital to watch, to understand the role of diffusing standards by global normative powers.

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