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THE FOREST AND THE TREES:

BIOMASS AND CERTIFICATION PROCEDURES

by Stephen Medlock*

On December 7, 2005 the European Union published its Biomass Action Plan.¹ The EU's goal of promoting the use of biomass energy, generally defined as energy that comes from processing any form of harvested biological life such as forest products and plant life, is part of an increasing trend.² Biomass emerged on the international market as a major renewable energy source during the last fifteen years.

While biomass has the potential to be a sustainable, renewable, and economic source of energy, it has drawbacks that must be managed. For example, biomass production could compete with food production.³ Cultivation of cash crops to produce biomass energy could also lead to deforestation or the take-over of traditionally indigenous lands by multinational corporations.⁴ Furthermore, the trade in biomass fuels crosses state boundaries and is largely the purview of multinational corporations. Hence, states are unable to effectively regulate this trade. Civil society actors, such as international regulatory organizations, have attempted to fill this governance gap by providing incentives for multinational corporations to adopt policies that reduce the potential negative impacts of biomass cultivation. Forest certification was one of the first incentive structures devised. Forest certification is the process by which an independent third-party assesses the management of biomass cultivation by a firm in relation to standards set by a regulatory organization.⁵ If the management of the resource complies with these organizational standards, the firm may display a label signifying they have conformed to the standards.⁶

While certification procedures are likely to marginally raise the cost of grossly violating the norms of a regulatory organization, these policies fall far short of the goal of ensuring biomass fuels do not negatively impact sustainable development. Certification procedures are not efficacious because they fail in two critical regards. First, they do not enforce accountability because of the limited resources of many regulatory organizations. Second, the broad language of the standards used to assess firms incentivizes compliance that often violates the spirit of the norms themselves.

Forest certification is not effective in realizing the goal of sustainable energy development because the organizations enforcing these norms lack the reach and resources to compel multinational corporations to comply.⁷ The funds necessary for continued monitoring of biomass firms are heavily reliant on the revenue generated by the certifications procedure itself.⁸ These limited resources make it difficult to ensure some compliance on the part of firms that have not sought certification. This leads to a basic selection problem. The only firms that will comply with

certification procedures are those who have an interest in doing so.⁹ As a result, the firms that are most likely to opt out of these procedures are the firms whose behavior civil society would most like to influence.¹⁰

The certification process itself has the potential to undermine the stated goals of the regulations. Since certification is the primary way organizations receive revenue, the certification process can be influenced by pecuniary interests.¹¹ Firms pay independent certifiers for their services. Certifiers who have a track record of certifying firms are more likely to be hired. If track records play a role in the selection of certifiers, this decision risks the creation of a negative feedback loop where firms select certifiers who interpret regulations more loosely and other certifiers lower their standards to compete for employment. In addition, few institutional safeguards exist to ensure that certifiers will remain truly independent.¹² Regulatory organizations that promote certification procedures without ensuring that certifiers have a safeguarded fiduciary responsibility run the short-term risk of entrenching this negative feed-back loop.

Despite the short-term limitations of biomass certification programs, it is important to see the forest through the trees. Virtually all stakeholders viewing the issue of biomass through the prism of sustainable development agree that some regulation is needed. Not all agree that certification programs alone will be the most effective method of achieving the stated goals of regulation. While all certification regimes face drawbacks, many other certification regimes benefit from state-level regulations that have established a baseline of acceptable corporate behavior. The nascent nature of international biomass trade means that there are few supplementary regulatory frameworks to create a baseline of permissible practice. While certification procedures may be effective in the long-term despite these problems, they cannot be effective alone in the short-term. In fact, the use of these procedures without other safeguards and supplementary forms of regulation risks the creation and entrenchment of policies that run counter to the ultimate goal of ensuring that biomass energy production is sustainable, renewable, and economic.



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ENDNOTES: THE FOREST AND THE TREES *continued from page 57*

¹ Comm'n of the Eur. Cmtys., Communication From the Commission: Biomass Action Plan 17 (2005), available at http://ec.europa.eu/energy/res/biomass_action_plan/green_electricity_en.htm (follow "Biomass Action Plan" hyperlink under "Communication from the Commission") (last visited Mar. 1, 2007).

² See Comm'n of the Eur. Cmtys., *id.*

³ LEWANDOWSKI & FAAIJ, STEPS TOWARDS THE DEVELOPMENT OF A CERTIFICATION SYSTEM FOR SUSTAINABLE BIO-ENERGY TRADE 6 (2004), available at <http://bioenergytrade.org/downloads/fairbiotradecertification.pdf> (last visited Feb. 28, 2007).

⁴ LEWANDOWSKI & FAAIJ, *id.* at 6; D. KAIMOWITZ & G. THIELE, THE EFFECTS OF STRUCTURAL ADJUSTMENT ON DEFORESTATION AND FOREST DEGRADATION IN LOWLAND BOLIVIA 50 (1999).

⁵ LEWANDOWSKI & FAAIJ, *supra* note 3, at 6.

⁶ See generally Eugene Standard, Eugene Standard: Technical Document (2004), available at http://www.eugenestandard.org/mdb/docs/15_Eugenestandard.pdf (last visited Feb. 28, 2007); LEWANDOWSKI & FAAIJ, *supra* note 3, at 6.

⁷ ERROL E. MEIDINGER, FOREST CERTIFICATION AS ENVIRONMENTAL LAW MAKING BY GLOBAL CIVIL SOCIETY, SOCIAL AND POLITICAL DIMENSIONS OF FOREST CERTIFICATION 312 (Errol Meidinger et al. eds., 2003), available at <http://law.buffalo.edu/homepage/eemeid/scholarship/FCGCSLaw.pdf> (last visited Feb. 25, 2007).

⁸ MEIDINGER, *id.* at 312.

⁹ MEIDINGER, *id.* at 312.

¹⁰ MEIDINGER, *id.* at 312.

¹¹ MEIDINGER, *supra* note 7, at 313.

¹² MEIDINGER, *supra* note 7, at 313.
