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**Stepping Onto a Moving Train: The Collision of
Illegal Logging, Forestry Policy, and Emerging
Free Trade in the Russian Far East**

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Originally published in PACIFIC RIM LAW & POLICY JOURNAL
14 PAC. RIM L. POL'Y J. 425 (2005)

www.NationalAgLawCenter.org

STEPPING ONTO A MOVING TRAIN: THE COLLISION OF ILLEGAL LOGGING, FORESTRY POLICY, AND EMERGING FREE TRADE IN THE RUSSIAN FAR EAST

Robert M. Crowley

Abstract: Faced with economic decline following the Soviet Union's collapse, Russia is energetically seeking ways to develop its economy and stimulate trade. In order to accomplish these goals, Russia has taken a number of steps to improve its interactions with its trading partners and reform its internal economic structures. Among the most sweeping areas of change are Russia's steps toward bilateral and multilateral free trade agreements and the proposed changes to its Forest Code. Externally, Russia has signed an agreement with China to stabilize relations, increase trade, and address shared environmental concerns, and has taken steps toward membership in the World Trade Organization ("WTO"). Internal reforms include revising Russia's Forest Code to enhance the productivity of the Russian forest sector, encourage investment, and discourage the problems of wasteful production and illegal logging.

Unfortunately, this simultaneous reform effort may be too ambitious. Given Russia's underdeveloped institutions and proclivity for corruption, Russia's new Forest Code may exacerbate rather than solve some of the problems it is designed to address, particularly that of illegal logging in the Russian Far East. Russia should take steps to ensure the protection of its Far Eastern forest resources from illegal exploitation prior to exposing them to the full effects of the regional and global free markets.

I. INTRODUCTION

More than a decade after the collapse of the Soviet Union, the Russian government still faces significant challenges in establishing a competitive economy in the global market. Despite the failure of the Soviet Union's state-directed economic model, Russia has not successfully transitioned to a true market economy,¹ nor has it managed to integrate its economy into the global marketplace.² Based on the Russian government's actions to remedy

¹ See LAURA IVERS, PROGRAMME ON FORESTS (PROFOR), INTERNATIONAL WORKSHOP ON INSTITUTIONAL CHANGES IN FOREST MANAGEMENT IN COUNTRIES WITH TRANSITION ECONOMIES: PROBLEMS AND SOLUTIONS, MOSCOW, RUSSIA (Feb. 25, 2003), at [http://lnweb18.worldbank.org/ESSD/ard/ext.nsf/14ByDocName/SummaryoftheWorkshopsProceedings/\\$FILE/InstitutionalChangeWorkshopSummary.pdf](http://lnweb18.worldbank.org/ESSD/ard/ext.nsf/14ByDocName/SummaryoftheWorkshopsProceedings/$FILE/InstitutionalChangeWorkshopSummary.pdf) (last visited Apr. 15, 2005); see also HISAKO TSUJI, THE ECONOMIC RESEARCH INSTITUTE FOR NORTHEAST ASIA, APEC'S NORTHERN FRONTIER: NORTHEAST ASIA (2001) (discussing Russia's challenges in forming market-based relationships with its neighbors in Northeast Asia); Colin B. Picker, *Neither Here Nor There: Countries That Are Neither Developing Nor Developed in the WTO: Geographic Differentiation as Applied To Russia and the WTO*, 36 GEO. WASH. INT'L L. REV. 147 (2004) (pointing out that several regions of Russia lag behind European Russia's more developed economy).

² HISAKO TSUJI, *supra* note 1, at 1; Kim Iskyan, *Selling Off Siberia: Why China Should Purchase the Russian Far East*, May 28, 2003, at <http://slate.msn.com/id/2086157> (last visited Apr. 15, 2005).

its nation's economic woes, it is clear the Russians recognize that the alternative to global integration is economic irrelevance.³

In order to speed the processes of transition and integration, the Russian government has undertaken a number of efforts to lift Russia out of its economic doldrums. Among these efforts are steps toward concluding agreements to integrate Russia's economy into the global market, and a reform of the Russian Forest Code.⁴ First, Russia signed an agreement known as the Treaty of Good-Neighborliness and Friendly Cooperation Between the People's Republic of China and the Russian Federation ("Cooperation Treaty") with China to improve the quality of their relations, resolve border issues, and encourage the development of economic ties between the two countries.⁵ Second, with the assistance and encouragement of the Chinese,⁶ Russia is preparing to enter the WTO.⁷ Finally, the third major step toward a market economy is a revision of Russia's Forest Code, designed to enhance the forest sector's productivity.⁸ This legal revision is perhaps the most risky of the three reforms because it would permit privatization of Russian forestlands and resources for the first time in modern Russia's history.⁹

The impact of these trade and forestry reforms is likely to be felt most strongly in the Russian Far East ("RFE"),¹⁰ a region in which both

³ Tamara Troyakova & Elizabeth Wishnick, *Integration or Disintegration: Challenges for the Russian Far East in the Asian-Pacific Region* (2003) at <http://src-h.slav.hokudai.ac.jp/coe21/publish/no1/wishnick.pdf> (last visited Apr. 15, 2005).

⁴ See Treaty of Good-Neighborliness and Friendly Cooperation Between the People's Republic of China and the Russian Federation [hereinafter Cooperation Treaty], July 16, 2001, available at <http://www.chinaembassy.org.zw/eng/zt/zgdwzc/t150130.htm> (last visited Apr. 15, 2005); Joint Declaration of the Russian Federation and the People's Republic of China, May 27, 2003, available at <http://www.ln.mid.ru/bl.nsf/0/9d22082391597d6443256c85005303e1?OpenDocument> (last visited Apr. 15, 2005); Forest Code of the Russian Federation, Draft Version of Mar. 13, 2004, available at <http://www.forest.ru/eng/legislation/forestcode.html> (last visited Feb. 15, 2005) [hereinafter Forest Code].

⁵ Cooperation Treaty, *supra* note 4.

⁶ *Id.* art. 17.

⁷ Picker, *supra* note 1, at 169-70. Russia's accession to the WTO appears likely to take place in the near future. WORKING PARTY ON THE ACCESSION OF THE RUSSIAN FEDERATION, WORLD TRADE ORGANIZATION, CONCLUDING REMARKS BY THE CHAIRMAN, Dec. 18, 2002, at http://www.wto.org/english/news_e/news02_e/accesion_russian_18dec02_e.htm (last visited Apr. 15, 2005). For a discussion of the current state of Russia's application for WTO accession, see BOGDAN LISSOVOLIK & YAROSLAV LISSOVOLIK, INTERNATIONAL MONETARY FUND, RUSSIA AND THE WTO: THE "GRAVITY" OF OUTSIDER STATUS (Aug. 1, 2004), at www.imf.org/external/pubs/ft/wp/2004/wp04159.pdf (last visited Apr. 15, 2005).

⁸ See Forest Code, *supra* note 4.

⁹ See *id.*; see also GERHARD DIETERLE & ANDREY KUSHLIN, WORLD BANK, RUSSIAN FORESTRY POLICY REFORM: KEY CHALLENGES (2004) at [http://www.worldbank.org/ru/ECA/Russia.nsf/ECA_DocByUnid/3447E75C1AE221EAC3256F0E00246EB9/\\$FILE/Forestry_Russia_PN2_eng%20.pdf](http://www.worldbank.org/ru/ECA/Russia.nsf/ECA_DocByUnid/3447E75C1AE221EAC3256F0E00246EB9/$FILE/Forestry_Russia_PN2_eng%20.pdf) (last visited Apr. 15, 2005) (spelling out procedures for sales and long-term leases of timber land).

¹⁰ For a discussion of the impact of changed trade policy due to WTO membership, see SHAMSHAD AKHDAR, ASIAN DEVELOPMENT BANK, RUSSIAN ACCESSION TO THE WTO: PERSPECTIVE AND PROSPECTS

overwhelming socioeconomic challenges and tremendous natural resources are concentrated.¹¹ The problem of illegal logging in the RFE offers insight into the interaction of such potential wealth and actual problems.¹² It also illustrates some of the possible unintended consequences of rushing Russian reforms. In the RFE, as in Russia as a whole, economic survival depends on its successful transition to a market economy and integration in the global marketplace.¹³ However, attempting to achieve both goals simultaneously exposes Russian society to challenges with which it is ill-prepared to cope.¹⁴

This Comment takes the position that the Forest Code's provisions for privatizing Russian forests are likely premature and will result in significantly greater problems with illegal logging, as well as concurrent secondary ill-effects on the Russian economy and society. Although its ambition is laudable, the Russian government should delay its forest privatization efforts. In the immediate future, the Russian government should address its efforts towards strengthening its forestry monitoring and enforcement mechanisms, securing bilateral and multilateral trade agreements, and phasing in privatization of public forest lands gradually.

This Comment examines the economic problems driving illegal logging in the RFE and the measures Russia has chosen to combat them. Part II focuses on economic deformations produced by seven decades of communism and concludes that inadequate or poorly developed remedies could exacerbate these deformations. Part III explores problems with the

FOR RUSSIAN AND ASIAN TRADE 27 (2002); RUSSIA'S FAR EAST: A REGION AT RISK (Judith Thornton & Charles E. Ziegler eds., 2002); THE RUSSIAN FAR EAST AND PACIFIC ASIA: UNFULFILLED POTENTIAL (Michael J. Bradshaw ed., 2001).

¹¹ For a discussion of the region's vast resources, see generally DIETERLE & KUSHLIN, *supra* note 9; Iskyan, *Selling Off Siberia*, *supra* note 2; RUSSIA'S FAR EAST: A REGION AT RISK, *supra* note 10. For problems, see generally RUSSIA'S FAR EAST, *supra* note 10.

¹² See WORLD WILDLIFE FUND, QUICK OVERVIEW FACTS ON ILLEGAL LOGGING IN RUSSIA (Mar. 2004) at http://www.panda.org/about_wwf/where_we_work/europe/problems/illegal_logging/Downloads/ILLEGAL%20LOGGING%20RUSSIA.pdf (last visited Apr. 15, 2005); Christopher Essick, *Crisis in the Forest: The Environmental Impact of Illegal Logging Under the New Russian Economy*, 15 COLO. J. INT'L ENVTL. L. & POL'Y 245 (2004); Paul Stanton Kibel, *Russia's Wild East: Ecological Deterioration and the Rule of Law in Siberia*, 7 GEO. INT'L ENVTL. L. REV. 59 (1994); Stanley R. Boots, *Observations from Afield: The Tension between the Goals of Russian Environmental Legislation and Extralegal Factors in the Russian Far East*, 10 INT'L LEGAL PERSP. 201 (1999). For information on the RFE's overdependence on raw timber exports, see Jennifer M. Howard, *Saving Russia's Forests: The Finnish-Russian Development Program on Sustainable Forest Management and Conservation of Biological Diversity in Northwest Russia*, 14 COLO. J. INT'L ENVTL. L. & POL'Y 273, 276 (2003).

¹³ See EASTWEST INSTITUTE, THE CHOICE FOR RUSSIA: COMPETE OR FAIL 2004, at http://www.ewi.info/pdf/A%20Choice%20for%20Russia%20Compete%20or%20Fail%20June%2010%2020041_NEW.pdf (last visited Apr. 15, 2005) [hereinafter "THE CHOICE FOR RUSSIA"].

¹⁴ DIETERLE ET AL., *supra* note 9, at 2. See also Bernard Black et al., *Russian Privatization and Corporate Governance: What Went Wrong*, 52 STAN. L. REV. 1731 (2000) (discussing the problems of self-dealing and insufficiently developed infrastructure).

laws, institutions, and attitudes toward law that have undermined previous attempts to control illegal logging in the RFE, and asserts that each must be addressed if any future reform is to be successful. Part IV examines the problems and shortfalls of the trade measures, while Part V examines the Forest Code provisions Russia seeks to implement as solutions. Finally, Part VI offers potential remedies.

II. THE RUSSIAN FAR EAST'S TREMENDOUS POTENTIAL FOR GROWTH IS HINDERED BY THE LEGACY OF SEVENTY YEARS OF COMMUNISM

The RFE is well-positioned to reap the benefits of integration into the global economy because of its tremendous natural resources, including oil, gas, minerals, timber, and fisheries.¹⁵ Encompassing a territory one-third the size of the continental United States, and stretching from Siberia to Russia's Pacific coastline,¹⁶ the region is nevertheless very sparsely populated.¹⁷ Despite its under-population, the RFE has been described as the "backbone of Russia's industrial development during the twentieth century"¹⁸ because of the resources it provided. In terms of economic development today, however, the RFE lags behind the western portion of Russia.¹⁹ The key reasons behind the economic problems of the RFE, in particular those leading to illegal logging in the region, stem from the economic distortions of the Soviet era.²⁰

A. *The Soviet Regime's Treatment of the Russian Far East as a Strategic and Economic Colony Hindered the Region's Economic Development*

Although the RFE has vast stores of resources and is situated in the prime trading regions of the Pacific Rim, its primary role during the Soviet era was as a strategic outpost rather than an area for economic

¹⁵ DIETERLE ET AL., *supra* note 9, at 1; *see also* RUSSIA'S FAR EAST: A REGION AT RISK, *supra* note 10, and THE RUSSIAN FAR EAST AND PACIFIC ASIA: UNFULFILLED POTENTIAL, *supra* note 10 (discussing the region's wealth of natural resources).

¹⁶ The RFE is "[c]omprised of Amur Oblast, the Chukhotka Autonomous Okrug, the Jewish Autonomous Oblast, Kamchatka Oblast, the Koryak Autonomous Okrug, Magadan Oblast, Primorski Krai, the Republic of Sakha, and Sakhalin Oblast." Troyakova, *supra* note 3, at 4.

¹⁷ RUSSIA'S FAR EAST: A REGION AT RISK, *supra* note 10, at 4.

¹⁸ DAVID GORDON, PACIFIC ENVIRONMENT RESEARCH CENTER, PLUNDERING RUSSIA'S FAR EASTERN TAIGA: ILLEGAL LOGGING CORRUPTION AND TRADE 4 (2000), at http://www.pacificenvironment.org/PDF/logging_final.pdf (last visited Apr. 15, 2005).

¹⁹ RUSSIA'S FAR EAST: A REGION AT RISK, *supra* note 10, at 4 & 11; THE RUSSIAN FAR EAST AND PACIFIC ASIA, *supra* note 10, at 8.

²⁰ For information on subsidy dependence, *see* RUSSIA'S FAR EAST: A REGION AT RISK, *supra* note 10, at 4-5; THE RUSSIAN FAR EAST AND PACIFIC ASIA, *supra* note 10, at 7-8.

development.²¹ The region's geostrategic importance enabled the Soviet Union to project its power and influence into Northeast Asia.²² As such, its borders were closed and militarized until 1989,²³ and it was cut off almost entirely from international trade.²⁴ Moscow's approach to the region as a strategic bulwark made the defense sector the primary actor in the region and left the RFE highly dependent on the military for its investment and development needs.²⁵

During this period of military isolationism, the Soviet government also treated the RFE's resources as something to be taken from the region for the benefit of central Russia, rendering the RFE a "resource periphery,"²⁶ and doing little to further development in the region.²⁷ The main products of the region were raw materials, which were processed or utilized in other regions of the Soviet Union.²⁸ Raw rather than processed timber was the focus of the RFE's governmental efforts in the forestry sector.²⁹ The Soviet government made limited or no investment to build up processing infrastructures in the RFE.³⁰

The net result of these artificialities was the development of an infrastructure "which was way beyond the means of the region's economy to sustain" on its own.³¹ Soviet practice distorted the RFE's economy so that it relied on a steady stream of external capital and investment in order to function, rather than relying on its own productivity³² and regional trading opportunities.

²¹ M. Titarenko & V. Mikheev, *The Asia-Pacific Region and Russia*, INTERNATIONAL AFFAIRS: A RUSSIAN JOURNAL, Nov. 3, 2001, at 5.

²² THE RUSSIAN FAR EAST AND PACIFIC ASIA, *supra* note 10, at 7.

²³ Kai-Ching Cha, *Can the Convention on Biological Diversity Save the Siberian Tiger?*, 24 ENVIRONS ENVTL. L. & POL'Y J. 3, 8 (2001).

²⁴ *Id.* at 9.

²⁵ RUSSIA'S FAR EAST: A REGION AT RISK, *supra* note 10, at 4.

²⁶ THE RUSSIAN FAR EAST AND PACIFIC ASIA, *supra* note 10, at 26.

²⁷ RUSSIA'S FAR EAST: A REGION AT RISK, *supra* note 10, at 4.

²⁸ WOOD RESOURCES INTERNATIONAL, SECONDARY WOOD PRODUCTS AND MARKETS FOR SIBERIA AND THE RUSSIAN FAR EAST 6 (2002).

²⁹ *Id.*

³⁰ RUSSIA'S FAR EAST: A REGION AT RISK, *supra* note 10, at 4.

³¹ THE RUSSIAN FAR EAST AND PACIFIC ASIA, *supra* note 10, at 7.

³² *Id.* at 7.

B. *The Collapse of the Soviet Union and Resulting Loss of Subsidies Caused Disproportionate Socioeconomic Dislocation and Uncertainty in the Russian Far East*

Many leading economists expected Russia's post-Soviet transition to a free market economy to be painful but quick.³³ While the transition was certainly painful,³⁴ it was by no means quick,³⁵ and the Russian economy remains in a transitional state.³⁶ After a decade of market liberalization and privatization efforts,³⁷ the Russian Gross Domestic Product ("GDP") in 2000 was only sixty-four percent of 1990 levels.³⁸ Some of this decline may reflect a correction of Soviet-era productivity overestimates and the shift to less wasteful economic practices.³⁹ Even if that is the case, though, the Russian economy seems to have begun serious recovery only in the early twenty-first century.⁴⁰

Despite the RFE's vast resources, the impact of the Soviet Union's economic disintegration was felt even more strongly there than in the rest of Russia.⁴¹ The RFE's dependence on government subsidies and investment left the region economically unprepared to be "cut adrift" by the Russian government.⁴² The primary reason for post-Soviet economic hardship in the RFE was the marketization of transportation and energy costs.⁴³ No longer ignored in price calculations, these increased costs made it too expensive to ship goods from the RFE to much of Russia.⁴⁴ As a result, industries in the RFE found themselves without a domestic market for their goods.⁴⁵

³³ Bernard S. Black & Anna S. Tarassova, *Institutional Reform in Transition: A Case Study in Russia*, 10 SUP. CT. ECON. REV. 211, 212 (2002).

³⁴ See generally Black et al., *Russian Privatization and Corporate Governance*, *supra* note 14.

³⁵ *Id.*

³⁶ Black, *Institutional Reform in Transition*, *supra* note 33, at 212.

³⁷ For specifics on Russian privatization, forestry practice reform, and land privatization, see generally Black et al., *Russian Privatization*, *supra* note 14; see also Lars Carlsson, *Towards a Sustainable Russian Forest Sector* (June 11, 1999) (unpublished manuscript, on file with author) (discussing post-Soviet changes in the Russian economy and forest sector).

³⁸ Black et al., *Institutional Reform in Transition*, *supra* note 33, at 212.

³⁹ Mikhail A. Alexseev, *Globalization at the Edges of Insecurity: Migration, Interethnic Relations, Market Incentives and International Economic Interactions in Russia's Border Regions 5* (2002), at <http://e-collection.ethbib.ethz.ch/cgi-bin/show.pl?type=incoll&nr=634> (last visited Apr. 16, 2005).

⁴⁰ LISSOVOLIK, *supra* note 7, at 6.

⁴¹ Iskyan, *supra* note 2, at 1.

⁴² THE RUSSIAN FAR EAST AND PACIFIC ASIA, *supra* note 10, at 8.

⁴³ WOOD RESOURCES INTERNATIONAL, *SECONDARY WOOD PRODUCTS AND MARKETS FOR SIBERIA AND THE RUSSIAN FAR EAST*, *supra* note 28, at 6.

⁴⁴ *Id.*

⁴⁵ *Id.*; see also Essick, *supra* note 12, at 251 (elimination of transportation subsidies made goods from the RFE less competitive within Russia).

Post-Soviet Moscow's inability to continue its investment in regional infrastructure exacerbated the region's economic woes.⁴⁶ Although the Putin administration has programmed a ninety percent increase in investment in the RFE from 2000 to 2004, this would still account for just seven percent of total Russian investment during the same period.⁴⁷ Such a low rate of investment does little to reverse the neglect of prior decades or to make the region more competitive in nearby Asian markets.⁴⁸

The direct socioeconomic impact of this economic change has been both profound and grim.⁴⁹ The region is a "distant underperforming colony that is gradually slipping into economic and demographic irrelevance."⁵⁰ Approximately ten percent of the RFE's population has migrated from the region since the collapse of the Soviet Union.⁵¹ Nonetheless, high regional unemployment persists and more than forty percent of the remaining population earns less than the official poverty rate.⁵² As a result, the standard of living in the RFE is far worse than the already low standard of Russia as a whole.⁵³

The central government's abandonment of the RFE has had a negative impact on intergovernmental relations.⁵⁴ Nine time zones from Moscow and representing only five percent of the population⁵⁵ of the Russian Federation, the RFE is remote from the support of the central government.⁵⁶ RFE residents perceive that Moscow has little to offer them and that its priorities are becoming "progressively disassociated from theirs."⁵⁷ Regional leaders

⁴⁶ Troyakova & Wishnick et al., *supra* note 3, at 1.

⁴⁷ *Id.* at 11.

⁴⁸ See, e.g. Xiufang Sun, Eugenia Katsigris & Andy White, *China and Forest Trade in the Asia-Pacific Region: Implications for Forests and Livelihoods*, (2004), at http://www.forest-trends.org/documents/publications/China%20Import_Working%20Paper.pdf (last visited Apr. 16, 2005) (pointing out that the RFE's neighbors in Asia have a head-start in productivity and competitiveness); M. Margelov, *Russian-Chinese Relations at Their Peak?*, 6 INTERNATIONAL AFFAIRS: A RUSSIAN JOURNAL 6 (2003).

⁴⁹ See generally RUSSIA'S FAR EAST, *supra* note 10; THE RUSSIAN FAR EAST AND PACIFIC ASIA, *supra* note 10; Iskyan, *supra* note 2.

⁵⁰ Iskyan, *supra* note 2, at 2.

⁵¹ RUSSIA'S FAR EAST, *supra* note 10, at 4.

⁵² *Id.*

⁵³ *Id.* at 11.

⁵⁴ Kibel, *supra* note 12, at 62.

⁵⁵ RUSSIA'S FAR EAST, *supra* note 10, at 35.

⁵⁶ See Elizabeth Wishnick, *Chinese Migration to the Russian Far East: A Human Security Dilemma* 155 (paper presented at the seminar, "Human Flows across National Borders in Northeast Asia," United Nations University, Tokyo, Japan, Nov. 21-22, 2002), available at <http://gsti.miis.edu/CEAS-PUB/200209Wishnick.pdf> (last visited Apr. 15, 2005); THE RUSSIAN FAR EAST AND PACIFIC ASIA, *supra* note 10, at 8.

⁵⁷ RUSSIA'S FAR EAST, *supra* note 10, at 35.

appear reluctant to follow Moscow's dictates on trade policy,⁵⁸ and may be equally reluctant to follow forestry policies that conflict with their view of the RFE's interests.

C. *Inefficient Forestry Practices in the RFE Produce Even Greater Reliance on Raw Timber Exports*

The RFE's timber resources may offer a partial solution to the region's economic woes given their size and the proximity of the region to China, Japan, and South Korea. Recognizing the ready availability of timber, the RFE's leaders have chosen increased exports as a means to boost revenue.⁵⁹ Approximately a quarter of Russia's vast forest resources are concentrated in the RFE⁶⁰ and its international neighbors have an almost unlimited demand for timber.⁶¹ As a recent United Nations report on forestry in the Russian Federation indicates, the RFE's vast timber resources have tremendous potential to assist in the development of Russia's overall economy if handled efficiently.⁶²

Unfortunately, the Russian forestry sector is extremely inefficient, which limits the RFE's ability to capitalize on its timber resources. Despite possessing a quarter of the world's forests, Russia produces only a quarter as much wood as Finland or Sweden.⁶³ Data from the Russian Ministry of Natural Resources indicates that no more than twenty-five percent of the annual allowable timber cut, a rough benchmark for a sustainable rate of exploitation, has been utilized in any of the past few years.⁶⁴ Analysis by outside sources puts the legal timber harvest at between sixteen and twenty percent of the apparent sustainable annual cut.⁶⁵

⁵⁸ Boots, *supra* note 12, at 221-28.

⁵⁹ See *Trade Booms in Sleepy Border Town*, THE STRAITS TIMES (Vladivostok, Russia), Feb. 12, 2003, available at <http://vn.vladnews.ru/Arch/2003/ISS350/News/upd12.HTM> (last visited Apr. 15, 2005); US EMBASSY BEIJING, ILLEGALLY HARVESTED RUSSIAN TIMBER ENTERING CHINESE MARKET, BEIJING ENVIRONMENT, SCIENCE, AND TECHNOLOGY UPDATE (May 20, 2004), at <http://www.usembassy-china.org.cn/sandt/05-20-04newsletter.doc> (last visited Apr. 15, 2005).

⁶⁰ UN ECONOMIC COMMISSION FOR EUROPE, RUSSIAN FEDERATION FOREST SECTOR OUTLOOK STUDY, U.N. GENEVA TIMBER AND FOREST DISCUSSION PAPERS #9, U.N. DOC. ECE/TIM/DP/27 (2003).

⁶¹ RUSSIA'S FAR EAST, *supra* note 10, at 120. The "total annual demand in China, Japan, and South Korea exceeds 260 million cubic meters [of timber], of which 65% is imported." *Id.*

⁶² *Russian Federation Forest Sector Outlook Study*, *supra* note 60, at 16.

⁶³ Nick Paton Walsh, *It's Europe's Lungs and Home to Many Rare Species. But to Russia it's £100bn of Wood: Sale of Forests to Loggers Could Create Ecological Crisis*, GUARDIAN (UK), Sept. 19, 2003, at <http://www.guardian.co.uk/international/story/0,,1045062,00.html> (last visited Apr. 15, 2005).

⁶⁴ *Improvement of the Organization of Forest Use*, U.N. Economic Commission for Europe, at 1, U.N. Doc. TIM/SEM.1/2003/R.20 (2003).

⁶⁵ Press Release, WOOD Markets, Russian Log Exports & Lumber Production Soaring (Mar. 27, 2003).

Some of this inefficiency stems from the collapse of formerly state-owned timber producers in the 1990s,⁶⁶ which cut production volume by fifty-six percent from 1990 to 2000.⁶⁷ A portion of the productivity problem can therefore be viewed as temporary consequences of the transition process, but other factors are rooted in inefficient practices.

A second component of the inefficiency problem is the incredibly high rate of waste in Russian timber harvesting operations. An estimated forty to sixty-six percent of the potential harvest is simply wasted prior to reaching the marketplace.⁶⁸ During the early 1990s, as much as half of the timber harvested rotted where it was felled.⁶⁹ Recent figures show minimal improvement in efficiency, estimating that approximately one quarter of harvested timber is lost in initial processing and transportation, and up to forty percent more is lost in rough processing for market.⁷⁰ The root causes of this waste in production are obsolete technologies and poor organization, and the net result is either low or no profitability.⁷¹ A recent United Nations study estimates that approximately half of Russia's forest industry enterprises are unprofitable.⁷²

Low labor productivity further degrades efficiency in Russian timber production. One observer of the region estimates that labor productivity in the RFE's timber industry is twenty times lower than in western Canada and the United States.⁷³ As a direct result, RFE-based logging enterprises are unable to capitalize on the comparative advantage that relatively low wage levels normally offer industries.⁷⁴

A final disadvantage is that Russian firms have difficulty meeting the finished timber quality standards their Asian customers demand.⁷⁵ For example, mills in the RFE are simply unable to provide sawn wood which meets the requirements of the Japanese lumber market.⁷⁶

⁶⁶ WOOD RESOURCES INTERNATIONAL, *supra* note 28, at v.

⁶⁷ *Id.* at iv.

⁶⁸ GORDON, *supra* note 18, at 6 (reporting that 40-60% is lost in logging or transport). See also RUSSIA'S FAR EAST, *supra* note 10, at 131 (stating that two-thirds of initial raw material is lost between harvest and market).

⁶⁹ Kibel, *supra* note 12, at 62.

⁷⁰ RUSSIA'S FAR EAST, *supra* note 10, at 131.

⁷¹ *Id.*

⁷² *Improvement of the Organization of Forest Use in Russia*, *supra* note 64, at 15.

⁷³ RUSSIA'S FAR EAST, *supra* note 10, at 128.

⁷⁴ *Id.*

⁷⁵ *Id.* at 121.

⁷⁶ *Id.*

The combined effect of these deficiencies is that the vast majority of the RFE's timber that does make it to market is exported as raw logs.⁷⁷ In the Primorskiy Krai, the subregion of the RFE bordering with China, the current estimate is that eighty percent of legal timber removals are exported as unprocessed logs.⁷⁸ While these exports provide the region with an influx of much-needed capital, they also preclude access to significantly more profitable forest product manufacturing.⁷⁹ Raw logs represent up to 51.5 percent of Russia's total exports, which gives policy decisions in the forestry sector tremendous impact on the Russian economy as a whole.⁸⁰

Because of this reliance on exporting raw timber rather than finished wood products, Russia's economy is cut off from the profits offered by later stages of manufacturing.⁸¹ Given the vast timber holdings in the RFE and its proximity to booming markets, this is a significant foregone opportunity.⁸² This is particularly true given the tremendous demand for Russian timber in China, Japan, and South Korea.⁸³ The markets in each of those nations rely almost exclusively on timber harvested in Russia.⁸⁴

D. *China's Demand for Russian Timber Places Further Pressure on the Region's Forests*

Trade relations between Russia and China are asymmetrical in terms of economic power. While Russia's economy is just recovering from a decade-long decline,⁸⁵ the Chinese economy is flourishing.⁸⁶ China is the dominant economic power in the region, bolstered by a combination of economic reforms and admission to the WTO.⁸⁷ China's economic growth

⁷⁷ GEORGE SHUVARIN, PACIFIC ENVIRONMENT & RESOURCE CENTER, RUSSIA'S TIMBER TUG OF WAR (2004), at <http://www.pacificenvironment.org/articles/tugofwar.htm> (last visited Apr. 15, 2005).

⁷⁸ WOOD RESOURCES INTERNATIONAL, *supra* note 28, at vii.

⁷⁹ SHUVARIN, *supra* note 77.

⁸⁰ *Id.*

⁸¹ Essick, *supra* note 12, at 255.

⁸² *Russian Federation Forest Sector Outlook Study*, *supra* note 60, at 9. See also RUSSIA'S FAR EAST, *supra* note 10, at 120 ("[The] total annual demand in China, Japan, and South Korea exceeds 260 million cubic meters [of timber], of which 65% is imported.").

⁸³ GORDON, *supra* note 18, at 6 ("By 2025 China could face a deficit of 200 million cubic meters of wood per year, according to a recent study by the Center for International Trade in Forest Products (CINTRAFOR) at the University of Washington.").

⁸⁴ Essick, *supra* note 12, at 246.

⁸⁵ THE CHOICE FOR RUSSIA, *supra* note 13, at 12. See also *Russian Forest Sector Outlook Study*, *supra* note 60, at 26 ("At present a sustainable economic situation has yet to take shape in Russia as a whole, and in the forest sector in particular.").

⁸⁶ Margelov, *supra* note 48, at 11; Xiufang Sun et al., *supra* note 48, at 2; Brook Larmer & Alexandra A. Seno, *A Reckless Harvest*, NEWSWEEK, Jan. 22, 2003, at 1.

⁸⁷ Larmer, *supra* note 86, at 1.

has caused a boom in the private development and ownership of housing, which has, in turn, increased demand for timber.⁸⁸

As a result of strict Chinese restrictions on logging imposed in 1998 in the wake of major flooding and forest degradation, China can no longer satisfy its own timber demand.⁸⁹ Forced to seek other sources, China has become the world's second largest importer of logs.⁹⁰ Roughly half of China's excess demand is now met with raw log imports from the RFE.⁹¹

Unfortunately, the combination of China's overwhelming demand and the RFE's vast resources has not worked to Russia's advantage. While the restrictions on logging are good for China's environment, they have led to the destruction of Russia's forests.⁹² In addition to straining Russian forests and logging enterprises, this combination of forces has exacerbated the problem of illegal logging in the RFE.⁹³

E. Illegal Logging in the Russian Far East Is a Significant Economic and Legal Problem

Current estimates indicate that between forty and fifty percent of the total timber harvest in the RFE is obtained illegally.⁹⁴ Illegal harvesting operations in the RFE employ a variety of techniques, including logging without permits,⁹⁵ logging outside of parcels approved for cutting,⁹⁶ misclassification of species⁹⁷ or grade,⁹⁸ smuggling,⁹⁹ documenting through

⁸⁸ *Id.*; Essick, *supra* note 12, at 254.

⁸⁹ Peichang Zhang et al., *China's Forest Policy for the 21st Century*, 288 *SCIENCE* 2136 (2000); Larmer, *supra* note 86, at 1; Masanobu Yamane & Wenming Lu, *The Recent Russia-China Timber Trade: An Analytical Overview* 1, at www.iges.or.jp/en/fc/phase1/ir99/4-11-yamane.PDF (last visited Apr. 15, 2005).

⁹⁰ Larmer, *supra* note 86, at 1.

⁹¹ *Id.*

⁹² *Id.*

⁹³ WWF-UK, *FIGHTING FOREST CRIME AND THE ILLEGAL TIMBER TRADE* 6 (2004), at <http://www.wwf.org.uk/filelibrary/pdf/fightingforestcrime.pdf> (last visited on Apr. 15, 2005); ARNOLDO CONTRERAS-HERMOSILLA, *WORLD BANK, FOREST LAW ENFORCEMENT* 8 (2004) (on file with author); GORDON, *supra* note 18, at 16.

⁹⁴ WYNET SMITH, *WORLD RESOURCES INSTITUTE, THE GLOBAL PROBLEM OF ILLEGAL LOGGING* 3 (2002) available at [http://www.itto.or.jp/live/Live_Server/157/ifu.2002.01\(03-05\).e.pdf](http://www.itto.or.jp/live/Live_Server/157/ifu.2002.01(03-05).e.pdf) (last visited Apr. 15, 2005); MARK PETRY & MURINA MURAN, U.S. DEPARTMENT OF AGRICULTURE FOREIGN AGRICULTURE SERVICE, *REVISION OF THE RUSSIAN FORESTRY CODE* (2004); GORDON, *supra* note 18, at 16; WWF, *supra* note 12, at 1.

⁹⁵ Essick, *supra* note 12, at 246.

⁹⁶ MARK PETRY & MURINA MURAN, U.S. DEPARTMENT OF AGRICULTURE FOREIGN AGRICULTURE SERVICE, *POLICY AND TRENDS IN THE FORESTRY SECTOR* 5 (2003).

⁹⁷ WWF, *supra* note 12, at 3; RUSSIA'S FAR EAST, *supra* note 10, at 331.

⁹⁸ ANATOLY LEBEDEV, *FOREST MONITOR, THE WILD EAST: TREES IN TRANSIT, THE TIMBER TRADE BETWEEN SIBERIA, THE RUSSIAN FAR EAST AND CHINA* 31 (Oct. 2001), at <http://www.forestsmonitor.org/reports/russia/twecov2.htm> (last visited Apr. 15, 2005).

⁹⁹ WWF, *supra* note 12, at 3.

cover firms or with false documents,¹⁰⁰ bribing officials,¹⁰¹ and purchasing illegal permits.¹⁰²

The most efficient illegal logging technique, however, appears to be exploiting the legal loophole of "sanitary" or "salvage" logging. Set out in Articles 98 through 100 of the 1997 Forest Code,¹⁰³ this loophole was designed to enhance the health of Russia's forests by culling fire-damaged or diseased timber.¹⁰⁴ Although necessary,¹⁰⁵ the provision has become a stimulus for illegal logging because some regional forestry authorities have come to rely on it as a source of revenue by creating large scale harvesting operations.¹⁰⁶ Forestry officials routinely permit cutting commercially valuable stands of timber, often in protected areas or involving protected species of timber.¹⁰⁷ More recently, officials set, or permitted customers to set, forest fires in order to qualify the timber for sanitary harvest.¹⁰⁸ It is particularly difficult to curb illegal logging when the primary actors in these enterprises are often the forestry enforcement officers themselves.¹⁰⁹

The direct and indirect consequences of illegal logging in the RFE are breathtaking in scale. The direct impact of illegal logging on Russia's economy has been estimated as a loss of US \$1¹¹⁰ to 3 billion annually.¹¹¹ The indirect effects of illegal logging may be even more significant in the long-term. In addition to harming the sustainability of timber resources, illegal logging deprives the government of tax revenue to enforce

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² CONTRERAS-HERMOSILLA, *supra* note 93, at 8.

¹⁰³ Lesnoi Kodeks Rossiskoi Federatsii [Russian Federation Forest Code], *Sobr. Zakonod. RF*, 1997, No. 22-FZ at art. 98-100 [hereinafter Forest Code]. English translation available at LEXIS, Nexis Library, RUSLEG File. The Forest Code of 1997 superseded the *Osnovy Lesnogo Zakonodatelstva Rossiskoi Federatsii* [Russian Federation Fundamentals of Forestry Act], *Sobr. Zakonod. RF*, 1993, Act No. 4613-I, which was Russia's first post-Soviet forest management code.

¹⁰⁴ GORDON, *supra* note 18, at 16.

¹⁰⁵ Russian Federation Forest Code, *supra* note 103, at art. 42 (stating that removal of "fallen, dead-stand and wind-felled wood" may be effected on the basis of an order by the forest warden).

¹⁰⁶ CONTRERAS-HERMOSILLA, *supra* note 93, at 8.

¹⁰⁷ GORDON, *supra* note 18, at 7.

¹⁰⁸ ANATOLY KOTLOBAY & ANDREI PTICHNIKOV, WWF-RUSSIA, *ILLEGAL LOGGING IN THE SOUTHERN PART OF THE RUSSIAN FAR EAST: PROBLEM ANALYSIS AND PROPOSED SOLUTIONS 9* (2002) available at http://www.wwf.de/imperia/md/content/pdf/waelder/illegal_loggin_in_the_russian_Far_East.pdf (last visited Apr. 15, 2005).

¹⁰⁹ Press Release, Forest Monitor, *New Investigations Reveal Devastating Illegal Logging in Russian Far East* (May 10, 2004), available at <http://www.forestsmonitor.org/news/press/press040510.pdf> (last visited Apr. 15, 2005).

¹¹⁰ WWF, *supra* note 12, at 2a.

¹¹¹ US EMBASSY BEIJING, *supra* note 59. For comparison, one estimate of the cost of illegal logging in Primorsky Krai alone is as high as US \$150 million, which is half of that region's annual budget. KOTLOBAY, *supra* note 108, at 15.

sustainable logging practices¹¹² and to invest in Russian-owned processing industries.¹¹³ Illegal logging also undermines the ability of legitimate logging enterprises to compete in the market,¹¹⁴ deepens the pervasive corruption in the region,¹¹⁵ and undermines the region's already shaky adherence to the rule of law.¹¹⁶ As such, illegal logging represents a significant problem for a region already beset with tremendous social and economic woes.

III. ANY SUCCESSFUL POLICY TO CURB THE PROBLEM OF ILLEGAL LOGGING IN THE RFE MUST ADDRESS THE STRUCTURAL AND SOCIAL PROBLEMS OF THE REGION

A complex web of legal and social issues complicates the prospects for a short-term resolution of the RFE's problems. Deeply rooted poverty in the RFE plays an important role in the prevalence of illegal logging there, but it is by no means the only factor.¹¹⁷ The problem of illegal logging is exacerbated by weak legal system and enforcement mechanisms.¹¹⁸ Because of the RFE's myriad difficulties, Russian authorities often cannot solve the problems, do not understand them, or do not have the legal authority to act.¹¹⁹

A. *The Current Forest Code Lacks the Necessary Clarity and Specificity to Be Effective*

The main problem with the 1997 Forest Code currently in effect is that it is unclear. Although the 1997 Forest Code espouses high standards of environmental protection, it fails to define individual rights and obligations clearly¹²⁰ and does not provide "solid and enforceable standards."¹²¹ Further

¹¹² CONTRERAS-HERMOSILLA, *supra* note 93, at 15.

¹¹³ ARNOLDO CONTRERAS-HERMOSILLA, PACIFIC RIM INITIATIVE, ILLEGAL FOREST ACTIVITIES IN THE PACIFIC RIM 5 (Sept. 2001) at http://www.forest-trends.org/documents/publications/pri_illegallogging2.pdf (last visited Feb. 15, 2005).

¹¹⁴ SMITH, *supra* note 94, at 4.

¹¹⁵ GORDON, *supra* note 18, at 7. For an overview of the impact of corruption on the Russian Federation's economy, see generally Scott Syfert, *Capitalism or Cronyism? Corporate Structure, Western Investment, and Commercial Crime in the Russian Federation*, 18 N.Y. L. SCH. J. INT'L & COMP. L. 357 (1999).

¹¹⁶ Essick, *supra* note 12, at 265; Iskyan, *supra* note 2.

¹¹⁷ KOTLOBAY, *supra* note 108, at 17.

¹¹⁸ *Id.*

¹¹⁹ *Russian, Chinese WWF Sections Join Efforts to Preserve Far East Forest*, AGENCE FRANCE-PRESSE, June 23, 2004, at <http://forests.org/articles/reader.asp?linkid=32974> (last visited Apr. 15, 2005).

¹²⁰ Boots, *supra* note 12, at 220.

¹²¹ *Id.* at 203.

complicating matters, the 1997 Forest Code has been described as being "as dense and impenetrable as the forest it governs."¹²²

The 1997 Forest Code fails to delineate Moscow's responsibilities versus those of various regional governments with sufficient precision.¹²³ Timber companies struggle to determine which governing agency is responsible for a given area of the forest or for the forestry laws themselves.¹²⁴ Companies seeking to adhere to legal forestry practices are confused and stalled.¹²⁵

The 1997 Forest Code also lacks sufficient penalties to deter illegal logging effectively. The World Wildlife Fund ("WWF") identified an "inadequate system of punishment for illegal timber harvesting" and "imperfect legislation" as two key problems which have contributed to illegal logging in the RFE.¹²⁶ In some cases, penalties are so light compared to potential profits, it remains more profitable to risk discovery than to follow the law.¹²⁷ Further, the current law is such that there are few repercussions for companies that default on levied fines.¹²⁸

B. *Russian Forestry Enforcement Mechanisms Are Underfunded and Poorly Structured to Face the Challenges of Illegal Logging*

As inadequate as the current forest legislation is, the system of enforcement is even weaker.¹²⁹ The WWF described forestry enforcement in Russia as "totally inadequate to the new socio-economic conditions of the country."¹³⁰ The Russian forest services are critically underfunded¹³¹ with steadily declining budgets.¹³² In the face of competition from well-funded illegal loggers, Russian foresters lack the resources to enforce the laws and are often simply outmaneuvered.¹³³

The Russian central government dramatically eroded the effectiveness of forest protection by eliminating the Forest Service as a separate entity and

¹²² Walsh, *supra* note 63.

¹²³ Boots, *supra* note 12, at 226.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ KOTLOBAY, *supra* note 108, at 17.

¹²⁷ GORDON, *supra* note 18, at 19-20.

¹²⁸ *Id.* at 20.

¹²⁹ KOTLOBAY, *supra* note 108, at 10; CONTRERAS-HERMOSILLA, *supra* note 93, at 8; GORDON, *supra* note 18, at 7. See also Carlsson, *supra* note 37, at 5 ("Even if intentions are good the authorities lack the means of implementing rules and regulations.").

¹³⁰ KOTLOBAY, *supra* note 108, at 10.

¹³¹ CONTRERAS-HERMOSILLA, *supra* note 113, at 5.

¹³² GORDON, *supra* note 18, at 13.

¹³³ Boots, *supra* note 12, at 229.

merging its functions with the Ministry of Natural Resources in 2000.¹³⁴ This led to diminished governmental focus on the problems of Russian forestry.¹³⁵

Pervasive corruption in the RFE further undermines the effectiveness of forestry law enforcement.¹³⁶ In a nation with an illicit economy estimated at forty percent of GDP,¹³⁷ the RFE is known as a particularly corrupt region.¹³⁸ Underfunded forestry officials are especially vulnerable to bribery and corruption, often simply to make ends meet.¹³⁹ In some instances, forestry officials are approached with offers of cash to stay out of areas in which illegal loggers are operating.¹⁴⁰ In other cases, the foresters themselves have engaged in illegal logging operations,¹⁴¹ either to procure funding to pay salaries and maintain infrastructure¹⁴² or for personal gain.¹⁴³

C. *Social and Cultural Factors May Be Even Greater Obstacles than Inadequate Legislation or Enforcement Schemes*

Perhaps the greatest challenge to be overcome in the RFE before illegal logging can be successfully addressed is that of the population's "frontier mentality."¹⁴⁴ Russia still faces a Soviet-inspired tragedy of the commons situation, in which the RFE's vast forests are viewed as inexhaustible,¹⁴⁵ with natural resources perceived as belonging to everyone and therefore to no one.¹⁴⁶ To some degree, the region's residents manifest the traditional view that they are free to obtain whatever natural resources they can and that new laws are intended only to diminish their freedoms.¹⁴⁷

¹³⁴ Essick, *supra* note 12, at 266.

¹³⁵ WOOD RESOURCES INTERNATIONAL, *supra* note 28, at 17.

¹³⁶ LEBEDEV, *supra* note 98, at 6.

¹³⁷ Troyakova, *supra* note 3, at 36.

¹³⁸ GORDON, *supra* note 18, at 7.

¹³⁹ Boots, *supra* note 12, at 228; Paul Stanton Kibel, *Reconstructing the Marketplace: The International Timber Trade and Forest Protection*, 5 N.Y.U. ENVTL. L.J. 735, 753 (1994).

¹⁴⁰ *Id.* at 229.

¹⁴¹ CONTRERAS-HERMOSILLA, *supra* note 93, at 8.

¹⁴² GORDON, *supra* note 18, at 7 & 16.

¹⁴³ Essick, *supra* note 12, at 254.

¹⁴⁴ GORDON, *supra* note 18, at 15.

¹⁴⁵ See Cymbre Van Fossen, *The Evolution of a Comprehensive Environmental Strategy in the Russian Federation*, 13 WIS. INT'L L.J. 531, 534 (1995) ("Because of the unfathomable size and breadth of the country, people believed that Russia could absorb all wrongs done to it. This mythological belief often resulted in an 'attitude of complacency towards resource depletion and pollution.'").

¹⁴⁶ Carlsson, *supra* note 37, at 31.

¹⁴⁷ LEBEDEV, *supra* note 98, at 6.

The RFE is also plagued with a skeptical view of the rule of law.¹⁴⁸ In the RFE, as in the rest of Russia, there is little expectation that laws will be enforced.¹⁴⁹ This attitude towards law also has roots in pre-Soviet Russia because even then czars used law as a tool to control the population, not a limit on the freedom of the powerful.¹⁵⁰ Consequently, Russians developed distrust of law and authority as tools of the powerful.¹⁵¹

The view of western capitalism that many in the region have absorbed complicates the situation further.¹⁵² A current measure of economic success in Russia is the degree to which an individual can take advantage of the system.¹⁵³ A western businessman working in the region stated that "[w]e've taught them very well in a short period of time what not to do, and they are doing it very well."¹⁵⁴

The final, and overarching, factor contributing to poor social attitudes in the region is deep-rooted uncertainty about the future of the RFE.¹⁵⁵ Given the history of the last decade, residents of the RFE have legitimate concerns, even extending to whether the region will remain a part of Russia or be absorbed by China.¹⁵⁶ Such uncertainties create a vicious cycle in which perceived "high risk discourages commitment in general."¹⁵⁷ As such, "[h]igher levels of risk make investors demand higher and faster financial returns," which discourages long-term planning.¹⁵⁸ This uncertainty and competition for short-term gain undermines trust in other market participants, and erodes incentives to adhere to the rules.¹⁵⁹

¹⁴⁸ Boots, *supra* note 12, at 231. For a detailed discussion of the rule of law as a basis for development, see Gary Goodpaster, *Law Reform in Developing Countries*, 13 *TRANSNAT'L L. & CONTEMP. PROBS.* 659 (2004).

¹⁴⁹ Kibel, *supra* note 12, at 65.

¹⁵⁰ Stanley R. Boots, *Note: The Personal Contacts Alternative: A Comparison of Japanese and Russian Legal Cultures in the Russian Far East Timber Trade*, 9 *INT'L LEGAL PERSP.* 257, 286-88 (1997).

¹⁵¹ *Id.* at 290.

¹⁵² Boots, *supra* note 12, at 244.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ Alexseev, *supra* note 39, at 37.

¹⁵⁶ *Id.* at 54. See also Elizabeth Wishnick, *One Asia Policy or Two? Moscow and the Russian Far East Debate Russia's Engagement in Asia*, 13 *NBR ANALYSIS* 1, 47 (2002) ("Unlike their colleagues in Moscow who emphasize the strategic benefits of Sino-Russian partnership, officials in the Russian Far East view China as Russia's main competitor in the short-term and as a potential threat in the long-term.").

¹⁵⁷ Alexseev, *supra* note 39, at 37.

¹⁵⁸ CONTRERAS-HERMOSILLA, *supra* note 113, at 5.

¹⁵⁹ Black, *supra* note 33, at 229.

IV. THE TREATY OF GOOD-NEIGHBORLINESS AND FRIENDLY COOPERATION WILL DO LITTLE TO RESOLVE THE PROBLEM OF ILLEGAL LOGGING IN THE RUSSIAN FAR EAST

Because the Treaty of Good-Neighborliness and Friendly Cooperation ("Cooperation Treaty") does not specify how to carry out policy goals, it is unlikely to succeed in curbing illegal logging in the RFE. Additionally, Russia's accession into the WTO's free trade regime may worsen the RFE's economic outlook in the immediate future.¹⁶⁰

The Cooperation Treaty improves cooperation between Russia and China, particularly in the areas of economics¹⁶¹ and the environment,¹⁶² both of which have a major bearing on the problem of illegal logging in the RFE. Its provisions, however, focus on general concepts without adequate specifics and produce negative unintended consequences.¹⁶³ Moreover, as the Cooperation Treaty is not between equal partners,¹⁶⁴ a fact of which the Russians are painfully aware,¹⁶⁵ it will most likely do little to resolve the uncertainty that plagues the RFE.¹⁶⁶ While the Cooperation Treaty does represent progress in the relations between the two nations, it will likely have little positive effect on the problem of illegal logging.

The Cooperation Treaty is broadly crafted to espouse the principles of adherence to international law, recognition of national sovereignty, and non-interference.¹⁶⁷ With few exceptions, such as Russia's explicit support for China's position on Taiwan¹⁶⁸ and China's agreement to facilitate Russia's entry to the WTO,¹⁶⁹ the Cooperation Treaty focuses primarily on broad commentary without specific points relating to implementation. This lack of

¹⁶⁰ See Picker, *supra* note 1, at 151-152. The WTO looks at the entire state without regard to the level of development in its internal regions. The result is that the failure to take into account the differences within countries, from an economic perspective, results in a failure to properly allocate scarce development dollars. *Id.*

¹⁶¹ Kai-Ching Cha, *supra* note 23, at 9.

¹⁶² Cooperation Treaty, *supra* note 4, arts. 19 & 20.

¹⁶³ See Natalie Chalifour, *Global Trade Rules and the World's Forests: Taking Stock of the World Trade Organization's Implications for Forests*, 12 GEO. INT'L ENVTL. L. REV. 575, 582 (2000) ("Trade liberalization is another factor that has been identified as an underlying cause of deforestation and forest degradation.").

¹⁶⁴ See Part II.D for a discussion of the relative power of the two economies.

¹⁶⁵ Yiwei Wang, *Beijing Hands Moscow a Long Rope*, ASIA TIMES, Oct. 19, 2004, available at <http://www.atimes.com/atimes/China/FJ20Ad03.html> (last visited Apr. 15, 2005); Alexseev, *supra* note 155, at 37; Celestine Bohlen, *Russians Gaze with Envy*, N.Y. TIMES, July 20, 1999, at A1.

¹⁶⁶ For a discussion of the region's skeptical view of China's goals for the RFE, see Alexseev, *supra* note 39, at 37.

¹⁶⁷ Cooperation Treaty, *supra* note 4, art. 1.

¹⁶⁸ *Id.* arts. 4-5. The Russian Federation adopts the Chinese position that Taiwan is not an independent state, but an integral part of China. *Id.*

¹⁶⁹ *Id.* art. 17.

specificity is particularly noticeable in Article Sixteen, which discusses the promotion of economic cooperation and trade between bordering regions of the two countries.¹⁷⁰ Perhaps even more relevant to illegal logging and its causes is the Cooperation Treaty's further lack of specificity on the protection of natural resources¹⁷¹ and in "taking strong measures" against the activities of organized crime.¹⁷² The Cooperation Treaty is merely a policy outline, intended to be supplemented with lesser agreements focused on practice. However, little real progress has been made in securing these lesser agreements for the areas it identified as important.¹⁷³

Considering that the Cooperation Treaty has been in force for more than three years and that economic cooperation is a priority for both nations,¹⁷⁴ one would expect to see tangible results on at least this front. The reality, however, is none too impressive. While the two nations have taken steps to establish free trade zones in border areas and remove tariff barriers, economic ties between Russia and China remain "weak and unvarying and lacking dynamism and creativity."¹⁷⁵ The Chinese continue to press their neighbor to the north to establish true free trade between their nations, but the Russians continue to resist the suggestion.¹⁷⁶

Although a true free trade zone between China and the RFE may make economic sense,¹⁷⁷ political concerns have rendered it unlikely. Many Russians are concerned that increased Chinese influence in the region will mean an erosion of Russian control.¹⁷⁸ The specific articles of the Cooperation Treaty that advocate mutual non-interference in each other's internal affairs,¹⁷⁹ prohibit the use of economic pressure,¹⁸⁰ and renounce territorial claims by either party on the other¹⁸¹ do not allay Russia's fears of Chinese dominance. Given the national distrust of Chinese intentions, it is

¹⁷⁰ *Id.* art. 16.

¹⁷¹ *Id.* art. 19.

¹⁷² *Id.* art. 20.

¹⁷³ For example, although the establishment of free trade was a key goal, the main effort has been developing free trade areas along the border. As a result of inertia and mistrust, it took three years from the signing of the Treaty to break the ground on the first such area. See, e.g., James Brooke, *Asia's New Trade Focus: Siberia Warms to China*, INT'L HERALD TRIB., Mar. 30, 2004 (last visited Apr. 15, 2005). For a discussion of why Russia may have taken so long to implement the free trade areas, see Yinwei Wang, *supra* note 165.

¹⁷⁴ Cooperation Treaty, *supra* note 4, arts. 16-17.

¹⁷⁵ Yinwei Wang, *supra* note 165.

¹⁷⁶ *Id.* at 4.

¹⁷⁷ *Id.* at 5.

¹⁷⁸ Bohlen, *supra* note 165; Yinwei Wang, *supra* note 165.

¹⁷⁹ Cooperation Treaty, *supra* note 4, art. 1.

¹⁸⁰ *Id.* art. 2.

¹⁸¹ *Id.* art. 6.

unfair to expect that the RFE, faced with greater economic privation and a more uncertain future, would be any less suspicious.

Another factor undermining the Cooperation Treaty's effectiveness is that China has little economic incentive to treat Russia as more than a source of raw materials. With the exception of advanced military technologies, Russia has little to offer a rapidly developing nation like China.¹⁸² Moreover, the Chinese have little reason to encourage Russian economic development when one of the key factors rendering Russian raw timber so profitable for the Chinese is its low cost.¹⁸³ This harsh economic reality has not escaped Russian observers: "[f]or China, it is not profitable for us to be strong. The weaker we are, the more they can get from us."¹⁸⁴ An even harsher reality is that Russia may have little real choice in the matter.

The Cooperation Treaty appears to have produced little in the way of investment in the region from either Russian or Chinese sources.¹⁸⁵ Although six Chinese companies have established logging and processing projects in the RFE,¹⁸⁶ the level of Chinese investment in the RFE remains miniscule.¹⁸⁷ When Chinese firms do take the risk of investing in the RFE,¹⁸⁸ they are often viewed with suspicion by Russians who question their motives.¹⁸⁹ Further, Chinese enterprises are reluctant to risk too much when they harbor doubt as to whether Russia will maintain its stability.¹⁹⁰

Given the current state of affairs in the RFE, it seems unlikely that unregulated free trade is the panacea needed to cure illegal logging.¹⁹¹ If the Cooperation Treaty were to increase free trade and eliminate trade barriers, the destruction of Russia's forest resources could accelerate.¹⁹² While

¹⁸² Bohlen, *supra* note 165.

¹⁸³ *Trade Booms in Sleepy Border Town*, *supra* note 59.

¹⁸⁴ Bohlen, *supra* note 165.

¹⁸⁵ RUSSIA'S FAR EAST, *supra* note 10, at 24.

¹⁸⁶ US EMBASSY BEIJING, *supra* note 59.

¹⁸⁷ RUSSIA'S FAR EAST, *supra* note 10.

¹⁸⁸ *Trade Booms in Sleepy Border Town*, *supra* note 59 ("Right now, they don't observe regulations and as they are mostly small companies and sole proprietorships, trading with Russians carries great risks.").

¹⁸⁹ RUSSIA'S FAR EAST, *supra* note 10, at 24.

¹⁹⁰ Yinwei Wang, *supra* note 165.

¹⁹¹ NIGEL SIZER ET AL., WORLD RESOURCES INSTITUTE, TREE TRADE: LIBERALIZATION OF INTERNATIONAL COMMERCE IN FOREST PRODUCTS: RISKS AND OPPORTUNITIES 3 (Nov. 1999) at <http://pdf.wri.org/tretrade.pdf> (last visited Apr. 15, 2005) ("Trade liberalization can be beneficial for forest conservation and sustainable management if domestic forest conservation policies are well developed and implemented . . .").

¹⁹² See generally Picker, *supra* note 1 (noting that an underdeveloped region may not benefit from free trade). See also Chalifour, *supra* note 163, at 582 (arguing that free trade may lead to deforestation and forest degradation).

"[m]arkets can be the best drivers towards sustainable forest management; they can also be devastating if not coupled with necessary safeguards."¹⁹³

The Cooperation Treaty has failed to create a true free trade relationship between Russia and China, to reduce national uncertainty significantly, or to produce significant levels of investment in the RFE. Thus, the Cooperation Treaty appears unlikely to have a positive impact on the problem of illegal logging.

V. THE DRAFT FOREST CODE'S APPROACH TO INSTITUTIONS, CENTRALIZATION, AND PRIVATIZATION MAY BE EFFECTIVE IN THE LONG-TERM, BUT CONTAINS SIGNIFICANT SHORT-TERM RISKS

The draft Russian Forest Code completed by the Russian Ministry of Natural Resources on March 18, 2004, is a wholesale revision of both Russia's forestry laws and its approach to its forest resources in general.¹⁹⁴ Although not yet approved in its final version by the Duma,¹⁹⁵ some of the most controversial and potentially risky provisions appear likely to pass.¹⁹⁶ Among these controversial provisions are the provisions for shifting oversight of Russia's forests to the national level¹⁹⁷ and allowing the privatization of forest lands.¹⁹⁸

A. *The Draft Forest Code's Separation of Policy-Making, Enforcement, and Oversight Functions Has Positive Aspects, But Also Significant Flaws*

Although the current draft of the Forest Code captures recommendations by the World Bank that key forest functions be separated to provide more effective checks and balances, there are problems with the approach the Draft Forest Code takes.¹⁹⁹ The actual functions of the three agencies responsible for various aspects of forest management are not clear

¹⁹³ See Workshop Proceedings, *supra* note 1, at 20.

¹⁹⁴ See Forest Code, *supra* note 4.

¹⁹⁵ The Duma is the lower of Russia's two national elected representative bodies, very roughly equivalent in function to the U.S. House of Representatives. See Anastasia Mayberry, *National Assembly: The Russian Parliament*, in THE RUSSIAN GOVERNMENT ON THE INTERNET: SELECTED ANNOTATED BIBLIOGRAPHY OF LINKS, at <http://polaris.gseis.ucla.edu/jrichardson/dis473/Russian%20Govt/Parliament.htm> (last visited Apr. 15, 2005).

¹⁹⁶ Given President Putin's consolidation of authority within the Russian government, the Duma is regularly described as compliant. See, e.g., *US Shares Russia Poll Concerns*, BBC NEWS UK, Dec. 8, 2003, at <http://news.bbc.co.uk/1/hi/world/europe/3300483.stm> (last visited Apr. 15, 2005) (discussing EU and US concerns about the fairness of Russian parliamentary elections).

¹⁹⁷ PETRY & MURAN, *supra* note 94, at 5.

¹⁹⁸ Forest Code, *supra* note 4, at ch. 8 (explaining procedures for the lease of forest parcels).

¹⁹⁹ See generally DIETERLE & KUSHLIN, *supra* note 9.

beyond general descriptions.²⁰⁰ Reporting chains, systems for interaction between the various entities, and priorities of effort are not sufficiently delineated in the text of the code.²⁰¹ This lack of clarity at the national level represents a major deficiency in Russia's draft code because it fails to address one of the main problems contributing to illegal logging: weak institutions and uncertainty as to their responsibilities.²⁰²

Even if the responsibilities of the three major national entities are further detailed, this effort at institutional reform has been described as "very ambitious and complex."²⁰³ While this does not mean that the reforms cannot be accomplished effectively, their scope and complexity necessitate a phased approach before some of the other, more ambitious provisions of the new Forest Code are implemented.²⁰⁴

The impact of the new Forest Code on sub-national institutions is even less clear.²⁰⁵ Specifically, the relationship between local and regional bodies and the new national structure are not readily apparent. One of two possibilities seems likely. The first is that the scope of the powers of "local self-governance bodies" will not be clarified much beyond the current text, which states that they "may be vested with certain public powers in the area of forest use, protection, and renewal in compliance with the legislation of the Russian Federation."²⁰⁶ This language creates a disconnect between regional and national officials, perpetuating an existing Forest Code problem that has contributed to a lack of compliance in the RFE.²⁰⁷

The second possibility is that as much as ninety-five percent of forest control will be transferred to the central government, leaving only five percent under regional control.²⁰⁸ This scenario is highly likely to occur, given the fact that collection of the majority of forest product taxes is expected to shift to the federal level.²⁰⁹ This development will likely have two negative repercussions for the RFE. First, because officials in Moscow are less in touch with local conditions than regional officials, the forests at the local level may receive less carefully tailored management. Second,

²⁰⁰ *Id.* at 11. See also Forest Code, *supra* note 4, arts. 11-13, 94-95 (delineating and describing responsibilities of forestry agencies in general terms).

²⁰¹ See generally Forest Code, *supra* note 4, arts. 11-13, 94-95.

²⁰² See *supra* discussion on Russia's weak forestry enforcement mechanisms, Part III.B.

²⁰³ DIETERLE & KUSHLIN, *supra* note 9, at 11.

²⁰⁴ See generally *id.* See also Andrei A. Baev, *The Privatization of Land in Russia: Reforms and Impediments*, 17 LOY. L.A. INT'L & COMP. L.J. 1 (1994); Black et al., *supra* note 14; Carlsson, *supra* note 37.

²⁰⁵ See DIETERLE & KUSHLIN, *supra* note 9, at 11-15.

²⁰⁶ Forest Code, *supra* note 4, art. 10, sec. 4.

²⁰⁷ Boots, *supra* note 12, at 226. See discussion of enforcement confusion, *supra* Part III.A.

²⁰⁸ PETRY & MURAN, *supra* note 94, at 5.

²⁰⁹ SHUVARIN, *supra* note 77, at 2.

local officials, having a diminished role in local forest management, will likely feel a corresponding diminished responsibility for the forests. Although a national forestry policy might provide a more coherent and consistent approach, allocating more power to regional officials would provide incentives to manage their forest stocks more effectively by reinforcing their positions as stakeholders.²¹⁰

B. Provisions in the Draft Forest Code Allowing Privatization of Forest Lands Present Grave Risks Under Current Conditions in Russia

At present, the Russian government owns all of Russia's forests, but under the Draft Forest Code a significant portion of these lands would be released to private ownership.²¹¹ It is unclear whether the transfer of ownership would take place after a long-term lease²¹² or immediately.²¹³ Whichever transfer method prevails in the final legislation, estimates by Greenpeace-Russia indicate that the measure "could lead to the privatization of up to ninety percent of Russia's forests."²¹⁴ According to some non-governmental sources, this privatization effort lacks transparency and may include the possibility of privatizing nature preserves and other currently protected areas.²¹⁵

Given the recent history of privatization in Russia,²¹⁶ legitimacy problems are likely to follow a dramatic shift in property rights, particularly in a region facing the challenges of the RFE.²¹⁷ If the transition process from state to private ownership is not carefully managed, or Russian citizens perceive mismanagement, expectations of unfairness may produce undesirable consequences.²¹⁸ It is highly likely that RFE residents would

²¹⁰ The old Forest Code's mixing of central and local responsibilities made responsibilities unclear and may have encouraged territorialism. This aspect of the new Forest Code may be a direct reaction to those problems, albeit possibly more extreme than required. See Cymbre Van Fossen, *The Evolution of a Comprehensive Environmental Strategy in the Russian Federation*, 13 WIS. INT'L L.J. 531, 548-54 (1995), for a discussion of the problems of the earlier Forest Code, particularly as they relate to the problems of the intersection of regional and national authority.

²¹¹ See Forest Code, *supra* note 4, ch. 8.

²¹² See *id.*

²¹³ See SHUVARIN, *supra* note 77, at 2.

²¹⁴ Boris Kagarlitsky, *Oligarchs to Rule Regions as Forests Open for Privatization*, ST. PETERSBURG TIMES (Russia), July 6, 2004, at 1.

²¹⁵ *Id.*

²¹⁶ For a detailed discussion of the history of privatization in post-Soviet Russia, see Black, *supra* note 14.

²¹⁷ Carlsson, *supra* note 37, at 5.

²¹⁸ See generally *id.*; Black, *supra* note 14.

take their cue from the government, thus creating a free-for-all approach to the RFE's forestry resources.²¹⁹

One of the Russian government's weakest arguments in favor of privatization is that it cannot control what currently goes on in the forests or enforce existing laws. On the contrary, this indicates that privatization at this stage of development is particularly risky.²²⁰ The Russian government should delay implementing a full privatization until its institutions are sufficiently developed to cope with the pressures of a free market.²²¹

VI. THE RUSSIAN GOVERNMENT SHOULD PURSUE AGREEMENTS WITH ITS TRADING PARTNERS AND REVISE ITS PLAN TO PRIVATIZE RUSSIA'S FOREST RESOURCES

The Russian government has a number of trade policy options available which offer better solutions to the problem of illegal logging in the RFE. Russian trade policy could include a combination of three different approaches: unilateral measures, bilateral agreements, and multilateral agreements. None of these measures, on its own, offers a complete solution to the RFE's current crises. Unilateral trade measures appeal to nations seeking to curb illegal or unsustainable logging but are a poor solution to Russia's problems. Bilateral trade agreements address the concerns of individual trading partners and may be easier to develop than multilateral agreements. However, bilateral agreements may not capture all of the relevant parties, nor provide as uniform a standard as multilateral agreements. Finally, multilateral agreements, while achieving broad participation, may not provide sufficiently firm standards to be effective. As a result of the shortcomings of each of these measures individually, the best solution for the RFE would be a combination of bilateral and multilateral agreements.

A. *Unilateral Trade Measures Are the Least Desirable Solution to the Problem of Illegal Logging in the RFE*

One of the most immediate responsive measures the Russian government could take to address the problem of illegal logging in the RFE would be a unilateral ban on the export of raw logs or subsidies to encourage

²¹⁹ See Carlsson, *supra* note 37, at 5.

²²⁰ See Kagarlitsky, *supra* note 214.

²²¹ See DIETERLE & KUSHLIN, *supra* note 9, at 2. See also SIZER ET AL., *supra* note 191, at 2 ("Trade liberalization that could threaten forests or interfere with their protection should not go forward until mechanisms are put into place to ensure parallel progress on forest protection.").

sustainable harvesting practices. Such practices could do more harm than good,²²² however, and would almost certainly fail a WTO challenge.²²³

1. *A Unilateral Ban on the Export of Raw Logs Would Be Ineffective, Would Not Survive a WTO Challenge, and Could Alienate Key Trade Partners*

A unilateral ban on the export of raw logs would be a poor policy decision in terms of both its effectiveness and its impact on trade relations. Although a number of nations have attempted such unilateral bans, their effectiveness is questionable.²²⁴ The typical immediate effect of a ban on the export of raw logs is a depression of local prices, which encourages even more wasteful processing.²²⁵ Similar measures that attempted to protect tropical forests have resulted in greater exploitation of those resources.²²⁶ Given the high demand for Russia's raw logs,²²⁷ a ban could also shift more of the RFE's timber exploitation into illegal channels.

In addition, such a ban would almost certainly face a successful challenge by Russia's trade partners.²²⁸ Japan, in particular, one of Russia's key trading partners,²²⁹ is on record as opposing raw log export bans, and would be likely to challenge an attempted ban in the WTO.²³⁰ Malaysia's successful WTO complaint against an Austrian ban on the import of raw logs, in which Austria intended to block the importation of unsustainably harvested logs, would serve as precedent in such a situation.²³¹ Given its aspirations of acceding to the WTO and maintaining positive interaction with its key trading partners, Russia would be wise to avoid such measures.

²²² Ryan K. McKain, *A Critical Evaluation of the Development and Implementation of Forest Preservation Strategies*, 15 CONN. J. INT'L L. 235, 239 (2000).

²²³ See Kibel, *supra* note 139, at 764-66; Chalifour, *supra* note 163, at 597.

²²⁴ Brian F. Chase, *Tropical Forests and Trade Policy: The Legality of Unilateral Attempts to Promote Sustainable Development Under the GATT*, 17 HASTINGS INT'L & COMP. L. REV. 349, 379 (1994).

²²⁵ *Id.* at 380.

²²⁶ *Id.*

²²⁷ See *supra* Part II.C for a discussion of demand for Russian timber among Northeast Asian nations.

²²⁸ See Kibel, *supra* note 139, at 766; Chalifour, *supra* note 163, at 597; Rudy S. Salo, *When the Logs Roll Over: The Need for an International Convention Criminalizing Involvement in the Global Illegal Timber Trade*, 16 GEO. INT'L ENVTL. L. REV. 127, 141.

²²⁹ See GORDON, *supra* note 18, at 6.

²³⁰ See Chalifour, *supra* note 163, at 597.

²³¹ See Salo, *supra* note 228, at 141.

2. *Subsidies to Encourage Sustainable Forestry Practices or Encourage the Development of Domestic Industry Are Unlikely to Survive a WTO Challenge*

Given the difficulties the forestry industry faces in the RFE, one possibility is for the central government to subsidize forestry practices. Subsidies could take the form of direct subsidies, tariffs on imports or exports, artificially low licensing fees, government financed construction of roads into timber harvesting areas, or other tactics to provide economic incentive to domestic producers.²³² Such measures have been attempted, with mixed success, in the United States, Chile, and Canada.²³³

Even if subsidies to forest enterprises in the RFE were couched in environmental protection language, however, they would be unlikely to survive a challenge in the WTO.²³⁴ The GATT makes no distinction between environmental subsidies and other forms of protection, nor does it allow subsidies for the development of sustainable industry.²³⁵ As such, on this basis alone, a subsidy regime to protect the RFE's forests would be a poor policy decision.

B. *Regional Bilateral Agreements Offer the Best Trade-Based Solution to the Problem of Illegal Logging in the RFE in the Immediate Future*

Bilateral trade agreements appear to be the most viable trade-based solution for Russia because they are likely to survive WTO scrutiny²³⁶ and are easier to achieve and implement than multilateral agreements.²³⁷ Both

²³² See Chase, *supra* note 224, at 357-60; Hale E. Sheppard, *Native Forest Protection in Chile: The Inadequacies of the Recent Environmental Framework Law and Relevant Multilateral Instruments*, 14 J. ENVTL. L. & LITIG. 225, 236-37 (1999); SIZER ET AL., *supra* note 191, at 4 (noting that among some of the other measures that serve as subsidies are paying for road construction in logging operations, helping with marketing, and conducting forest inventories).

²³³ For a discussion of subsidy regimes in British Columbia, Chile, and Russia, see Kibel, *supra* note 139, at 751-52. For a more detailed discussion of Chile's attempts at forest protection, see Sheppard, *supra* note 232.

²³⁴ Kibel, *supra* note 139, at 764.

²³⁵ *Id.*

²³⁶ See UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE, FOREST PRODUCTS ANNUAL MARKET ANALYSIS 2002-2004, 56 UN TIMBER BULLETIN 35 (2003), U.N. Doc. ECE/TIM/BULL/2003/3, available at <http://www.unecce.org/trade/timber/docs/fpama/2003/2003FPAMA-whole-doc-webversion.pdf> (last visited Apr. 15, 2005); see also PAUL TOYNE ET AL., WWF INTERNATIONAL, THE TIMBER FOOTPRINT OF THE G8 AND CHINA: MAKING THE CASE FOR GREEN PROCUREMENT BY GOVERNMENT (2002), at <http://www.wwf.org.uk/filelibrary/pdf/g8timberfootprint.pdf> (last visited Apr. 15, 2005) (making a case for the impact a unified G8 policy on timber procurement could have on forest markets and production).

²³⁷ See Ronnie D. Lipschutz, *Why Is There No International Forest Law?: An Examination of International Forestry Regulation, Both Public and Private*, 19 UCLA J. ENVTL. L. & POL'Y 153 (2001) (detailing a number of structural challenges hindering the formation of a global forest convention). See also Robert M. Hardaway et al., *Tropical Forest Conservation Legislation and Policy: A Global*

the United Nations²³⁸ and the World Bank²³⁹ have recommended bilateral agreements generally as a partial solution to the problem of illegal logging. The European Commission has also proposed the establishment of voluntary bilateral agreements between the European Union and its timber-producing trading partners.²⁴⁰

The fact that Russia already has a bilateral agreement with China that addresses trade and environmental issues should make a further agreement on illegal logging easy to achieve.²⁴¹ Given the two countries' interdependence in the forestry sector²⁴² and the Cooperation Treaty's language on trade and the environment,²⁴³ the Cooperation Treaty could provide the foundation for a bilateral agreement addressing the problems of the forest trade.

A few provisions should be featured in such a bilateral agreement in order for it to work. First, the agreement should specify the steps each trade partner would take to enhance the effectiveness of monitoring agencies such as national forestry and customs services.²⁴⁴ Under this broad rubric, a number of individual steps could apply, depending on the specific conditions of trade between the involved countries. For example, in the case of trade with China, some effective simple steps could be: establishing channels of communications between officials on both sides of the border; training officials to recognize protected species and grades of timber; and establishing a holding period for timber prior to export.²⁴⁵

Second, the bilateral agreements should provide for an independent monitoring mechanism instituting a chain of custody from point of production to point of purchase as a finished good.²⁴⁶ The model of the independent Forest Stewardship Council's certification system may be applicable in this case.²⁴⁷ Such an independent certification and monitoring

Perspective, 15 WHITTIER L. REV. 919, 948-50 (1994) (focusing on the failure of the International Tropical Timber Agreement to achieve results in promoting sustainable forest practices or protecting sensitive species from overexploitation).

²³⁸ *Forest Products Market Analysis*, *supra* note 236, at 35.

²³⁹ DIETERLE & KUSHLIN, *supra* note 9, at 2 ("Collaboration among governmental forestry agencies, forest industries, and local populations should be enhanced, as should Russian collaboration with European and international forestry systems and organizations.")

²⁴⁰ *See Forest Products Market Analysis*, *supra* note 236, at 35.

²⁴¹ *See Cooperation Treaty*, *supra* note 4, arts. 16, 17, 19 & 20.

²⁴² *See Larmer*, *supra* note 86.

²⁴³ *Cooperation Treaty*, *supra* note 4, arts. 16 & 19.

²⁴⁴ CONTRERAS-HERMOSILLA, *supra* note 113, at 6.

²⁴⁵ *Id.*

²⁴⁶ TOYNE ET AL., *supra* note 236, at 29.

²⁴⁷ *Id.* In general terms, the Forest Stewardship Council sends inspectors to establish that a given area of forest is managed sustainably and that the trees in question are of legally harvestable species. The Forest Stewardship Council also assists in developing a chain of custody system which allows end-users to trace

system would be a particularly important step for a number of reasons. First, an inherent problem contributing to illegal logging in the RFE is the weakness of the systems designed to address it.²⁴⁸ Currently, even if customs officials do attempt to ascertain the legal origin of a given shipment of logs from Russia to China, the task is nearly impossible. Second, such a system could assist Russia in achieving compliance with its own laws.²⁴⁹ This would help, incrementally, to assert that the Russian forestry sector is moving toward the rule of law. Third, and perhaps most important, is that this system would facilitate the export of Russian logs in a manner consistent with end-user nations' laws. Beginning in 2006, EU countries will block the importation of uncertified Russian forest products.²⁵⁰ This process will soon be necessary to stave off the closing of possible markets.

Finally, such bilateral agreements should require the criminalization of illegal timber exports or imports and establish specific mechanisms to enforce such laws.²⁵¹ In the case of trade between Russia and China, the current civil sanctions for illegal logging are insufficient to deter illegal behavior.²⁵² The risk of serious criminal penalties would provide an effective deterrent, particularly when applied to merchants and officials.²⁵³ As with other control measures, the effectiveness of such criminal penalties would depend on their broad and even application, both to increase the reality of the risk and to build confidence in the rule of law.²⁵⁴

C. *Multilateral Agreements Are the Best Long-Term Solution to the Problem of Illegal Logging in the RFE*

Multilateral agreements, whether global or regional in scope, offer greater promise of uniformity in resolving the problem of illegal logging in the long run than bilateral agreements, but at the cost of increased

their final purchase back to the area of harvest. This final measure is a way to create a market for sustainably harvested timber. For a discussion of the viability of such a licensing scheme under the WTO regime, see DUNCAN BRACK, ROYAL INSTITUTE OF INTERNATIONAL AFFAIRS, SUSTAINABLE DEVELOPMENT PROGRAMME, WTO IMPLICATIONS OF AN INTERNATIONAL TIMBER LICENSING SCHEME, THIRD DRAFT, (Mar. 12, 2003) available at http://www.riia.org/pdf/briefing_papers/Licensing%20and%20WTO%20Brack%202003.pdf. (last visited Apr. 15, 2005).

²⁴⁸ See discussion of weak institutions, *supra* Part III.B.

²⁴⁹ PÉTRY & MURAN, *supra* note 96, at 4.

²⁵⁰ *Id.*

²⁵¹ TOYNE ET AL., *supra* note 236, at 29; CONTRERAS-HERMOSILLA, *supra* note 113, at 6.

²⁵² See *supra* discussion on inadequate legislation, Part III.A.

²⁵³ CONTRERAS-HERMOSILLA, *supra* note 113, at 6.

²⁵⁴ Carlsson, *supra* note 37, at 1.

compromise and more complex negotiation.²⁵⁵ Because of their scope, they are the "preferred way to provide credibility, legitimacy, and acceptability to trade measures for forest products."²⁵⁶ The challenge in achieving and implementing such broad agreements means that they should probably be viewed as a long-term approach to the problem rather than as the main solution in the short-term. In the case of illegal logging in the RFE, the preferred sort of multilateral agreement would be a regional agreement rather than a global agreement.

Global agreements such as the International Treaty on Tropical Timber have been unable to halt the illegal logging of tropical timber, a problem very similar to that of illegal logging in the RFE.²⁵⁷ This may be because the causes of illegal logging in specific regions throughout the globe are too diverse and complicated for single, worldwide agreements to address effectively. Alternatively, the failure of these agreements may be due to necessary compromises in their language, which render standards and enforcement measures ineffective. Whether either hypothesis is correct or not, the short-term record of such agreements suggests that a more regionally-focused approach would be appropriate for the RFE.

A more manageable and effective approach for the RFE may be available in the form of regional agreements or agreements with trade blocs. One proposal is that the members of the G8 group, which represents the world's most powerful economies, as well as Russia, institute single procurement policies within their governments to "ensure that suppliers do not receive mixed signals about the environmental and social standards required to secure a government contract."²⁵⁸ This would reduce confusion and complexity, and simplify enforcement of standards within the scope of government purchasing.

Another option is for Russia, perhaps under the auspices of the Asian-Pacific Economic Council,²⁵⁹ to push for the creation of a regional trade policy pertaining to timber sales. Such a trade agreement would be equivalent to a regional free trade area in a specific sector of commerce. It would establish a uniform standard for all partners in the region, which

²⁵⁵ For a general discussion of the relative merits of various forms of international agreements, see JEFFREY L. DUNOFF ET AL., *INTERNATIONAL LAW: NORMS, ACTORS, PROCESS: A PROBLEM-ORIENTED APPROACH*, ch. 2 (2002).

²⁵⁶ Andre Nollkaemper, *Protecting Forests Through Trade Measures: The Search for Substantive Benchmarks*, 8 *GEO. INT'L ENVTL. L. REV.* 389, 401 (1996).

²⁵⁷ Hardaway et al., *supra* note 237, at 948 ("The [International Tropical Timber Organization] has not been very efficient and has produced little activity.")

²⁵⁸ TOYNE ET AL., *supra* note 236, at 8.

²⁵⁹ The Asian-Pacific Economic Council is a trade association which includes most of Asia's free market economies.

would streamline production. It would also relieve timber producers of the need to compete with other suppliers in providing the most attractive regulatory and export regimes. This would have two immediate effects. First, it would cut production and overhead costs by reducing complexity and uncertainty for the timber producer. A single, uniform standard would enable producers to configure their operations once to sell their products throughout the regional market. This would streamline production of timber, reduce administrative and overhead costs, and simplify the enforcement of regulations. Second, it would reduce the ability of nations in the region to obtain competitive advantage by having lower environmental standards. This would, in turn, provide an incentive to a developing region such as the RFE to husband rather than expend its natural resources.

Although a bilateral agreement might be the most effective measure for the time being, Russia would be well advised to consider such regional, multilateral measures as long-term solutions.

VII. CONCLUSION

To correct the causes of illegal logging in the RFE, Russia should strengthen its trade relationships and institutions before exposing them to unregulated free trade or rapid privatization. Facing the threat of economic and social decline, as well as a loss of global status, Russia has naturally sought powerful solutions for its woes. Unfortunately, the measures under consideration are too radical and are likely to do more harm than good. Russian society and institutions are not strong enough to cope with the twin pressures of unregulated free trade and rapid privatization of forest resources. Given the problems of the RFE, Russia's government should reconsider its decision to pursue free trade and forest privatization simultaneously. Although Russia must find a way to integrate itself into the global marketplace, simultaneously implementing free trade and privatization could cost Russia the very resources that could fund its future development.