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### PUBLIC AND PRIVATE REGULATION OF THE FORESTRY SECTOR: THE CASES OF THE UNITED STATES AND CANADA\*

*Общественное регулирование обычно рассматривается как одно из основных прав государства. Это положение восходит к Вестфальской концепции национального суверенитета. Однако в наши дни мы видим подъем наднационального и частного регулирования, которое дополняется и, таким образом заполняет пробелы, имеющие место в рамках общественного регулирования. Целью данной статьи является освещение двух различных систем общественного регулирования лесного хозяйства в США и Канаде. На этом основании предлагается рассмотрение этого поля регулирования на базе проведенного анализа современного транснационального и частного регулирования как средства дополнения и представления в данной статье значения национального суверенитета. В конечном итоге, изложенные в представленной статье основные положения будут использованы при рассмотрении вопроса российского лесного сектора, как актора, имеющего наибольшие масштабы в современном мировом лесном хозяйстве.*

**Ключевые слова:**

*гражданское общество, лесное хозяйство, окружающая среда, правительство, право, развитие, регулирование, сертификация, устойчивость, транснациональное частное регулирование, управление.*

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#### **Canada Public**

Canada, in contrast to the United States, displays a different system of forestry oversight and market capture. From a structural standpoint, Canada adheres to the second system of timberland management, in which the government owns the land, about 94% of total forestland, and then leases permits to private shareholders for the purpose of wood extraction [8; 31]. Canada's population is approximately 35 million, or about 10% of the United States [41; 44], of which the forestry industry employs more than 200,000 individuals. This is about twice that of the U.S., measured as a portion of the population. Canada possesses one of the world's largest forests, comprising

approximately 9% of all world forested area over more than 348 million hectares; it is an industry that produces almost \$20 billion annually [31], equalling about 1.17% of the total Canadian economy [24]. The Canadian forestry economy is largely export oriented, with almost half of all exports going to the United States [7; 44]. "Canada has long been the world's largest forest products exporter, with a comparative advantage unchallenged globally" [44, p. 18]. Canada's forestry industry touches many corners of the wood market, with major export shares in sawn wood, round wood, plywood, pulp and paperboard [44]. With a relatively small population and an export oriented market, Canada is much more sensitive than the United States to external pressures. The

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134 Canadian market is strongly cyclical because of its larger dependence on the growth of foreign construction markets [44].

Since the federal and provincial governments own the majority of timberland, [8] public oversight is able to implement stricter sustainability requirements. To this effect, under the sustainable forest management laws, "All forests harvested on public lands must be regenerated" [31, p. 1]. Additional policies must also be taken into consideration, including the respect for biodiversity and aboriginal peoples [32]. This has also helped limit and prevent illegal logging. Public initiatives mandating sustainable logging practices have helped foster an atmosphere of environmental consciousness and awareness. "Canada has emerged in recent years as among the world's leaders in aggressively improving sustainability practices. For the most part, Canada employs non-discretionary, clearly spelled out regulations designed to limit the environmental impacts of forestry" [6, p. 10]. Canada is consistently ranked as having strong, clear regulations that are widely respected, thus ensuring a fairly efficient industry that successfully prevents illegal logging [8]. These policies come into play even before third party certification schemes are considered.

#### Private

Canada has emerged as one of the leaders in third-party certification of forest products [6; 23; 44]. According to Cashore [6, p. 10], "Canada has also, like other leading countries, embraced the concept of providing customers with third party certification of sustainable forest practices. Today, Canada can offer customers more fibre from certified forests than any other country in the world". Approximately 153 million hectares of its forests, comprising more than 40% of Canadian timberland, has been independently certified as sustainably managed [23; 31]. Cashore, Auld and Newsom's comparative study [7], which included the Canadian province of British Columbia, helps shed light onto some of the factors playing a role in Canadian certification. As the researchers state, "Arguably no greater interest has been shown in forest certification as a policy instrument for addressing sustainable forestry than in British Columbia, Canada" [7, p. 59]. A number of features can help explain British Columbia's, and Canada's, interest in third-party forest certification. First, Canadian public forestry governance is already closer to the standards laid out by the FSC and the PEFC than in many other countries in the world, including the United States. This means that forestry companies seeking certification have a smaller energy and monetary investment, and fewer changes to implement, in order to receive certification.

Implementing major structural changes to any business can be costly and thus a deterrent to adopting stricter guidelines; these companies are therefore able to keep certification costs to a minimum whilst garnering the benefits of possessing an eco-label.

Further, as explained by Cashore et. al. [6], the industrialized countries under comparison that were more reliant on exports demonstrated a greater interest in third-party certification. Additionally, the large and concentrated wood industry and unfragmented non-industrial ownership allowed for greater ease in adopting these standards [7]. Finally, the authors [7] evoke a history of forest policy on the public agenda and a sense of public dissatisfaction with forestry practices, brought on by environmental groups concerned about forestry management, as additional reasons that help explain the surge in Canadian certified forest products.

While there is no explicit mandate by the governments of Canada at the federal, regional or local level for companies to obtain third-party certification, a clear demand exists that promotes the active pursuit of more stringent responsible forest management guidelines. The study by Cashore et. al. [7] helped elucidate some of the reasons why the Canadian forestry industry has been proactive in obtaining third-party labels on top of the relatively stringent public regulation mandates. Based on this understanding, it is possible to deduce that the Canadian industry has not attempted to replace or fill in the gaps in public regulation, but rather to supplement or complement the existing system.

#### Russia

Russia's role as an economic powerhouse in the forestry industry, as well as possessing the most timberland worldwide, accounting for more than 20% of the world's forests, necessitates a brief discussion [27]. At 1.2 billion hectares of forest area, this is approximately three times that of Canada's or the U.S.'s total forest area [27]. The industry employs about 1.1 million individuals [19]. However, according to the Food and Agriculture Organisation [19], the Russian forestry industry is significantly underutilised, accounting for below 4% of global wood production. Russia currently has net positive forest growth, i.e. greater growth than exploitation [27]; however, if Russia were to realize its full potential as a wood-producing nation, significant biodiversity loss and climate change could result [19]. Further, illegal logging in Russia is a major problem; some estimates place this value at 20–30% of all harvested wood, although this figure is difficult to verify due to the nature of the problem [8; 19].

The current Russian forestry industry, following the collapse of the U.S.S.R., is governed

similar to that of Canada, wherein the government owns the majority of the forestland and thus leases permits to private companies for timberland production [8; 19]. Following the collapse of the U.S.S.R. in 1991, the forestry industry underwent a number of major changes relating primarily to the institutions responsible for the management of timberland, leasing and oversight; this has added to an already disorganized forestry sector that is extremely difficult to regulate, manage and supervise due to widespread corruption and a complex bureaucratic administration [8; 19].

Third-party certification currently accounts for approximately 9% of Russian forest area and has begun to grow at a rapid rate, in spite of a slower start than many industrialized nations [23]. Despite the small percentage of total forest area, the absolute area of privately verified timberland, totalling more than 36 million hectares [23], demonstrates a clear demand for labelled wood products. It was not until 2000 that the Russian forestry industry even began to recognize and pursue third-party oversight, and was not until 2005 that the market really began to take-off [19]. One of the reasons for this was the amendment to the Lacey Act in 2008 that explicitly banned the import of illegally harvested wood products. FSC and PEFC certified harvested wood ensures that these goods have been legally obtained [19]. Further, in 2010, the European Union adopted stricter regulations addressing illegal logging; not only was the acquisition of illegally obtained wood products forbidden by law, as has been the case since 2003, companies purchasing these products must do due diligence. This means that the companies must actively ensure that the purchased goods are of legal origin according to national legislation of the exporting country. Section 19 of the legislation explicitly names third-party certifiers as an acceptable means to perform this due diligence [14]. Hence, a European company that purchases certified wood has undergone the process of due diligence. As a major importer of Russian wood products, especially plywood, this regulatory change had a major impact on the Russian forestry industry's desire to obtain third-party certification.

The FAO has evaluated three potential scenarios for the future of the Russian forestry sector, stressing the "innovative scenario", in which Russia heavily invests in increasing wood-production and associated technological innovation, coupled with a major emphasis on sustainable forestry management, primarily through third-party certification programmes [19]. A number of the Food and Agriculture Organization's (2012) main recommendations include increasing effective supervision and

streamlining the regulatory process. Further, since corruption is a major problem for the Russian forestry sector, the FAO placed considerable emphasis on third-party certification programs.

### Conclusion

This article has explored two different systems of public forestry regulation stemming from two major industrial powers, the United States and Canada. The U.S. employs an entirely privatized system in which forestry companies own and process the land; the Canadian government, on the other hand, owns the timberland and leases permits to private forestry companies for the purpose of resource extraction. Both countries have a long history of wood production and forest exploitation, but demonstrate a number of different characteristics and behaviours. Economically, the United States consumes the majority of its wood products and imports the rest. Canada, on the other hand, is an export-oriented market, that heavily relies on the United States and other international buyers. From a regulatory perspective, the United States exhibits an almost entirely privatized system of forestry governance for commercial timberland; private enterprises own the physical tracts of land and decide in what ways it wishes to yield the resources. Public regulation does not explicitly cover sustainable harvest practices; however, regulations do exist covering certain elements of environmental and social management, such as the protection of endangered species and limiting pollution. Canada, on the other hand, functions on a two-tiered system. The government, mostly at the provincial level, owns the territory and then leases this territory to private companies. Further, in recent years, Canada has taken significant steps to help ensure sustainable management that goes above and beyond the public regulations of the United States. Russia, as an emerging market in the post-Soviet era, operates a system similar to that of Canada in which the government owns the land and leases the property to private companies for resource extraction. Russia does not employ an explicit sustainable regulatory mandate. Further, corruption and illegal logging have hampered Russia's ability to not only fully reach its potential, but also its capacity to ensure sustainable resource exploitation.

Following the failure of the United Nations Conference on Environment and Development in Rio in 1992 to establish strict international forestry guidelines, private regulatory programmes emerged. These programmes, which are based on the idea of private regulation – i.e. not government-led – are voluntary by nature.

136 Organisations, mostly private companies, seeking certification for environmental and social good-practices, willingly adhere to one of these private certification programmes. The United States exhibits a much smaller interest in certifying products as a percentage of total timberland compared to Canadian wood producing companies; this now accounts for nearly 40% of all Canadian forests. Thus, Canada is the largest certified wood producer and exporter in the world. Russia, as a major wood-exporter, is extremely susceptible to the demands of its markets. As regulation becomes more stringent in a number of markets, including the United States and the European Union, Russia has begun to seek ever-increasing certification through third-party private organisations. The lack of sustainability requirements by the Russian government and its incapacity to control illegal logging have been cited as primary reasons for obtaining these labels.

While there is little doubt or debate that sovereign national governments retain the ultimate right of regulation over its territory, as

has been the case for hundreds of years and affirmed by recent international treaties, the increasing role of supranational regulation and transnational private governance has begun to take serious root. The normative and pragmatic reasons for which supply and demand has followed this trend are still up for debate; however, there is no doubt that this is a growing phenomenon that is here to stay and expand. As the world is becoming increasingly globalized, private actors are playing a more active role on the international stage. The results and benefits are as of yet unknown, as this supplement and complement to traditional regulation remains in its naissance. As other major forest-producing countries engage in the wood trade, public and private regulation standards are becoming increasingly crucial for the protection of the global ecosystem and climate change management. It is without a doubt that forests play a crucial role in the everyday life of most humans around the world and ensure ecosystem stability; the means to protect and regulate forests is thus of critical importance.

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