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The Privatization of Global Forestry Regulation[1]

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Abstract

In 1992, representatives of 180 of the world's nations met in Rio de Janeiro at the UN Conference on Environment and Development. Among the submissions debated and considered at the "Earth Summit," as it was called, was one addressing sustainable forestry, with the unwieldy title "Non-legally binding authoritative statement of principles for a global consensus on the management, conservation and sustainable development of all types of forests" Opposition to the Forest Principles was much broader than support for them, and they crashed and burned. Over the intervening years, there have been repeated efforts to launch an International Forest Convention; although UN-sponsored panels, commissions, and forums on forests have worked continuously on the matter since 1995, these efforts have, so far, not been consummated in either an agreement or an organization.

The absence of a global forestry convention does not mean the absence of "international" forestry regulations, although these, for the most part, have their origins in long-standing national legal and regulatory systems. One result of the apparent international impasse has been the growing privatization of global forestry regulation. There is nothing new about private law, either domestic or international. But whereas private law was historically constituted by contract among signatories, and usually legitimated through the legal structures of and enforcement by states, private forestry regulation rests on the hope for a form of "social contract" between producers and consumers. Such a contract promises consumer loyalty in return for corporate good behaviour. Indeed, in the face of an international failure to establish a global forestry convention, such "private" initiatives have proliferated, offering competing venues for those interested in fostering "sustainable forestry."

Can such private regulation ensure sustainable forestry? This paper attempts to answer the question. I begin with an examination of the reasons for privatization of forest regulation. In the second part of the chapter, I turn to a discussion of the many initiatives to implement semi-public or private forestry regulation, and the ways in which market-based methods lie at their core. Finally, I assess what I see as the fundamental flaws in such an approach, and argue that the sovereign consumer, when faced with contradictory messages about her purchases in the market and, possibly unmotivated by normative concerns, is not necessarily going to choose an environmentally-friendlier product.

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[1] This paper is drawn from Ronnie D. Lipschutz, with James K. Rowe, *Globalization, Governmentality and Global Poilitics: Regulation for the Rest of Us?* (Routledge, forthcoming 2005), especially chapter 5. The full bibliography for references in this paper can be found at: http://people.ucsc.edu/~rlipsch/Rout/Bib.pdf

Paper or Plastic?
The Privatization of Global Forestry Regulation

Ronnie D. Lipschutz

The subject of forests is related to the entire range of environmental and development issues and opportunities, including the right to socio-economic development on a sustainable basis.
—UNCED Statement on Forest Principles (1992)—

INTRODUCTION

In 1992, representatives of 180 of the world's nations met in Rio de Janeiro at the UN Conference on Environment and Development. Among the submissions debated and considered at the "Earth Summit," as it was called, was one addressing sustainable forestry, with the unwieldy title "Non-legally binding authoritative statement of principles for a global consensus on the management, conservation and sustainable development of all types of forests" (UNCED 1992). This proto-convention was the result of several years of sustained, intensive negotiation and controversy and a product of growing concern during the 1980s and early 1990s about the future of the world's remaining tropical forests (Hecht and Cockburn 1990).

That the Earth Summit was taking place in Brazil was especially apposite, for two reasons. On the one hand, the burning forests of Amazonia had, during the late 1980s, served to focus global attention on their survival as well as their role in the global environment, especially the carbon cycle. On the other hand, the Brazilian government was strongly opposed to any hint of internationalization of its sovereign resources and territory (for background, see, e.g, Goodman and Hall 1990; Schmink and Wood 1992; Fogel 2002: ch. 3). Opposition to the Forest Principles was much broader than support for them, and they crashed and burned. Over the intervening years, there have been repeated efforts to launch an International Forest Convention; although UN-sponsored panels, commissions, and forums on forests have worked continuously on the matter since 1995, these efforts have, so far, not been consummated in either an agreement or an organization.

The absence of a global forestry convention does not mean the absence of "international" forestry regulations, although these, for the most part, have their origins in long-standing national legal and regulatory systems. Indeed, examination of national forest regimes suggests that virtually all contemporary forest management systems have been derived from principles and practices developed during the eighteenth and nineteenth centuries in those regions that would eventually become Germany. Subsequently, these were revised and adopted by France, Britain, and the United States and later diffused throughout European colonial territories (Scott 1998; see also Schama 1995; Peluso 1992). In all instances, national systems were implemented as the "best available approach" to forest

management, even though subsequent experience showed them to suffer from serious shortcomings. Inasmuch as these management techniques were intended not for purposes of forest preservation but, rather, conservation and commodification of timber resources (e.g., Hays 1980), it is not surprising that there has been considerable resistance to a global forestry convention that might emphasize protection over exploitation. Timber companies are fearful that they will be denied access to forests; activists worry that forests will nonetheless be ravaged; states are concerned about intrusions on their sovereignty. And really-existing institutions and practices are sticky and difficult to change.

But why regulate forestry practices at all? Here, we encounter the tension between forests as "capital on the hoof," so to speak, and forests as providers of "natural services." Aside from the intrinsic ecological value of the various species of trees themselves, forests serve a variety of ecological functions, providing habitat for other plant and animal species, environmental services such as water purification, soil retention, local climate moderation, and carbon sequestration (with the last being especially important for global climate), and as reservoirs of genetic diversity. These services are not provided in equal measure by forests managed purely for timber growth, and the rate of destruction of non-managed forests, especially tropical regions is, by all accounts very high (FAO 2001). If the preservation of forests is essential to the viability of life on earth, there is, in other words, a global public interest in seeing that they are treated in a sustainable manner.

While a number of the ecological functions listed above might arguably fall into the category of global commons, as suggested by the Convention on Biological Diversity (CBD), none of these are as central to the political economy of states and markets as production of timber and conversion of land. Moreover, while sovereignty considerations do enter into questions such as access to genetic resources, with nominal limits to access addressed in the CBD and related agreements, neither considerations of sovereignty nor global commons appears especially relevant to any of the other secondary benefits provided by forests. For the time being, these natural services might be thought of as positive externalities for which no one pays but from which everyone benefits. In political terms, then, concentrated economic stakes and the maintenance of national control of forests far outweigh the diffuse and scattered interests that the world might have in the secondary benefits of sustainable forests.

Despite the best efforts of concerned governments, some of which have called repeatedly for an international forestry convention (Canada having been among the most voluble in this regard), one result of the apparent international impasse has been the growing privatization of global forestry regulation. As indicated in earlier chapters, there is nothing new about private law, either domestic or international. But, whereas private law was, historically, constituted by contract among signatories (Braithwaite and Drahos 2000; Cutler 2003), and is now legitimated and maintained through ratification and enforcement by states, the private forestry regulation discussed in this chapter, like the attempts to address labor rights in the apparel industry, rests on hopes for some type of "social contract" between producers and consumers promising loyalty by the latter in return for corporate good behavior.

The number of privatized regulatory forest projects is considerable and, in many ways, the stakes are higher here than in the apparel industry. Forests have, historically, been subject to considerable state management, if only because, until the mid-nineteenth century, timber played a major role in military as well as economic affairs, especially in the construction of warships. Forests were often the property of kings and aristocrats, who were zealous about protecting them, and governments regarded forests as integral to projects of national development. Finally, forests occupy national territory and continue to be regarded as sovereign resources and state property (Kuehls 2003). As a result, there is considerable competition among the various private forestry codes on offer, for the one that is most widely-adopted and accepted by both consumers and producers could well acquire a monopoly position in the market for such regulation and become the basis for an eventual international forestry law.

In this paper, I begin with a discussion of the "demand" for social regulation, one forthcoming as a result of weak institutions of international governance, unable and unwilling to seek meaningful and enforceable *global* rules addressing labor rights, environmental protection, and other social concerns. I then examine the failure to achieve a global forestry convention during the 1990s. As we shall see, one key obstacle to such an agreement was to be found not so much in conflict over fundamental principles as in the political economies of *national* forest management approaches, which are historically-rooted, materially-based institutions that are not easily addressed or changed through international law. In the third part of the paper, I turn to a discussion of the many initiatives to implement private forestry regulation, and the ways in which market-based methods lie at their core. I focus here on three particular initiatives: the Forest Stewardship Council (FSC), ISO 14000 of the International Organisation for Standardization (ISO), and arrangements for mutual recognition of national forestry regulations. I then address evaluations of the effectiveness of these private regulatory projects and ask whether the sovereign consumer, when faced with contradictory messages about her purchases in the market and, possibly, unmotivated by normative concerns, is necessarily going to choose an environmentally-friendlier product.

THE NEW GLOBAL POLITICAL ECONOMY OF REGULATION

The book from which this paper is drawn began its life as a study of civil society projects intended to develop and deploy social and environmental regulations in what are largely un- or under-regulated international settings. These are the work of private and semi-governmental groups and organizations based in global civil society and include:

- activist campaigns to embarrass and cajole corporate producers into self-regulation via codes of conduct;
- organizations whose goal is the promulgation of processing and production standards for goods and commodities
- movements to sanction international trade in certain goods and commodities in order to constrain violence and human rights abuses in particular countries; and

- corporations, corporate associations, and programs seeking to institute "corporate social responsibility" in production and sales of various types of goods and commodities (examples of such projects can be found in Table 1-1).

Table 1: Examples of Private International Regulation

Type of regulatory campaign	Focus of regulatory campaign	Example of groups involved
Activist	Labor standards in apparel companies' contractor factories	UNITE Clean Clothes
Standard-setting	Management of sustainable forests and lumber production	Forestry Stewardship Council Int'l Organisation for Standardisation
Boycotts	Goods from countries violating human and labor rights	Ethical Trading Initiative Fatal Transactions
Social Responsibility	Corporate management	Business for Social Responsibility As You Sow

Why are such regulatory activities deemed necessary, and why are they taking place now? Why are these campaigns so focused on modifying the behavior of producers and consumers? Why don't those who are concerned about social and environmental conditions focus on changing political regulation in those countries where these problems have emerged?

Some degree of regulation is generally demanded by producers and capitalists, who believe that a "level playing field" and a high degree of legal certainty are essential for economic success. For smaller businesses, regulation may also provide some protection against predatory and monopolistic behavior by larger ones. But "too much" regulation is strongly resisted in the view that it imposes excessive and unfair costs on capital. Consumers tend to demand regulation because they believe it protects them from unscrupulous and rapacious producers and provides safeguards against dangerous activities and products. Finally, governments demand regulation—notwithstanding neo-liberal and libertarian rhetoric—in the hope that other governments and actors will act in predictable, rule-based manner (this hope is at the core of regime theory; Krasner 1983).

It is useful, in this context, to distinguish between "constitutive" rules and regulations, which organize and structure markets, and "distributive" (or instrumental) rules and regulations, which govern behavior between parties within markets (Lipschutz with Mayer 1996: 36). Conventionally—or, at least, according to standard theories—regulation develops for two reasons.[2] First, markets do not emerge "naturally" out of some human propensity to barter and exchange. They are social institutions, based on constitutive "rules of the game," which develop over time or are created by authoritative bodies. Such rules legitimize markets' existence and instill normative discipline in those who engage in exchange within them according to distributive rules. Many of the constitutive or structural rules are rarely questioned or examined, but some, such as property rights, are legislated or reified as "natural law." Such rules do establish

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[2] My use of the term "regulation" has nothing to do here with French regulation theory (see, e.g., Boyer and Drache 1996; Robles 1996; Boyer and Saillard 2002).

the certainty demanded in situations of decentralized exchange, such as markets, but they can also limit the potential for change and flexibility.

Second, many economic activities impose social costs on the general public that accrue to its detriment or generate unjustified benefits to certain private parties. This tendency is sometimes described as "privatization of benefits, socialization of costs." I have borrowed the term "externality" from neo-classical economics to describe such benefits and costs, although other terms and discourses, such as "risk" or even "human rights violations" have also been applied to the phenomenon of unpaid social costs.[3] The creation and existence of externalities are often couched in terms of "market failure," that is, the failure of markets to include the costs of things that cannot be commodified or valued. Market failure can be remedied, according to the conventional wisdom, by including social costs in the price of a good, but this is not as easy as it sounds.

It is not always evident, moreover, that markets have "failed." It may be, instead, that they have been organized with the intention of socializing certain costs and realizing private benefits, as is the case when, for example, pension rights are eliminated in the name of "efficiency." Indeed, under capitalism the very organization of states and markets, as well as the division between that which is "public" and that which is "private" (Wood 1995: ch. 1) are the result of constant struggles over socialization and privatization, often between classes, leading to what we call "political economy." Political efforts to minimize social costs to capital in order to maximize private profits take the form of active support for those rules that provide maximum freedom for business to maneuver and active opposition to those rules that seek to impose constraints. This is only a very general observation, however, because the precise desires and activities of any particular business or industry in this regard are a function of how they see their specific operating environment and how they assess both threats and interests within it.

Nevertheless, regulation has been frequently judged necessary to reduce or eliminate externalities, both environmental and social, which otherwise provide undeserved private benefits to producers. These and other forms of regulation have historically emerged through institutionalized political processes *within* states, especially when it has become glaringly apparent that self-regulation is inadequate or non-existent (Polanyi 2001). Whether regulations are too lax or too heavy, or what form they take, is not at issue here; it is the existence of mechanisms to legislate and regulate at the *national* level that is important. Moreover, the ability and right to demand such controls, have them implemented, and achieve some degree of distributive justice are critical to system legitimacy.

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[3] I use the economic term "externality" for both analytical and ironic reasons, rather than the more politicized concept of "risk" (Beck 1992). First, when "normal" production and economic exchange generate social costs that are not absorbed by the beneficiaries of those activities, a classical externality results. Second, many economists are quick to point out that such social costs are more appropriately subsumed under the category of comparative advantage and market equilibrium. Consequently, the low wages received by workers in 'Third World' factories represent the normal functioning of international supply and demand, rather than a subsidy—or positive externality—to "First World" consumers.

There are, by contrast, no standardized *international* procedures for promulgating or enforcing such regulations. But by contrast with the myth of the absent sovereign, international rules and regulations are being formulated and implemented all the time, through a broad range of states, international organizations, regimes, and agencies (this is often called "global governance" or, alternatively, "global governmentality"; see Lipschutz 2002; also Vogel 1996). Each rule maker or rule-making forum does so in a fairly idiosyncratic fashion and rarely with consideration of or in consultation with others. Some of these rules and regulations have the force of international law, and are meant to be implemented through domestic legislation and enforced by domestic authorities (as in the case of Codex Aliementarius, which establishes international standards for foodstuffs). Others are administrative tools, whose application is primarily functional and sectorally-limited (as in the case, for example, of commercial aviation, telecommunications frequencies or geosynchronous satellite slots). A third category involves limits or prohibitions on certain types of national activities or legislation (resulting, for instance, from the dispute resolution process of the World Trade Organization or the rather weak oversight of the International Atomic Energy Agency).

But note carefully: *None of these rule- and regulation-making forums has acquired authority through a fully-legitimated, participatory or representative system.* They are representative of states, and not people. This "gap" is sometimes called the "democratic deficit" (e.g., Underhill and Zhang 2003), although it seems likely that even an operational global democracy would require the types of constraints on the practices of politics as to be virtually indistinguishable from what now exists internationally. What happens nowadays in lieu of a truly representative process is the pushing and hauling of states, organizations, and lobbies, focused on the ersatz legislative arenas that constitute the basis for the existing system of international regulation. The links between these rule-making arenas and local, national, and global (if such can be imagined) polities are quite feeble.

To whom, then, can those in pain turn for redress? Although there are markets everywhere, and innumerable actors exchanging every conceivable item in those markets, it seems as though no one is in charge. There is no institution or individual responsible for the social costs, externalities and risks imposed so unfairly on the weak, the poor, the unrepresented. Governments claim, whether it is true or not, that markets are in control and they must obey its strictures. Corporate executives argue that, although they are all in favor of social responsibility, their first responsibility is to shareholders. International agencies protest that they are only following the dictates of their members who, in turn, claim they must obey international law. Buck-passing is the order of the day—nothing needs to be done because everything is copacetic!

That is why the WTO, the IMF, and the World Bank, among others, have become the prime targets of the global justice movement and other activists. Certainly, they seem each to have a major hand in controlling global trade, finance, and capital flows. Yet, this is more than a little illusory, as suggested above. For, not only are the WTO and its Sisters in Capitalism effectively tools of the most powerful of its member states—whose governments themselves do not always agree on what constitutes desirable policy and

practice—a growing fraction of international trade, it is now acknowledged, takes place not *among* countries but *within* multinational firms and their networks (Clausing 2000). The WTO is, at best, a symbol of both the distancing of the global economy from any sort of politics as well as the loss of institutional legitimacy that has followed from that distancing.

This "gap" between the structuring of the political economy and the failure to address the resulting costs have led to what the "new international division of regulatory labor"—that is, *private* regulation (Haufler 2001; Hall and Biersteker 2002)—seeks to fill. The goal of such regulatory projects is the creation of some sort of transmission belt between "the people"—here represented by activists and nongovernmental organizations, whose representativeness is often challenged by states and business—and the apparently autonomous and uncontrolled international and transnational institutions, both governmental and corporate, of global capitalism. As we shall see, this is the tack taken with respect to forestry regulation. First, however, a few words about the history of forest management.

THE POLITICAL ECONOMY OF FORESTS

It is a commonplace, in this era of almost-instantaneous communication, to argue that the diffusion of both knowledge and practice is more widespread than ever before (see, e.g., Castells 1996 1997 1998). Successful practices—if they are not proprietary—attract attention and are replicated by people living in other places far removed from their point of origin. But as attested by the diffusion of agriculture throughout the world 10,000 years ago, there is nothing very new about such social imitation. What *has* changed is the velocity with which communication takes place, and the concomitant contraction of space involved. Hence, it is hardly surprising that there are a limited number of templates for forestry management in place around the world. Nor is it unexpected that these templates originated mostly in Europe, where sovereigns and states were best organized to deploy regulation. Just as the organizational principles of European states converged on a few forms, so did the management of forests and other natural resources.

The basic elements of contemporary forestry originate primarily from practices developed by state authorities in Prussia and Saxony during the 1700s century, in response to a growing shortage of wood. These were adapted subsequently for application elsewhere. As James Scott (1998) has described it, "scientific" forestry was based on the precise measurement of the distribution and volume of wood in a given parcel, the systematic felling of trees, and their replacement by standard, carefully-aligned rows of mono-cultural plantations that could be harvested at set times. According to Scott (1998:19-20), this approach succeeded beyond expectations during the first harvest cycle of 80 years or so, but began to fail during the second as a result of unforeseen ecosystemic damage and destruction. No matter—by then, the model had been adopted around the world as the law and practice of many lands.

What is worth noting about scientific management of forests is that its goal was not preservation, or "sustainable development," in the sense that we understand those

practices today. Rather, as Scott (1998:11-12) has observed, the goal was entirely economic:

> The early modern European state, even before the development of scientific forestry, viewed its forests primarily through the fiscal lens of revenue needs. To be sure, other concerns—such as timber for shipping, state construction, and fuel for the economic security of its subjects—were not entirely absent from official management. These concerns also had heavy implications for state revenue and security. Exaggerating only slightly, one might say that the crown's interest in forests was resolved through its fiscal lens into a single number: the revenue yield of the timber that might be extracted annually.

In each instance, management was overseen by state authorities whose objective was maximizing production in the national "interest." Specific practices differed, of course, from one country to the next (compare Hays 1980; Peluso 1992; Schama 1995). For example, even though most forest land in the United States and Canada was and remains privately-owned, a considerable amount is held by the state as "public commons" but systematically leased to private timber producers. In nineteenth century India, the British Raj took ownership of virtually all forests, declaring them to be "wasteland" and having no owners (Guha 2000), a practice continued today by the government of India. Interestingly, forestry policy in the Raj was based on French and German practices that, in turn, were eventually applied throughout the United Kingdom (e.g., Oosthoek 1999). In Indonesia, forests are state-owned but, in practice, treated as private property while, in Brazil, the lack of national government capacity has literally rendered Amazonia's forests an unregulated open access commons.

In all cases, however, public forests have been viewed as a *national* resource, that is, the sovereign property of the state. In this role, the conservation of forests is tightly linked to the production of timber and other commodities that generate both capital and jobs, and the economies of large regions have become almost wholly-dependent on natural resource production from those forests (e.g., Magnusson and Shaw 2003). Moreover, in the domestic scheme of things timber producers can be politically-influential and often get their way (although this is changing; see, for example, Lipschutz and Mayer 1993; Lipschutz 1996a ch. 4; Dauvergne 2001). In this respect, forestry regulation differs significantly from efforts to protect other elements of the Earth's environment, such as oceans and atmosphere, which have been defined as global commons and have, consequently, been made subject to regulation through international conventions (Soroos 1997; Buck 1998). Because forests are, in effect, *private* resources whose market value is easily determined, there is considerable reluctance to give away any of that value in pursuit of some poorly-defined global good whose benefits are widely spread and difficult to quantify.

If we look at these different issues more closely, *why* forests are different may become clearer. The point at which each portion of the natural environment becomes subject to international regulation is, for the most part, that one at which the balance-of-interests and costs tilts clearly toward a public solution ("public" in the international sense).

Moreover, a public solution is most easily negotiated when there is already in place a template or framework within which a new issue can be addressed. For example, although the Basel Convention and other agreements on the international movement of toxics are intended, in part, to encourage source reduction, their control mechanisms rely largely on the regulation of trade in toxic wastes (O'Neill 2000; Clapp 2001). The same is true for the ozone agreements, the Convention on Trade in Endangered Species, and even the CBD. There already exists a well-developed framework for treating international trade as a heavily-regulated public good through the General Agreement on Tariffs and Trade and the World Trade Organization, the North American Free Trade Agreement, the European Union and other such bilateral and multilateral agreements and institutions. (It is one of the rhetorical paradoxes of "free trade" that it is so heavily regulated at the international level, which, from the national perspective, renders such law invisible and makes it appear as though no political intervention is taking place; see Ruggie 1983, 1991, 1995; Vogel 1996). Hence, those bads whose substance or effects are transmitted through international commerce are also those for which global regulation seems to be most easily achieved (although I do not consider here whether such agreements achieve their stated goals; on the topic of effectiveness, see Bryner 1997; Kütting 2000; Miles 2002).

By contrast, those environmental bads whose substance or impacts are not easily amenable to management through a trade regime, such as climate change, are proving to be much more difficult to address at the international level (though not for lack of trying). The production of greenhouse gases is intimately involved with everyday life, and there is little willingness on the part of political authorities or capital holders to limit trade in or production of the goods (fuel, food, fiber) that give rise to the bads. The political economy of greenhouse gas production is so much a part of modern industrial life that resistance to regulation is already intense, even as, in the face of accumulating evidence of global climate change, there are no effective restrictions in place at any level. The emerging solution to this impasse has thus been to transform climate change into a trade matter through markets in tradable emission permits, and to leave the difficulties of implementation to the states themselves. While we might expect such a permit system to work smoothly once it is in place, whether national efforts to control emissions will be effective is anybody's guess.[4]

Forests have similar characteristics. Ecological functions are not amenable to exchange whereas commodities are. As might be expected in such a case, therefore, international efforts to regulate forestry practices have come to rest largely on the tools of trade. For better or worse, however, both international trade lawyers and the advocates of free trade are skeptical of such international regulation. First, public international forestry law would mandate some degree of harmonization of forestry practices yet, just as in the case of labor law, free trade advocates generally argue that this would amount to a form of "cultural imperialism." They are, therefore, opposed to the inclusion of environmental

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[4] More to the point, unless there is some binding agreement on the distribution of such permits, national governments will be hard put to prevent the kinds of corruption and black marketeering that have appeared in connection with other environmental protocols, such as Montreal.

regulations in trade agreements (Bhagwati 1993 2002 2004). Second, in the absence of such harmonization, individual states find themselves in a weak position from which to impose their own municipal standards on forestry imports as part of an effort to encourage more sustainable practices in the country of origin. Such restrictions are likely to be judged as a violation of WTO rules that forbid process standards as non-tariff barriers to trade (see, e.g., Mayer and Hoch 1993), while countries with lower levels of regulation might also be able to offer timber at lower cost. These reasons, among others, are why the agreement presented at the Rio Earth Summit was characterized as "Forestry Principles," rather than as a binding convention; as principles, countries could choose to follow them or not. Most have chosen not to. Countries can impose their own domestic standards but these are likely to increase variable costs to producers; paradoxically, perhaps, timber producers in high-cost countries such as Canada wish to remain competitive and demand international harmonization so that all countries must impose the same costs (see, e.g., Barron 1997).

The resulting lacuna has motivated efforts by both activists and business to find alternative means of regulating forest practices at the global level. Timber company brands are hardly as ubiquitous as those of clothing manufacturers, with the result that consumer awareness is a less-powerful lever with which to move capital. At the same time, however, "do-it-yourself" (DIY) remodeling has become ever more popular—sales by home improvement stores in the United States alone approach $300 billion per year, a sizable fraction of which is lumber). The global market structure of the timber trade is quite fragmented, as well, inasmuch as producers tend to be national. Activists have chosen, therefore, to pursue a double-pronged strategy. As in the case of the apparel industry, activists are putting pressure on retailers and DIY stores in Europe and North America, demanding that they sell only sustainably produced lumber and inform consumers that they are doing so. Demand from these retailers, it is hoped, will induce wholesalers and producers to seek sustainable timber for sale to contractors and do-it-yourselfers. But many timber companies and governments are reluctant to hop on activist bandwagons, regarding those standards as being too high. Consequently, the forestry equivalents of codes of conduct are also on offer.

INTERNATIONAL TRENDS IN FORESTRY REGULATION

Although forestry management has been an "internationalized" activity for more than two centuries, it is only over the past two decades that serious international attention has been paid to the externalities generated by conventional forestry practices (Table 5.1). As defined in the 1993 Helsinki Declaration of the Ministerial Conference on the Protection of Forests in Europe (*International Trade Forum* 2002), sustainable forest management (SFM) is

> the stewardship and use of forests and forest lands in a way, and at a rate, that maintains their biodiversity, productivity, regeneration capacity, vitality and their potential to fulfill, now and in the future, relevant ecological, economic and social

functions, at local, national and global levels, and that does not cause damage to other ecosystems.

As is the case with the apparel industry, efforts and projects to regulate forestry fall into several different categories, as shown in Table 5.1. Many of the projects listed in Table 5.2 seek to regulate economic activities through *certification*. There are three types of product certification. *First party* labeling, the most common and simplest approach, entails producer claims about a product, such as "recyclable," "ozone-friendly," "non-toxic" or "biodegradable." In the absence of a mechanism for verifying these claims, the only guarantee that the product performs accordingly is the producer's reputation.

Table 2: Institutional Form of Sustainable Forestry Regulation

	Political	**Economic**
Public	**Inter-state** UNCEF Forestry Principles	**Activist** Forest Stewardship Council
Private	**Trans-national** Int'l Forestry Industry Roundtable	**Private** ISO-14001

Second party labeling is conducted by industry-related entities, such as trade associations, which establish guidelines or criteria for making claims about the product. Once the standards are met or the guidelines followed, an industry-approved label is placed on the product stating or verifying the product's environmentally friendly qualities. In this instance, corporate members of the certifying organization will seek to ensure the label's value, and to mandate its use, so that no single producer will have an advantage over any other.

Third party, or independent, labeling is performed by either a governmental agency, a non-profit group, a for-profit company, or an organization representing some combination of these three. As with second party type, third party labeling programs set guidelines that products must meet in order to use their label. They may also conduct audits in order to ensure compliance with the guidelines. As the name implies, third party

Table 3: Selected National and Global Initiatives in Sustainable Forestry Management

Name	Membership			Objective
	NGOs	States	Corp.	
Kyoto Protocol		Π		Establish terms and conditions to meet provisions of Kyoto Protocol regarding management of forests & their role as carbon sinks
Intergovernmental Working Group on Global Forests (1993-1994)		Π		Created to develop a scientifically-based framework of criteria and indicators for the conservation, management and sustainable development of boreal and temperate forests.
UN Intergovernmental Panel on Forests (IPF) (1995-1997)		Π		Created by the UN Commission on Sustainable Development as an open-ended ad hoc group to pursue consensus and coordinate proposals to support the management, conservation and sustainable development of forests.
Intergovernmental Forum on Forests (IFF) (1997-2000)		Π		Followup to the IPF created by ECOSOC to pursue further proposals for action to governments, international organizations, private sector entities and all other major groups on how further develop, implement and coordinate national and international policies on sustainable forest management.
UN Forum on Forests (UNFF) (2000-present) (www.un.org/esa/forests/)		Π		Created as the permanent intergovernmental body responsible for overseeing the implementation of the IPF/IFF Proposals for Action and enhancing cooperation and international forest policy dialogue.
International Tropical Timber Organization (1985-present) (www.itto.or.jp)	observers	Π	observers	Created in 1985 to provide international reference document upon which more detailed national standards could be developed to guide sustainable management of natural tropical forests
Center for Int'l Forestry Research (CIFOR)	Π	Π		Established to improve the scientific basis for ensuring the balanced management of forests and forest lands; develop policies and technologies for sustainable use and management of forest goods and services.
International Oganisation for Standardization ISO-14001 (www.iso.ch)		Π	Π	ISO series provides a framework for an organization to use to identify and address the significant environmental aspects and related impacts of its activities, products and services
World Commission on Forests and Sustainable Development (1996-99)	Π	Π	Π	Independent commission which held hearings to achieve policy reforms aimed at reconciling economic and environmental objectives for sustainable management of global forests.
Rainforest Action Network (www.ran.org)	Π			"Old Growth Campaign" promotes consumer boycotts of companies that log and sell products from old growth forests
Smart Wood (1989-present) (www.smartwood.org)	Π			Established by the Rainforest Alliance to provide certification to all types of operations in all types of forests. FSC accredited.
Forest Stewardship Council (FSC) www.fscoax.org	Π		Π	Created in 1993 to establish internationally-recognized principles and criteria of forest management as a basis for accrediting regional certifiers
Scientific Certification Systems (Oakland, CA) www.scs1.com/forestry.shtml			Private firm	"Forest Conservation Program" evaluates forest management against objective and regionally appropriate principles of sustainable forestry; FSC certified
SGS Qualifor (Oxford, UK) www.qualifor.com			Private firm	"Carbon Offset Verification Service" assesses, surveys, monitors & certifies project development & management
Pan-European Forest Certification (1999-present) www.pefc.org*			Π	Created to provide certification of forests according to the Pan European Criteria as defined by the resolutions of the Helsinki and Lisbon Ministerial Conferences of 1993 and 1998 on the Protection of Forests in Europe.
Sustainable Forestry Initiative (1995-present) (www.aboutsfi.org)			Π	Established by American Forest and Paper Association to provide standard of environmental principles, objectives and performance measures that integrates growing and harvesting of trees with the protection of wildlife, plants, soil and water quality and other conservation goals for int'l application
African Timber Organisation		Π		Pan-African timber trade organization with 13 member countries developing standards for sustainable forest management that could form eventual basis for certification program
Malaysian National Timber Certification Council (www.mtcc.com.my)		Π		Quango established to administer voluntary third party certification of forests in Malaysia. Cooperates with FSC
Lembaga Ekolabel Indonesia (1998-present) (www.lei.or.id)	Π			Certifying organization for Indonesian forests, works in cooperation with FSC.
International Forest Industry Roundtable		Π		Proposal for an international mutual recognition framework for national forest certification programs is in the works
The BMZ/GTZ Forest Certification Project www.gtz.de/forest_certification		Π		German government-owned corporation which provides training and support for information, capacity building, participation and networking for better communication and co-operation of those involved in certification processes
Initiative zur Föderung nach-haltiger Waldbewirtschaftung (IFW)			Π	Dual process of certification whereby nationally-accredited bodies within timber exporting nations would certify that producers have met high standards of forest management. for European label

Sources: Evans 1996; CIFOR No Date; SGS No Date; IISD 2003; UN Forum on Forests 2004; and other forestry websites. *The PEFC was recently renamed the "Programme for the Endorsement of Forest Certification schemes

organizations are not affiliated with the products they label (Caldwell 1998; Bass and Simula 1999).

Timber certification comes in two forms. *Forest management certification* involves assessment of forestry practices by a company, community or other organization according to a set of predetermined standards. The focus of such certification may be an individual forest or a set of forests managed by a single entity. It may also be conducted regionally or nationally, depending on the management structure of the forestry and timber sectors in a given country. *Wood product certification* involves an inspection of the "chain of custody" to follow wood throughout the commodity chain. This is done by auditing individual organizations at each step of the chain to determine whether or not they are using materials from certified sources (Oliver 1996).

Finally, the entity responsible for overseeing certification may be either *independent* (third party) or *national*. In the former case, standards are usually formulated by an organization, whether public, private, or non-profit, with no ties to the companies whose practices and products are subject to certification. The standard-setting organization then authorizes other independent entities to act as certifiers. Alternatively, certification standards may be devised by national forest and timber associations whose members are owners of forests and producers or sellers of wood products. In the latter case, responsibility for certification can be under the authority of the state itself, either in the form of a government agency or an "independent" body established or chosen by the state. In all cases, the company or individual seeking certification for a property pays the independent auditor to examine, assess, and certify the forest. Once approved, certified timber companies, producers, and products are permitted to display an *eco-label* intended to inform consumers that SFM standards have been met (Oliver 1996). Clearly, however, the credibility of a certification is no easy thing for a consumer to assess, and it is retailers that provide the information and assurances for those customers concerned about the origins of the lumber they purchase.

Estimates of the total area of 'certified forests' worldwide range from 265 to almost 500 million acres (about 2-5 per cent of the world's forests; FAO 2001: xii; CSFCC 2002). Statistics about availability and sales of certified lumber and wood products do not appear to be available, although several large home-supply and DIY companies have, either under activist pressure or out of self-interest, agreed to carry certified wood. Among the best known of these is Home Depot in the United States.

Public regulation

Negotiations over an international forest convention, which would establish some level of harmonized SFM standards among countries, failed repeatedly during the 1990s. The Rio Forest Principles contained no provisions for an international law to regulate forestry. At the time, states were leery of being bound to a single set of rules—some, such as Brazil, feared that a convention would become the basis for the internationalization of the Amazon—while many environmental NGOs believed that any agreement would only

foster increased global trade in timber and further boost already-high rates of deforestation. How did this state of affairs come about?

The first major international initiatives in this direction were launched during the 1980s, divided between management for protection and management for production. In 1983, timber producing and consuming countries established the International Tropical Timber Organization (ITTO) and negotiated and signed the first International Tropical Timber Agreement (ITTA), in order

> To promote the expansion and diversification of international trade in tropical timber and the improvement of structural conditions in the tropical timber market; to improve market intelligence with a view to ensuring greater transparency in the international tropical timber market; to encourage members to support and develop industrial tropical timber reforestation and forest management activities; [and] to encourage the development of national policies aimed at sustainable utilization and conservation of tropical forests and their genetic resources, and at maintaining the ecological balance in the regions concerned (ITTO 1983; see also ITTO 2004; Schwartzman and Kingston 1997).

In 1985, the World Wide Fund for Nature (WWF) convinced the 35-odd developing country members of the ITTO to pledge that, by 2000, they would trade only in forest products originating from sustainably-managed forests. Country-level guidelines on sustainable forest management were developed soon thereafter, but were rarely put into practice. In 1989, an influential ITTO study (Poore, et al. 1989) concluded that less than one-eighth of one-percent of all tropical forests (less than one million hectares) were under sustainable management regimes, but the intergovernmental body and its member governments failed to act on this finding. The following year, the ITTO rejected a WWF proposal to initiate an independent scheme that would assess and certify sustainable forestry so as to help realize the Year 2000 pledge, and WWF decided to start its own program. The result was the Forest Stewardship Council (FSC; see below). In 1991, the ITTO finally adopted guidelines for sustainable forestry management, but these were neither binding on countries nor were they monitored for adherence to the standards. In 1994, a new ITTA was formulated but this, too, seems to have proven fairly ineffectual. Since then, the ITTO has focused mostly on green labeling, although this has been opposed by the United States which sees such labeling as a barrier to trade (Schwartzman and Kingston 1997: 41).

The ITTO was not the only game in town. In response to growing industrialized country concern about tropical deforestation during the 1980s, the World Resources Institute, the World Bank, the UN Development Program and the Food and Agriculture Organization launched the Tropical Forestry Action Plan (TFAP) in 1985. The TFAP was meant to advise developing country governments on sustainable forestry while also coordinating development aid in support of plans and practices. But initial enthusiasm for the TFAP began to fade after several years, and NGOs accused it of fostering, rather than slowing or preventing, deforestation. By 1990 the TFAP had been judged a failure, unable to coordinate conservation and development. Indeed, a report published in 2000 concluded

that, although annual net tropical deforestation had declined, this was "mainly due to significant increases in forest plantations and the succession of forests on abandoned agricultural lands" (FAO 2000: 8).

By 1990, too, the first international efforts to formulate a forestry convention had begun. During that year alone, as many as nine proposals were issued for a "Global Forest Agreement," covering tropical as well as boreal and temporal forests (Fogel 2002: 119). Developing countries (DCs) were strongly opposed to any kind of global regulation, viewing it as an attempt by industrialized countries (ICs) to gain control of tropical forests. The DCs demanded compensation if they were to be denied the sovereign right to exploit their national forests, while the ICs refused to discuss anything of the sort in the absence of concrete commitments by the DCs. As a result, the UNCED Forest Principles bound no one to do anything (Fogel 2002: 121-22). By the early 1990s, moreover, many NGOs that had once supported a forest convention had turned against the idea, convinced that it would only encourage trade in timber and only serve to accelerate deforestation.

Given the momentum generated by the UNCED Forest Principles, however, in 1993, two interested states proposed establishment of an Intergovernmental Working Group on Global Forests (IWGF; the word "global" was later dropped). A joint initiative of the Canadian and Malaysian governments, the IWGF held a series of meetings of experts and officials from fifteen key forest countries as well as several NGOs to facilitate dialogue and consolidation of approaches to the management, conservation and sustainable development of the world's forests. By the second meeting, attendance had expanded to include technical and policy experts from 32 countries including Brazil, the US, Indonesia, Finland, Sweden, the Russian Federation, Japan, Gabon, five intergovernmental organizations and eleven NGOs (IISD 2003).

At the end of 1994, the final report of the IWGF was presented to the UN Commission on Sustainable Development (CSD) which, at its third meeting in 1995, proposed to establish an ad hoc Intergovernmental Panel on Forests (IPF) to further examine issues and develop proposals and recommendations. The IPF held four meetings through 1997, when its final report was submitted to the CSD (IISD 2003). As a follow-up to the work of the IPF, the UN Economic and Social Council (ECOSOC) established the Intergovernmental Forum on Forests (IFF), which pursued the work of the IPF and developed additional action proposals. Ultimately, the IPF and IFF together issued 270 proposals for action (UNFF 2004). Finally, in 2000, ECOSOC established a permanent entity, the UN Forum on Forests (UNFF), to build on the work of its predecessors (UNFF 2004).

None of these initiatives led, however, to a global forestry convention, and therein lies a tale. Initially, the United States was a strong supporter of an agreement, in the view that *tropical deforestation* represented a major contributor to global warming. Preferring to see other countries, especially developing ones, reduce their emissions, the UNCED Forest Principles were the most to which the DCs would agree. After UNCED, a number of governments, including European ones, DCs, and Canada, supported a global agreement but this led nowhere. By 1996, moreover, the U.S. position had changed

completely, as boreal and temperate forests came to be included in the remit of the various panels and forums addressing deforestation. This generated growing industry opposition to an agreement. Environmental organizations, too, were opposed to an international convention and wished, instead, to see forest conservation addressed through the Convention on Biological Diversity (Fogel 2002: 129).

The final nail in the coffin of a forest convention might have been hammered in when the Kyoto Protocol became the locus of global forestry regulation, under the rubric of "LULUCF" (Land Use, Land Use Change, and Forestry). In effect, the United States and several other countries began to see in forests the possibility of sequestering carbon and avoiding the need to actively reduce greenhouse gas emissions in other sectors, such as transport and industry. Cathleen Fogel (2002) has nicely documented the logic behind this shift from conservation of standing forests to sequestration through replanting forests already cut down. Through the Clean Development Mechanism and other modalities, carbon emissions in the form of standing trees will be traded, and sustainable forestry will become something quite different from what was originally envisioned. While a few countries, such as Canada, continue to call for a global convention in order to override the growing proliferation of forestry certification schemes, for the moment, global public forestry regulation appears dead.

Activist regulation

By contrast, private forestry regulation is booming. The first activist programs opened for business in 1989. In response to the 1988 ITTO study cited earlier (Poore, et al. 1989), the Rainforest Action Network (RAN), based in San Francisco, initiated successful U.S. consumer campaigns to boycott the import and use of all tropical timber except that produced from sustainably managed forests. In 1989, RAN launched "Smart Wood," the first industry-independent certification program. At the same time, the Rogue Institute in Ashland, Oregon began a verification program to promote environmentally-sensitive timber production as an alternative to clearcut logging in the southern part of the state. Other groups focusing on sustainable forestry included the Sierra Club, Friends of the Earth, Greenpeace, the National Wildlife Federation, and the Woodworkers Alliance for Rainforest Protection (WARP), the last representing concerned wood users, as well as several smaller grassroots forests groups, indigenous peoples, social organizations, timber producers, and timber retailers from several countries. Today, although there are no reliable statistics, the number of non-governmental organizations and industry-linked groups dealing with forest certification must number in the high hundreds or low thousands, based in virtually every country with significant timber or retail lumber sales (recent overviews of private regulation and certification include Teeter, Cashore and Zhang 2003; Meidinger, Elliott and Oesten 2003a; and Cashore, Auld and Newsom 2004).

The **Forest Stewardship Council** (FSC) is the best-known of the private non-profit certification groups. The FSC was launched in 1993 in Washington, DC by environmental groups, the timber industry, foresters, indigenous peoples and community groups from 25 countries, with initial funding provided primarily by the Worldwide Fund

for Nature/World Wildlife Fund (WWF). An interim board was elected, a mission statement adopted, and draft Principles and Criteria for Forest Management formulated soon thereafter. The FSC was originally based in Oaxaca, Mexico but subsequently moved its central office to Bonn, Germany so as to be better positioned to compete with other standard-setting organizations. FSC a membership organization comprised of three equally weighted chambers—environmental, social and economic—and membership within each chamber is also equally weighted between North and South. As the FSC's web site puts it (FSC 2002):

- The Environmental Chamber includes non-profit, non-governmental organizations, as well as research, academic, technical institutions and individuals that have an active interest in environmentally viable forest stewardship;

- The Social Chamber includes non profit, non-governmental organizations, as well as research, academic, technical institutions and individuals that have a demonstrated commitment to socially beneficial forestry.

- The Economic Chamber includes organizations and individuals with a commercial interest. Examples are employees, certification bodies, industry and trade associations (whether profit or non-profit) wholesalers, retailers, traders, consumer associations, and consulting companies (FSC 2002).

Each chamber represents 33% of the vote at Annual Meetings, and the Board of Directors has rotating members reflecting these interests. By 2001, the FSC had become an internationally-recognized organization with 448 members in 56 countries 221 in the economic chamber, 86 in the social chamber, and 174 in the environmental chamber (Meridian Institute 2001: 20).

With international governmental processes in apparent stalemate, the FSC has come to been seen by many as a "magic bullet," a market-driven mechanism able to fill a critical niche towards achieving sustainable forest management where governments cannot. Certainly, its mission statement (FSC 2002) encourages this view:

1. The Forest Stewardship Council A.C. (FSC) shall promote environmentally appropriate, socially beneficial, and economically viable management of the world's forests.

2. Environmentally appropriate forest management ensures that the harvest of timber and non-timber products maintains the forest's biodiversity, productivity, and ecological processes.

3. Socially beneficial forest management helps both local people and society at large to long term benefits and also provides strong incentives to local people to sustain the forest resources and adhere to long-term management plans.

4. Economically viable forest management means that forest operations are structured and managed so as to be sufficiently profitable, without generating financial profit at the expense of the forest resource, the ecosystem, or affected communities. The tension between the need to generate adequate financial returns and the principles of responsible forest operations can be reduced through efforts to market forest products for their best value.

The FSC has developed and adopted global Principles and Criteria for Forest Management and it accredits certifying organizations that agree to abide by these Principles and Criteria. Purportedly, the FSC also monitors the operations and portfolios of such certifying groups on an annual basis. In cooperation with lumber retailers, the FSC creates Buyers Groups in consuming countries. Members of these groups are committed to selling only verified "sustainably produced" timber in their stores (FSC 2002). As of June 2004, the FSC had granted 623 "forest management certificates" in 62 countries, covering some 95 million acres (Edwards 2004), and 3,136 "chain of custody" certificates in 66 countries (Certified Forests 2004).

The actual ecological and social results triggered by the FSC system are not entirely clear, however, although several studies of these matters have been conducted (Freris and Laschefski 2001; Meridian Institute 2001; Counsell and Loraas 2002). There are indications that, in some locations, FSC regulation does not lead to ecological or social outcomes that exceed those already required by existing governmental policies. In other instances, its standards may not actually be implemented by producers, due to the FSC's relatively weak institutional base. Funding and personnel to monitor implementation are scarce and penalties for failing to observe the rules are few (e.g., Freris and Laschefski 2001). Moreover, the large financial stakes involved have led forest products companies to become actively involved in standard setting and implementation activities in several countries such as Sweden and British Columbia, Canada. This appears to be leading to a "consensus" rather than "science-based" approach to standard setting in order to make the standards achievable, and thus to ensure that the large and growing market demand will indeed be met.

An additional challenge to the FSC's success may be the broader trend toward green labeling that it has inspired. Its forest product certification program has triggered numerous corporate and government responses, and considerable alarm. A growing number of organizations including the American Forest Products Association, and the Canadian Pulp and Paper Association, in conjunction with the International Organization for Standardization, have developed certification programs (e.g., SFI, n.d.; CPPA 2002; Wood 2000; see also Meidinger, Elliott and Oesten 2003b). While these industrial projects might have originally reflected an attempt to expropriate forest product certification processes, principles and discourse from the FSC and other environmental organizations (Hauselmann 1997), more recently, there appears to be a growing interest in reconciling national programs with each other and with those of the Forest Stewardship Council (CPPA 2002).

Private regulation

The **International Organisation for Standarization** (ISO), based in Geneva, is a quasi-governmental body with member organizations in 119 countries. It is the official standard-setting and labeling body recognized by the World Trade Organization and other international agencies (see, e.g., Cascio, Woodside and Mitchell 1997; Clapp 2005). Founded in 1946,

> ISO's mission is to promote standardisation and related activities in the world with a view to facilitating the international exchange of goods and services and to developing cooperation in the spheres of intellectual, scientific, technological and economic activity" by developing worldwide technical agreements which are published as international standards (Hauselmann 1997:3).

With an annual operating budget in excess of $125 million, provided by governments and corporate members, the ISO is far larger than the FSC and other comparable certifying organizations. Around the world, it hosts as many as ten standards-setting meetings each day (Hauselmann 1997:3). The organization only provides the context within which standards can be negotiated and promulgated; it does not engage in policing corporate behavior, enforcing standards, or penalizing violators. In fact, individual corporations generally devise their own internal performance programs which are vetted and certified by an authorized company or organization. In other words, a producer whose program receives second-party certification from an ISO-approved auditor is, for the most part, self-regulating and responsible for seeing that it meets the terms of its programs.

Historically, the ISO has neither worked on nor developed competency in either environmental or forestry issues. Until the early 1980s, it limited itself to purely technical standards, such as the size of nuts and bolts (Hauselmann 1997). The demand for environmental standards grew out of a concern that these might be imposed "from above" as a result of interstate agreements and conventions. Growing public agitation over the absence of any environmental considerations in the GATT and, later, the WTO also contributed to the ISO's entry into the environmental standards business (Lally 1998: 4). In 1993, the ISO initiated a process of developing a new "ISO 14000 Series" of Environmental Management Systems standards. This was intended to build on the success of the ISO 9000 Quality Management Systems, which are *de facto* requirements for companies engaging in most sectors of international trade (Cascio, Woodside and Mitchell 1996). Those standards are driven by the market and based entirely on self-regulation (Lally 1998:3).

The ISO's Environmental Management Systems (EMS) approach differs from the FSC's Principles, Criteria and Standards for forest management in that EMS prescribe only *internal* management systems for companies that wish to continuously improve upon an environmental performance level which they themselves define. Adherence to externally agreed standards (ostensibly set by all interested stakeholders) is not required (as it is in

the FSC). Furthermore, the ISO has no adequate mechanism to either ensure corporations' compliance with or the effectiveness of their individual action plans, or to control the use (or misuse) of logos and certification marks. In other words, ISO-14000 involves only *first-party* certification

As a result, there is, according to one observer (Hauselmann 1997), a

> potential for confusion... this situation is worse in the case of forest management certification, where some economic interests are seeking to use the ISO framework to develop a forestry-specific application of the Environmental Management System (EMS) approach in order to counter an existing and operational environmental labeling scheme—that of the Forest Stewardship Council.

Although the ISO has well-developed procedures on consensus and participation, these have not been well followed in creating ISO-14000. Environmental organizations have not been allowed to attend standards-setting meetings (Hauselmann 1997), ostensibly to avoid "politics." Instead, corporate forest product industry efforts seem to be aimed at imbuing the ISO with an aura of scientific, technical and *social* legitimacy, all the while maintaining a near perfect level of control.

Nevertheless, forest industry members and supporters of the ISO 14000 series are using the discourse developed by the FSC and environmental groups to describe their systems approach in terms uncannily similar to those adopted by the FSC. For example, a 1997 press release issued by the Canadian Sustainable Forestry Certification Coalition (an industry group), promoting ISO forest certification, claimed that

> we have identified the background information that forestry organizations will find useful as they implement and progressively improve upon their environmental management system. This major step forward in relating the key elements of the ISO standard in the context of a range of international forest management measures will further the UN Agenda 21 goal of promoting sustainable development (CSFCC 1997).

Some ISO members continue as well to actively push forward the development of international ISO forest management system standards. Others are concerned that certification might obstruct free trade and are active at the WTO Environment Committee to limit the definition and mutual recognition of eco-labels by GATT country signatories. Consequently, although timber products may carry ISO certification, what might lie behind the label remains none too clear.

Trans-national regulation: Mutual Recognition of National Standards

The large number of forestry certification programs has been particularly frustrating to national timber industry associations, who see fragmented and privatized regulation as disadvantageous to their members. As a result, something of a backlash has developed

among the national associations who would prefer to retain their own national certifications systems but have them recognized by other national associations. Because the likelihood of formulating a global forest convention, much less ratifying one, is so low, the industry strategy has been to seek "mutual recognition" of competing standards. As the "Canadian Sustainable Forestry Certification Coalition," composed of national, provincial, and sectoral associations, has put the case (CSFCC 2002) for mutual recognition

> Although nice in concept, it is unlikely that one standard could ever speak to the diversity of forest types and ecosystems across North America, to the diversity of tenure systems, to public ownership, to private ownership, to the different needs and operating systems within a business, including their varied sources of wood supply, or to the different needs and priorities of the users of wood products. While one standard could run the risk of not speaking to the forest management realities of many operations, many standards will likely result in more widespread application, and in the end, more improvements in forest management.

One transnational harmonization scheme is the **International Forest Industry Roundtable's** (IFIR) mutual recognition project. IFIR is a self-described "independent network of industry associations," with members from Argentina, Australia, Brazil, Canada, Chile, Finland, France, Malaysia, Mexico, Norway, New Zealand, South Africa, Sweden, the United Kingdom, and the United States. In 1999, IFIR established a working group to develop an "International Mutual Recognition Framework" for national forestry certification standards, intended to

> provide a critical mass of credibly certified wood products by recognising that <u>different</u> certification systems can provide <u>substantively equivalent</u> standards of sustainable forest management. Mutual recognition would set a high threshold for entry for participating standards, while enabling the use of standards that accommodate local and regional circumstances. By providing a process to <u>differentiate</u> *credible from non-credible* certification standards, mutual recognition would use market forces to provide a range of certification standards that will assure customers that their wood product purchases contribute to sustainable forest management (Griffiths 2001: 3; emphasis in original).

Although it is not stated outright, mutual recognition of national standards may also be directed against the Forest Stewardship Council, which is beginning to look like a default global standard setter, if only because of its broad membership and environmentalist credentials (Griffiths 2001: 8). There is also fear of the "potential *imposition* of 'mandatory' solutions via government regulation at the national or international level" (Griffiths 2001:8) if the industry is unable to self-regulate.

As of this writing, the IFIR appears to be moribund, having been largely replaced or co-opted by the **Pan-European Forest Certification Council,** recently renamed the **Programme for the Endorsement of Forest Certification schemes** (PEFC). The PEFC Council was initiated in 1998 by European national forest associations and landholders who believed they were already engaged in sustainable forest management but felt unfairly attacked by various environmental organizations. They were also concerned that

FSC standards might be broadly adopted throughout the continent (Meidinger, Elliott and Oesten 2003b: 18). In mid-1999, representatives of eleven "officially constituted national PEFC governing bodies with the support of associations representing some 15 million woodland owners in Europe and of many international forest industry and trade organizations" met in Paris to launch the organization (PEFC 2004a).

According to its web site (PEFC 2004b)

> PEFC is a global umbrella organisation for the assessment of and mutual recognition of national forest certification schemes developed in a multi-stakeholder process. These national schemes build upon the inter-governemental [sic] processes for the promotion of sustainable forest management, a series of on-going mechanisms supported by 149 governments in the world covering 85% of the world's forest area.

In effect, the PEFC has become the international forum for mutual recognition of national forest standards. It issues both forest management and chain of custody certificates, carried out by independent certifiers that meet ISO certification requirements and are accredited by independent national accreditation bodies that also follow ISO rules. Certification and accreditation standards are, in effect, certified by other international or regional bodies so as to assure the equivalence of certifications issued in different countries (PEFC 2004c). As of 2004, 27 countries with "independent national forest schemes" are PEFC members. Most are European but Brazil, Canada, the United States, Australia, Chile, and Malaysia are also members. Of these, 13 schemes covering 110 million acres "have been through a rigorous assessment process involving public consultation and the use of independent consultants to provide the assessments on which mutual recognition decisions are taken by the membership" (PEFC 2004b).

> Finally, according to the PEFC, it offers a system that is superior to the FSC because it facilitates active involvement of all forests and enterprises regardless of size. This includes family-owned forests and also small to medium sized forest enterprises as well as multinational corporations; and accomodates [sic] and incorporates the global diversity of forest types, cultural heritage, ownership structures and management objectives" (PEFC 2004d).

The FSC standards are meant to be global, the PEFC's, national. The credibility of the PEFC's program rests on the belief that it generates results as good as the FSC's and will be preferred by consumers loyal to the nation and national standards. At the same time, however, what is presented as an advantage (national "diversity") might also provide an opportunity for undue industrial and landowner influence and undermine the program's credibility. Who, then, can you believe?

DOES PRIVATE REGULATION WORK? CAN IT?

Ultimately, the question comes down to this: Does private certification of sustainable forestry provide an adequate substitute for public regulation? For the most part, the jury remains out on this question. Recognizing that public regulation has hardly been without serious flaws and that the state has, in fact, been a major contributor to forest destruction throughout the past several centuries, might not private schemes offer greater protection than public ones? The stakes are large. According to IFIR, global sales in the forest products business amount to about $500 billion per year, of which some 30 per cent enters international trade (Griffiths 2001:5). The market for certified timber is, as yet, only a small fraction of this, but there is a widespread conviction that it can only grow much larger.

In the case of sustainable forest management (SFM), "spillover"—that is, the extension of practice by a few producers to the forestry sector as a whole—seems unlikely. The "ratcheting" argument of Archon, O'Rourke and Sabel (2001)—that producers will raise their standards in order to remain competitive—appears more germane. This is especially the case if landowners and timber companies belong to national associations and have an interest in leveling the playing field. At the same time, however, the SFM criteria established by such associations may serve to fulfill only a portion of the requirements set by an organization such as the Forest Stewardship Council.

More to the point, different standards may emphasize different criteria. For example, the FSC lists as one of its major concerns benefits to "local people" (FSC 2002). While this might be thought to refer to small-scale landowners (as in the case of the PEFC), it is, in fact, a reference to indigenous forest peoples. The FSC's First Chamber includes indigenous organizations, while Principles 2 and 3 of the organization's ten principles state that "Long-term tenure and use rights to the land and forest resources shall be clearly defined, documented and legally established; [and] the legal and customary rights of indigenous peoples to own use and manage their lands, territories, and resources shall be recognized and respected" (FSC 2003: 37).

By contrast, the PEFC (2004d) speaks of "stakeholders," "diversity," and "cultural heritage," but mentions only "family-owned forests" and says nothing about indigenous peoples. Of course, it is the responsibility of the individual national associations to decide what criteria to include—are there any indigenous peoples in Germany?—but these may tend more toward the interests of capital than society. As a study produced by FERN, the Forests and the European Union Resource Network (Ozinga 2004:30), points out,

> a consumer label is required to inform the consumer about what certification means. Consumers care about old growth forests, pesticide use, clear cutting, land rights of Indigenous Peoples and other issues. All certification schemes, therefore, ought to be based on clear minimum performance-based standards that allow consumers to make an informed choice…none of the schemes [assessed here]– again with the exception of the FSC – has meaningful performance-based standards that provide this guarantee. All certification schemes with the exception of FSC allow for the conversion of forests to plantations – by bending the definition of 'forest' to include 'plantation' these schemes are making a mockery of 'good forest management'.

Clearly, the most important question is how environmentally effective are these regulatory schemes? Most of the available research focuses on the content of the principles and standards offered by the schemes, the conditions under which forest owners participate in certification schemes, or the performance of the certification process (see, e.g., Meridian Institute 2001; Ozinga 2001 2004). The vast majority of certified forests are in industrialized countries, and it appears that most of those forests are already being managed close to certifier standards. Furthermore, the long-term consequences of certification, especially for natural forests (whether old-growth or new-growth) cannot be assessed until a significant fraction of a harvesting cycle has passed. Consequently, for the time being there appears to be no way to determine whether certification, as a policy instrument, offers a viable long-term means of protecting the environment (Bass, et al. 2001).

Furthermore, there are significant costs to meeting certification standards for SFM. The growing demand for certified lumber and wood products has outstripped supply, and this has made it possible to sell certified goods at a premium. As certification becomes more widespread, however, this premium will decline and, at the margin, will provide little or no benefit to the producers in the timber commodity chain. At that point, all else being equal, the benefits of sustainable forestry will have been internalized and socialized, with the global public and environment as the beneficiaries. But, if sustainable forestry is voluntary and coverage does not extend to all forests, whether North or South, there will be strong incentives by non-certified producers to free-ride on the global trade system. Recall, moreover, that nothing but consumer choice can prevent this outcome inasmuch as the WTO forbids discrimination against substantially equivalent products on the basis of production method (see, e.g., FERN 2003).

Finally, while certification does reduce transaction costs for the consumer of lumber and wood products, that "savings" might be wiped out by the premium that can be charged for certified lumber. The global benefits of sustainable forestry will be imperceptible to the individual consumer while the concentrated costs of more expensive lumber will be quite evident. A study of ecolabeled forest products conducted by Oregon State University researchers (Anderson and Hansen 2002:1) at two Home Depot Stores concluded that

- The ecolabeled product outsold the non-ecolabeled product 2 to 1, so long as the price of plywood in each bin was equal.

- When the ecolabeled plywood was priced at a 2 percent premium, the non-ecolabeled product outsold the ecolabeled by 1.7 to 1.

- 37 percent of the sales were to consumers who paid a 2 percent price premium.

These findings suggest that, by the time the price premium rises as high as 10 percent, consumers may think twice about buying certified goods. Moreover, it is one thing to tack a 10 percent green surcharge on a two by four costing three dollars or a piece of furniture that may cost a few hundred dollars; it is quite another to charge an extra 10% on a $20,000 remodeling job or a $300,000 house, which may make the difference between obtaining a mortgage and having a loan application turned down.

Might there be other benefits from certification, such as innovative methods of forest management? If there are any innovations driving the movement for sustainable forestry, they are *social*. To be more precise, the demand for certification is driven by two motivations (and a long feedback loop): habitat maintenance, on the one hand, and consumer consciousness, on the other. Protection of forests and habitat could be accomplished by any number of "command and control" strategies, many of which have been tried and many of which have failed. Because the market is such a powerful force in environmental degradation, and efforts to exclude the market from environmentally-sensitive areas have often failed, the temptation to "harness the market" in the service of environmental protection seems both innovative and promising. The consumer appears to be the lever that can move industry toward sustainable forestry management. By appealing to the interests of both—the consumer's in environmental protection and the corporation's in increased profits—certification looks like a magic formula. But isn't most magic simply sleight of hand?

CONCLUSION

As suggested by this paper, the privatization of regulation of forestry practices through certification is based on markets and market-based strategies as mechanisms to foster compliance. As progress in the formulation of conventions and protocols has slowed, especially in the environmental issue area, the demand for such private regulation has grown. The area of certified forests and the volume of certified wood products has certainly grown over the past decade, from virtually nothing to a few percent of stock and production. Both social activists and the timber industry have an interest in the institutionalization of such certification, although for quite different reasons. Activists wish to see forests conserved, if not preserved; industry wants to ensure that restrictions on the cut remain as limited as possible. Reconciliation seems improbable (Magnusson and Shaw 2003).

At the same time, however, corporations engaged in the production of material goods have no inherent interest in environmental protection, with two exceptions. First, a failure to reduce externalities may increase variable costs from fines and lost business, which requires the kind of policing that ISO-14000 does not address and that many corporations are loathe to accept. Second, having a "green" reputation could increase corporate profits. A producer who voluntarily controls externalities, and engages in virtuous behavior, can advertise such practices and, with luck, grab a little extra market share. It might even be possible to charge a premium for green certification, for which high-income consumers will gladly pay. So, there is available here both a moral and a market

opportunity. Corporations can do well by doing good, while certifiers can do good by doing well.

But there is a more important conclusion that arises from the case of forests, as well. As any number of commentators have noted, under conditions of globalization, rules are often promulgated at the international level but deployment remains within the purview and jurisdiction of the state (Braithwaite and Drahos 2000; Gill 2003). States are expected to legislate domestically the laws to which they have agreed in international forums and to see that they are implemented and enforced domestically. There is, of course, little in the way to ensure that the last two steps of this procedure will be followed and, in fact, no great expectation that they will be. For the most part, when international sanctions of one sort or another are imposed on states that have been judged to be in violation of international law, governments decide whether the costs of disobedience are acceptable or too high, and respond accordingly. Thus, a state that has signed and ratified those International Labour Organization (ILO) conventions addressing workers' rights of free association is under no serious international compunction to fulfill the terms of these conventions, and certainly is not expected to assist actively in their fulfillment. But we then bemoan the ineffectiveness of the ILO (and many other international agencies), as though this were the organization's fault.

Under these circumstances, those who believe there is merit in active domestic fulfillment of international law seem to be reduced to two basic strategies. Strategy One is to induce those who are subject to the laws in question to live up to the terms of those laws. Thus, for example, corporations that operate factories in which workers' rights are routinely violated may be pressured, via various market mechanisms, to obey those rules and laws. Strategy Two is to work within a domestic political context, toward effective and active state implementation and enforcement of relevant laws. There is no reason, of course, that both strategies cannot be pursued in common but, as I shall make clear in later chapters, the first approach appears to be today's strategy of choice, inasmuch as the individual exercise of one's consumer preferences offers the comforting illusion of influence over corporate behavior. If enough people decide to boycott company X, it is often said, that company will have to change its policies and practices if it wants to stay in business (Taylor and Scharlin 2004). By comparison, the political struggle implied by Strategy Two looks time-consuming and unpleasant, without any promise of success (Chaloupka 2003). So, markets it is.

Is this so terrible? Politics, it must be admitted, have come to be seen as a realm of corruption, double-dealing, and personal enrichment. Politicians, of whatever stripe, are regarded as wholly self-interested, power-seeking individuals with no conception of, much less regard for, a common good. Governments are routinely purged in the hope that a new regime will be an improvement, but there is little empirical evidence to suggest that this is more than empty faith. As a result, social movements, non-governmental organizations, and corporations—civil society, in other words—have come to be seen as the "last, best hope" by those intent on providing public governance in pursuit of the common good and help for those in need. Such a hope might not be entirely in vain, but

those holding it tend to overlook the relationship between civil society, state, and market and the role that politics and the political *must* play in shaping and constraining markets.

Indeed, the state is central to such shaping and constraining. As Robert Boyer and Daniel Drache (1996:11) put it,

> The idea that markets have multiple, continuous and contradictory effects, and hence are unstable structures and subject to the constant need for organization and reorganization, is due to the fact that they emerge out of social relationships…. [M]arkets are like open-ended social spaces constantly subjected to spontaneous countermovements by producers, consumers, owners, workers and government threatened by the price system's rapacious excesses. When the price system does not work *ex mirabulis*, society must rely on the state to find ways to stabilize it and the larger economy.

Without some kind of structuring form or limits, markets quickly degenerate into an economic "state of nature." Boyer points out that, in the absence of monetary and legal systems, both of which are imposed by some kind of authority, "any market will collapse due to the spreading of opportunistic behavior among traders" (1996:101). In democratic market systems, in particular, civil society is the source of the ethics that underpin the specific form of and limits on markets, and its members expect the state to follow its dictates in this regard (not that this always happens). That is why the activities of civil society, if they are to have any effect on the conditions of concern, must be directed towards the state rather than the market. It is in this context, too, that the restoration of the political to everyday life becomes critical, not because it can create miracles but because it can show us what is missing from our everyday lives.