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Item Type	Preprint
Authors	Schepers, Donald H.
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Download date	2026-11-12 19:01:07
Link to Item	http://hdl.handle.net/20.500.12424/173928

CHALLENGES TO LEGITIMACY AT THE FSC

Donald H. Schepers
Baruch College / CUNY
Zicklin School of Business
One Bernard Baruch Way
Box B9-240
New York, NY 10010

646.312.3651
646.312.3621 (fax)

Donald_Schepers@baruch.cuny.edu

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ABSTRACT

The Forestry Stewardship Council (FSC) is a global private governance system overseeing the sustainability of the world forestry system through certification of forests and forestry products. It has seen more prominence in developed than developing countries in terms of amount of forest certified and number of Chain of Custody certificates issued. Though its governance system appears strong, the FSC itself exhibits an economic bias toward developed nations. A number of challenges have arisen to test the legitimacy of the FSC as a private governance system: alternative certification schemes, output and market access, cost of certification, plantations, and illegal logging. In this paper, I review private governance, and then examine the FSC, its challenges, and make recommendations for future development.

Inaugurated in 1993, the Forestry Stewardship Council (FSC) has attempted to produce a system of private governance in the forestry, pulp and paper, wood products, and non-timber forestry products industries. The assessment of its achievements in the time since inception is mixed. On the whole, it has managed to govern only some 90 million hectares of forest in over 70 countries[1], whereas data from the Food and Agriculture Organization of the United Nations indicates that some 3 trillion hectares of forest was in production in 2005 in 103 countries[2]. Of all the forests that are now certified, 17.7% are in Africa, Asia, Oceania and Latin America, and 82.3% in North America and Europe, and only 13 of 36 national initiatives are in developing nations (Pattberg, 2006). There is clearly an economic bias toward developed nations.

On the issue of governance, the record is somewhat stronger. FSC has a set of ten Principles and 57 Criteria (P&C) that it enforces worldwide, with regional variations that must adapt up to the P&C. FSC certifies independent third parties who then audit firms for certification, and then afterwards, for compliance. NGOs, such as WWF (formerly known as the World Wildlife Fund) have endorsed FSC, and the World Trade Organization (WTO) endorses the FSC as the only reliable certifier of timber products for world trade. As one of over 20 forest certification schemes available (Pattberg, 2006), those seem strong endorsements for what appears a relatively good system of governance. Where, then, is the problem with uptake? And are the issues around uptake surmountable? Is the FSC itself sustainable in a competitive environment? Are there flaws not apparent at first glance that imperil the FSC, and perhaps forestry governance itself?

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[1] http://www.fsc.org/en/about
[2] http://www.fao.org/forestry/site/32049/en/

To examine these questions, I divide this paper into four sections. The first section will deal with issues of private governance. The second will examine the FSC and its structure. The third will delve into issues and critiques of the FSC. The final section will draw these elements together into a future trajectory for the FSC and forestry governance.

THE NATURE OF PRIVATE GOVERNANCE

Private governance schemes have emerged in recent years due to a number of phenomena, most prominent among them 'government rollback' (Cashore & Vertinsky, 2000). Government rollback can take at least two forms. Governments can either choose not to enact strict regulatory policy, thereby relying on voluntary self-regulation, or governments can not enforce regulations, perhaps due to insufficient resources. In either case, such rollback creates a space in the regulatory regime, and private governance either at the firm or industry level becomes the alternative.

Though private governance schemes might be perceived as less costly than government regimes, particularly on the international stage where firms would deal with a myriad of regulatory regimes, they are not costless. Hence, such schemes are subject to cost-benefit analysis prior to adoption. Firms and industries would be attracted to private governance under conditions where (a) the alternative is more costly; (b) non-adoption forms a barrier to entry; or (c) where adoption might lead to some competitive advantage.

Private governance at the firm level (i.e., firm-specific codes of conduct) is perhaps most easily explained by the last rationale, the establishment of competitive advantage. This could occur at the consumer end, where buyers are seeking more

environmentally friendly products, for example, or at the shareholder end, where socially responsible investors seek higher levels of environmental performance, or investors seek reduced environmental liability. A second explanation for firm-level governance is that the alternative might be more costly, either in terms of government regulation or consumer or pressure group boycott.

Firms join industry codes of conduct for all three reasons, though perhaps more for the first two than the third, as competitive advantage is diluted through the participation of multiple firms in the same industry. Again, at the international level, compliance with multiple regulatory regimes would be very costly, giving the private governance alternative clear preference. Further, private governance can form a barrier to entry, such as the WTO endorsement of the FSC implies. Those firms not certified by the FSC may be excluded from specific trading regimes and thereby locked out of markets where certified wood is required. This is the case for most projects using Leadership in Energy and Environmental Design (LEED) certification.

Industry codes may bring three transactional advantages to participating firms (Sethi & Emelianova, 2006): lowered economies of scale, through cooperative establishment of standards; increased political capital through umbrella groups; and lowered operational costs, through pushing externalities costs off to the public sector. Industry codes also build a network which brings three outcome: a common forum for problem solving; a forum for production and dissemination of knowledge; and a forum for learning (Pattberg, 2005b).

In addition, industry codes bring institutionalization (Cashore & Vertinsky, 2000; DiMaggio & Powell, 1991). Outside pressure groups may force firms to band together in

a code (coercive isomorphism). Firms may imitate others by joining them in a code of conduct (mimetic isomorphism). Finally, codes may emerge from the association itself in order to facilitate the operation of the industry (normative isomorphism). That is, private governance is not merely cooperation, as a transaction approach might suggest. It is also, and perhaps more importantly, an institutional mechanism. As Falkner (2003) notes,

> Cooperation requires the adjustment of individual behavior to achieve mutual beneficial objectives…It is mostly of an *ad hoc* nature with a short lifetime. Governance, however, emerges out of a context of interaction that is institutionalised and of more permanent nature. In a system of governance, individual actors do not constantly decide to be bound by the institutional norms based on a calculation of their interest, but adjust their behavior out of recognition of the legitimacy of the governance system. (p. 73)

What may begin through a transactional cost approach therefore takes on a larger perspective as a governance mechanism. A governance mechanism becomes a means of legitimizing a particular industry, particularly through the moral and cognitive elements (Suchman, 1995). Both forms rest on cultural norms, not self-interest. Though moral legitimacy may be arrived at through discourse, cognitive legitimacy may be undermined by excessive verbal defense. The maintenance of legitimacy through governance, therefore, may be attained only through consistent behavior according to the norms of the governance system.

With this overview of private governance, I now turn to the subject of the makeup and function of the FSC itself.

THE FORESTRY STEWARDSHIP COUNCIL

The FSC is an industry-based private governance system that oversees a system of certifiers as well as regional and national networks. This system of certifiers issues two types of verification. First, these certifiers certify that logging operations are done in accordance with the ten P&C, as well as any regional accommodations approved by the FSC, within specific forest boundaries. Second, these certifiers also issue Chain of Custody (COC)certificates that accompany any forestry product from certified forests through the supply chain, and mandate such things as amount of non-FSC certified materials allowed. Such COCs allow those in the supply chain to be assured they are purchasing materials produced according to FSC guidelines. The FSC, therefore, has three levels of standards: standards that apply to accreditation of certifiers, standards that apply to forestry operations, and standards that apply to operations along the supply chain.

The FSC has four regional offices (Africa, Asia and Oceania, Europe, and Latin America) and operates national initiatives in 43 countries[3]. The overall network comprises not only industry but also NGOs, certification agencies, wood products producers, and retailers (Espach, 2006).

The initial guidelines for the FSC were drafted in 1993 by a group of 126 participants, consisting of various NGOs, retailers, unions, and indigenous peoples (Pattberg, 2005b). The space for the private governance system was created by a deadlock among governments on a regulatory regime that would have applied in place of FSC. There have been (and still are) other forms of 'soft law' (Gulbrandsen, 2004) that could fill this governance space, but lack in some manner or other. For example, the

[3] http://www.fsc.org/en/about/contact_fsc/national_initiatives

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) bans international trade, but cannot deal with national trading schemes. Carbon sequestration schemes such as the UN Framework Convention on Climate Change and the Kyoto Protocol may have the unintended consequence of promoting forest plantations at the expense of biodiversity.

Internal governance of the FSC is accomplished through its General Assembly (GA). The GA is comprised of three divisions: economic, social, and environmental. Further, there is a North-South split, with the North comprised of developed nations, and the South comprised of developing nations. Whereas all decisions regarding changes of P&C are relegated to the GA, there is an executive board that does much of the work of the FSC. This board has nine members, three from each of the divisions, and divided 50-50 between North and South, with each new three-year board term rotating the 4/5 split between the North and South.

To maintain credibility, governments are not allowed to join the FSC, and the FSC accepts no contributions from commercial enterprises. Certifiers pay fees for accreditation, and commercial enterprises pay fees for certification, portions of which go to the FSC and the certifier. In addition, there are donations from foundations and other sources.

The FSC mission is to promote "environmentally appropriate, socially beneficial, and economically viable" forest management[4]. FSC P&C deal with: compliance with laws, international treaties and agreements where applicable, FSC P&C; land tenure and usage rights; indigenous people's rights; benefits from the forest, including such things as

[4] http://www.fsc.org/en/about/about_fsc/mission

watersheds and fisheries; environmental impact; management plan; monitoring and assessment; maintenance of high conservation value forests; and plantations.

There have been four drivers that have pushed firms to certify their forests or forest products through FSC or some other governance scheme. Primary among these has been buyer groups and NGOs (Domask, 2003; Espach, 2006). In the buyers group are retailers such as Home Depot in the U.S., and B&Q in the EU. Increasing such demand are requirements such as those imposed by LEED and the WTO mentioned earlier. Pulp and paper companies are also demanding COCs before buying forestry products for their industry. Environmental NGOs, such as WWF and Greenpeace, have been instrumental in pushing certification, particularly certification through the FSC. The capital markets are providing two additional drivers. Investment banks are beginning to require forestry firms to comply with FSC or some other scheme. HSBC in particular has required specifically FSC certification as a condition for capital. Socially responsible investors have also begun examining forestry and COC certification as a pre-condition for investment.

In sum, therefore, FSC governance extends in two manners. First, it extends to the forest management system itself, examining the sustainability and monitoring the management plan of each forest. Second, it extends to the product line emanating from the certified forests through the COC system. The COC system allows retailers and other users to maintain their own credibility regarding the use of certified forest product. FSC has attempted to maintain its own credibility through its governance and certification system. Finally, FSC is a market-based system, using consumer and investor demand, coupled with NGO pressure, to persuade firms to obtain certification (Espach, 2006;

Gulbrandsen, 2004). I now turn to the various challenges faced by FSC in the accomplishment of this mission.

CHALLENGES TO THE FSC

There are five main challenges to the sustainability of the FSC as a certification scheme: the existence of alternative schemes; the lack of through-put and market access; the plantation issue; the cost of certification, particularly with small farmers and those located in developing countries; and illegal logging. I will discuss and assess each in turn.

Alternative Certification Schemes

At least 20 alternative certification schemes are in current usage (Pattberg, 2006), ensuring a more than adequate supply of certification schemes should any one prove unsustainable. Of these, the ones that appear in the literature (aside from the FSC) most frequently are the Canadian Standards Association (CSA), the Programme for Endorsement of Forest Certification Systems (PEFC), ISO14001, and the Sustainable Forest Initiative (SFI). Of the various initiatives, only FSC, PEFC, and ISO 14001 are global in nature. The remainder are national, with SFI covering both the US and Canada. The major global competitors to the FSC are PEFC and ISO 14001, and hence I will concentrate on those standards.

ISO 14001 has inherent flaws as a certifier of forests and forest products. The ISO system accredits management practices, and therefore concentrates on process, not product. It certifies the process of instituting an effective environmental management system, but it does not certify the content of the management system. Hence, companies

that use such a standard might also use other standards to supplement ISO 14001. Both Weyerhouser and International Paper do exactly that, using the SFI principles to govern soil, water quality and forestry practices, while using the ISO 14001 standard to certify their environmental management system[5]. The one very real threat from the ISO standard arises from the WTO's recognition of ISO 14000 series as legitimate public standards. This may have the effect of making ISO 14001 a ceiling, as other more stringent standards may be in violation of WTO (Clapp, 1998). The ISO standard, therefore, while giving instant recognition, offers limited legitimacy to those subscribing to it, and very limited legitimacy to those subscribing to it without also subscribing to some other environmental practices standard.

The PEFC is an umbrella system that certifies national systems of forestry management, and with that, also certifies COC certificates. The PEFC is the largest certification system, with 23 independent national systems and 200 million hectares under certification[6]. The PEFC originated in the EU in 1999, and has expanded in recent years to cover other areas of the globe. It has recently endorsed both the SFI and CSA as PEFC systems, establishing the PEFC in North America as a major accreditation body. Whereas the FSC centralizes its auditor accreditation, the PEFC uses the relevant national bodies to accredit auditors. This optimizes local adaptation, but at the same time loosens certain standards-setting abilities of the central organization at the auditor-approval level, a critical linkage in the system. Forestry audits are conducted by approved auditors, a practice common to both FSC and PEFC. Approval requires both documentation and on-site evaluations, but the PEFC does not require stakeholder interviews, as does the FSC.

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[5] http://www.weyerhaeuser.com/environment/;
http://www.internationalpaper.com/Our%20Company/Environment/EnvironmentalStewardship.html

[6] http://www.pefc.org/internet/html/about_pefc.htm

Monitoring is done annually but may not require field reviews, a requirement of the FSC. Both FSC and PEFC provide COC certificates, though with different thresholds. The PEFC requires a minimum of 70% certified content. The FSC has three different labels: a 100% 'pure' label, a 'mixed' label of 10% certified and 60% recycled post-consumer content, and a 'recycled' label of 100% post-consumer content.

The SFI and CSA labels are similar in one significant aspect: they are both products of their respective forestry industry associations. In that sense, they are both perceived as corporatist or corporate-dominated actors reacting to the perceived NGO domination of the FSC (Cashore & Vertinsky, 2000; Gulbrandsen, 2004). Both have third-party auditors perform the audits. In the case of the CSA, the auditors forward their assessment to an executive committee which then certifies (much the same as FSC and PEFC certification processes). In the case of SFI, the audit team itself certifies the site. The CSA has the shortest renewal cycle (every three years, as opposed to five for the other schemes). The SFI does not have the extensive stakeholder involvement that the FSC insists on, nor does it have any requirement regarding indigenous people's rights. The CSA has COC certificates, and the SFI has optional COC certificates.

The FSC and PEFC offer perhaps the greatest amount of moral and cognitive legitimacy (Suchman, 1995) among the various suppliers of certification, and therefore the greatest promise of effective private governance. Norway, for example, has declared them equally suitable[7]. They have the strongest and most complete set of criteria, with extensive stakeholder involvement. Indigenous peoples, however, are explicitly protected in the FSC scheme, and only through national requirements in the PEFC scheme. The FSC is considered by many the strictest regime (Gulbrandsen, 2004), and

[7] http://www.nordicforestry.org/article_sok.asp?Data_ID_Article=1760

has the strongest NGO input (Pattberg, 2005a). ISO 14001, while offering instant recognition, offers little in the way of actual legitimacy, as it certifies only the management system, not the specific content. SFI offers the least in the way of legitimacy, as it is clearly the most industry-friendly scheme .

Lack of Through-Put and Market Access

The FSC is a market-based mechanism, and relies on getting goods to market to produce demand for its certification. That is, firms only desire certification when that brings some premium from the marketplace, either in the form of premium prices or market access. That premium has not been evident in the market to date, and many firms are declining certification as a result. In Argentina, the adoption rate of FSC has been very slow, with firms waiting to see if FSC certification provides either premium prices or access to markets that would otherwise be closed (Espach, 2006).

In part, this lack of recognition is a product of diminished through-put from FSC certification. Without adequate through-put, neither governments nor other accreditation bodies can require full compliance with FSC certification. In LEED's 69-point system for rating construction, only one point is dedicated to FSC-certified wood, and that requires a 50% minimum of certified wood or wood products. Given that FSC certification can come with as little as 10% certified wood content, there is small requirement for actual certified materials. Similarly, the pulp and paper industry met very strong problems with requirements for FSC-certified pulp and paper. That difficulty is in fact what instigated the COC with 10% certified / 60% recycled content (Roberts, 2003).

Market access is likewise problematic. For most buyers, the only requirement is certification by some authorized body, leaving FSC open to competition (Gulbrandsen, 2004). Futher, Southern sellers have less access to Northern (more lucrative) markets, making it very difficult for Southern forestry firms to perceive the incentive to FSC certify (Pattberg, 2005b, 2006). Pattberg (2006) notes that the only clear incentive for certification has been a mismatch between supply and demand, particularly where that demand requires specific tropical hardwoods. In terms of the global marketplace, only 6-8% of all harvested lumber moves into international trade (Pattberg, 2006). Given that most of the market for lumber and forestry products in general is in the Northern markets, this places Southern forestry firms at a competitive disadvantage, and provides no incentive to certify. Lack of participation of the Southern markets is a clear threat to the legitimacy and credibility of the FSC, as shall be discussed below.

Plantations

Plantation development has been noted as one troubling issue for FSC, in that plantations develop monoculture forests rather than promote biodiversity in silviculture (Gulbrandsen, 2004; World Rainforest Movement, 2003). Promotion of biodiversity is key to legitimacy for the FSC in the eyes of the environmental NGOs, and the certification of plantations, particularly in developing economies, flies directly in the face of that mission. From the industry perspective, however, plantations are the most efficient ways to forest for the purpose of harvest. In addition to destruction of biodiversity, plantations in biodiverse areas tend to disrupt rather than add to the livelihoods of indigenous peoples (World Rainforest Movement, 2003). Few jobs are created, and many are forced from the livelihoods sustained by the biodiverse forests.

Again, this challenges the legitimacy of the P&C of the FSC, as indigenous rights are prominent in the P&C, and a clear defining issue from other certification schemes.

On the other hand, plantations are abnormally productive, consisting as they do of rapidly growing soft pine (Gulbrandsen, 2004). In addition to forestry products, plantations have been used for carbon sequestration schemes, though forest protection systems are not certified for carbon sequestration (Gulbrandsen, 2004). There is therefore demand for FSC certification of plantations, in spite of the challenge to FSC legitimacy.

Cost of Certification

The cost of FSC certification is seen as exorbitant, in the range of USD 50,000-150,000 (Espach, 2006). This is even more problematic in developing economies where the predominant amount of tropical forest and biodiversity exists. Tropical forests tend to be smaller, more complex holdings, requiring greater auditing efforts and hence greater expenditures. Northern forests, on the other hand, are more industrialized, better management systems, and have greater access to market outlets, both reducing the scale of cost and providing greater incentive for certification (Pattberg, 2006).

This is particularly troubling in that FSC legitimacy in part derives through protection of biodiversity. Cost of certification, coupled with the lack of ready markets for certified lumber, can be construed as a barrier to entry for Southern firms into the certified forest products market. The FSC has attempted to deal with the cost problem through group certification of small farmers, as well as a program known as Small and Low Intensity Managed Forests (SLIMF). Group certification allows farmers to enroll as a group, thereby sharing some of the auditing costs among themselves. This tends to be

more helpful for Northern than Southern groups, however. Each farmer must still maintain all requisite paperwork and management plans. Only a portion of the group is visited through field audits in any one year, but it bears noting that failure of any one member of the group fails the whole group. Given that tropical forests are more complex, the probability of loss of group certification would be higher in Southern than Northern groups, reducing the incentive for the group solution.

SLIMF attempts to reduce costs by being more flexible through scaling the standards and certification process to the forest. One way that SLIMF attempts to do this is to recognize that small farmers have had little opportunity to participate in the national standard-setting process that is part of the FSC. Hence, SLIMF allows standards groups to adapt certain standards for use in SLIMF-certified forests. The issue here is one of definition: whereas tropical biodiverse forests might be small, they typically are not low intensity. This leaves the SLIMF program more suited to the Northern forestry industry, and fails to resolve the legitimacy problem for the FSC.

Illegal Logging

Though illegal logging is clearly outside the purview of a non-governmental certification scheme, it still threatens all certification schemes in that it promotes two outcomes: cheaper forestry products in the marketplace, and reduced biodiversity overall, since much of the illegally logged product comes from tropical areas. Illegal tropical wood may be as much as 80% of all European tropical imports, while certified wood sells for only 2-3% more than uncertified, undercutting market incentives for tropical forest certification (Down in the woods, 2006). Illegal wood may comprise 10% of the total international market (Brack, 2005). Such disparate areas as Nigeria, Honduras and

Indonesia have all seen massive amounts of tropical deforestation (Down in the woods, 2006). For certain countries, notably Russia, Indonesia, Brazil and Cameroon, illegal harvesting amounts to more than half all wood products (Brack, 2005; World's forests, 2006).

Illegal logging threatens the FSC primarily from the economic perspective, in that it reduces incentive for harvesters to enter the certification system, particularly an expensive system such as the FSC. That threat in turn reduces the legitimacy of the FSC in that the FSC is perceived incapable of accomplishing its mission of preserving biodiversity.

CONCLUSION: THE FUTURE OF THE FSC

The FSC appears to be at an inflection point in its history. It has accomplished some early success in getting subscribership to its certification scheme, and filling its ranks of auditors. However, it faces challenges on both supply and demand ends of its economic model, and consequently faces some very strong challenges on its legitimacy as a system of private governance. Private governance demands both that firms be willing to change their behavior in order to adhere to the proposed governance scheme, and that the governance scheme establish an effective and credible network.

On the supply side, there are clearly enough alternative certification schemes to pose as alternatives to the FSC, particularly in the Northern region. The FSC has attempted to distinguish itself from the rest by both rigor and adaptation. It maintains a rigorous, third-party certification system that examines both process and product, and follows the product through the value chain. It has adapted to the needs of small farms

through its group certification and SLIMF program. It has not yet provided a system that meets the requirements of the small tropical Southern farmer, and that is a major economic and legitimacy challenge.

On the demand side, trade patterns favor local rather than global trade (Pattberg, 2006). This favors the Northern farmer who is closer to the major markets. Illegal trade further undercuts economic incentives for the Southern farmer. This challenges the legitimacy of the FSC claim to protect biodiversity.

The FSC linked its legitimacy to its promise of economic benefit for participants. Those benefits have not come (Espach, 2006; Pattberg, 2005b). In the North, it must meet the challenge of the alternative systems, most of which are perceived as more industry-friendly. In the South, it must meet the challenge of certification cost/benefits. This may necessitate a specifically Southern-oriented adaptation of rules, which such networks are devised to do quite well (Pattberg, 2005b) in order to defend its legitimacy as a preserver of biodiversity.

The FSC may also need to re-think its stance on government participation to find some method of private-public governance partnership. On the one hand, certain states (e.g., Maine, Pennsylvania and Maryland) in the U.S. have attained FSC certification for state forests in order to achieve legitimacy of their forestry programs. More importantly, however, the FSC needs the coercive power of governments to tamp down the illegal trading of forestry products. Private governance schemes alone are insufficient. Five EU governments have already changed state procurement policies to purchase only certified forest products for construction purposes, and it is becoming increasingly apparent to governments they are losing tremendous amounts of money from the practice (Brack,

2005; Down in the woods, 2006). A full assault on illegal lumber must pass through the WTO, but that is not possible without government assistance.

The FSC may never completely die away, but its legitimacy as a system of private governance is surely being tested. The concerns of the South offer a major foothold for the FSC to assert itself where other Northern national certification schemes are not present. The FSC must surely consider this opportunity, and take advantage of it.

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