Chapter 9
Two Voluntary Approaches to Sustainable Forestry Practices

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Introduction

This is an account of two voluntary initiatives pertaining to sustainable forestry, that of the Forest Stewardship Council (FSC) and of the Canadian Standards Association (CSA). Although they claim similar objectives, these initiatives differ in approach, operation and key players. The FSC is a stand-alone international program spearheaded by environmental non-governmental organizations (ENGOs) that, from its inception, has very actively promoted the value of its on-product eco-label. The CSA initiative, on the other hand, originated with the forestry industry and was developed within the framework of Canada's National Standards System, with the objective of improving forest management.[1] Initially, the proponents of the CSA Sustainable Forest Management (SFM) System refrained from entering into the area of on-product labelling. Only recently has a chain of custody labelling component been added to SFM. The differences between the two initiatives do not take away from the fact that they have fundamentally the same goals, seeking to serve as a vehicle through which a company may send credible messages to the public about its forestry practices.[2]

A comparison of the two initiatives is undertaken in this chapter to provide readers with some insights as to how industry-supported and ENGO-supported voluntary codes interact in the marketplace. It consists of a discussion of the origins of the two standards,[3] the development of their rules, their respective auditing and certification

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1. The National Standards System is coordinated by the Standards Council of Canada (SCC), a federal Crown corporation. SCC accredits organizations involved in standards development (of which there are four in Canada, CSA being the best known) and conformity assessment or auditing (of which there are about 250). The SCC also determines policies and procedures for developing National Standards of Canada. For an overview of the National Standards System, see Industry Canada, *Standards Systems: A Guide for Canadian Regulators* (Ottawa: Industry Canada, 1998), available at <http://strategis.ic.gc.ca/sc_mrksv/regaff/stdguide/engdoc/english.pdf>. See also Andrew Morrison and Kernaghan Webb, "Bicycle Helmet Standards and Hockey Helmet Regulations: Two Approaches to Safety Protection," Chapter 11, below.

2. These are two of the most prominent sustainable forestry initiatives in Canada; there are others, both within Canada and abroad, such as the American Forest and Paper Association's Sustainable Forestry Initiative Program (see <www.afandpa.org>) and the Pan European Forestry Certification Council (see <www.pefc.org>). For further discussion, see Kernaghan Webb and David Clarke, "Voluntary Codes in the United States, the European Union and Developing Countries," Chapter 13, below.) The American program has, in fact, made some inroads into Canada. An example of another ENGO-led initiative is the Silva Forest Foundation, based in British Columbia (see <www.silvafor.org>).

3. The term *standard* is used throughout this case study to refer to the rules developed by both initiatives, though only one was developed within the framework of the National Standards System. The term fits equally well to describe the documents produced by both initiatives, according to the general definition provided by the Standards Council of Canada: "Standards are publications that establish accepted practices, technical requirements and terminologies for diverse fields of human endeavour." See <www.scc.ca>.

processes and the extent of their acceptance and implementation, one in the light of the other. The relationship of the standards to the regulatory process is also discussed.

Origins of the Standards

FSC Principles and Criteria

Many participants involved in the genesis of the FSC — which currently claims that almost 24 million hectares[4] of forest area worldwide have been certified by FSC-accredited organizations — admit that the program's success and high visibility were entirely unexpected in the beginning. Indeed, they thought they were creating, according to one participant, a niche market.[5] The idea of certification had been bandied about independently by a variety of environmental groups in the late 1980s as a positive alternative to boycotting tropical timber. Notable among the groups were the Canadian and U.S.-based Woodworkers' Alliance for Rainforest Protection and the U.K. chapter of the World Wide Fund for Nature (WWF).[6] Meanwhile, in 1989, the Rainforest Alliance, an international nonprofit organization dedicated to preserving tropical forests, became involved in forest certification through its Smart Wood certification program.[7] From about 1990, these and other environmental groups started discussing the issue of certification and proposing drafts for standards.[8] These discussions were usually conducted informally and did not include contributions from significant commercial interests. A meeting in Washington in 1992 was a significant turning point. It was there that the various drafts for standards formulated by the attending groups started coalescing

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4. See FSC, *Forests Certified by FSC-Accredited Certification Bodies*, available at <www.fsc.org/keepout/content_areas/77/55/files/ABU_REP_70_2004_06_01_FSC_Certified_Forest.pdf>.

5. This cursory history is constructed from interviews in December 1998 and January 1999 with Jamison Ervin, the then-coordinator of the FSC's United States Initiative, Andrew Poynter, an Ontario woodworker, Paul Griss, an Alberta-based environmental consultant and key catalyst of the New Directions Group virtual dialogue between environmental and industry interests, and James Sullivan, FSC's Operations Director at the time of the interview. Mr. Sullivan had also served on the CSA SFM Technical Committee before joining FSC.

6. Founded in 1961 as the World Wildlife Fund (the full name that is still used by its national chapters in Canada and the U.S., though elsewhere it calls itself the World Wide Fund for Nature), WWF is frequently described as the world's largest environmental group. WWF International's Secretariat is based in Switzerland, although there are 26 national and territorial WWF organizations throughout the world, and offices in 20 other countries. WWF International and its national organizations reported an income of 575 million Swiss francs (CAN$585 million) in 1999–2000, with the principal income sources being individuals' contributions (45 percent) and governments and aid agencies (20 percent). See The Fridtjof Nansen Institute, *Yearbook of International Co-operation on Environment and Development*, available at <www.ext.grida.no/ggynet/ngo/wwf.htm>. WWF's approach to environmental activism includes partnerships with other ENGOs, industry and government. A notable example of the last is The Endangered Species Recovery Fund, a partnership between WWF Canada and Environment Canada.

7. See Rainforest Alliance Web site, <www.rainforestalliance.com>. Today, the Rainforest Alliance is one of FSC's accredited certifiers.

8. An intergovernmental organization, the International Tropical Timber Organization, had also become interested in certification at this time, but some of its member countries dismissed the concept as a boycotting effort or as unworkable. See E. Meidinger, "'Private' Environmental Regulation, Human Rights and Community," *Buffalo Environmental Law Journal* 7 (2000), pp. 123–237, p. 131, available at <www.law.buffalo.edu/homepage/eemeid/scholarship/hrec.pdf>.

into something of a coherent document. Representation by this time had widened: the large U.K. building supply retail chain B & Q[9] was represented, along with Greenpeace, Friends of the Earth and WWF International. At this meeting, the groups agreed that more work on the drafts was needed. An interim board was elected to carry out consultations and develop the set of Principles and Criteria that would serve as a basis for certification.

The drafts were distributed to various national contact people, who then circulated them within their own countries. Canada's contact person sent out about 50 copies of the drafts, to every deputy minister of forestry, most industry associations, some senior officials of large companies, some academics and environmental groups. He received about a dozen responses and synthesized them into a report that was sent to the international coordinating body. Most replies came from industry.

While the documents were circulating, funding was solicited. At first, minor charitable organizations gave small contributions. A significant boost came when a grant of $100,000 was received from the MacArthur Foundation, with more money following soon thereafter from WWF-UK, and the Austrian and Dutch governments. The Ford Foundation also made a contribution, as did the WWF chapters in Austria and the Netherlands. When FSC established its international secretariat in Oaxaca, Mexico, the Mexican government contributed funds to offset startup costs for the office.

FSC's Founding Assembly in Toronto in September 1993 was attended by 130 participants from 25 countries. It was at this meeting that FSC was established as a membership organization. Founding members included Greenpeace International and various national organizations of the WWF.[10] FSC's Principles and Criteria, adopted at the Assembly, were later approved by mail-in ballot. The membership roll did not include any large-scale forestry *producers*. However, some very large wood-product *retailers* were founding members, including Home Depot and B & Q.[11] A major step forward for FSC came in early 1997, when the Swedish company AssiDoman, described as the largest private forest owner in the world, became the first major forest products company to join FSC.[12] From 1998 to 2000, AssiDoman's Chief Ecologist was chair of FSC's board of directors.

FSC's members constitute the General Assembly, which was originally divided into two voting "chambers": "economic interests" (includes timber traders, forest industry representatives, certifiers and retailers); and "social and environmental

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9. With almost 300 stores in the United Kingdom, B & Q claims to hold 19 percent of that country's retail building supply market.

10. FSC's current membership list includes 13 WWF national chapters, such as those of Canada, the U.K. and the U.S. The current membership list is available at the FSC Web site, <www.fsc.org/fsc>.

11. By this time, too, the 1992 Earth Summit in Rio de Janeiro was already history. The failure there to reach a State-sanctioned agreement on forestry conservation was said to have sparked an increased interest among ENGOs in finding market-based conservation instruments, such as certification. See S. Bernstein and B. Cashore, "Globalization, Four Paths of Internationalization and Domestic Policy Change: The Case of Eco-forestry Policy Change in British Columbia," *Canadian Journal of Political Science* 33 (2000), pp. 67–99.

12. "It's Official: AssiDoman Makes History With FSC Membership," *Timber Trade Journal*, January 4, 1997, p. 4.

organizations."[13] Originally, the former group wielded 25 percent of the voting power and the latter, 75 percent. These proportions were officially modified in 1996 to create three chambers: 33 percent social, 33 percent ENGO and 33 percent commercial.[14] This change was designed to ensure a greater voice for the last group. The voting power within each chamber is divided evenly between North and South[15] to ensure equal representation. The board of directors comprises two representatives of economic interests, and seven of social, indigenous and environmental interests.[16] The board's voting power is divided according to the same categories and proportions as the General Assembly.[17] In 2003, the office of chair of the board of directors was held by a representative of the Algonquins of Barriere Lake, Canada.[18] There were five representatives from the South and four from the North.[19] FSC by-laws are designed to ensure that these proportions are reversed every three years.[20]

FSC Regional and National Standards

Perhaps as important as the original development of the Principles and Criteria is the development of standards that are specific to a country or region. It is against these standards that a company seeking certification is assessed. These local standards are developed not by FSC's Mexico-based international body, but by national or regional working groups, though FSC International ultimately must approve the final document. FSC's stated objectives in developing this structure are "to decentralize the work of FSC and encourage local participation."[21] Canada has a national office,[22] based in Toronto, but because of the country's size and the variety of its forest types, there is no attempt to create national standards, as there are in smaller countries. Rather, a number of working groups are at various stages of developing regional standards. These groups represent British Columbia, the Great-Lakes-St. Lawrence region of Ontario, the "Boreal Pilot

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13. C. Elliott and A. Hackman, *Current Issues in Forest Certification in Canada: A WWF Canada Discussion Paper* (Toronto: WWF Canada, 1996), p. 5. There was said to have been vigorous debate at the Founding Assembly over the extent to which commercial interests should be allowed to participate in the development of standards; this according to an anonymously written document, "Acting in the Public Interest: Policy Considerations which shape governments [sic] role and responsibility in standards development and administration, natural resource regulation and development policy and the maintenance of free and open markets," supplied by the Canadian Pulp and Paper Association to the authors, April 1998.

14. FSC, *Forest Stewardship Council A.C. By-laws*, s. 12, available at the FSC Web site, <www.fsc.org/keepout/content_areas/77/84/files/FSC_By_laws___revised_November_2002.PDF>.

15. FSC's terms for high-income countries, and low-, middle- and upper-middle-income countries, as determined by "United Nations Criteria": ibid., ss. 13–14.

16. Ibid., s. 51.

17. Chris Elliott, *WWF Guide to Forest Certification* (Surrey, U.K.: World Wildlife Fund, 1996), p. 8.

18. FSC, *Address List for FSC Directors and Secretariat*, available at FSC Web site, <www.fsc.org/fsc>.

19. Ibid.

20. See FSC, *By-laws* (footnote 14), ss. 51–52.

21. Ibid., s. 71.

22. See FSC Canada Web site, <www.fsccanada.org>.

Project" in Ontario, and the Maritimes.[23] While FSC International calls for national and regional working groups to have three chambers, one of each representing social, economic and environmental interests, Canadian working groups actually have a fourth chamber, representing Aboriginal interests.[24]

The Canadian working group with the highest profile has been the one in British Columbia. The early standards development work of the group was described by one observer as being conducted by "a close-knit group of environmentalists," with little outside participation.[25] According to the B.C. group's original coordinator, throughout the early years of the group's work the provincial government consistently sent observers to meetings and offered technical expertise.[26] She said that some representatives of industry (both large and small producers) attended meetings, describing their involvement as "cautious."[27] Until fall 1998, the development process had been carried out on a very tight budget, with participants generally paying their own way to meetings. Then, faced with increasing interest from the media and from industry, the working group realized that it was time to accelerate the process of writing the draft. To do this, the group had by 1999 raised operating funds from some large environmental groups as well as from FSC International's secretariat.[28] A five-member team was contracted to write the first draft standard.[29] According to the B.C. initiative's Web site, the final standard was in place in July 2002.[30] The B.C. initiative has apparently become much more successful in fundraising now than it had been in earlier years; its Web site lists a wide variety of contributors (of "financial gifts or in-kind resources"), ranging from environmental groups such as Greenpeace Canada and WWF Canada, as well as industry associations and the provincial government of British Columbia.[31]

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23. Ibid.

24. See <www.fsccanada.org/about/chamber_rep.shtml>.

25. G. Hoberg, "The Coming Revolution in Regulating our Forests," *Policy Options* (December 20, 1999), pp. 53–56, p. 54, available at <www.irpp.org/po/archive/dec99/hoberg.pdf>.

26. Interview with Lara Beckett, then-regional coordinator of the B.C. FSC initiative, 1998.

27. Beckett, ibid.

28. This according to Marty Horswill, who in 1999 was regional coordinator of the B.C. initiative, in interview with the authors. Mr. Horswill did not go into detail about the names of environmental groups involved and the specific amounts received.

29. The five members were a forest consultant to industry, an agronomist who was a consultant to both government and industry, an environmental lawyer, a representative knowledgeable of issues relating to First Nations, and a writer. (Ibid.)

30. See <www.fsc-bc.org>.

31. See <www.fsc-bc.org>.

The CSA Sustainable Forest Management System Standards

The depletion of the world's tropical forests became the subject of international attention in the late 1980s and early 1990s.[32] However, the interests of international media and ENGOs gradually expanded to encompass more northerly forests, including those of Canada, in particular, British Columbia.[33] Among the principal stakes in the debate that arose was the European share of British Columbia's exports of lumber, pulp, paper and other wood products.[34] As one B.C. forest industry spokesman was quoted as saying at the time, Europeans were "getting a very bad impression about B.C."[35] Canadian and international media focussed in particular on Clayoquot Sound, an area on the west coast of Vancouver Island that attracted hundreds of protesters over the spring and summer of 1993 who called for a halt to forestry company MacMillan Bloedel Ltd.'s logging operations there. The protesters' logging road blockades, subsequent arrests and mass trials became a *cause célèbre* among environmental activists throughout the world.

Faced with the pressure of negative public opinion abroad and in Canada, representatives of major Canadian forestry industry associations, led by the Canadian Pulp and Paper Association, saw that to remain competitive in international markets, it would be useful to develop a system of certification for sustainable forestry that would be independent and reliable, and perceived as such by the public. In the spring of 1994 the Association contracted with CSA to direct the standards development process. CSA received funding for this endeavour from the forestry industry, though the standards were to be developed in conjunction with a government-funded pilot project that would test the draft CSA standard, on a working scale, in six test areas across Canada.[36]

The forest industry had concluded that CSA, as a well-established and independent standards development organization with an affiliated (but independent)

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32. Concerns were expressed not just by ENGOs but among intergovernmental organizations as well. For instance, the intergovernmental International Tropical Timber Organization (ITTO) developed the *ITTO Guidelines for the Sustainable Management of Natural Tropical Forests*, released in May 1990. Then, in 1991, ITTO committed to the Year 2000 Objective, which was the "goal of having all tropical timber entering international trade come from sustainably managed sources by 2000." See *ITTO Objective 2000*, available at the ITTO Web site, <www.itto.or.jp/live/PageDisplayHandler?pageId=5>.

33. See F. Gale and C. Burda, "The Pitfalls and Potential of Eco-Certification as a Market Incentive for Sustainable Forest Management," in C. Tollefson, ed., *The Wealth of Forests: Markets, Regulation and Sustainable Forestry* (Vancouver: UBC Press, 1998), pp. 278–296, p. 281.

34. See W. Stanbury, I. Vertinsky and B. Wilson, *The Challenge to Canadian Forest Products in Europe: Managing a Complex Environmental Issue* (Victoria, B.C.: Natural Resources Canada, 1995).

35. Patrick Watson of the B.C. Forest Alliance, quoted in R. Matas, "Foreign Eyes on Canadian Forests," *The Globe and Mail*, February 6, 1993, p. A7.

36. Interview with Ahmad Husseini, Program Manager, CSA Standards Development, 1996. See also *Canada's Model Forest Program*, available at <www.nrcan.gc.ca/cfs-scf/national/what-quoi/modelforest_e.html>.

certification/registration[37] body, was best suited to develop the standard.[38] The CSA struck the multistakeholder Technical Committee, which included 32 voting members, and sought to ensure what it calls a "balanced matrix" of representation. By the time the standards were ultimately published (in October 1996), the four categories of representation were as follows: academia (22.5 percent), government/regulatory (22.5 percent), environmental/general interest (32.5 percent) and product/industry interests (22.5 percent).[39] Because the inclusion of government representatives from each of the provinces would have made the Technical Committee unwieldy, only provincial government officials from British Columbia, Alberta, Ontario, Quebec and Nova Scotia participated on the Committee.[40]

The development of the standards was thus said to be a broad-based multistakeholder process. Drafts of the standards were brought to public attention by various means.[41] Anxious to show that it was ensuring significant environmentalist input in the development process, the CSA hosted a Canadian Environmental Network[42] information session in Ottawa, which brought the process to the attention of ENGOs.[43]

In additional, consultations were held across the country toward the end of October 1995 in Vancouver, Toronto and Montréal. Of the environmental organizations invited to attend these consultations, approximately 135 were present at the three

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37. A note on the term *certification*. CSA documents employ the term *registration* to denote the process of confirming that a company conforms to the standard. Certification usually implies a mark or label, whereas registration usually refers to a recording of a successful system audit. Given that there was no initial intention by the industry proponents of the CSA initiative to create a label, the word *registration* was used to denote system auditing, not labelling. However, the Canadian Sustainable Forestry Certification (CSFC) Coalition prefers the term *certification*, because that is the more common term for the process and is more readily understood by overseas customers. For the purposes of this case study, the words are synonymous. See CSFC Coalition, *Communicating Your Certification to the Sustainable Forest Management System Standards, CAN/CSA Z809* (Montréal: CSFC Coalition, 1997), p. 1.

38. As we will see, there were in fact two standards published. One document (CSA, *A Sustainable Forest Management System*, CAN/CSA-Z808-96 [Toronto: CSA, 1996], hereafter "*Z808 Guidance Document*") is a guide for companies, outlining in some detail the steps they need to take to obtain certification. The shorter document (CSA, *Specifications Document, A Sustainable Forest Management System*, CAN/CSA-Z809-96 [Toronto: CSA, 1996], hereafter "*Z809 Specifications Document*") is a checklist for certification bodies to determine whether the necessary elements of a management system are present. Thus, it is to the Z809 standard that a management system is certified.

39. According to Mr. Husseini, who was chair of the Technical Committee, the voting membership of the Committee changed little over the course of the development process. Voting environmental representatives were constant throughout the entire process. (Interview with Mr. Husseini, May 1999.)

40. However, Alberta's representative spoke for Saskatchewan and Manitoba. Nova Scotia represented the Atlantic provinces. The federal government was also represented on the Technical Committee.

41. The task of writing the drafts as well as the final standards was contracted out to professional writers. This was supervised by an editing team comprising representatives of the four categories of the matrix. (Husseini [footnote 36].)

42. The Canadian Environment Network provides a forum for ENGOs of all sizes and mandates, ensuring that they have coordinated input into national environmental policy discussions (see <www.cen-rce.org>).

43. See CSA, *Background and Proceedings of the Non-Governmental Organization (NGO) Consultation Sessions for the Canadian Standards Association's Sustainable Forest Management (SFM) Project*, summary report (Toronto: CSA, November 29, 1995), pp. 3–6.

sessions.[44] The consultations led to redrafts that incorporated many of the suggestions of attending parties, as well as the comments sent in by those who did not attend.[45] The redrafted documents were again sent to any interested party for comment. Further public consultations were conducted in February and March 1996, in a widely advertised process. The ENGO conferences and consultations were organized and funded by CSA (and therefore ultimately by the Canadian Pulp and Paper Association), and interested ENGOs could attend without incurring any costs.[46] Hence, the problem of lack of funds for interested parties was largely negated as an issue in the consultation process. The final documents were published as National Standards of Canada in October 1996.[47]

Although at first glance this would seem to represent an example of the thorough multistakeholder development process required by the Standards Council of Canada, critics raised a number of concerns, as follows:[48]

- ENGOs were not invited to participate on the Technical Committee "until decisions about the process, membership, time frames and other key aspects of the SFM Technical Committee had been made, the terms of reference of the CSA's contract negotiated, and the background document prepared."[49] Strictly speaking, this is correct. However, it is worth pointing out that frequent requests to ENGOs to become part of the CSA process and attempts to include members of the Canadian Environmental Network were rejected. In specific regard to time frames, the Technical Committee's consumer representative points out that industry representatives on the Committee were particularly amenable to setting back the development process for several months to allow for country-wide NGO consultations.[50]

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44. Ibid.

45. Ibid.

46. Husseini (footnote 36).

47. See footnote 38.

48. Some of these concerns were related to efforts to bring the CSA SFM System immediately to the international level. As Rachel Crossley describes it, the original intent of the Technical Committee was to bring the Canadian standards, once developed, to the International Organization for Standardization (ISO) for approval as international standards. In April 1995, the ISO national bodies of Australia and Canada proposed to formally request that ISO develop international standards based upon the Canadian model. It was at this point that groups opposed to the Canadian standards started becoming more vocal in their opposition, saying that there was an attempt to avoid national debate on the standards by shifting their development to the international level. See R. Crossley, *A Review of Global Forest Management Certification Initiatives: Political and Institutional Aspects*, draft paper for the Conference on Economic, Social and Political Issues in Certification of Forest Management, Malaysia, May 1996, available at <www.forestry.ubc.ca/concert/ crossley.html>.) ISO did not ultimately publish a sustainable forest management standard; rather, it published a technical report, a guide for companies wishing to apply the ISO 14001 or ISO 14004 environmental management standard to the forestry context. See *ISO 14061, Information to Assist Forestry Organizations in the Use of Environmental Management System Standards ISO 14001 and ISO 14004* (Geneva: ISO, 1998).

49. Paul Griss, letter to Jean-Claude Mercier, Chair, Sustainable Forest Management Technical Committee, March 10, 1995. Mr. Griss, an Alberta-based environmental consultant, was an associate (non-voting) member of the Technical Committee at the time he wrote the letter. As we have seen, he also participated in the development of the Forest Stewardship Council's Principles and Criteria. A similar criticism is made by Gale and Burda (footnote 33), p. 285.

50. Interview with Jennifer Hillard, Vice-President, Policy, Consumers' Association of Canada, July 1999.

- ENGOs were critical of the management basis of the standards, preferring what they called performance-based standards (a distinction discussed in further detail below), which the FSC purported to be producing during the same period.[51]

- There were allegations that CSA misrepresented the role of environmentalists in the process. This was said to be manifest in several ways. First, it was said that one prominent environmentalist was listed as a consistently absent member of the Technical Committee for a year, when in fact she had informed CSA that she would be unable to participate.[52] Second, the calibre and kind of ENGOs that did participate were criticized as not representing the views of larger, more well-known ENGOs that did not participate. Third, and more generally, CSA boasted of a wide representation from ENGOs on the Technical Committee. However, according to critics, these were not the "groups most experienced and independent regarding forest ecology and protection work."[53]

Content of the Standards

FSC Principles and Criteria, Standards, and Certificates

The FSC's base rules are 10 very general principles, each of which is fleshed out with a number of criteria.[54] Many of the Principles and Criteria are arguably quite vague, but perhaps necessarily so, since they are meant to apply to forest types throughout the world — tropical, temperate and boreal forests, as well as plantations. They form the basis for national or regional standards that, as noted earlier, are developed by the national or regional working groups.

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51. Forest Caucus of the Canadian Environmental Network, *An Environmentalist and First Nations Response to the Canadian Standards Association Proposed Certification System for Sustainable Forest Management*, paper presented to the Canadian Standards Association, October 20, 1995. The paper was endorsed by 25 organizations, most notably Friends of the Earth and Sierra Club of Canada. A similar document, spearheaded by Greenpeace and signed by more than 40 groups, had been released in June 1995.

52. The misrepresentation was apparently caused by the fact that the list of participants also included individuals wishing to receive documents related to Technical Committee meetings. Some industry representatives were overly enthusiastic about a prominent environmental activist's presence on the list. CSA offered a full apology to Elizabeth May. (Authors' correspondence with Elizabeth May, January 1999.)

53. Forest Caucus of the Canadian Environmental Network (footnote 51), p. 5. One commentator has written of the groups who were included: "None of these groups are what one would call forest activist groups — Wildlife Habitat Canada is primarily involved in collaborative initiatives with government and the private sector, while the other two groups [the B.C. Federation of Mountain Clubs and the Ontario Federation of Anglers and Hunters] have mandates that limit them to specialized interests." (M. von Mirbach, *Reward the Best or Improve the Rest? Questions About Forest Certification in Canada and Internationally*, paper prepared for February 23–27, 1998, meeting of ENGOs in Ottawa, cited in T. Burrell, *CSA Environmental Standards Writing: Barriers to Environmental Non-Governmental Organization Involvement*, Canadian Institute for Environmental Law and Policy, May 1997.) The response from CSA to this has consistently been to point out that environmental activist groups had always been encouraged to participate. Indeed, a WWF representative was present for some of the earliest Technical Committee meetings.

54. See *FSC Principles and Criteria*, available at <www.fsc.org/fsc/whats_new/documents/Docs_cent/2,16>.

Some critics have nevertheless expressed concerns that the Principles and Criteria will be applied inconsistently, because of their imprecision.[55] For instance, the Principles and Criteria do not explicitly forbid clearcutting, though some supporters and critics have interpreted them thus. Rather, they only forbid conversion of a primary or well-developed secondary forest to other uses.[56]

At the same time, FSC documents are very similar in some of their procedural requirements to those of the CSA SFM System. First, management must respect local laws (Principle 1), as well as Aboriginal interests. Second, the Principles and Criteria require the production of a management plan that, though far from identical in format to the plan called for in the CSA SFM System standard, nevertheless appears similar: management objectives must be clearly stated, along with detailed analyses of the means of achieving them. Furthermore, the plan must be updated to reflect the results of ongoing monitoring. Also, there are public input requirements built in to the process: "Consultations shall be maintained with people and groups directly affected by management operations."[57]

An apparent difference lies in the fact that FSC's public input requirements, though less detailed, appear to place more weight on objections from interested parties. According to Criterion 2.3, disputes "of substantial magnitude involving a significant number of interests will normally disqualify an operation from being certified."[58]

Turning to substantive aspects of the Principles and Criteria, FSC is frequently described by its proponents as emphasizing on-the-ground performance over management.[59] Despite this characterization, however, the Principles and Criteria contain few specific performance requirements. Rather, on the whole they emphasize general social goods — respect for laws and the rights of Aboriginals, workers and communities — as well as outlining performance guidelines that are frequently articulated in imprecise language. Only two of the principles lay down substantive rules about a company's actions within forests. Of these, Principle 5 — Benefits from the Forest — and its related criteria are surprisingly vague. The related criteria tend to use the word *should* rather than *shall*, suggesting either that they are optional or that they will be applied with less rigour than will the other requirements. In contrast, it must be said that Principle 6 — Environmental Impact — lays down firmer and more specific rules for minimizing the impact of the use of pesticides and other chemicals. But it is less specific on what

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55. See, e.g., M. von Mirbach, "Demanding Good Wood." *Alternatives Journal* 23 (Summer 1997), p. 12.

56. Len Aipedale, a representative of FSC-accredited SGS International Certification Services Ltd., outlined some of the confusion in this way:

> A lot of people have their own ideas about what certification means, about what FSC certification means and about what the FSC Principles and Criteria mean. ... Some people interpret it on one end of the scale as no logging in natural forests. That's certainly not the common interpretation or the intent of the FSC Principles and Criteria, but some people believe very strongly that this is what it means.

Quoted in D. Jordan, "Forest Certification Behind Schedule," *Business in Vancouver*, January 19–25, 1999, p. 1.

57. Criterion 4.4 (footnote 54).

58. Criterion 2.3, ibid.

59. See, for instance, Elliott and Hackman (footnote 13), pp. 24ff.

appropriate measures should be taken to protect animal and plant species. Thus, there is a great deal of flexibility built in to the Principles and Criteria.

As well as developing and occasionally amending the Principles and Criteria and other documents, an important role of FSC's international secretariat is to accredit organizations to carry out the certification process. Eleven organizations have been accredited as of this writing, one of them Canadian.[60] The accredited certifier will, ideally, assess (or "audit") an area (a "management unit") according to region-specific standards that are in keeping with the globally applicable Principles and Criteria. The qualifier "ideally" is used because in many cases forests are not actually being certified to regional or national standards. During the period that the standards are being developed, a management unit can be certified to the auditor's own, generic set of standards employed in combination with consultations among local interested parties. This explains how, for instance, there can be forest areas commonly described as "FSC-certified" in British Columbia,[61] even though, as we have noted above, no standards for the province were finalized until July 2002.[62]

Discussion has thus far focussed on FSC's forest management certificate. From a consumer perspective, however, the most visible aspect of the FSC process is the on-product logo, a stylized checkmark melding into the outline of a tree. Before a product or its packaging may bear the logo, the product's manufacturer is required to establish and document a chain of custody, the link between the certified management unit and the product. Unless the link can be positively traced, the product may not carry the logo. So there are, in effect, two certificates involved in the FSC process, the forest management certificate and the chain of custody certificate. The holder of a forest management certificate alone cannot put the logo on a product or packaging, though it may, with permission, use the logo on promotional materials. While it has been pointed out that the chain of custody requirement makes FSC a rather difficult system to implement for some large operations that obtain wood from various sources,[63] such criticisms may become more muted with time, given that those promoting the CSA SFM System have now found some value in the use of on-product logos.

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60. See *FSC-Accredited Certification Bodies*, available at <www.fsc.org/keepout/content_areas/77/78/files/FSC_Accreditated_CBs__June_1__2004_.pdf>.

61. See "Progress in Implementation," below.

62. As for costs incurred by a company seeking certification, they have been described as "shrouded in mystery" and varying anywhere from "$500 to $130,000 US." See Meidinger (footnote 8), p. 150.

63. See T. Rotherham, *Chain of Custody*, a paper presented to the International Conference on Certification Criteria and Indicators: Global Approaches to Sustainable Forest Management, Prince George, B.C., September 1997, available at <www.mcgregor.bc.ca/publications/GlobalApproaches/GAPanel2.pdf>. Products bearing the FSC logo must contain a specified percentage of wood from an FSC source. The amount originally specified was 70 percent, but was subsequently lowered to 30 percent, and is to rise to 50 percent by 2005. This percentage and its variability have been the subject of criticisms by consumer groups such as the Consumers' Association of Canada, the U.S. Consumers Union and Consumers International. These groups have also pointed out that the FSC label is not life-cycle based. These points are discussed in *Forest Certification Watch*, Issue 23 (April 30, 2002), pp. 8–9 (see http://certificationwatch.org), and Consumers International, *Green Claims: Environmental Claims on Products and Packaging in the Shops: An International Study* (London: Consumers International, March 2000).

The CSA Sustainable Forest Management System Standards

The CSA SFM system standards have been described as "ISO 14000 plus."[64] They contain a management component based on the ISO 14001 and 14004 environmental management system standards, which principally call for a commitment to comply with applicable environmental laws and to continuous improvement, as well as the adoption of a management system designed to ensure conformity with that commitment.[65] One "plus" element is the requirement for public consultation throughout the process as the system is proposed, drawn up and implemented. Another "plus" element is the performance side of the standards; an organization's management plan must identify "values, goals, indicators and objectives" for a given Defined Forest Area and declare how it will implement them on the ground. Third-party audits must examine not only the management system, but also on-the-ground performance, including whether the organization is living up to its commitment to continually improve.

The CSA standards organize this process into four components, which merit closer examination in light of a principal criticism, that in the absence of minimal on-the-ground performance requirements, a company can receive certification without changing its *status quo*.[66] To judge strictly by the text of the standards, this outcome is possible, since specific performance indicators are not predefined. However, the very public nature of the planning and certification process makes this unlikely, given the ample opportunity for interested parties to air their views on the process.

The first component of the standard requires a company to commit to the process — to make "readily available to internal and external parties" a policy statement that includes a commitment at the highest levels of the company not only to manage the forest in a sustainable manner, but also to provide for public participation, with particular attention to the needs of Aboriginal peoples, in the setting of "objectives, goals and indicators"[67] and "values."[68] These key terms are defined mainly by their relationship to one another,[69] though they all ultimately find their basis in the Canadian Council of

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64. The CSFC Coalition, for its part, says that the CSA SFM System "builds on the ISO 14001 system framework." See Coalition Web site, <www.sfms.com/iso.htm>.

65. The ISO 14001 and 14004 international standards for environmental management systems were published by the International Organization for Standardization in September 1996. They are the first of a group of standards collectively called ISO 14000. While supporters of ISO 14001 and 14004 contend that they provide a competitive advantage to companies along with ensuring good environmental stewardship, critics feel that they were developed with little ENGO input, are essentially procedural standards with no substantive requirements, and entail a certification process that is of little value. For a discussion of these and other issues, see P. S. Evers, "ISO 14000 and Environmental Protection," *Mississippi Law Journal* 67 (1996), pp. 463–526.

66. Elizabeth May of the Sierra Club of Canada, for instance, said the following about the CSA SFM system standard: "[The companies] are audited by independent auditors against the plan they have chosen for themselves. They are not audited to see if the outcome was enhanced biodiversity; they are audited to see if they did what they said they would do." (*Proceedings of the Subcommittee on the Boreal Forest*, Standing Senate Committee on Agriculture and Forestry, April 24, 1997.)

67. *Z809 Specifications Document*, p. 7.

68. Ibid., p. 8.

69. *Z808 Guidance Document*, p. 8.

Forest Ministers' Criteria and Indicators for Sustainable Forestry.[70] At the top of the order is a "value" — that is, "a principle, standard or quality considered worthwhile or desirable."[71] A "goal" is a "broad, general statement that describes a desired state or condition related to one or more forest values."[72] One or more goals must be set for each value. An "indicator" is a "measurable variable used to report progress toward the achievement of a goal."[73] An "objective," which is set for each indicator, "is a clear, specific statement of expected quantifiable results, related to one or more goals."[74] Next in order is the "practice" — the "on-the-ground forest management activity designed to achieve an objective."[75]

All but the last of these elements are determined by the public participation process. The public participation process is the second component of the CSA SFM approach. In this component, the company determines which participants to invite (and is audited to ensure that this is done fairly) by making efforts to identify "local people and others who are affected by or who have an interest in the Defined Forest Area and ask them to participate."[76] The rules of the process — time lines, decision making and dispute settlement, for example — must be developed and agreed to by the participants, and then must be clearly described. The company is obliged to provide participants with access to relevant information about the Defined Forest Area, consider all input from participants, and provide responses to it. It is from this public process that values, goals, indicators and objectives are to be set. Actual practices, as we have noted, are not determined by the public participation process.

The third component is the establishment of the Sustainable Forest Management System. This component entails rather extensive documentation requirements, including an account of the public participation process (including its outcomes), and the drawing up of an SFM plan and manual. Apart from documenting its intentions in this way, the applicant must show that the system is implemented on the ground.[77]

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70. In 1993, the Canadian Council of Forest Ministers (CCFM) produced a national framework of criteria and indicators to help track progress toward achieving sustainable forest management. See CCFM, *Criteria and Indicators of Sustainable Forestry Management in Canada, Technical Report 1997* (Ottawa: Canadian Council of Forest Ministers, 1997), p. i. For details on the Criteria and Indicators, see the Canadian Forest Service Web site, <www.nrcan.gc.ca/cfs/proj/ppiab/ci/indica_e.html>.

71. *Z808 Guidance Document*, p. 4.

72. Ibid., p. 3.

73. Ibid.

74. Ibid.

75. Ibid., p. 12.

76. Ibid., p. 15.

77. Ibid., pp. 17–21.

The final component — "continual improvement" — is closely linked to the ongoing process of review, measurement and assessment. Ongoing performance is measured against objectives, and new information that results from past practices, audits and performance reviews must be incorporated into the CSA SFM System.[78]

For the first five years of its existence, the CSA SFM System did not provide for a CSA logo to appear on a product, allowing time for the management system to be put in place and begin working, and apparently reflecting the fact that it was not initially intended to be used as an on-product marketing tool. While this arguably limited the potential visibility of the certification process, the Canadian Sustainable Forestry Coalition[79] sought to overcome any such weakness by encouraging companies to widely publicize their certification and provide background information about it.[80] Recommended techniques ranged from putting information on the company letterhead, to contacting the media.[81] Logos on products or packaging, however, did not form a part of the system. Such logos are intimately tied to the concept of "chain of custody," which is the tracking of forest products originating from the certified forest of origin, "through all phases of ownership, transportation and transformation" to the end consumer.[82] Coalition representatives occasionally offered reasons why such a system was neither feasible nor ecologically sound.[83]

This attitude had apparently changed by the summer of 2001, when CSA released a document providing for the optional use of an on-product and/or on-package logo by companies establishing a chain of custody from the forest to the product.[84] Three logo options are available, the most stringent indicating to the consumer that 100 percent of the "product has been tracked and monitored from its point of origin (a Z809-certified forest) to the end consumer."[85] The precise motivations for developing a product-centred logo after years of resistance are a matter of speculation. It is safe to assume, however, that the success of FSC in promoting its own logo (as discussed below) provided at least some of the inspiration. Even without FSC's influence, however, it is obvious that companies that make the effort to implement the CSA SFM System, and companies manufacturing products derived from certified forests, would all be anxious to see those efforts communicated effectively to the consuming public at the retail level.

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78. Ibid., p. 21. The CSA certification process is said to cost a company more than $200,000. See D. Brown and D. Greer, *Implementing Forest Certification in British Columbia: Issues and Options*, prepared for the Trade and Sustainable Development Group, Policy and Economics Division, B.C. Ministry of Forests, March 2001, p. 113, available at <www.for.gov.bc.ca/HET/certification/ResearchStudyReport0301.pdf>.

79. The Canadian Sustainable Forestry Coalition is dedicated to the promotion of certification standards by Canadian industry (footnote 37).

80. CSFC Coalition (footnote 37), p. ii.

81. Ibid.

82. See CSA, *Chain of Custody for Forest Products Originating from a Defined Forest Area Registered to CSA Standard CAN-CSA-Z809,* CSA Special Publication PLUS 1163 (Toronto: CSA, June 2001), p. iv.

83. Chain of custody was said not to be feasible because of the difficulty of distinguishing wood that originated in a certified area from wood that was not. See, e.g., T. Rotherham (footnote 63). For a contrary view, see R. P. Vlosky and L. K. Ozanne, "Chain of Custody Vital to Certification Process," *Wood Technology*, March 13, 1995, p. 35.

84. CSFC Coalition (footnote 37).

85. See Coalition Web site, <www.sfms.com/csa.htm#chain>.

Progress in Implementation

Forest Stewardship Council

In Canada, as of early 2003, 10 forest areas were subject of FSC Certification, in locations ranging from Nova Scotia to B.C. The largest of these forest areas is about 19,180 ha; the total of all areas is a modest 35,553 ha.[86] Five of the areas are under 1,000 ha each. Though modest, FSC's progress in implementation has frequently been fraught with controversy. An 11th area, managed by J. D. Irving Ltd. at Black Duck Brook in New Brunswick, is no longer certified; in early 2000, Irving renounced its certification when it felt that the standards finally endorsed in the region were too strict because they forbid the use of biocides.[87] The Sierra Club of Canada, for its part, had been calling for the Irving certification to be withdrawn.[88] The certification of the privately owned Haliburton Forest and Wildlife Reserve in Ontario also drew some public criticism — in this case from a member of the CSA SFM System Technical Committee.[89]

In spite of international success measured in total hectares of forests certified around the world,[90] FSC has also experienced a number of administrative missteps at the international level. In its early years, FSC received some unfavourable media attention in the Netherlands when its name became associated with a controversial Costa Rican teakwood plantation.[91] More recently, FSC had to suspend the authority of one of its accredited certifiers to issue certificates because of non-compliance with FSC procedures.[92] In combination with some of the highly criticized Canadian certifications, these experiences seem to indicate an organization that has occasionally struggled with the difficult task of developing a good reputation (by associating it with valid, well-performed certification processes), while also ensuring that the name has a high profile in the marketplace.

The challenge of balancing success and credibility may have been one motivation for FSC joining with other environmental and social labelling programs in the

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86. *Forests Certified by FSC-Accredited Certification Bodies* (footnote 3).

87. See discussion of the controversy in M. Lansky, "If Certification was the Answer, What was the Question? A Close Look at J. D. Irving and the Certification of Industrial Forestry," *Understory* 9 (Summer 1999); responses to this story are published in "Touching a Nerve," *Understory* 10 (Winter/Spring 2000). For a discussion of the Maritimes standard development process, see E. Meidinger (footnote 8), pp. 156–162.

88. Sierra Club of Canada, *Evidence Confirms Sierra Club of Canada Concerns Over Black Brook Certification Process*, press release, January 21, 2000, available at <www.sierraclub.ca/national/media/fsc-cert-concerns-00-01-21.html>.

89. See K. Armson, letter to the editor, *The Forestry Chronicle* 74 (May/June 1998), p. 284. Among the criticisms: the certification took place over only four days, in December 1997, when the forest was covered with snow; there was no completed forestry management plan; and there was no documentation to "clearly demonstrate that the rate of harvest of forest product does not exceed levels that can be sustained."

90. As of early 2003, the certified forests approached 24 million hectares in total area worldwide. See *Forests Certified by FSC-Accredited Certification Bodies* (footnote 3).

91. For more information on this controversy, see an unofficial archive of the United Nations Environment Program's Infoterra mailing list, available at <www.ee/lists/infoterra/>.

92. See World Wide Fund for Nature, *Skal's Authority Suspended to Issue FSC Certificates, Forests For Life Certification Updates*" May 2001, and *Skal's Chain-of-Custody Accreditation Reinstated*, June 2001.

International Social and Environmental Accreditation and Labelling (ISEAL) Alliance.[93] Just as FSC purports to lend credibility to individual sustainable forestry efforts, so does ISEAL offer its members the opportunity to maintain and enhance their own credibility. ISEAL has indicated that it intends to enable its members to gain credibility in the eyes of government and international trade bodies, in part by establishing transparent and professional mechanisms for peer review of member operations (see more detailed discussion in Chapter 5).

CSA SFM System

As of early 2003, 14.5 million hectares of Canadian forest had become registered to the CAN/CSA Z809 standard.[94] While this represents significantly more area than that certified by FSC, the management of the CSA forest areas is much more concentrated: the certified forest areas are managed by three major companies.

Approaches to Regulation and Their Effect upon Certification

Both standards require that forestry practices conform to domestic laws. Even if the standards contained no such obligation, forestry companies would need to comply with the law. A certification scheme's practical impact on a company's operations will heavily depend upon the extent to which the scheme's requirements are already covered by (and are compatible with) local laws. Two examples from Canadian jurisdictions (British Columbia and Ontario) serve to highlight this fact. One commentator noted that a company operating in British Columbia may have an easier task of implementing an FSC standard than would a company operating in Ontario; the reverse would be true for the CSA SFM system standards. This is because the commentator concluded that forestry regulation in B.C. to be generally more performance-based, while Ontario relies more upon a management approach.[95] Other observers point out that the tenure rights granted to companies operating in B.C. may hamper those companies' ability to make the long-term commitments necessary for certification to any of the currently available programs.[96] In either case, one point prevails: government regulation always looms in the background, and frequently in the foreground, of the certification process.

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93. See ISEAL Alliance Web site, <www.isealalliance.org>. See also E. Meidinger, *Emerging Trans-Sectoral Regulatory Structures in Global Civil Society: The Case of ISEAL*, paper prepared for the Tools for Regulation Panel at the Joint Annual Meetings of the Law and Society Association and the Research Committee for the Sociology of Law, July 4–7, 2001, Budapest, available at <http://law.buffalo.edu/homepage/eemeid/scholarship/ISEAL.pdf>.

94. CSFC Coalition, *Certification Status and Intentions in Canada*, available at the Coalition Web site, <www.sfms.com/status.htm>.

95. P. Griss (footnote 5).

96. Brown and Greer (footnote 78), p. 113.

Attitudes of Regulators Toward Certification

The attitude of forestry regulators to voluntary certification is worthy of discussion, because regulators regularly balance the interests of industry, environmentalists, other government sectors, those people who directly depend upon the forest for their living, and those who do not. British Columbia provides an interesting focal point for discussion, because forestry is not only that province's most important industry, but is also the scene for some of the most intense conflicts among the varying interests.[97]

It would seem that any *voluntary* process would not have entered into an overly welcome legal environment in British Columbia in the early to mid-1990s. According to the provincial government's own history, the B.C. *Forest Practices Code* (the principal law governing the forest industry in the province, which was brought into force in 1995) was "a reaction to the old framework, which relied much more heavily on contractual obligations and voluntary incorporation of forest practices guidelines into operational plans and permits."[98] The Code was, in part, the product of the government's commitment to toughen its regulation of forest practices in response to growing pressure from environmental groups. The intense negative international publicity resulting from the 1993 Clayoquot Sound demonstrations seems to have been one spur to more stringent regulation.

This detailed, complex body of law has required extensive inspection measures.[99] The apparent hope was that this sort of detailed inspection and oversight regime would improve the image of B.C.'s forest industry. By many accounts, it has not achieved that objective. The Code has been criticized by industry and environmental groups. Industry complained about the paperwork, which was adding $8 to $20 to the cost of a cubic metre of wood: a company was required to file six different plans before it could proceed to log an area.[100] On the other side, environmental groups perceived the Code as ineffectual.[101]

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97. For its part, Canada's federal government, or at least the Department of Natural Resources, has explicitly stated that it "supports" the efforts of both initiatives, even though it was actively involved in the development of only the CSA SFM System standards. See Natural Resources Canada, *Sustainable Development Strategy: Safeguarding our Assets, Securing our Future* (Ottawa: Natural Resources Canada, 1998), p. 67.

98. Kristine Weese, Research Officer, Integrated Resources Policy Branch, British Columbia Ministry of Forests, in *Introduction to the Forest Practices Code*, September 1996.

99. According to the Compliance and Enforcement Branch, the Ministry of Forests provides reports of its extensive inspection and enforcement activities. See <www.for.gov.bc.ca/hen>.

100. "B.C. Not Backsliding with Forest Practices," *Financial Post*, April 4, 1998, p. 18.

101. See, e.g., Greenpeace, *What is Happening in B.C.'s Forests* (undated, 1997?), available at <www.greenpeace.org/~comms/97/forest/logging.html>. It should be noted that the government announced an overhaul of the Code that was geared in part to reducing companies' paperwork. See P. Lush, "B.C. Forest Firms to Reap Savings. Changes to Code Will Cut Logging Costs," *The Globe and Mail*, April 3, 1998.

To judge from published reports, the Forestry Minister was frustrated by Greenpeace's efforts to convince European companies to cancel contracts unless they sought FSC certification.[102] But once MacMillan Bloedel[103] announced its intention to halt clearcutting and seek certification, the Minister became more upbeat about the FSC: "This is a positive move on the part of MacMillan Bloedel, and we're interested in working with other forest companies in this regard. ... Other recent announcements about companies seeking Forest Stewardship Council certification reflect important changes in the forest industry, which we have been encouraging and promoting through the *Forest Practices Code* and other major forestry initiatives."[104]

In September 1998, the Ministry announced a decidedly qualified position on voluntary forestry certification:

> In British Columbia, government has stated it supports voluntary certification in the marketplace if certification will support real progress in sustainable forest management. Government wants to ensure that certification is based on standards that are equally challenging and meaningful for all jurisdictions, and that certification systems are compatible with definitions, standards, and processes developed domestically and in the international arena.[105]

The position remains unchanged at the time of writing, based on a review of Ministry materials.[106]

For more detail on what it seeks from a certification system, the Ministry reverts to a set of guiding principles, agreed upon by federal, provincial and territorial governments in 1996.[107] The principles are hardly revealing, and the extent to which the CSA SFM system or the FSC conforms to some of these principles is open to debate. For instance, some of the criteria reflect the government's desire that any given certification system be fully welcomed by all major consumer markets. Obviously, this is a delicate goal that has not yet been fully achieved by either the CSA or the FSC initiative. But it is

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102. See "British Columbia Forest Expert Calls for Certification," *Vancouver Sun*, April 3, 1998: "Forests Minister David Zirnhelt said FSC standards have no more scientific support than the standards B.C. is moving towards under the CSA process. However, he acknowledged the process of setting standards is moving too slowly."

103. MacMillan Bloedel was British Columbia's largest forest products company at the time. It was purchased by U.S.-based Weyerhaeuser Company in 1999. See Weyerhaeuser's Web site, <www.weyerhaeuser.com>.

104. Ministry of Forests (British Columbia), *Forests Minister Welcomes MacMillan Bloedel's Plan to Phase Out Clear Cutting Old Growth*, press release, June 10, 1998, available at <www.news.gov.bc.ca/hnr/content/1998/1998nr/1998045.asp>.

105. From Ministry Web site, ibid.

106. The Ministry commissioned a major comparative study of the various certification processes available, without stating any particular preference for which fit best into its regulatory framework. See P. Wood, *A Comparative Analysis of Selected International Forestry Certification Schemes* (Victoria, B.C.: Ministry of Forests, 2000), available at <www.for.gov.bc.ca/het/certification/WoodReportOct00.PDF>.

107. See *Framework of Guiding Principles For Voluntary Certification System for Sustainable Forest Management Prepared by the Federal/Provincial/Territorial Ministers Responsible for Forestry* (1992), as discussed in Brown and Green (footnote 78).

just as true that many parties have been unhappy with the *Forest Practices Code*, and it is unlikely that this situation will change as long as there are differing views on the proper use of forest resources as a source of economic wealth. To require the same of a voluntary initiative seems a lot to ask.

Conclusions

In this chapter, an attempt has been made to describe the origins of two approaches to voluntary verification of sustainable forestry management practices used in Canada, the processes of rule development, the content of the rules, implementation to date, and relations to the Canadian regulatory forestry management system. While the terms and operation of the programs differ in some respects, both seem to offer a real prospect of substantive achievement of sustainable forestry practices to those companies that adhere to their requirements. Both now offer product labelling based on chain-of-custody attribution programs.

From a Canadian perspective, the FSC initiative can be seen as a program driven originally by European consumers, created by international environmental organizations (ENGOs) working in partnership with large European (and, later, North American) retail interests, which is now in the process of regional elaboration for Canadian forestry conditions. To achieve "traction" in Canada (and in other regions where it operates), the challenge for FSC has been to attract forestry companies and not simply appeal to retailers, who to date have been its most receptive commercial constituency in North America. If measured in terms of hectares of forests that are certified as in compliance with FSC standards, success in Canada has been limited, particularly when compared with the CSA SFM program. Nevertheless, initial outright resistance by the Canadian forest industry to FSC seems to be giving way to some degree of industry acceptance. While Canadian forestry industry certification to FSC has been limited to date, several large North American and European retailers have committed themselves to purchasing FSC or similarly labelled products.

In contrast to the FSC initiative and its reception in Canada, the CSA SFM program is "home-grown," yet it too is attempting to appeal to the same largely non-Canadian (i.e. European) consumer audience. The primary sponsors of the CSA initiative have been Canadian forestry companies, using the services of the Canadian Standards Association. As a recognized standards development body, the CSA is under an obligation to develop standards in an open way through a balanced matrix. A key challenge has been to find ways of attracting ENGO support, particularly from the high-profile international ENGOs that are backing the FSC. (Indeed, the refusal of many ENGOs to participate in the CSA process, or the withdrawal of participation of some of these ENGOs, would most appear to resemble a boycott of the process.) These ENGOs have shown themselves to be wary of what they perceive as an industry-driven process. Some have also suggested that part of the discomfort may stem from the fact that the development of many environmental norms has a higher public policy content than most technical standards, which traditionally have been the bread-and-butter of conventional

standards developers. In a report prepared for CSA, Terry Burrell observes that the development of environmental standards involves:

> ... broad policy issues in a way that technical standard setting does not. ... Public policy making has demands and constraints appropriate to a different form and style of consultation. It requires the commitment to a distinct brand of stakeholder consultation, including a commitment to transparency and a willingness to do what is necessary to ensure that the appropriate interests are represented in decision making. It can also involve a willingness to entertain questions about scope and purpose and be open to alternative ways of looking at issues.[108]

While participation in and support of the CSA SFM initiative from high profile international ENGOs has been slow in coming, the program has been more successful in terms of total hectares of forests committed to compliance with its provisions. Subsequent environmental standards development activity of CSA seems to have received a more positive reception from ENGOs, suggesting that the CSA has learned from the SFM experience and adjusted its processes in a manner more conducive to ENGO participation.[109] The ultimate acceptance, credibility and sustainability of either SFM initiative in the marketplace is unclear at this time.

As Ben Cashore of the Yale School of Forestry and Environmental Studies has discussed in several recent publications,[110] the two programs have from the outset struggled for legitimacy in the eyes of several constituencies.[111] Cashore describes similar struggles for legitimacy taking place in other jurisdictions. He suggests that, in the early days of FSC operation, with few exceptions, forestry companies and landowners gave pragmatic[112] and moral[113] legitimacy to industry-driven (e.g. CSA SFM, or the American

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108. Burrell, (footnote 53), p. 29.

109. Environmental groups were said to have been hesitant to participate in the development of Z770, an environmental assessment standard that was spearheaded by the federal government (rather than by industry). The Environmental Assessment Caucus of the Canadian Environmental Network was convinced to participate, with a promise that it could choose six of the eight Technical Committee representatives in the environmental/general interest category. This is according to Nathalie Séguin of the Canadian Environmental Assessment Agency, in communication with the authors. Note, however, that this standard is essentially domestic in scope with no evident international market implications.

110. For example, B. Cashore, "Legitimacy and the Privatization of Environmental Governance: How Non State Market-Driven (NSMD) Governance Systems (Certification Eco-labelling Programs) Gain Rule Making Authority," *Governance: An International Journal of Policy, Administration and Institutions* 15:4 (October 2002), pp. 503–529; Bernstein and Cashore (footnote 11).

111. Cashore, in "Legitimacy and the Privatization of Environmental Governance," ibid., defines legitimacy as "... a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs and definitions." In so doing, he is quoting Mark Suchman, "Managing Legitimacy: Strategic and Institutional Approaches," *Academy of Management Review* 20 (1995) pp. 571–610, p. 574.

112. Cashore, ibid., defines *pragmatic legitimacy* as resting on "self-interested calculations of an organization's most immediate audiences."

113. *Moral legitimacy* reflects a "positive normative evaluation of the organization and its activities. It rests not on judgments about whether a given activity promotes the goals of the evaluator, but rather on judgements about whether the activity is 'the right thing to do'." Cashore, ibid., drawing on Suchman (footnote 111).

Forestry and Paper Sustainable Forestry Initiative), as opposed to ENGO-driven SFM programs such as FSC, but that since 1998 the supply-side audience in B.C. and the United Kingdom has started to give the FSC pragmatic legitimacy. Cashore concludes that forestry companies are more likely to support the FSC program if:

- there is a high reliance on foreign markets, since these international buyers can make demands for FSC wood without risking political backlash that domestic companies might experience; and
- forest management practices in a region have reached the status of "problem" on the policy agenda, so that FSC is seen as a way to gain "social licence" and thus resolve the problem.[114]

On the other hand, a high level of forest industry sector group cohesion was identified by Cashore as being closely related to the ability of such supply-side interests to resist the pressure for FSC certification. This appears to have been the historical situation in both Canada and the United States, although this resistance seems to be lessening over time.

Arguably, the single most significant observation emerging from the foregoing examination of the FSC and CSA SFM experience in Canada is that international ENGOs have flexed their muscles and moved from being, at best, invited (and, often, token or tolerated) participants in government- or industry-led policy initiatives, to powerful rule makers and implementors in their own right,[115] or sought-after participants in government- and industry-led initiatives. This transformation from bit-player to kingpin seems to have occurred as a result of several factors:

- ENGO frustration with, in their eyes, the inadequate development and implementation of conventional public law instruments at both the international[116] and domestic[117] level;
- a decrease in public confidence in government — particularly its regulatory efforts — aided no doubt by mounting evidence of its fallibility;[118]

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114. Cashore, ibid.

115. See discussion of allegations of anti-competitive behaviour of an FSC "buyers group" in the United Kingdom, in Kernaghan Webb and Andrew Morrison, "The Law and Voluntary Codes: Examining the 'Tangled Web'," Chapter 5, above.

116. As noted earlier, one reason for ENGO movement on market-driven SFM initiatives was frustration with the lack of progress at the 1992 Earth Summit toward development of an international agreement on forestry conservation (see footnote 11).

117. See earlier discussion of ENGO criticisms of the B.C. regulatory regime.

118. For example, the tainted blood scandals in several jurisdictions, the U.K. mad cow and foot-and-mouth disease containment problems, the Nova Scotia Westray mining disaster, and the Walkerton, Ontario, water tragedy are recent examples of incidents in which regulatory failure was identified as at least a contributing factor to the problem.

- increased public confidence in NGOs as credible sources of information, and public interest watchdogs;[119]
- recognition by ENGOs of an opportunity to exploit a market niche.[120]

These points are perhaps no more clearly demonstrated than with recent announcements by Canadian provincial and American state governments that they themselves are obtaining or have obtained certification from FSC and its related entity, the Marine Stewardship Council, for their private forestry and fishery resource management regulatory regimes.[121] In effect, such actions seem to represent government acknowledgment that, as currently operated, their regulatory regimes are lacking in some element of public credibility, and that ENGO-led certification schemes might assist them in providing that needed credibility.

Not only do these actions demonstrate a commodification of environmental values (an old story[122]), but also a commodification of ENGOs themselves (who have, through the creation of their spin-off private regulatory bodies such as FSC and the Marine Stewardship Council, attempted to transform their credibility as critics of public policy into a marketable rule-and-label commodity) and even a commodification of regulatory regimes. In keeping with this notion of commodification and markets, there is

119. "Public surveys reveal that NGOs often enjoy a high degree of public trust, which can make them a useful — but not always sufficient — proxy for the concerns of society and stakeholders." International Institute for Sustainable Development, *Business and Sustainable Development: A Global Guide*, at <www.bsdglobal.com/ngo/roles.asp>.

120. In "The NGO-Industrial Complex," *Foreign Policy* July–August 2001, authors Gary Gereffi, Ronie Garcie-Johnson, and Erika Sasser of Duke University state:

> NGOs have become highly sophisticated in using market-campaigning techniques to gain leverage over recalcitrant firms. Market campaigning, which focuses protests against highly visible branded retailers, is only about 10 years old, but in the words of one Greenpeace activist, "it was like discovering gunpowder for environmentalists."

121. In March 2001, "The Honourable John Snobelen, Minister of Natural Resources for the province of Ontario, and Dr. Maharaj Muthoo, Executive Director of the Forest Stewardship Council (FSC), initiated a bilanteral process that will result in FSC certification of all Crown-owned forests managed in compliance with Ontario law and the products derived from those forests." Per Ontario Ministry of Natural Resources, *Ontario First in World to Receive Environmental Forest Certification*, press release, March 23, 2001. E. Meidinger, in "Environmental Certification Programs and U.S. Environmental Law: Closer Than You May Think," *Environmental Law Reporter* 31 (2001), pp. 10162–10179, p. 10169, reports sources indicating that the agencies responsible for managing State-owned lands in Minnesota, New York and Pennsylvania have either achieved Forest Stewardship Council certification or announced they intended to do so. The State of Alaska's commercial salmon fisheries management program has been certified as sustainable by the non-governmental Marine Stewardship Council, pursuant to its sustainable fishery standards. See Office of the Governor of Alaska, *Alaska's Salmon Fishery Certified as Sustainable*, press release, (September 5, 2000). Note that the Marine Stewardship Council differs in significant respects from the FSC.

122. See discussion of the history of environmental product labels in K. Harrison, "Promoting Environmental Protection Through Eco-Labelling: An Evaluation of Canada's Environmental Choice Program," Chapter 10, below.

now a high degree of domestic and international competition among public and private rule-making bodies — be they ENGO-led regimes, or those of conventional standards bodies, industry associations or governments — concerning who is the most credible and why.[123]

These activities represent a blurring of public and private spheres, or a "hybridization of law and market, state and non-state,"[124] which has led some commentators to suggest that a new conception of "government" is needed, capable of encompassing "the entire complex of ideals, goals, rationales, techniques, procedures and programs by which a diversity of state and non-state authorities seek to shape human conduct to desired ends."[125] In this broader sense, it is possible for non-State actors such as ENGOs to use "governmental technologies"[126] to achieve their aims. Arguably, the FSC represents a good example of a "governmental technology" employed by ENGOs: through trial and error, the FSC has developed into a fairly conventional bureaucratic rule-making and implementation structure, and indeed there are indications that, in an effort to be seen as acceptable for trade purposes, it will become even more conventional in its operations.[127] Thus, an ENGO-spearheaded body is submitting to the "discipline" of an intergovernmental rule regime (World Trade Organization) in an effort to be seen as acceptable by governments and others.

As ENGOs develop rule-making and development bodies, some familiar questions arise. Just how accountable and transparent are these bodies in their decision-making processes? Are there meaningful opportunities for all affected parties to participate in their decision making? And what is the basis for their decisions?[128] These, of course, are the very questions ENGOs have asked for years of governments. Looked at from this broader perspective, it is not clear whether bodies such as FSC will eventually represent the triumph of ENGOs over governments and the private sector, or the reverse, since in the final analysis it is not apparent that an ENGO-led body subject to the same

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123. A similar point is made by T. Walde in "Non-Conventional Views on Effectiveness: The Holy Grail of Modern International Lawyers," *Austrian Review of International & European Law* 4 (1999), pp. 164–203, p. 201.

124. S. Wood, "Green Revolution or Greenwash? Voluntary Environmental Standards, Public Law and Private Authority in Canada," in *New Perspectives on the Public-Private Divide* (Vancouver: UBC Press, 2004)..

125. Wood, ibid, drawing on, among others, M. Foucault, "Governmentality," in G. Burchell, C. Gordon and P. Miller, eds., *The Foucault Effect* (Chicago: Chicago University Press, 1991), pp. 87–104, and N. Rose and P. Miller, "Political Power Beyond the State: Problematics of Government," *British Journal of Sociology* 43 (1992), p. 173.

126. Wood, ibid.

127. The FSC and the Marine Stewardship Council are both members of the ISEAL (International Social and Environmental Accreditation and Labelling) Alliance, which has the express purpose of positive environmental and social change "through the implementation of international standards-setting and accreditation systems that comply with internationally accepted criteria; that do not act as technical barriers to trade. ..." See ISEAL Alliance, "Mission Statement," *Membership Requirements: Public Requirements*, Public Draft 2 (July 4, 2001), available from the ISEAL Web site, <www.isealalliance.org>. ISEAL, and the implications of the trade agreements such as those of the World Trade Organization, are discussed in greater detail in Webb and Morrison, "The Law and Voluntary Codes," Chapter 5, above.

128. See, e.g., A. Warleigh, "NGOs: More Influence Means More Responsibility," *Consumer Policy Review* 11:3 (2001), pp. 101–104. See also A. Adair, *A Code of Conduct for NGOs: A Necessary Reform* (London: Institute for Economic Affairs, 1999).

fairness, accountability, accessibility and transparency constraints as governments and conventional standards bodies will operate in a manner markedly different from how governments and conventional standards bodies operate.

Now that ENGOs are acting as rule makers and rule implementors, it is reasonable to predict that they will experience many of the same problems that have plagued more conventional rule-making and implementation bodies, such as regulatory agencies and state-supported standards bodies — that is, they too will be subject to the usual array of allegations of unfairness, conflicts of interest, corruption and incompetence, some well founded, some not. When these problems arise, then the credibility of these ENGO-supported organizations will inevitably be tested, and will likely diminish. Like a film critic who becomes a director, the barbs will now be pointed in the other direction. Just how sustainable such initiatives will be in the long-term, once some of these problems do arise, remains to be seen.

In the final analysis, as is common with other market goods, the public has more choice as to rule makers now that ENGOs have entered the field (and governments and conventional standards bodies have new competition). It is probably a choice the public would prefer not to have, but as confidence in governments has diminished, an opening has been created for others to fill the gap. Whether ENGO spin-off bodies such as FSC can maintain the aura of legitimacy, and adjust to the constraints they are subject to as rule makers is an open question. Undoubtedly, governments and conventional standards bodies will respond to the competition as well.[129] While it is too early to predict exactly what will happen, a likely scenario is that ENGO-supported bodies such as FSC will become established and accepted standards developers, conventional standards organizations will adjust their processes and perspectives to become more amenable to the more policy-oriented work of environmental, labour and human rights standards, and governments as well as other stakeholders will draw on the services of both as they feel is appropriate in the circumstances.

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129. For example, the Technical Committee of ISO that is responsible for development of environmental management standards (ISO 14000) is currently sponsoring research led by ENGOs concerning how to improve the functioning of the committee.