



A Case Study on Large-Scale Forestland Acquisition in China

**The Stora Enso Plantation Project
in Hepu County, Guangxi Province**

LI PING AND ROBIN NIELSEN

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CONTENTS

PREFACE	IV
EXECUTIVE SUMMARY	V
1. INTRODUCTION	1
2. CHINA'S REGULATORY FRAMEWORK GOVERNING COLLECTIVE FORESTLAND	4
2.1 OWNERSHIP OF COLLECTIVE FORESTLAND AND THE ROLE OF THE COLLECTIVE	4
2.2 INDIVIDUAL USE RIGHTS TO COLLECTIVE FORESTLAND	6
2.3 TRANSFERS OF COLLECTIVE FORESTLAND USE RIGHTS	7
3. PROPOSED INTERNATIONAL GUIDELINES FOR COMMERCIAL INVESTORS	11
3.1 SOURCES OF CSR GUIDELINES	11
3.2 PROPOSED PRINCIPLES UNDERLYING THE GUIDELINES	12
3.3 PROPOSED PRE-PROJECT GUIDELINES	13
3.4 PROPOSED GUIDELINES RELATING TO INVESTMENT AGREEMENTS	14
3.5 GUIDELINES REGARDING PROJECT DESIGN/DEVELOPMENT/IMPLEMENTATION	14
4. FIELDWORK FINDINGS	16
4.1 THE NATURE OF THE LAND OBTAINED BY STORA ENSO	16
4.2 TRANSFERS OF INDIVIDUAL USE RIGHTS TO FORESTLAND	17
4.3 TRANSFERS OF USE RIGHTS TO COLLECTIVE-MANAGED FORESTLAND AND WASTELAND	18
4.4 TRANSFERS OF FORESTLAND RIGHTS THROUGH A THIRD PARTY	19
4.5 GOVERNMENT COERCION	22
4.6 DOCUMENTATION OF FORESTLAND TRANSFERS	23
4.7 DISPUTES AND DISPUTE RESOLUTION SYSTEMS	24
5. ANALYSIS	26
5.1 DIRECT TRANSACTION	26
5.2 TRANSACTIONS WITH THIRD PARTIES	28
5.3 CORPORATE SOCIAL RESPONSIBILITY STANDARDS	29
6. RECOMMENDATIONS	31
6.1 GENERAL RECOMMENDATION FOR INVESTORS	31
6.2 RECOMMENDATIONS RELATING TO THE STORA ENSO PROJECT	32
CONCLUSIONS	36
ENDNOTES	37
BIBLIOGRAPHY	43

LIST OF FIGURES AND TABLES

FIGURE 1. GUANGXI PROVINCE, BEIHAI MUNICIPALITY	3
TABLE 1. THE CHINESE REGULATORY FRAMEWORK ON COLLECTIVE FORESTLAND	5
FIGURE 2. FORESTLAND RIGHTS DISTRIBUTION	8

PREFACE

Rural development and forest restoration have been key priorities for the Chinese government over the last decade, and indeed many countries in the world. To address these priorities, the Chinese government has aggressively promoted new investment—public and private, including foreign direct investment (FDI)—together with tenure and related institutional reforms.

Over the same period, Corporate Social Responsibility (CSR) has become a highly touted approach that aims to ensure minimal social, economic as well as environmental protections and, to some extent, advance development. This has been, in part, due to the recognition that private FDI to developing countries is overwhelmingly larger than official development assistance and that this investment can be put to development ends if it adheres to minimal standards—or at the least, avoids undermining development.

This study examines the case of one FDI made by Stora Enso with International Finance Corporation support in forestland plantations in Guangxi, China. Stora Enso is a company which explicitly adheres to CSR principles and believes in the importance of forest certification systems such as by the Forest Stewardship Council. The study was prompted by a series of conflicts between farmers and Stora Enso's Chinese partners in Hepu of Guangxi over the compensation these farmers received for the land acquired by Stora Enso. The study was conducted over 2009-2010 by a team of legal experts from the Rural Development Institute, a highly respected international research organization on land rights with a strong history of research and advisory to legal reforms in China. The research method included fieldwork, interviews with government, village cadres, and village members, as well legal analysis of documents from communities, local governments and intermediaries. The local staff of Stora Enso were contacted but chose not to participate in the study.

In brief, the study finds that despite Stora Enso's good intentions as revealed by its establishment of the "Principles for Sustainable Wood and Fibre Procurement and Land Management" in March 2005 among other CSR principles, there are major limits to their legal due diligence. In effect, this is raising risks for local people to both their rights to land and livelihoods. Since weak governance and limited recognition of local land rights is more the norm than the exception in developing countries, the study points to the continued difficulty of meeting local laws, much less global standards, by foreign investors who hold a commitment to CSR.

We hope this study helps clarify land and forest issues in China and enables local owners, government and private companies, as well as investors to recognize and respect land and resource rights in China and beyond.

Andy White
Coordinator
Rights and Resources Initiative

EXECUTIVE SUMMARY

The increasing urban-rural income disparity over the last few decades is evidence that China's unprecedented economic growth has not been spread evenly across Chinese society. Forest farmers, most of whom rely on forest farming for living in remote areas, are especially hard-hit by this income disparity. To revitalize the forest sector and improve forest farmers' livelihood, the Chinese government launched a nationwide forestland reform designed to give individual farmer households secure and transferable rights to forestland under collective management.

Such individualization of forestland rights also provides foreign entities with opportunities to invest in China's forestland. While foreign investment can bring great benefits to the Chinese economy and its people, there is also potential for great social harm if such investments are not implemented with the highest concern for legal and social standards.

Collectively owned forestland available for foreign investments can be divided into two general categories: forestland allocated to and managed by households who have property rights to such land, and forestland managed by rural collectives. Household land rights may be transferred to an outside entity only if the transfer is voluntary and with compensation, as a result of non-compulsory consultation and negotiation. Rights to land that is under collective management can only be acquired by an entity outside of the village if (1) the land is not suitable for household management; (2) the transfer terms are reached through bidding, an auction, or public negotiation process; (3) public notice is given to the members of the collective in advance of the transaction; and (4) the transaction is approved by two thirds of the villagers and the township government. In addition to the legal requirements, international corporate social responsibility (CSR) standards require conformity to local law and allow for public notice and participation.

Stora Enso's large-scale plantation project currently underway in China's Guangxi Autonomous Region serves as an illustration of current forestland acquisition practices by international companies. To cultivate eucalyptus trees to support its wood pulp operation, Stora Enso has commenced acquiring a total of 1.8 million mu (120,000 hectares) of land throughout Guangxi.

Extensive fieldwork indicates that the legal procedure was not followed for the acquisition of both household forestland rights and rights to collective-managed forestland. Due to a lack of public notice and approval by collective members, many farmers have been completely unaware of the transfer terms. A widespread lack of documentation further limits public knowledge and clarity. In some cases farmers were even deceived or physically threatened into transfer deals. Systems for notification and resolution of disputes have been unavailable or inadequate. It appears that Stora Enso's primary dependence on government power under the guise of middlemen to acquire collective forestland rights is largely to blame for these violations.

Given Stora Enso's commitment to Chinese laws and CSR principles, there is a great opportunity to improve the forestland acquisition process. To guide Stora Enso in its continued acquisition goals, as well as to inform future stakeholders in large-scale forestland acquisition projects, we provide the following recommendations:

- Suspend the land acquisition program until the legal regulations can be evaluated and forestland reforms are operational;
- Consider alternative models for obtaining land without the use of government power, including direct contractual relationships with landholders;
- Review the legal status of landholdings and rectify any problems;
- Refine CSR standards so they are applicable to the project;
- Exercise appropriate influence on the government to encourage greater social responsibility;
- Conduct comprehensive independent assessment of the project.

1

Introduction

Over the last 30 years, China has become one of the largest economies in the world. To date, however, the benefits from the country's extraordinary growth have not been proportionally enjoyed by its urban population and rural population. The urban-rural income disparity increased from 1.74:1 in early 1985¹ to 3.31:1 in 2008.²

China's rural land, including its 112 million hectares of collectively owned forestland,³ is critical to closing the gap. If the land rights – including forestland rights – held by hundreds of millions of Chinese rural households are effectively recognized and enforced, China's rural land can provide its rural population with a means of livelihood support, income-generation, a buffer against economic and environmental shocks, as well as improved security for the future. The improved livelihoods and income levels can further fuel domestic consumption and sustain overall social and economic growth for China.

The Chinese government recognizes the vital role land can play in improving rural livelihoods and the rural economy. In the late 1970s and early 1980s, the government decollectivized agriculture by allocating collectively owned arable land to individual farmer households, initially for terms of a few years and subsequently for 30-year renewable terms. Although some collectively owned forestland was also individualized during this arable land reform, the bulk of such forestland remained under collective management. Collective forest tenure reform was rekindled in 2003 to revitalize economic development in forest areas. The reform encour-

aged collectives to allocate collective-managed forestland to individual farmer households⁴ for individual forest farming for a term of 70 years.⁵

While this move intended on benefiting farmers, at the same time, foreign investors have also recognized the potential value in China's rural land. Foreign direct investment (FDI) in China jumped from \$920 million in 1983 to \$92.4 billion in 2008, with an accumulated amount of \$852.6 billion.⁶ Much of that investment, especially the investment in agricultural and forest sectors, requires use of substantial tracts of rural land relied on by the local population for their livelihoods. On the one hand, large-scale investment has the potential to bring significant benefits to China and its people. Investment can stimulate the rural economy by helping to modernize the agricultural sector, provide rural employment, and establish new markets. Investment projects can transfer technology and expertise to the host country and create a basis for sustainable development. At the same time, large-scale investment in rural areas can also do enormous harm. Poorly conceived investment can violate land rights, displace communities, disrupt smallholder farming, deplete or destroy natural resources, and can generate catastrophic environmental damage. When investment occurs without knowledge of local land rights and without genuine community participation, the investment may reduce economic opportunities for a community, limit or extinguish livelihood options, and increase landlessness and poverty. Negative media campaigns, sabotage, and violence can slow or halt production, distract cor-

porate management, and force investors to spend profits on private security and public relations efforts.⁷ Ultimately, investors can find themselves without grassroots support and their investment then becomes at risk.

With appropriate knowledge, planning, and implementation, the risk of negative consequences of large-scale investment can be reduced. Moreover, attention by investors and other stakeholders to applicable legal and corporate social responsibility standards can improve the opportunities for all stakeholders, including local communities, to benefit from land-based commercial investment. China's legal framework provides an increasingly broad foundation for the protection of rural land rights in the face of pressures exerted by commercial investment. Laws and policy statements establish the substance and procedures for transactions in land while expressly prohibiting any form of coerced land transfers. However, in order for the laws and policies to meaningfully protect and benefit the rural population, the appropriate laws and policies must be implemented and enforced so that the land rights are recognized by all stakeholders involved.

In collaboration with the Rights and Resources Initiative (RRI), the Rural Development Institute (RDI) undertook this study to examine the process of implementing a large-scale plantation project on Chinese forestland. RDI examined the steps through which the investor obtained the land necessary for the project in the context of the legal framework and evolving principles of corporate social responsibility.

We selected the Stora Enso Oyj (Stora Enso) pulp and paper operation in Beihai Municipality of Guangxi Autonomous Region of China (Guangxi) for the case study because of the scope of the planned investment, its potential impact, the company's commitment to corporate social responsibility (CSR), and because of the reported conflicts between forestland rights holders and Stora Enso's Chinese partners. Stora Enso is the world's largest paper and board producer by output volume and the third largest producer of sawn timber. The com-

pany has annual sales of €11 billion and an annual operating profit of nearly €390 million in 2008.⁸ The company has adopted principles of social responsibility and sustainability while expressing a strong desire to develop and manage its investment in a socially responsible manner.⁹

Stora Enso began operating a plantation company in Guangxi in 2002. The company planned to invest €1.8 billion¹⁰ and acquire 120,000 hectares (or 1.8 million mu¹¹) of land from five counties of Guangxi by 2010.¹² The company will use the land for eucalyptus plantations that will supply the raw material for its pulp/paper production facilities.¹³ The company also plans to develop a pulp, paper, and board mill in southern Guangxi. The company has asserted that it will only proceed with the mill if the company can obtain sufficient volumes of wood for pulping on a sustainable basis.¹⁴

RDI conducted its fieldwork in Hepu County of Beihai Municipality of Guangxi Autonomous Region (Figure 1). We selected Hepu for several reasons. First, Stora Enso's plantation management is headquartered in Hepu. Second, the Beihai Municipality Government committed to provide 600,000 mu of forestland to Stora Enso by 2010¹⁵ (1/3 of the Stora Enso's land acquisition target of 1.8 million mu for the whole province), and 540,000 mu (90% of the commitment) has been assigned to Hepu.¹⁶ Third, the Hepu assignment accounts for nearly half of total collectively owned forestland in Hepu.¹⁷ Fourth, Hepu is an agricultural county with nearly 80% of its population relying primarily on its land for livelihoods.¹⁸ And fifth, Hepu was the site of reported conflicts.¹⁹

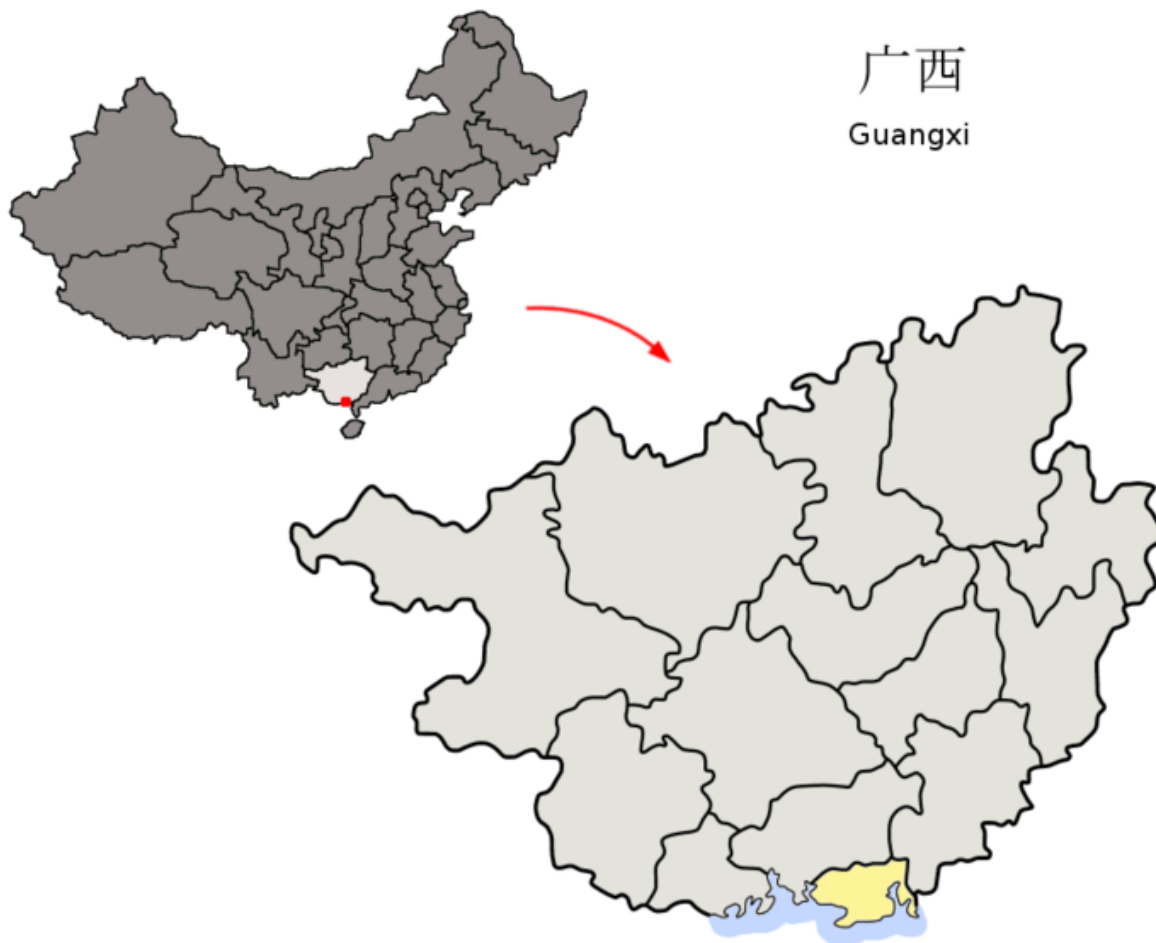
The study consisted of three parts:

- Desk research on Chinese law and the regulatory policy regime governing rural land transfers and international CSR standards and norms;
- Field research and analysis of the land transfers for the Stora Enso project; and
- Development of recommended approaches to the issues identified in the fieldwork based on Chinese laws and international CSR norms.

Following this Introduction, Section II of this report discusses China's legal and regulatory framework governing ownership and transfer of collective forestland. Section III examines proposed CSR guidelines for commercial interests engaging in land-based investments in developing countries. Section IV reports the findings of our fieldwork conducted at the Stora Enso plantation sites. Section

V analyzes the Stora Enso acquisitions in light of Chinese law, international CSR guidelines, and the company's internal principles for social responsibility. In Section VI we offer a series of general recommendations with respect to large-scale, land-dependent investment and targeted recommendations with respect to Stora Enso's project, followed by the conclusion in Section VII.

FIGURE 1. GUANGXI PROVINCE, BEIHAI MUNICIPALITY



Note: Hepu County is located in Beihai Municipality (yellow) in Guangxi Province
 Source: Wikimedia Commons. 2007. http://en.wikipedia.org/wiki/File:Location_of_Beihai_Prefecture_within_Guangxi_%28China%29.png#globalusage

2

China's Regulatory Framework Governing Collective Forestland

China's economic boom started from rural land reforms that decollectivized Chinese agriculture and gave farmers individual land rights.²⁰ On the other hand, individualization of collective forestland rights establishes an institutional foundation for market development of such land rights, and thus making it possible for international forest companies to acquire forestland land rights for their plantations. On the other hand, land is the primary means of livelihood and therefore the most important asset for Chinese farmers. Land is even more critical in Hepu County, where 79% of the population live in the countryside and rely on land as the primary means of survival. Realizing the importance of land to the improvement of farmer income as well as social stability in the

countryside, the Chinese government consistently discourages industrial and commercial interests from obtaining long-term rights to large tracts of rural land, including forestland.²¹ Although corporations can legally obtain use rights to collectively owned arable land and forestland through private transfers between farmers with land rights and corporate entities, Chinese law and central government policies embrace protections for farmers if such transfers occur.

In China, rural land is regulated by both laws and central policies. This section provides an overview of the regulatory framework governing rights to forestland in China, the role of the collective, and requirements for legal transfer of forestland from individuals and collectives to third parties.

2.1

OWNERSHIP OF COLLECTIVE FORESTLAND AND THE ROLE OF THE COLLECTIVE

Under China's Constitution, all land (including forestland) located in rural and suburban areas, except for that owned by the state, is owned by rural collectives.²² The 1998 Land Management Law (LML) reiterates this constitutional principle and authorizes the administrative body of the collective²³ to "operate and manage" their collectively owned land.²⁴

China's Property Law of 2007 clarifies the distinction between the members of the collective

(the farmers) and the collective entity itself, as well as their respective rights. Under the Property Law, collectively owned immovable property such as forestland, is "owned by all members of the collective," a group that consists of all farmers located within the community in which the collective is formed.²⁵ The Property Law further provides that the collective entity is "exercising ownership rights on behalf of the collective."²⁶ Accordingly, the collective's operation and management of the collectively owned

TABLE 1. THE CHINESE REGULATORY FRAMEWORK ON COLLECTIVE FORESTLAND.

The PRC Constitution	<ul style="list-style-type: none"> ■ All rural land, including forestland, is owned by rural collectives
Property Law (2007)	<ul style="list-style-type: none"> ■ Collectively owned forestland is owned by all members of the collective, not the administrative bodies of the collective ■ The collective administrative bodies are authorized to exercise collective ownership rights on behalf of all members in the collective
Rural Land Contracting Law (2002)	<ul style="list-style-type: none"> ■ Use rights to collective forestland must be allocated to villager households through household contracting for a term of up to 70 years ■ Use rights to collective forestland that is not suitable for household contracting, such as wasteland, may be granted to non-villagers through bidding and auction ■ Individualized use rights to forestland may be transferred voluntarily; compulsory transfers are strictly prohibited ■ Any individual transfers to the farmer transferee must be with compensation, which should not be intercepted by any entity ■ Granting of use rights to collective forestland that is not suitable for household contracting must be consented by 2/3 of villagers and approved by the township government
Central Document No. 9 (2003)	<ul style="list-style-type: none"> ■ Collective-managed forestland suitable for household contracting must be allocated to villager households ■ Where continuing collective management is more suitable, the land must be converted to shares of stock which will be distributed among villager households
Central Document No. 10 (2008)	<ul style="list-style-type: none"> ■ Most collective-managed forestland should be allocated to villager households through household contracting for a term of 70 years; only a small amount of collective-managed forestland may be continued under collective management ■ For the forestland that is under collective management, not suitable for household contracting, individual property right interest in such land must be ascertained and allocated to individual households in the form of shares of stock

land is a delegated authority performed on behalf of all member owners.

Two observations can be made based on the Property Law's definition of collective ownership. First, rural land, including rural forestland, is owned by all members of the community, not the administrative body. Each member of the collective has an equal, indivisible, undemarcated, and unpartitionable ownership interest in all collectively owned land located within the community. The collective's administrative body does not have any property interest in the land; the members of the collective hold the property interest in the land.

Second, the law authorizes the collective's administrative body to exercise the ownership rights to the land on behalf of its member-owners. The structure is analogous to that of a joint-share company where the board of directors, elected by all shareholders, is entrusted to manage the com-

pany and conduct normal business transactions on behalf of its shareholders, including buying and selling the company's assets. The company reports the income from such business transactions on the balance sheet of the company with the income being the property of all shareholders. Likewise, the collective's administrative body is elected by all farmers in the collective. The power of a collective's administrative body, including the power to transfer collective property, is a delegated authority that the body must exercise on behalf of the member-owners.

The central government's policies on forestland reforms reflect this principle of member ownership. The 2003 central decision on forestland reforms requires collectives to convert forestland suitable for collective management into shares of stock of a collective forest farm in lieu of being physically allocated to individual households.²⁷

The collective must distribute the shares of stock to individual farmer households.²⁸ The 2008 central document further reiterates that property interests in collective-managed forestland be ascertained and allocated to villager households in the form

of shares of stock.²⁹ Both national law and central policy documents support the principle that the farmers, not the collective's administrative body, have property interests in collectively owned forestland.

2.2

INDIVIDUAL USE RIGHTS TO COLLECTIVE FORESTLAND

China's rural land system recognizes both the indivisibility of collective land ownership and individual use rights to such collectively owned land. The system allows for individual possession, use, and benefit from collectively owned land while maintaining the principle of communal ownership.

Under this system, an individual household may acquire use rights to collective forestland either through: (1) household contracting or (2) "other forms of contracting," such as auction or negotiated sales.³⁰ "Household contracting," the allocation of collective forestland rights to individual households in the community, applies to the forestland suitable for household contracting. "[O]ther forms of contracting," applicable only for the land unsuitable for household contracting, allows for the transfer of forestland use rights to individuals and entities that may or may not be part of the immediate village or villager group community. Individuals and entities obtaining use rights under such contracts usually pay the collective's administrative body a fee, either in lump sum or installments. There is no law specifically defining "suitable for household contracting" and "non-suitable for household contracting." Yet, the application of non-household contracting only to collective-controlled wasteland and waste mountains under Chapter III of the 2002 Rural Land Contracting Law expresses a strong legislative intent that all collective land, including forestland, is suitable for household contracting.³¹ In this case wasteland and waste mountains would be the only category of land not suitable for household contracting, and

therefore available to non-villagers through other forms of contracting.

Individual rights to collective forestland acquired through household contracting are created and mandated by law.³² The central policy directives on forestland reforms reinforce the requirement that collective forestland should be allocated to individual households.³³ The 2007 Property Law defines such land rights as usufructuary property rights.³⁴

The legal framework is unclear as to whether the rights to forestland acquired through "other forms of contracting" are also usufructuary property rights and thus entitled to the same protection available to the land rights acquired through household contracting. The collective's administrative body has more discretion over land subject to "other forms of contracting" than it does over land allocated to individual households. First, while the administrative body must allocate all land suitable for household contracting, the administrative body is not obligated to contract out collective forestland unsuitable for household contracting. Second, if the administrative body does contract out the land, the administrative body has discretion over the selection of the contract recipient; it may grant the contract to whoever pays the highest premium, regardless of whether he or she is a member-owner in the village, a non-villager farmer, or business entity. Third, unlike the household land use rights, which must be affirmed with land registration, land rights acquired through "other forms of contracting" do not need to be registered.³⁵ This suggests

that the rights conveyed are contractual rights, and therefore governed by principles of economics and

contract law, rather than property rights governed by property law.

2.3

TRANSFERS OF COLLECTIVE FORESTLAND USE RIGHTS

Under China's forestland laws, the transferability of forestland rights depends on the classification of the forestland. The 1998 Forest Law permits transfers of forestland rights except for rights to ecological forestland and forestland designated for special purposes.³⁶ Under Chinese law, use rights to collectively owned forestland must be granted to villager households unless the forestland is unsuitable for household contracting, such as wasteland and waste mountains.³⁷ The 2003 central document on the forestland reform explicitly requires that the collective forestland be contracted to individual households in the village as long as it is suitable for household contracting; only wasteland that can be rehabilitated into forest may be contracted out (i.e., transferred) to non-villager businesses.³⁸ Different rules govern transfers of forestland rights initially obtained by individuals through household contracting and transfers of rights to forestland that have not been allocated to individual households and is managed by the collective.

TRANSFERS OF HOUSEHOLD FORESTLAND RIGHTS THROUGH MARKET MECHANISMS

Chinese law and central policies permit and encourage farmers to transfer their rural land rights, which have been allocated to them as members of the collective, to other farmers and non-farmer third parties. The 2002 Rural Land Contracting Law (RLCL) provides that forestland rights “may be transferred [to other village households], leased [to non-village households], exchanged, assigned, or transacted by other means in accordance with law.”³⁹ The 2007 Property Law subsequently echoes the RLCL's original support for market-based transfers.⁴⁰ Moreover,

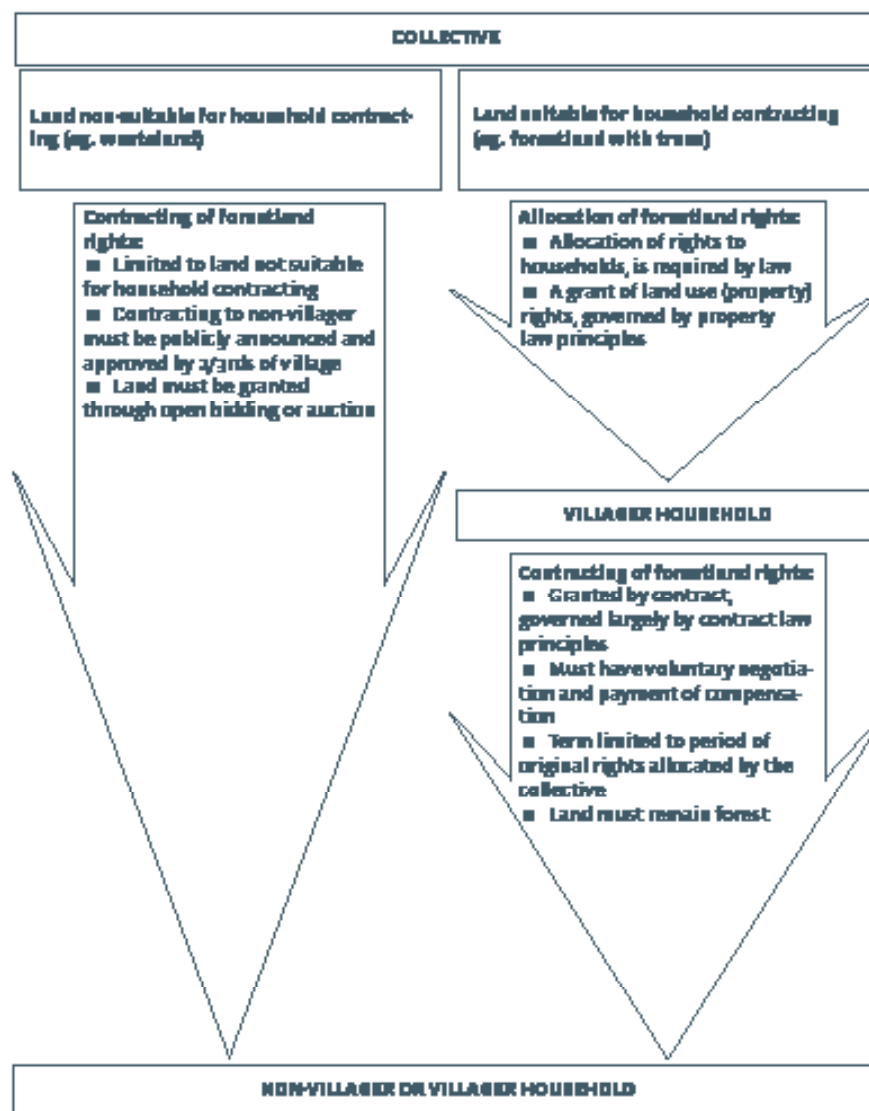
the recent central decision on further land reforms in 2008 reiterates this legal permission.⁴¹

If a farmer decides to transfer his or her forestland rights to a third party, including a non-villager individual or entity, the farmer-transferor should enter into a contract with the transferee setting out all the agreed terms of the transfer.⁴² No approval of the collective is necessary unless the farmer-transferor transfers all of his or her rights for the years remaining on the farmer's contract.⁴³ If the farmer transfers all rights, a contractual relationship must be established between the collective entity and the transferee.⁴⁴ In order to protect farmers' property interests in land in the course of land rights transactions, the law explicitly requires that the farmer-transferors receive all proceeds from such transactions; no one is permitted to intercept or reduce the proceeds.⁴⁵

A 2008 central decision reinforces rules permitting forestland rights holders to transfer, lease, and assign forestland rights or contribute such rights as investment in a cooperative of forest operation.⁴⁶ The intended transfer must be: (1) voluntary; (2) within the remaining period of the contract term; and (3) the transaction cannot alter the use of the land to non-forest purposes.⁴⁷

Clearly, the repeated emphasis on market transactions of farmers' forestland rights in laws and central documents indicates the importance of the issue. Because of power imbalance between small farmers, collective entities and local governments, farmers' sovereignty in transferring their forestland rights are often violated by local power brokers. Reiteration of rules on transfers may play an added role in deterring such violations, and therefore is not only important, but also necessary.

FIGURE 2. FORESTLAND RIGHTS DISTRIBUTION



TRANSFERS OF RIGHTS TO COLLECTIVE-MANAGED FORESTLAND OR WASTELAND THAT IS NOT ALLOCATED TO HOUSEHOLDS

Land that is unsuitable for household contracting⁴⁸ may be transferred to non-villager farmers or businesses through competitive bidding, auction, open negotiation, or other methods.⁴⁹ The 2008 central document deepening forestland reform reiterates these requirements and provides further protections for the rights of villagers. If collectively managed forestland or wasteland is not suitable for household contracting, the villagers' property inter-

ests in such land must be ascertained and allocated to individual households before the administrative body can transfer the forestland.⁵⁰

In order to prevent the collective entity from circumventing member-owners in dealing with collectively owned land, the 2007 Property Law requires that the members of the collective decide whether to contract out collective land to non-villagers, including granting use rights to collective forestland through non-household contracting.⁵¹ Transfers of use rights to collective forestland under collective management must be publicly announced in advance and approved by collective members in

accordance with the law.⁵² The 2002 RLCL requires the consent of two-thirds of villagers (or member-owners) or two-thirds of villager representatives and the approval of township government.⁵³

In addition to these existing legal requirements and central government rules, in 2009 the State Forest Administration issued a directive establishing special rules for the transfer of rights to forestland under collective management.⁵⁴ This directive was issued to control unregulated markets for collective forestland rights and prevent arbitrary and under-the-table transactions that have led to the loss of collective forestland and its asset value. The directive states that collectively owned forestland and wasteland under collective management should not be transferred out before being contracted to individual farmer households, except for circumstances that are “absolutely necessary.”⁵⁵ Even in such circumstances, the transfer must go through the following procedures: (1) a value assessment of forest assets; (2) advance public notification of the transfer plan within the collective entity; (3) consent to the transfer plan by two-thirds of collective members or their representatives and approval by the township government; and (4) bidding, auction, or public negotiation of the terms of the transfer.⁵⁶ In addition, members of the collective entity have priority to acquire rights to such collective-managed forestland or wasteland under the same conditions.⁵⁷

The new rules are based on the following principles. First, collective-managed forestland is primarily for household contracting and should be allocated to individual households in the village because the members are joint owners of the land under the Property Law and the forestland reform policies.⁵⁸ Allocation helps prevent landlessness in forest areas so as to maintain social stability and harmony, encourage forest farmers to invest in forestland, and create an equitable basis for development of forestland rights markets. Second, forest farmers should be the primary players in forestland rights markets because as individual operators of the land they would know best when to transfer out their contracted forestland, to whom, at what

price, and for how long. Third, because of concerns over rent-seeking by collective cadres in cooperation with local government officials, the value of collective-managed forestland must be assessed before being transferred. Fourth, all existing laws and policies on transferring collective-managed forestland must be strictly followed in order to tighten restrictions on such transfers further.

DOCUMENTATION OF TRANSFERS OF COLLECTIVE FORESTLAND RIGHTS

To further consolidate the governmental interest in protecting the benefits that accrue to farmer households from collective forestlands, there is specific legal guidance on the documentation of transfers of collective forestland rights. Under Chinese law, all transfers of individual land rights, including individual forestland rights, must be evidenced with a written transfer contract⁵⁹ unless the transfer is for a period of less than one year.⁶⁰ The transfer contract must be signed by the farmer-transferor and the transferee, whether it is an individual or a corporation.⁶¹ The contract should include all the terms of the transfer, including names of both parties, the identification of the forestland, the start and end dates of the transfer, the amount of transfer proceeds, and the payment method.⁶² The State Forest Administration reiterates these requirements in its 2009 “Comments on Effectively Strengthening Management of Transfers of Collective Forestland Rights.”⁶³

These rules also apply to transfers of use rights to collective-managed forestland.⁶⁴ In such transactions the transferor is the collective entity, which is responsible for evaluating the credit standing and the capability of the transferee’s forest operation before signing the transfer contract.⁶⁵

COMPULSORY TRANSFERS OF FORESTLAND RIGHTS

The forced or compulsory transfers of farmers’ forestland rights are strictly prohibited. Under the 2002 RLCL, all transactions in forestland rights must

be voluntary;⁶⁶ pressuring a farmer into a transaction of his land rights under the pretext of “minority submitting to majority” is prohibited.⁶⁷ This law also prohibits government officials from compelling farmers to transfer their land rights.⁶⁸

Anticipating the increasing interest of commercial entities in farmland and forestland, in 2004 the central government issued a series of policy directives to regulate development of rural land rights markets in order to prevent coerced transfers.⁶⁹ In its “Urgent Notice on Properly Resolving Rural Land Contracting Disputes,” the State Council requires local governments to “resolutely stop and correct various acts that compel farmers to transfer their land rights against their willingness” and states that “any contract involving compulsory transfers should be deemed void.”⁷⁰

In this spirit and based on existing laws, China’s Supreme Court held that “where the contract issuing party [the collective entity] compels the contracting party [the farmer] to convey his rural land contracting and operating rights to a third party, the contracting party’s claim for voiding the transfer contract should be supported” by the local court who reviews the claim.⁷¹ The recent Supreme Court’s decision on implementing the new Central Committee’s decision further requires local courts to void land transfers that violate farmers’ property interests in land contracting as well as correct any act that unlawfully interferes with the transfer of land rights.⁷² The new central decision reiterates the principle of voluntariness in land rights transactions and prohibits any transactions

that may violate farmers’ property interests in land contracting.⁷³

Clearly, this is a matter that bears continued attention because the rules governing collective forestland rights transfers recently issued by the State Forest Administration in 2009 further emphasize the prohibition against compulsory transfer. The rules ban any individual or entity from coercing farmers to transfer their forestland rights through compulsion or deceit, or from forcing farmers to accept low-price transfers.⁷⁴ No one is permitted to impose his or her will on farmers with respect to transfer terms and transfer period.⁷⁵

REMEDIES FOR AGGRIEVED RIGHTS HOLDERS

Chinese law provides holders of forestland rights with a variety of remedies for prohibited transactions. Under the Property Law, if a decision made by the collective entity or the person in charge of such entity violates members’ lawful rights, the aggrieved members may file a lawsuit to nullify the decision.⁷⁶ In addition to nullification, the RLCL further prescribes both equitable remedies and legal damages for farmers who are compelled to transfer their land rights, including when they are compelled under pressure of the majority. Remedies include injunctive relief, restitution, and monetary damages.⁷⁷ Government agencies or government employees involved in such violations are subject to administrative or criminal penalties in addition to monetary damages.⁷⁸

3

Proposed International Guidelines for Commercial Investors

In addition to China's legal and regulatory framework that govern the conditions under which collective forestlands can be made available for non-local entities such as Chinese and foreign business enterprises, separate standards of corporate social responsibility (CSR) are also applicable to commercial investment in China's forestland. Concerned about the potential impact of large-scale commercial investment on local communities and resources, various stakeholders around the world have been engaged in developing norms and standards governing those investments. This section provides an overview of emerging international guidelines and specific CSR policies adopted by Stora Enso.

At this time, none of the guidelines under discussion by the international community or those adopted by Stora Enso have the force of law. However, to the extent that the guidelines reflect an evolving ethical perspective and approach to

investment in developing countries, they are significant. The guidelines are an expression of shared values and expectations of corporate conduct that can shape global opinion and inform the development of national and regional policy.

CSR guidelines also have practical significance. Investors can refer to guidelines to assist them in setting company policy, working with governments and communities to select project sites, developing appropriate strategies for projects, working with local communities and NGOs, project implementation, and conducting project evaluations. Guidelines can help investors frame their negotiations with governments and ensure they are working with governments at the appropriate levels. From the perspective of host country governments, civil society, and local communities, corporate guidelines provide a framework for understanding corporate plans and a foundation for monitoring and evaluating corporate action.

3.1

SOURCES OF CSR GUIDELINES

At the international level, the 2007 United Nations Declaration on the Rights of Indigenous Peoples establishes a universal framework of minimum standards intended to ensure the survival, well being, and rights of the world's indigenous people.⁷⁹ The Declaration grants indigenous people the right

to pursue their own economic, social, and cultural priorities, and introduces the requirement of Free, Prior, and Informed Consent (FPIC) as a means of ensuring their full and effective participation in matters that concern them. China adopted the Declaration, signaling support for the principles.

The Declaration is aimed at governments and does not have the force of law. However, the principles underlying the Declaration and the requirement of Free, Prior and Informed Consent establish an accepted foundation that can be extended to and help guide private sector action.⁸⁰

Several groups are extending and supplementing the broad statements included in the UN Declaration with a set of guidelines governing commercial investment in rural land. In particular, FAO and its development partners have been working on a set of Voluntary Guidelines to provide guidance to governments, the private sector, civil society, donors and development specialists on the responsible governance of land tenure.⁸¹ Beginning in 2009 FAO has been convening a series of workshops with various stakeholders at locations around the world, encouraging discussion and collecting input from a diversity of interests. Final guidelines are expected from the World Bank and FAO in early 2011.

In addition to the efforts of FAO and the World Bank, 26 civil society organizations have formed a Working Group on Commercial Pressures on Land. This group, which includes organizations from Africa, Asia, Latin America, and Europe, prepared a series of recommended guidelines. In addition to this collaboration the International Food Policy Research Institute (IFPRI) has researched and reported on this issue, as well as research conducted for the Forest Dialogue and Forest Peoples

Programme, and extensive reports and case studies prepared for and under the leadership of the International Land Coalition have provided further insight.⁸²

Other sources of guidelines and standards of conduct are requirements imposed by international financial institutions and industry groups including the Asia Development Bank (ADB), and the International Finance Corporation (IFC). The IFC, for example, has created a handbook of good practices for companies doing business in emerging markets.⁸³

In addition to these efforts, numerous private entities (including Stora Enso) have adopted their own corporate social responsibility policies to guide their corporate conduct. Stora Enso's Code of Conduct begins with its commitment to compliance with local laws.⁸⁴ The company's Principles for Social Responsibility include commitments to open transactions, community involvement, and a prohibition against corrupt practices. The company's Sustainability Policy expresses a corporate commitment to contribute to the well-being of the societies in which the company operates and to support social development.⁸⁵

The following represents a compilation of principles and guidelines that have been proposed by the various individuals and entities engaged in consideration of appropriate conduct for commercial investors.

3.2

PROPOSED PRINCIPLES UNDERLYING THE GUIDELINES

1. Investors should deal with issues of rights to land and other natural resources openly in a participatory and inclusive fashion that recognizes and protects the legitimacy of statutory and customary land tenure, the variety and diversity of land uses and users. Companies should pay particular attention to the potential impact of projects on common pool resources, such as forests, pastureland, and water bodies.
2. The formal and customary laws in some countries may not meet international human rights standards, including principles of nondiscrimination and transparency. In those circumstances, investors should adhere to international standards that are not explicitly prohibited by laws in the host country.
3. Most communities and individuals will require significant, targeted assistance in order to be able

to participate in development projects in a meaningful fashion.

4. Any compulsory acquisition of land should be in accordance with the law and with international

principles of equality and transparency. The valuation of rights and property must meet international standards. Eviction of local communities should be reserved for the most exceptional circumstances.

3.3

PROPOSED PRE-PROJECT GUIDELINES

1. Conduct inventory and land tenure assessment. Investors should ensure that an inventory of land and natural resources has been conducted in areas in which projects might be sited. The inventory should identify all land and natural resource uses, as well as the value of the land and natural resources to the community. A land tenure assessment must be conducted to identify land rights of all users. The results of the inventory and land tenure assessment should be provided to the local community, local government, and the prospective investor.
2. Conduct impact assessment. The investor should ensure that impact assessments are conducted. The impact assessment should include the consequences of the investment on the (a) local livelihoods (disaggregate for gender, marginalized groups); (b) local economy; (c) access to productive resources of the local communities, including pastoralists or itinerant farmers; (d) the environment; (e) natural resources, including water, wildlife, etc. and (f) local food production and availability. The results of the impact assessment shall be made available to the local community, local government, and investor.
3. Secure existing rights. In areas where land rights have not been formalized, the investor should ensure that rights are nonetheless protected through the course of the project. If it is necessary to acknowledge and protect existing rights, the investor shall assist the community and local government in formalizing the community's rights

to land and other natural resources as a component of the investment.

4. Conduct community consultations and negotiations. Investors should consult with the local communities potentially affected by the proposed investment. The community consultations and negotiations leading to investment agreements should be conducted transparently and with the genuine and meaningful participation of the local communities whose access and rights to land and other natural resources may be affected by the proposed project. Projects should be described with clarity, in local languages, and through local forums so that the components of agreements and projects, roles of local community members, and negotiated benefits and enforcement procedures are understood by all.

5. Recognize need for community capacity building. Investors should recognize that some measure of capacity building will likely be necessary in order for local communities to participate meaningfully in consultations and negotiations.

6. Free, Prior and Informed Consent (FPIC). Investments that cause changes in land rights and use should only take place with the free, prior, and informed consent of the local communities concerned. Investors should take proactive steps to ensure that all local interests are adequately represented (e.g., women, ethnic minorities, non-residents). Community consultations and negotiations must occur while all options are still open.

3.4 PROPOSED GUIDELINES RELATING TO INVESTMENT AGREEMENTS

1. Investment contracts should prioritize the development needs of the local population and seek to create a reasonable balance between the interests of all parties. Investment agreements should contribute to the fullest extent possible to reinforcing local livelihood options.
2. The obligations of the investor must be defined in clear terms and be enforceable without cost to the community such as by the inclusion of pre-defined sanctions in cases of non-compliance. For this mechanism to be effective, independent and participatory impact assessments should be required at predefined intervals.
3. Investors' obligations should include clear and verifiable commitments relevant to the long-term sustainability of the investment and local livelihoods. Examples of commitments are the inclusion of smallholders through locally appropriate outgrower schemes, joint ventures or other forms of collaborative production models, components designed to ensure that a larger portion of the value chain can be captured by the local communities, for instance by the building of local processing plants, and generation of local employment, technology transfer, and creation of infrastructure.
4. Agreements should expressly address the potential impact of the project on food security and make appropriate provisions to protect against negative impacts, including potentially securing a percentage of any crop produced for local use. Foreign exporters should not be permitted to export all production during a national food crisis.
5. Investment agreements shall be made available to all parties to the agreement, any additional affected communities, and NGOs and civil society members working with the communities.

3.5 GUIDELINES REGARDING PROJECT DESIGN/DEVELOPMENT/IMPLEMENTATION

1. The project design should recognize and protect existing land rights (including customary and formal rights).
 2. The project should be designed to improve and promote a model for investment that does not assume the need for transfers of land ownership and engages with the local community as partners.
 3. At all stages the project should deal directly with affected communities, rather than through a middleman or agency. Investors should appoint/assign individual(s) responsible for community communications.
 4. The design and implementation of the project shall respect the environment, shall not accelerate climate change, soil depletion, land degradation, or the exhaustion of natural resources.
 5. The project should be designed to include an investor/company ombudsman function for the community and accessible process for receiving and resolving problems and claims.
 6. The project should establish mechanisms for independent monitoring and evaluation throughout its lifespan.
 7. The project should be designed with an exit strategy in mind that is reviewed, approved by the community, and revisited and refined by the investor and the community throughout the project.
- Several themes run through these proposed guidelines: (1) the need for investors to recognize and respect the land rights of local communities; (2) the need for projects to be developed with the participation of local communities; (3) the desirabil-

ity of investors dealing with communities directly; and (4) the commitment of investors to ensure that the investment will have a positive impact on local livelihoods, especially those of the poorest and most marginalized people.

These themes are also reflected in the laws and policies governing forestland rights and

transfers. The next section of the report chronicles the information collected in Hepu County regarding Stora Enso's project. In Section V the report will analyze the information gathered with respect to the legal framework and the CSR themes discussed above.

4

Fieldwork Findings

The study team spent seven days in Hepu County visiting ten villages in five townships affected by Stora Enso's project. The team interviewed farmers and collective cadres with respect to their experience with the project's methods for obtaining land. Groups of between three to ten or more farmers participated in each interview session, with some sessions participated by collective cadres. No government officials attended any of these sessions. In addition we interviewed two businessmen who leased land from administrative bodies of collectives for plantations and subsequently reassigned their land rights to Stora Enso. We also interviewed a senior management official of Stora Enso responsible for its operation in Hepu.⁸⁶

The interviews were semi-structured interviews utilizing the Rapid Rural Appraisal method. The team asked the farmers questions about their experience with Stora Enso's methods of obtaining land based on a checklist of issues prepared before the interview. Rather than being a passive respondent to a questionnaire, all interviewed farmers were active participants in the discussions. In order to minimize undue influence, no government official or Stora Enso employee attended the farmer interview sessions and the interviews with two business people. We randomly selected villages, gave no advance notice, and talked with the first farmers met to ensure the objectivity of interviews.

4.1

THE NATURE OF THE LAND OBTAINED BY STORA ENSO

In the ten villages we visited, arable landholdings range from only one to 1.3 mu per person, which is barely able to produce sufficient food for daily consumption. Therefore, farmers rely on forestland for cash income. Forestland, especially wasteland that has been developed into forestland by farmers, has played an instrumental role in improving farmers' livelihoods in Hepu.⁸⁷ According to farmer interviewees, none of the arable land in the villages visited was transferred directly or indirectly to Stora Enso. As is mandated by law, almost all of the land

obtained by Stora Enso for its plantations is forestland or unutilized wasteland. According to the Stora Enso official interviewed, the company has obtained use rights to 330,000 mu of forestland in Hepu.⁸⁸ Ten percent of the transactions were conducted between the collectives' administrative entities and Stora Enso. The remaining 90% of transactions involved either a single middleman (70% of transactions) or multiple middlemen (20% of transactions).⁸⁹

According to Stora Enso, all collectively owned land acquired by Stora Enso in Hepu was

managed and/or operated by the village collective's administrative body. Farmers confirmed that with the exception of a few isolated cases, the collective land transferred to Stora Enso was not

contracted to individual households at the time of the transfer. The study team found evidence of three types of exceptions, discussed in the following subsection.

4.2

TRANSFERS OF INDIVIDUAL USE RIGHTS TO FORESTLAND

As noted above, most of the land obtained by Stora Enso was managed by the collective and not individualized. In a few cases, farmers had individual rights to forestland that were transferred. First, in three villages farmers had developed collective wasteland into forestland in the early 1980s under the county reforestation policy of “whoever develops the land owns the trees on it.”⁹⁰ The farmers stated that the land they had developed under this policy was transferred to Stora Enso. In Baisha Township, for example, one farmer reported that he used labor to develop dozens of mu of collective wasteland and planted eucalyptus trees in 1980s in response to the county government's reforestation policy. Before the land was transferred to Stora Enso together with collective-managed forestland in 2007, he had harvested four rounds of trees and earned an average income of 20,000 yuan per year. The farmer stated that the trees had been his only source of income.

Second, in one village local government encouraged farmers to farm on the land that had been left uncovered by water after the completion of a reservoir in 1972. The local government reportedly forced the farmers to surrender the land for transfer to Stora Enso. No compensation was paid to the farmers. Government officials stated that the land became state land at the time of the reservoir construction. The farmers were encroaching on state land and therefore required to surrender the land upon the government's order without entitlement to any compensation.

Third, in two cases the land obtained by Stora Enso included forestland that had been formally

allocated to the villagers with the county-issued certificate reaffirming such farmers' individual land rights. In one case a farmer's 2.1 mu of documented forestland was transferred to Stora Enso together with 600 mu of the village-managed forestland. The farmer was not consulted regarding the transfer, did not give his consent to the transfer, and did not sign a contract transferring his interest in this 2.1 mu of the forestland formally allocated to him. In another village, a signed contract between the villager group and Stora Enso evidences the transfer of the village's 468 mu of land to Stora Enso. The land transferred included 190 mu of the village's land allocated to 22 households for reforestation and confirmed as individual landholdings by the township government with a township confirmation letter.

In some of these cases, the farmers' individual holdings were documented; in other cases they were not. In some cases the land had been allocated to them; in other cases they obtained rights through development of land. In all cases these individual landholdings were obtained by Stora Enso because they were within larger tracts of collective-managed forestland subject to the Stora Enso land-obtaining program.

Under Chinese law, transfers of individual rights to forestland must be accomplished through execution of a transfer contract by the transferor and the transferee.⁹¹ In these cases in which individual forestland rights were transferred, the study team found no evidence of the required contract between the individual farmer and Stora Enso. None of the farmers were aware of the legal requirements

for transfer of their individual rights.⁹² None of these farmers reported being consulted about the transfer of their individual forestland rights, let alone

consenting to the transfer. None reported receiving any proceeds from the compulsory transfer of their formal or informal individual forestland rights.⁹³

4.3

TRANSFERS OF USE RIGHTS TO COLLECTIVE-MANAGED FORESTLAND AND WASTELAND

Farmers in the 10 villages visited by the study team reported that a large portion of collective-managed forestland in each of their villages was transferred to Stora Enso by the collective's administrative body. For example, in a village with more than 3,000 mu of forestland, over 2,000 mu was transferred to Stora Enso in 2008. In another village, more than 600 mu of forestland was conveyed to Stora Enso, leaving 300 mu still under collective management.

Stora Enso reported that all transactions of collective-managed forestland were consented by at least two thirds of villagers or villager representatives in the village as required by law. One component of the company's due diligence procedure requires the company to check whether the transfer contract includes a document indicating the consent of two-thirds of the villagers. The company believes that this requirement has been followed in all transactions.⁹⁴

Most farmers interviewed disagreed with the company's position. Most of the farmers stated that they were never consulted about the transactions in forestland managed by the collective.⁹⁵ This level of participation is consistent with the findings of a national survey conducted by Peking University that showed an average of 28 percent of households were consulted regarding tenure reform.⁹⁶ Some farmers told the study team that they were not aware of the transfer until workers organized by the township government started clearing land for Stora Enso. One farmer explained how the evidence of two-thirds consent was apparently manufactured by collective officials. In March 2007, the party secretary of the administrative

village came to his villager group⁹⁷ asking villagers to provide finger prints on a piece of blank paper for "monetary subsidies for hardship" in an amount of 30-50 yuan per person. A couple of days after farmers in this villager group gave their prints, the secretary announced that 500 mu of the villager group's forestland had been transferred to Stora Enso with all farmers' consent.

Although farmers believed there must be written contract related to the transfer of land to Stora Enso, most farmers reported that they did not see any written documentation of the land transaction and they did not have access to such documents. Farmers in several villages asked collective officials to show them the transfer contracts; officials told them the documents were kept at the township. In almost all cases, collective officials verbally told farmers the terms of the agreement after the transfer was done: how much of the village land was transferred, the duration of the transfer, and the amount of proceeds per mu per year. When the study team asked the farmers whether they are sure of these transaction terms, they answered: "only heaven knows."

Based on farmers' recollection of what collective officials told them, the duration of transfers ranges from 15 years to 30 years, with most contracts having a term of 30 years. The rent payment for such transfers also ranges from 32 yuan to 120 yuan per mu per year, depending on the quality of land and the time of the transfer.⁹⁸ Stora Enso management reported that the company currently pays 30-140 yuan per mu per year.

Most farmers do not object in principle to leasing collective-managed forestland to Stora

Enso. Rather, the farmers object to the manner in which the transactions occurred and the level of rent paid by Stora Enso.⁹⁹ None of the interviewed farmers was personally involved in the decision to make the land available to lease to Stora Enso or any determination of the land's value and bargaining over the rental amount. The farmers typically learned about the deal from collective cadres, some of whom also denied any participation in negotiating rental payments. According to the farmers, they were told that Stora Enso offered a fixed price with no opportunity to negotiate.

The farmers believe that they would have higher returns on their investment in the forestland if it had not been transferred to Stora Enso. The interviewed farmers provided detailed explanations why they considered Stora Enso's payments insufficient. Under intensive forest farming, the fast-growing eucalyptus trees that Stora Enso is currently planting on the transferred land will be mature for harvest in five years, and produce about 10 tons of timber wood per mu of land. At the current price of 380 yuan per ton, a mu of land can generate gross revenue of 3,800 yuan in five years, with an average of 760 yuan per year. After deducting an annual cost of 400 yuan in labor, fertilizer and management, farmers could clear a net profit of over 350 per mu per year if they did the farming themselves. This would be between three to 10 times as high as the land rental rate they currently receive from Stora Enso. Another group of farmers calculated the income they received from the land under traditional non-intensive farming before Stora Enso came to Hepu. It would take six years for a young eucalyptus to become mature for harvest through a natural growing process. Because no fertilizer was applied

and minimum management was conducted, a mu of land could generally produce five tons of timber, about 0.8 ton per year. The pre- Stora Enso market price was 280 yuan per ton, resulting in a net revenue of roughly 230 yuan per mu per year.

In some cases, farmers alleged that Stora Enso's application of its rules has resulted in the denial of rental payments to the farmers. For example, Stora Enso has a policy of not renting any land that is under dispute, and therefore would not make rental payments for the land that is subsequently found by Stora Enso to be under dispute. In one 2009 case, 2000 mu of the village's forestland at issue is subject to claim by a neighboring village. Under pressure from the county government, the township government compelled the village to transfer this 2,000 mu of forestland. Therefore, while the land has been planted with young trees, the farmers in this village had not received the rent. The farmers reported that the company told them they needed to resolve the land dispute before they would be eligible to receive any payment.

In another case, an administrative error may have led to delayed or denied payment. During the fieldwork, a villager group stated that it had signed a transfer contract with Stora Enso in 2004 involving 468 mu of the group's land. Although all land is now planted by Stora Enso with eucalyptus trees, at the time of the fieldwork the farmers had not received the agreed-upon rent of 32 yuan per mu per year for 280 mu. The farmers asked for an explanation through the company-operated hotline. The company responded that the land had yet to be "formally delivered" to Stora Enso. The land delivery confirmation (an attachment to the transfer contract) was still blank.¹⁰⁰

4.4

TRANSFERS OF FORESTLAND RIGHTS THROUGH A THIRD PARTY

Headquartered in Hepu County, the Beihai Forestry Investment Company (hereinafter BHC) was established in 2006 by the Beihai Municipal Govern-

ment solely for the purpose of obtaining rights to forestland land that would then be transferred to Stora Enso. In the single middleman transactions,

BHC leases land from a collective's administrative body. BHC then assigns the leased-in land rights to Stora Enso.

The multiple middlemen approach is adopted when land is already in the hands of a private business person who has leased the land either directly from rural collectives or from another business person. Under these circumstances, the lessee assigns the leased-in rights to BHC. BHC then assigns the rights to Stora Enso.

In both types of transactions, BHC is responsible for planting eucalyptus trees on the land that it obtains from the collectives in accordance with Stora Enso's technical standards. Thereafter, BHC conveys the land to Stora Enso.

In 2008 BHC began using a modified single middleman approach. In circumstances where there was expected to be potentially strong resistance to the transaction, BHC employs locally influential people as "shadow buyers" or surrogates to do the initial acquisition of land from villages. Once these individuals obtain the land, they transfer it to BHC immediately, usually for a fee.

Seven of the ten villages the study team visited had experience with transactions conducted through a third party: in four villages there were single middleman or modified single middleman transactions, two villages had multi-middlemen transactions, and one village had both types of transactions. Farmers in these villages reported that they were not engaged in deciding whether to lease the land or negotiate the rate; they were told these transfer terms were decided by the government without room for bargaining. The farmers did not have power to say no.

The middleman approach to obtaining land for the project results in a reduction in rent received by farmers, often a significant reduction. The middleman approach results in less money reaching the farmers because the middleman takes some percentage of the payment. Farmers receiving payment for their forestland from a middleman often have no idea how much Stora Enso paid for the land and cannot assess what percentage of any payment is taken by BHC or another middleman.

In circumstances explored by the study team, the farmers appeared to receive far less than what Stora Enso paid. In a villager group where the land was eventually transferred to Stora Enso through a BHC surrogate, Stora Enso agreed to pay 100 yuan per mu per year. However, after land was conveyed, the rental payment was reduced to 50 yuan per mu per year. When farmers demanded payment consistent with the agreement, the surrogate used his local political capital and local network of thugs to silence the protest.

Overt profit taking is even more pronounced in transactions involving multiple middlemen. In one case, a business person interviewed by the study team leased 300 mu of forestland from a village in 2000 for a term of 25 years at a rent of 32 yuan per mu per year. In 2006, he was asked to reassign the land rights for the remaining years to BHC. Because of his self-claimed good relationship with BHC, he received an annual rent of 130 yuan per mu, adjustable with inflation every seven years. Even though he is still obligated to pay the village an annual rent of 32 yuan per mu, he takes an annual profit of nearly 30,000 yuan solely because of his middleman status.

The use of a middleman also obfuscates the terms of the transaction and its performance, making enforcement of rental payments difficult. In one village, 700 mu of the village's forestland was transferred to BHC in 2007 at 120 yuan per mu per year for 30 years. The land was later planted with fast growing eucalyptus trees and conveyed to Stora Enso which regularly dispatched workers to the village to fertilize the trees. By the time of our interview, the village had received the promised rent for only 200 mu of land. When they demanded the township government for the rent for other 500 mu, they were told Stora Enso had not made that payment. They brought their complaints to the Stora Enso workers who had been assigned to fertilize the trees. The workers responded that they did not have the authority or capacity to respond to the complaints. It is unknown whether Stora Enso failed to pay the rent, or paid the rent but the payment was intercepted by BHC or the township government.

Another transaction highlights how the middleman approach can harm not only farmers but also Stora Enso. In 2008, an administrative village committee transferred 500-600 mu of a villager group's land to BHC without informing farmers in the villager group.¹⁰¹ As a result, farmers did not know the terms of the transaction and they did not receive any payment for their land. According to farmers, the deal was conducted by the administrative village and BHC with the administrative village receiving all transfer proceeds. Farmers were unaware of the transaction until Stora Enso employees arrived to clear the land for planting fast growing eucalyptus trees.¹⁰² Farmers lodged a complaint to the township government and demanded the rent owed the village group from the administrative village committee. Pressured by farmers and perhaps the township government, the village committee returned to BHC the total rent payment in an amount of 144,570 yuan, and showed farmers the remittance receipt issued by the bank indicating the money going back to BHC. It is unknown whether BHC returned the payment to Stora Enso.

The return of the payment by the village committee should have terminated the contract through the principle of a failure of consideration, rescission, or anticipatory breach, depending on the exact circumstances. However, Stora Enso continued fertilizing trees, suggesting it did not receive the returned consideration and it believed the contract was still in force. Meanwhile, frustrated farmers in the villager group were contemplating self-help measures, including cutting down Stora Enso's trees down and taking back the land.

Third party transactions—whether conducted through BHC or another entity or individual—angered all the farmers and village group leaders we interviewed. They expressed a deep distrust of middleman involvement in land transfers. Farmers were also frustrated by the denial of responsibility by both Stora Enso and government at the township and county levels. Farmers complaining to Stora Enso are referred to these local governments because Stora Enso does not have a contract with

the farmers. Farmers approaching governments for intercepted rents are often referred back to Stora Enso. None of farmers or villager group leaders in these seven villages had ever seen the transfer contract involving the land in their villager groups or the contract between the middleman and Stora Enso. As such, they are powerless to try to hold either party to the terms of the agreement even if they knew the contractual terms. All farmers and village groups interviewed would prefer direct transactions between the village and Stora Enso, assuming a reasonable rent. Those interviewed suggested they may accept a rent of 100-150 yuan per mu per year adjustable every five years in parallel to the rate of increase in local land market price for forestland. A direct relationship would allow them to know the terms of the agreement and to whom they can direct any complaints if issues arise.

Stora Enso is aware of the problems caused by the third parties acting as intermediaries or middlemen. According to the company official we interviewed, Stora Enso had identified the failure to deliver the full rental amount to farmers as one of the biggest problems associated with the middleman approach. However, Stora Enso also realizes some benefits from the use of a middleman. First, the approach may substantially reduce transaction costs. Rather than dealing with each of the hundreds or even thousands of collective lessors in negotiating terms of transfers, Stora Enso can negotiate with BHC. Given the local government's zealous efforts to attract large-scale foreign investments, Stora Enso has a favorable bargaining position in negotiating with BHC. However, such a bargaining chip might not be there if the company directly dealt with farmers and collectives because they will not likely share BHC's interest in attracting foreign investment; what farmers are concerned most with is whether the deal is fair and the payment is adequate. Second, as a government institution, BHC can reach all villages in Hepu through its government network. Using that network, BHC is likely to find more land than Stora Enso's own land agents or employees acting without government assistance. Third, using BHC to obtain land from the

collectives' administrative bodies and individuals places the onus on BHC to comply with the law regarding individual and collective consent, thereby

allowing Stora Enso to essentially subcontract out some legal liability associated with land acquisition.

4.5

GOVERNMENT COERCION

In order to secure Stora Enso's 1.8 billion Euro investment, the Beihai Municipal Government issued an official letter in mid 2009 to the company containing a firm commitment to provide a total of 600,000 mu of forestland (roughly half of Hepu's collective forestland) to Stora Enso by the end of 2010. That forestland would provide the land base for tree plantations producing fast-growing eucalyptus for Stora Enso's pulp production. According to the government report, 90% of this commitment needed to be accomplished by Hepu County.¹⁰³ To fulfill this commitment, the government launched a massive "forest-pulp-paper integration" campaign in Hepu County, seeking forestland for Stora Enso. In this process, government compulsion can be seen in direct transfers, single middleman transfers, and multiple middlemen transfers, but is most visible in the latter two forms of transactions.

Farmers in all 10 villages reported government compulsion in acquiring land for Stora Enso; in three villages, such compulsion even developed into violent clashes between farmers and government officials as well as armed police. Around May or June of 2008, the township government came to a village together with over 50 workers and local police to cut down existing trees on more than 500 mu of collective forestland and prepare land for the subsequent transfer to BHC and eventually to Stora Enso. The move was resisted by farmers wielding knives because they were not aware their land had been transferred. In order to calm down the agitated farmers, the township government officials stated that they were merely following the orders of the county government because BHC had already acquired the land. In another village, more than 100 armed police and hired labors showed up

on May 27, 2007 and bulldozed existing trees, many of which were already large enough for harvest. Farmers resisted with protest, fighting with the police. The police took several farmers into custody on the grounds that they were "sabotaging forest production."

With the exception of these extreme examples, government coercion has primarily been exercised through top-down administrative pressure. At first, all township leaders were summoned to a county government conference and assigned the task of delivering a specific quantity of land to Stora Enso. Each of these townships spread the township obligation to each administrative village with forestland and ordered them to surrender the land by a particular date. The administrative village leaders further split the village quota among all villager groups. The quota quantity for each level of this administrative apparatus was non-negotiable. All officials were threatened with demotion if they failed to complete the quota. In order to mobilize all resources for achieving the county goal of conveying 540,000 mu of forestland (90% of the municipality's commitment) to Stora Enso, the county government even required all government employees to look for available forestland, with the threat that they might be fired if unable to come up with a certain amount of land. According to farmers, some teachers at public schools in the county seat were reassigned to schools located in remote areas because they openly refused to do so.

The county government itself acknowledged such coercion, although these coercive activities were expressed as a creative way to complete the task. In order to pressure the township government to fulfil their quota assignments effectively, the

county government invented a risk deposit mechanism, requiring the party secretary and the governor of each of all 14 townships in the county to put up a cash deposit. If any township fails to complete its quota assignment, the deposit made by both leaders of the township will be forfeited together with a yellow pad warning to be publicized in the county. If the quota is completed, the deposit will be returned together with a monetary reward.¹⁰⁴ Because of the personal finances and positions that are at stake, these township leaders would tend to use whatever means possible to accommodate Stora Enso's needs. This could also help explain why the township police and township officials showed up in confrontation with angry farmers refusing to give up land, as reported by some of the interviewees.

All three villager group leaders we interviewed reported that the administrative village committee and township government had demanded them to "persuade" farmers in their villager groups to surrender land to Stora Enso. They felt pressure from the top and non-cooperation from the bottom. In the end, they had to coerce farmers to give up land by threatening farmers that the township would send police.

It is unknown whether Stora Enso is aware of the nature of these coercive acts. In response to negative media coverage, in 2008 Stora Enso set

up a hotline to receive complaints concerning its methods of obtaining land. The hotline provides a means by which the company can receive notice of coercive practices and other problems. At least three farmers (including a villager group leader) stated that they used Stora Enso's complaint hotline to report their grievances. They reported that Stora Enso told them that since the company obtained the land from the county government instead of from villages the farmers should seek redress from the government.

The company may on occasion be receiving erroneous and incomplete information, which hampers its ability to respond appropriately. In at least one case, Stora Enso's public grievance process may have been compromised. In the summer of 2009, a high-ranking Stora Enso official visited Hepu and convened a meeting to seek comments on the methods for obtaining land for its use. Several middlemen who acquired land from villages and subsequently transferred their land to BHC were invited to the meeting. According to two attendees, they were warned by the BHC officials in advance that if they said anything unfavorable, they would get punished. When asked what the punishment might be if they did not cooperate, they said an immediate result would be withholding of rent due. Consequently, all attendees praised the company without disclosing any problems.

4.6

DOCUMENTATION OF FORESTLAND TRANSFERS

Although Stora Enso has obtained use rights to forestland in all 10 villages we visited, farmers in nine out of these 10 villages, including villager group leaders present at the interview sessions, could not produce any transfer documents. They reported that the documents were either kept at the administrative village, township government, or BHC.

The study team found a complete set of transfer contract documents in one villager group.

The transfer contract was signed by the villager group leader and Stora Enso transferring 468 mu of the group's land to Stora Enso for reforestation. The contract consists of a master contract and six attachments: (1) Explanations of Issues Related to Reforestation; (2) Copy of (the Owner's) Land Rights Certificate; (3) Map; (4) GPS Measuring Map; (5) Reforestation Document Package including Application for Reforestation, Reforestation Project Con-

tract and Table for Signature of All Reforestation Households; and (6) Land Delivery Confirmation.

The reviewed contract uses a standard form apparently designed by Stora Enso for the land transferred to Stora Enso for reforestation. The contract term is from January 1, 2004 to January 1, 2019, for a total period of 15 years. The annual rent is 90 yuan per mu for the land that is proved as reforestation land and 32 yuan per mu for the land that is not qualified as reforestation land.¹⁰⁵ However, the contract specifies that Stora Enso will not start paying rent for the reforestation land until the government subsidy for reforestation ends in eight years. Within these eight years, the government reforestation subsidy will be paid to farmer households with rights to such land. Stora Enso is entitled to government reforestation subsidy of 50 yuan per mu for purchasing young trees. The contract was signed by representatives from the villager group and Stora Enso, and was printed with the seal of Stora Enso. In addition, the contract was printed with seals of the county forest bureau, reforestation office, and the township government.

There are some irregularities in the contract. First, the Land Delivery Confirmation is blank, suggesting that the land had not been legally delivered to Stora Enso although its workers had started planting trees on the land five years ago and were now ready for harvest. Second, although the Application for Reforestation (a critical component of

the contract) of all 468 mu transferred to Stora Enso was approved by the township government with its official seal, the villager group did not get the full benefits from such approval. The Reforestation Project Contract (another integral component of the contract) also approved by the same township government with the same official seal but dated after the approval date of the Application for Reforestation, permitted reclassifying only 189 mu as reforestation land partly because this land was previously allocated to farmer households and then under reforestation by these households. It thus left 279 mu ineligible for the reforestation subsidy.¹⁰⁶ Such a discrepancy puts farmers at risk: they would not be able to get government subsidy for all 468 mu based on the legal document of Reforestation Project Contract, nor receive Stora Enso rent if relying on the approved Application for Reforestation, which indicates all 468 mu is classified as reforestation land and thus ineligible for the Stora Enso rent.

According to the villager group leader who maintained this document, the villager group had never received rent payment from Stora Enso despite their numerous attempts to alert the company. In the meantime, the government got the land for Stora Enso to secure its investment and Stora Enso can use the land without paying rent relying on the government approval of the application. Farmers are the only loser of this game.

4.7

DISPUTES AND DISPUTE RESOLUTION SYSTEMS

When asked whether they had disputes with government and/or Stora Enso, all farmers in 10 interviewed villages showed a mild to strong discontent with the transfer deals involving their forestland. Even the two business people voiced dissatisfaction with administrative intervention in market transactions of land rights. Government coercion seems to be the primary source of the

discontent; farmers in eight out of these 10 villages complained about powerful pressures exercised by governments at various levels to force farmers to give up their forestland. Farmers in five villages reported they had not received all or part of the rental payment from the transferee (either Stora Enso or BHC) for the land now in the hands of Stora Enso.

None of farmers had lodged, or had heard of any incidence of lodging a formal lawsuit with local courts to resolve disputes over government compulsion and non-payment of rent.¹⁰⁷ According to local legal professionals, even if farmers filed a complaint with the court, a lawsuit of this nature would not be accepted by courts.¹⁰⁸ Partly because of the lack of an available judicial remedy, farmers rely on petitioning upper levels of government to resolve their disputes. One farmer filed a formal petition letter with the provincial government through his government contact that was established during his tenure as a bodyguard for a central government official, but the petition was referred back to the township government for dispute resolution. In one village, farmers raised funds for their representative to travel to Beijing and file a petition letter with the State Petition Administration. The representative returned with a receipt acknowledging the Administration's receipt of the petition letter but no action has been taken on their petition.

In response to negative media coverage, in 2008 Stora Enso set up a hotline to receive complaints concerning its methods of obtaining land,

and in 2009, the company published a notice in the local media re-informing farmers of the existence of the hotline. Some farmer interviewees made phone calls to the hotline, but the response reportedly was usually a redirection of farmers to local governments for dispute resolution. According to the businessmen interviewed for their forestland transaction experience, Stora Enso also organized some meetings to hear complaints about their practices, but the meetings appeared more a public relations effort orchestrated by the local government. In at least some cases, BHC representatives warned attendees against making any negative comments. The study team found no evidence that local governments or BHC had established a dispute resolution mechanism.

The inactivity of various dispute resolution channels seems to have made farmers pessimistic about resolving their disputes under existing institutions and prompted them to think of engaging in self-help. For example, in at least two villages, farmers contemplated cutting down trees planted and managed by Stora Enso on their village land if their demand for rent continued to be ignored.

5

Analysis

This section analyzes the means by which the land has been obtained for Stora Enso's operations with reference to China's legal and regulatory framework as well as evolving standards of corporate social responsibility impacting local forestland rights. As discussed in the preceding section, Stora

Enso has obtained land through both direct transactions with the collectives' administrative bodies as well as through transactions with third parties, most often BHC. This section reviews Stora Enso's methods in the context of the applicable legal and CSR standards.

5.1

DIRECT TRANSACTION

Direct transactions for forestland are those in which Stora Enso enters into a contract for land with the landholder. The forestland may be individualized and managed by households, or be unallocated and managed by a collective. Households may have received forestland from an allocation by the collective or may have developed land under a government reforestation policy. Because the legal rights to land developed under the reforestation policy are unclear, this section concentrates on forestland allocated to households and forestland managed by collectives that has not been allocated.

TRANSACTIONS FOR INDIVIDUALIZED RIGHTS

Under Chinese law, individual forestland rights are transferable, usufructuary property rights.¹⁰⁹ The transfer must be made by the household with rights to the forestland.¹¹⁰ Transfers must be evidenced with a written contract executed by both parties

and containing the essential terms, including the name of the farmer household, starting and ending dates of the transferred land rights, the amount of the transfer proceeds and the payment methods.¹¹¹ The transfer must be voluntary and with compensation,¹¹² and therefore should be the result of non-compulsory consultation and negotiation.

The study team reviewed two situations in which Stora Enso contracted directly for land that included land held by individuals. As discussed in more detail in Section IV, in one case a farmer's 2.1 mu of forestland was transferred to Stora Enso together with 600 mu of the village-managed forestland. In the other case, the transfer of 468 mu of land to Stora Enso included 189 mu of land allocated to 22 households for reforestation and confirmed as individual landholdings by the township government.

In both cases neither the contract nor the contracting process met the legal requirements. The contract for 600 mu did not reference the individual

holding of 2.1 mu. The contract transferring rights to the 190 mu of individually held reforestation land does not include language describing that transfer of individual land rights. Although the law requires a written contract be signed by the farmer-transferor agreeing on all transfer terms, no contract existed for either of these two transactions. Further, Stora Enso is required under the law to sign a separate transfer contract with each of 22 farmers holding that 190 mu of reforestation land, but the company did not sign anything with any of these 22 farmers.

Although the law requires compensation be made for transfer of individual landholdings, Stora Enso did not pay rent for such land in either case: in the first instance, the land was included within collective-managed land and no separate payment was made for individualized land rights. In the second case, Stora Enso was excused for the requirement to pay rent because the land is classified as the land for reforestation to be financed by the government. Although the farmers reportedly received a subsidy from the government in lieu of rent, the arrangement effectively deprived farmers of their right to bargain over the amount of rent paid for their land.

COLLECTIVE-MANAGED LAND

Most of the land transferred to Stora Enso to date was unallocated land controlled by the collective. Transfers of this land falls within “other forms of contracting.”¹¹³ As discussed more fully in Section II, in order to qualify for such transfers: (1) the land cannot be suitable for household contracting; (2) the terms of transfer contracts must be reached through bidding, an auction, or public negotiation process;¹¹⁴ (3) public notice must be given to the members of the collective in advance of the transaction;¹¹⁵ and (4) the transaction must have the approval of two thirds of the villagers and the township government.¹¹⁶

In addition, Chinese law requires the terms of transfer contracts to be reached through a bidding, auction, or public negotiation process.¹¹⁷ For bidding and auction, the transfer proceeds should be

determined through competitive price offering; if by public negotiation, the parties openly negotiate and agree to the contract fee.¹¹⁸ Regardless of the method by which the terms of the transaction are reached, members of the collective have the priority in contracting this collective-managed land.¹¹⁹

Our interview findings with respect to the agreements that Stora Enso reached with collectives to contract for collective managed forestland and wasteland suggest that Stora Enso has not fully complied with these substantive and procedural requirements. In the case referenced above, a villager group leased to Stora Enso 279 mu of unallocated forestland managed by the collective together with 189 mu of individually held reforestation land. Under the law, all farmers in a village are joint owners of the village’s forestland under collective management. They should have approved the transaction and had knowledge of the terms. Farmers were not aware of the transaction or the terms, indicating that the requirements of advance notice, a bidding, auction, or public negotiation process were not met at all. Given the lack of knowledge, it is unlikely that the consent of two-thirds of the members was obtained. The transfer contract only indicates the fingerprint of the leaders of the collective and the signature of Stora Enso’s general manager.

The farmers interviewed reported that Stora Enso has not paid for the unallocated collective-managed forestland transferred under the contract. According to farmers, Stora Enso reported that the contract was still under review and it had not yet received the land so Stora Enso’s performance (i.e., payment for leased land) was not yet due. The farmers reported that the land has been planted with plantation trees and thus appears to have been transferred.¹²⁰ Based on the information obtained during the fieldwork it appears that either no contract was ever entered into between Stora Enso and the collective, or if a contract was executed, Stora Enso may be in breach. In either case, the farmers potentially have a case for equitable or legal relief, including taking possession of the forestland, nullifying the contract, and seeking damages in the amount of unpaid rent and lost profits.

5.2

TRANSACTIONS WITH THIRD PARTIES

In roughly 90% of the transactions, a third party contracted with the farmers or the collective's administrative body for rights to their forestland. The third party – most commonly the state-owned BHC – obtained the rights to the forestland and subsequently entered into a second contract to transfer those rights to Stora Enso. In this circumstance, the legal requirements applicable to contracting apply to the landholders and the third party because they are the parties to the first contract. As an initial matter, therefore, BHC (or any other third party) is required to meet the legal requirements, including meeting the standards for a comprehensive contract, obtaining voluntary consent of the landowners to the transfer of unallocated forestland, confirming the agreement of 2/3 of collective members, and engaging in bidding, public negotiations, or auction to set the price..

The field interviews told a consistent story about the land obtained by BHC: farmers were not advised of the potential transfer of collective-managed forestland to a non-village entity. Farmers were generally unaware of the transactions at the time they were considered or occurred. The farmers were not advised of the terms of the transactions; they had no knowledge of any auction, bidding, or public negotiation over the lease rate.

In addition, in many cases farmers reported that the land was delivered to BHC in the face of their overt protest. In some cases farmers' protests were controlled by armed police and township government officials. The RLCL explicitly forbids government agency and its staff from using their administrative power to force farmers to transfer their forestland rights.¹²¹ If compulsory acts result in losses to farmers, the government must pay damages with the possibility of administrative and criminal penalties.¹²²

As noted above, the obligation to comply with the law falls in the first instance on the contracting party, which is BHC or another third party. Because

the third parties are not agents of Stora Enso and are not entering into contracts in the name of Stora Enso, Stora Enso's legal liability for the acts of BHC is limited by the lack of an agency relationship and the principle of good faith purchaser.

Under Chinese law, if a purchaser of immovable property pays a reasonable price and takes the property in good faith belief that the seller had the asserted rights to the property, the purchaser takes the property free of any claims against the rights of the seller.¹²³ In China, a good faith purchaser is a person who "has no knowledge of the relevant facts sufficient to influence the legal effects and has no fault with respect to having no knowledge."¹²⁴ That is to say, a good faith claim will fail if the purchaser knows or should know the illegality of the transaction. Even if the purchaser has no knowledge of the illegality, the good faith claim will also potentially fail if the purchaser's ignorance of the illegality is a result of some fault of the purchaser.

Applying these principles, even if BHC illegally obtained the land from farmers or collective entities, Stora Enso may still receive the land free from any claim by farmers. In order to take the land free of claims, Stora Enso must have been unaware of any illegality in the transactions between BHC and the farmers. However, if Stora Enso had knowledge of any facts suggesting the illegality of the initial transfers or had knowledge that the farmers or collective have claims against BHC relating to those transactions, any contract between Stora Enso and BHC for the land is potentially subject to the claims of the original landholders against BHC.¹²⁵ Given the fact that Stora Enso's Beihai operation has a large legal team specialized in land acquisitions, any claim for being unaware of Chinese laws on transfers of rural forestland rights would not fly.

The study team has no direct evidence of the company's knowledge or lack of knowledge of the issues with the underlying transactions between BHC and the farmers. However, the information ob-

tained during the fieldwork suggests cause for concern. Various farmers interviewed reported having contacted Stora Enso regarding violations of farmers' rights in forestland transactions. Moreover, the media has reported on violence in several villages caused by allegations that land was taken from the

farmers for Stora Enso's operations without the farmers' consent. If indeed the company's response was to deny responsibility based on the lack of a contractual relationship between Stora Enso and the farmers, the company may have too narrow an understanding of the scope of its legal obligations.

5.3

CORPORATE SOCIAL RESPONSIBILITY STANDARDS

If there is ambiguity regarding Stora Enso's responsibility under the legal framework, there is no such ambiguity under standards of corporate social responsibility, including the company's own standards. As discussed in Section III, evolving standards of corporate social responsibility require companies to inform themselves about land rights in the areas in which they plan to invest and to respect those rights in designing and implementing their projects. Stora Enso's own Code of Conduct specifically states that the company will abide by all local laws, an obligation that should encompass the substantive and procedural requirements relating to forestland transfers. Other standards include incorporating community consultation into the process of designing and developing the project and considering projects that maintain current land rights and make use of various production models.

None of the documentation reviewed by the team regarding Stora Enso's project suggest that it engaged in any consultations with local farmers regarding the proposed investment. The company does not appear to have discussed the possibility of other production models, such as contracting with farmers for the plantation crop. The company does not appear to have discussed the economics of land rental with the farmers nor negotiated with farmers over the rates the company would pay. The company is considering developing a pulp and paper mill, which will potentially create local employment opportunities, develop infrastructure, and

allow for the transfer of technology and know-how. However, those potential benefits will potentially be offset by the harm done to farmers who have been and will continue to be deprived of their legal right to their forestland and their right to negotiate freely to lease out that land.

CSR standards also suggest that investors deal directly with affected communities rather than rely on intermediaries, including local government intermediaries. The issues that Stora Enso is confronting in the countryside demonstrate the wisdom of this guideline. Our fieldwork suggests that the farmers are willing to work with Stora Enso to ensure it has the raw product it needs for its operations; they are frustrated by the company's reliance on an intermediary corporation. The intermediary structure prevents the farmers from negotiating directly with the company. As a result, the farmers are not receiving the full economic value from their land. They are at the mercy of coerced agreements to obtain their land and the agreement reached between Stora Enso and BHC – the terms of which are not disclosed to the farmers.

The use of an intermediary keeps the farmers at arm's distance from the transactions and precludes them from knowing the terms of the transactions for their land. CSR standards provide that agreements shall be made available to all parties to the agreement and any additional affected communities. In most of the cases reported during the fieldwork, farmers seeking information about how their land was transferred together with the terms

of the transfers have been unable to obtain copies of the documents. Absent knowledge of the terms of the agreements, the farmers have no ability to enforce the terms on their own behalf. BHC and any other entities operating as intermediaries can take whatever percentage of Stora Enso's payment for the land they wish without any accountability to either side. The RLCL protects payment for land from interception or reduction, yet without knowledge of the terms of the agreement between

BHC and Stora Enso, the farmers cannot enforce their rights.

Stora Enso's own corporate guidelines dictate against the manner in which the company obtained land in Guangxi. The company is committed to open transactions and prohibits corrupt practices. The company is dedicated to contributing to the well-being of the societies in which the company operates.¹²⁶ The fieldwork findings reveal little evidence of these corporate principles in action.

6

Recommendations

China is a land scarce country. Average land-holdings are just above two mu for arable land and less than four mu for forestland, for a total of a little more than one acre. Despite rapid industrialization and urbanization over the past 20 years, land remains the primary means of livelihoods for Chinese farmers, especially for farmers in poor areas where non-agricultural opportunities are scarce. For this population, forestland provides not just an income source, the land provides for their survival.

Investments that impact China's forestland have enormous potential to benefit or harm the rural population. China has a broad legal framework that protects the rights of farmers, and CSR standards place an even higher social standard for corporations' performance. However, the laws and standards are of little impact if they are unknown or if the rights of the population are not identified. The recommendations below are designed to fill that gap.

6.1 GENERAL RECOMMENDATION FOR INVESTORS

The following general recommendations for investors are based on Stora Enso's experience as well as the experience drawn from investments in other countries – experience that is generally guiding the development of CSR principles.

1. Conduct a thorough land tenure assessment prior to development of investment project design. Impact assessments have become commonplace for large-scale investments. However, the majority of investments either do not include a land tenure assessment or they give the topic only cursory attention. A land tenure assessment should include analysis of the legal framework (formal and customary), mapping of landholdings of all users of land, land-related institutions, and land issues. Such an assessment provides foundational information es-

sential to the development of appropriate plans for the project's projected land needs.

2. Include local communities and other stakeholders in project planning. Investors who engage all stakeholders, including local communities, in the process of planning and developing a project are likely to be in the best position to understand and evaluate project options that are sustainable, recognize and respect existing land rights, whilst possessing the potential to improve local livelihoods. The engagement should occur at a time when all options are still open to the investor and should continue through the life of the investment.

3. Adopt a rigorous adherence to legal requirements for land transactions and, in the absence of local laws protecting land rights, adopt CSR

standards and principles such as free, prior and informed consent (FPIC). Investors should be fully informed on local laws (formal and customary) governing land rights and develop procedures to ensure that the company complies with both the letter and spirit of the law. In environments where the local law fails to protect the land and natural

resources rights of local communities, investors should adopt international standards as necessary to ensure protection of those interests. For example, investments that may cause changes in land rights and use should only take place with the free, prior, and informed consent of the local communities concerned.

6.2 RECOMMENDATIONS RELATING TO THE STORA ENSO PROJECT

The average landholdings for farmers we interviewed in Hepu are significantly less than the national average. These farmers rely on forestland and wasteland-developed forestland to support their households. They have lived in an enclosed environment for thousands of years, without many non-farming or non-forest farming skills; to them, forestland is also a link to their cultural heritage. Even if they were paid adequate compensation determined by market price for land (which is not the case), the loss of land means a loss of economic opportunity, survival kit, as well as a cultural foundation.

The Beihai Municipal Government made a commitment to provide 600,000 mu of collective land by 2010 for the development of Stora Enso's tree plantations. As of the end of 2009, Stora Enso had obtained rights to 330,000 mu, leaving 270,000 mu as the target for 2010 year. In order to meet that goal, a large scale effort to obtain the forestland is widely expected. According to some village group leaders and local business people with access to BHC, a massive campaign to obtain land will be launched after the Chinese New Year holiday. These recommendations are therefore directed to BHC and Stora Enso being made with a recognition of the urgency of the situation.

1. *Suspend the program to obtain land in order to evaluate and revise current methods and allow forestland reforms to become operational.* Given the new policy rules on the individualization of

collective-managed forestland and wasteland and the need for evaluation and refinement of the project's current methods of obtaining land, we recommend BHC and Stora Enso consider suspending their efforts to obtain land for a brief period of time to allow the rules to be implemented and an evaluation performed. The reforms will allocate collective-managed forestland to individual households and secure such individual forestland rights with written documents such as the forest rights certificate.¹²⁷ Neither BHC nor Stora Enso should attempt to obtain land for the Stora Enso project until after this process is completed. Continued operations, especially with concerns about procedures used, will be in direct contravention of the central government's expressed interest in securing the forestland rights for the people. Stora Enso could use the hiatus to gather information about the land transactions, evaluate them in light of the policy, legal, and CSR environment, and determine whether revisions and refinements can be made.

If the company elects to continue to obtain land during the period of evaluation, it could consider: (1) focusing on less desirable land, such as barren, collective-managed wasteland; (2) piloting some alternative models, such as some form of contracting with farmers for wood products; and (3) developing its internal procedures, as discussed below.

2. *Evaluate relationship with BHC and consider other models for structuring operations, including*

direct contractual relationships with landholders.

This point in the project may be a good time to evaluate the role of BHC in the project and Stora Enso's relationship to BHC. BHC's methods of obtaining land for Stora Enso appear to have in some cases violated farmers' legal rights, run contrary to central policy directives supporting farmers' rights, and caused widespread discontent within the rural population. Farmers do not distinguish between the acts of BHC and Stora Enso; the legal separation is of no consequence to farmers who have their land transferred without their knowledge and without an opportunity to negotiate freely for a fair price. The public (if not the law) imputes the actions of BHC on Stora Enso. Stora Enso risks purchasing land rights that at best are inherently insecure because of the nature of the underlying transaction and at worst carry legal liability. Stora Enso should consider revising its procedures for obtaining land to eliminate third parties and emphasize direct contractual relationships with landholders.

There are several advantages to dealing with farmers directly. First, farmers prefer such direct dealing as compared with using BHC to acquire land for Stora Enso, and Stora Enso will benefit from better relationships with the local communities. Second, if the company contracts directly with farmers, it can ensure that the process complies with the law and CSR standards, and minimize government interference and coercion. Third, the company will be in a position to fulfil its promises to farmer transferees in terms of rental payments, payment delivery, and payment schedule. Fourth, by paying farmers directly, Stora Enso can minimize corruption and rent-seeking by local officials; conduct that is prohibited under Chinese law and denounced by Stora Enso's own policies.

3. *Review legal status of all landholdings and rectify any problems.* In 2009, the central government issued a document requiring a comprehensive review of historical problems associated with collective forestland transfers in order to enhance social stability.¹²⁸ The approach for the review is one of "respecting history, taking into account of reality, with an emphasis on consultation and

adjustment of financial interests."¹²⁹ For transfers of oversized areas, for a low rate, lengthy transfer period, and overly strong opposition from farmers, the document requires an adjustment of the agreement by increasing transfer payment, shortening the contract period or converting payment entitlement into shares of stock, based on mutual consultation.¹³⁰

As the company moves forward with new or refined plans to obtain the necessary land, the company should initiate a review of all current landholdings.¹³¹ The review should include attention to the underlying transactions with the landholders and identify those transactions that require renegotiation. A process should be adopted or expanded to address all contracts requiring clarification or renegotiation of terms.

Moreover, one of the issues farmers complained about most often during field interviews is the low rent for the land that was eventually transferred to Stora Enso. According to farmers, the present annual potential rent level for forestland is above 200 yuan per mu, but the Stora Enso annual rent paid is as low as 32 yuan per mu. While the dramatic increase in local market price for land may be a reason for farmers' dissatisfaction, government pressure, non-participation by farmers in the negotiations, and farmers' lack of access to market information at the time of the transfers are greater contributors to the low price. Among the three adjustment approaches outlined in the central document, an increase in rental payment may be the approach that Stora Enso would favor.

Stora Enso plans to invest 1.8 billion Euros (around 18 billion RMB) in its Beihai operation. Even if it increases an average of 100 yuan per mu per year for its acquired 330,000 mu of forestland, the total increase in cost of rent is still less than 0.2% of its total investment. Including the rent it is currently paying, the annual total rental cost is still less than 0.5% of its investment, and perhaps even much lower than the annual industrial insurance policy that Stora Enso must purchase for its operation in Beihai. It seems that this nominal increase in cost could bring about farmers' coopera-

tion and satisfaction, help Stora Enso meet its CSR obligations, and take a big step toward ensuring a successful and productive operation in the years ahead.

If Stora Enso were to adopt this recommendation, careful attention must govern the method of delivery of the additional payments. Given the current interception by cadres, officials, and middlemen, we recommend Stora Enso work with the local government to establish an individual account for each of the affected farmer households and arrange to deposit the increased rent directly into these individual accounts. The Chinese government is currently building a rural social security system throughout the country, with individual household accounts. This system could be a vehicle for the payments.

4. *Revisit and refine CSR standards applicable to the project.* The sheer amount of land needed for Stora Enso's project, the importance of that land to the local communities, and the plethora of incidence of noncompliance with legal and CSR standards (whether by the company directly or by BHC and other third parties) suggests a need for Stora Enso to evaluate its conduct and position in light of CSR standards. That evaluation will likely suggest areas where CSR standards can be refined or new standards adopted that better reflect the position the company would like to have with relation to the local communities and county at large. Through such evaluation and refinement, Stora Enso can become a leader in developing and refining CSR systems relevant to large land projects, including systems for public awareness building, participatory negotiations, and dispute resolution.

As an example, the company could establish an effective internal dispute resolution mechanism to address farmers' complaints. Relying on the local government to resolve potential land disputes appears unrealistic and inadequate. We recommend that Stora Enso take a proactive view in setting up an internal mechanism that can address farmers' complaints promptly and effectively. It is clear that Stora Enso has tried to improve its responsiveness to complaints by setting up a hotline to receive

complaints, publicly circulating information on the hotline, and sending a senior executive to Hepu to investigate such allegations. However, at least to date these measures appear to be ineffective or inadequate according to the farmers we interviewed.

First, the existing hotline is a good tool, but it can be improved in order to enhance its effectiveness. The hotline operators should be trained with CSR guidelines and Chinese laws on rural land rights and transfers, their performance should be reviewed periodically based on the feedback from farmer callers, and their compensation could be tied to their performance.

Second, the company could conduct an independent review of the most frequently reported complaints based on the phone log of the hotline and invite these most frequent callers to review meetings. The company may take immediate action if the dispute can be resolved internally, or pass the complaint to the local government with the company's suggested approaches if the dispute is related to government conduct.

Third, the company could design a "publicity card"¹³² that includes a description of farmers' land rights under the law in a concise and farmer-understandable language and include the hotline number together with the address of the company's dispute resolution unit. This card could be widely distributed in areas where Stora Enso acquisitions have occurred or will occur whilst also being widely publicized through the local media.

Fourth, the company could partner with local NGOs such as legal aid centers to address farmers' complaints. Fieldwork findings indicate that a number of farmer grievances were related to non-payment of rent, which appears to have been the result of skimming or interception by collective cadres, local officials, and business middlemen. These violations may be more effectively addressed by the judicial system, and farmers need legal advice and assistance in such situations. Through partnership with legal aid services, Stora Enso may help farmers to get what they are entitled to and increase farmers' satisfaction.

5. *Exercise appropriate influence on government to be more socially responsible for its people.* The majority of farmer grievances relate to the conduct of the local government rather than Stora Enso. An international company with a substantial investment portfolio in the local economy such as Stora Enso has can have tremendous leverage over the local government with respect to its behavior in attracting and securing such investments.¹³³ The company is in a better position than the farmers to influence the local political elite to ensure their conduct is consistent with the law, meet CSR standards, and reflect China's policies supporting farmer land rights. Stora Enso could consider taking the following types of actions:

- With external assistance, conduct several training sessions of local officials with respect to compliance with China's legal framework governing land rights
- Include securing farmers' forestland rights under existing Chinese laws a term of the investment agreement
- Design an operations manual for local government practitioners that is in conformity with international CSR standards and consistent with Chinese law
- Conduct independent monitoring to ensure local government performance in line with Chinese law
- Convene regular meetings/conferences, co-sponsored by the local government, to discuss issues arising from land contracting for the project

6. *Conduct a comprehensive independent assessment of the project.* In addition to an immediate examination of the methods the project is using to obtain land, the company should consider conducting a larger and more comprehensive assessment of its operation. The purpose of the study would be to identify both legal and social issues that an international company would encounter in land acquisition for its business, develop strategies to deal with these issues, and establish socially sensible and company-acceptable models for international companies to consider.

The evaluation must be independent, preferably conducted by a team with experience in rural land tenure, rural development and forest plantations. Given the huge stake the local government has in the Stora Enso project and the pervasive government influence in the locality, we recommend that the evaluation be conducted without the involvement of the company nor government officials. However, the local government should be informed of the evaluation and convinced to provide free or nearly free access to all information, including but not limited to, land transfer documents. In order to ensure the objectivity of the evaluation, the research team should interview all stakeholders, including farmers, collective cadres, local officials related to the Stora Enso acquisitions, and the Stora Enso employees, especially those in charge of creating models for plantations, obtaining land, and CSR standards and accountability.

7

Conclusions

Stora Enso has a unique opportunity. The company has obtained about one-third of the forestland it needs for its operations in Guangxi. The farmers interviewed support the company's operations in principle but assert that the middleman method of obtaining most of the land has resulted in the denial of their property rights to collective forestland and substantially reduced their economic benefit. Stora Enso has also expressed dissatisfaction with the middleman arrangement and a preference to work directly with the farmer collectives. However, the company also recognizes that it benefits from the efficiencies offered by use of a middleman.

Stora Enso is committed to principles of corporate social responsibility, including working within local laws and in a manner that supports the local

communities in which it operates. The company's experience to date in Hepu County suggests several areas where the company could profitably revisit its project design and procedures to meet its own standards and those expressed in the central government's policy and applicable land laws.

The government is currently engaged in further individualizing collective forestland in an effort to increase the protection of farmers' forestland rights. Now is an ideal time to conduct a project evaluation, collect the lessons learned to date, and work with stakeholders to consider options for refinement and redesign of procedures. Devoting time and resources to such a process at this stage will improve the opportunities for all stakeholders – including the local communities of farmers – to benefit from Stora Enso's investment in China.

ENDNOTES

- ¹ The National Bureau of Statistics of China, “Statistical Bulletin on National Economy and Social Development for 1985,” available at http://www.stats.gov.cn/tjgb/ndtjgb/qgndtjgb/t20020331_15379.htm.
- ² The National Statistics Bureau “Statistical Bulletin on National Economy and Social Development for 2008” available at http://www.stats.gov.cn/tjgb/ndtjgb/qgndtjgb/t20090226_402540710.htm.
- ³ China’s total forestland is 195 million hectares in 2010 according to the State Forestry Administration, available at <http://www.forestry.gov.cn/portal/main/s/65/content-326341.html>; and 57.55 percent of forestland is owned by collectives, available at <http://finance.sina.com.cn/g/20050704/1512175179.shtml>.
- ⁴ The Central Committee and the State Council Decisions on Speeding Up Forest Development (Document No. 9 of 2003) (widely viewed as the document launching the forestland reform, explicitly requires collective-managed forestland be converted into shares of stock to be allocated among all households in the village even if the land is not physically allocated).
- ⁵ The Central Committee and the State Council Comments on Pushing Collective Forest Rights Reform at Full Scale (Document No. 10 of 2008).
- ⁶ The National Bureau of Statistics of China, The Great Historical Transition from a Closed or Semi-Closed Society to an All-Front Opening Society, available at http://www.stats.gov.cn/tjfx/ztfx/qzxzgcl60zn/t20090908_402585245.htm
- ⁷ Petteri Tuohinen, “Chinese farmers lose land to Stora Enso tree plantations,” available at <http://www.hs.fi/english/article/Chinese+farmers+lose+land+to+Stora+Enso+tree+plantations/1135245537698>; Eeva Eronen and Miska Rantanen, Finnish Prime Minister wants investigation into claims of violence linked with Stora Enso activities in China, available at <http://www.hs.fi/english/article/Finnish+Prime+Minister+wants+investigation+into+claims+of+violence+linked+with+Stora+Enso+activities+in+China/1135245537984>; Green Peace, Investigation Report on APP Hainan Project.
- ⁸ “Stora Enso in Brief,” available at <http://www.storaenso.com/about-us/stora-enso-in-brief/Pages/stora-enso-in-brief.aspx>
- ⁹ Stora Enso. 2007. “Principles for Social Responsibility.” Available online. URL: http://www.storaenso.com/sustainability/our-approach/sustainability-policy/Documents/080110_English_Social%20Responsibility%20Principles_%20Final.pdf, accessed 5 February 2010; UNDP. 2006. “Environment and Social Impact Analysis – Stora Enso Plantation in Guangxi, China” iv, available at <http://www.undp.org.cn/downloads/otherlocal/FinalESIA.pdf>
- ¹⁰ Authors’ interview with a Stora Enso official, December 19, 2009.
- ¹¹ 1 hectare = 15 mu.
- ¹² UNDP. 2006. “Environment and Social Impact Analysis – Stora Enso Plantation in Guangxi, China” available at <http://www.undp.org.cn/downloads/otherlocal/FinalESIA.pdf>
- ¹³ UNDP. 2006.
- ¹⁴ IFC. 2006. “Stora China-II: Summary of Proposed Investment.” Available online. URL: <http://www.ifc.org/ifcext/spiweb-site1.nsf/2bc34f011b50ff6e85256a550073ff1c/3e05ecc8bb94c86a852576ba000e28a5?opendocument>.
- ¹⁵ Authors’ interview with a Stora Enso official, December 19, 2009.
- ¹⁶ The Hepu County Forestry Bureau, “Report on Building Raw Material Base for the Forest-Pulp-Paper Project in Hepu,” available at <http://www.hepu.gov.cn/html/info/achievement-article-22-2963.aspx>.
- ¹⁷ According to the Hepu County government statistics, of 1.16 million mu of forestland in the county, 1.13 million mu is collectively owned. See “State Forest Administration Studies Forest Reform in Hepu,” available at <http://www.hepu.gov.cn/html/hepu/news-article-6-7011.aspx>.
- ¹⁸ “Hepu of Guangxi Moves from ‘Big Agricultural County’ to ‘Strong Industrial County’,” Guangxi Daily, September 17, 2007, available at <http://cpc.people.com.cn/GB/67481/86039/86044/89216/6274139.html>.
- ¹⁹ Supra, Eeva Eronen and Miska Rantanen, note 7.
- ²⁰ In China, collective forestland is regulated by both laws and central policies, collectively called “regulatory framework” for the purpose of this report. There are several distinctive features of this regulatory framework. First, although central policies contained in central documents do not have judicial force, they are perceived as rules with regulatory force that local governments must follow. Second, central policies may reiterate existing laws that they believe are advancing the central objectives. Third, central policies may also address issues (especially reform issues) which remain unsettled under the law, to fill up the regulatory vacuum. Fourth, statements of a regulatory nature in

central document are often embodied into law.

- ²¹ Document No. 18 of the Central Committee of the Communist Party of China (2001) (stating that the acquisition of rural land by urban people and industrial/commercial enterprises for large-scale and extended projects should not be promoted).
- ²² PRC Const., art. 10.
- ²³ After decollectivization in late 1970s and early 1980s, the old collective structure – commune, production brigade and production team – has been abolished, and replaced with a new structure composed of township, administrative village, and villager group. In present-day China, the vast majority of collectively owned real properties are owned at the administrative village and villager group levels. Under the Organic Law of Village Committee, the village committee is an administrative body set up at the administrative village level. The committee consists of 3 to 7 people elected by villagers aged 18 or above. See *id.*, art. 9. Most administrative functions of the villager group, a successor of the production team under the commune system, are delegated to the village committee at the administrative village level, but real properties located within the villager group boundaries are still owned by members of the villager group according to the Property Law. Collective economic organizations may be created at either administrative village or villager group, with the function of “independently performing economic activities.” See *id.*, art. 5.
- ²⁴ The 1998 Land Management Law, art. 10.
- ²⁵ The 2007 Property Law, art. 59.
- ²⁶ *Id.*, art. 60(i).
- ²⁷ The Central Committee and the State Council Decisions on Speeding Up Forest Development, Document No. 9 (2003). According to the Document, collective-managed forestland should in general be contracted out to individual farmer households in the village; where continued collective management is preferred by farmers and therefore not suitable for household contracting, the collective management approach may be adopted.
- ²⁸ *Id.*
- ²⁹ The Central Committee and the State Council Comments on Pushing Collective Forest Rights Reform at Full Scale, Document No. 10 (2008).
- ³⁰ According to Chinese law, “other forms of contracting” apply only to the land that is not suitable for household contracting, such as wasteland and waste mountains. See the 2002 Rural Land Contracting Law, art. 44.
- ³¹ The 2002 Rural Land Contracting Law, art. 4.
- ³² *Id.*, the 2007 Property Law, art. 125.
- ³³ The Central Committee and the State Council Decisions on Speeding Up Forest Development (Document No. 9 of 2003); The Central Committee and the State Council Comments on Pushing Collective Forest Rights Reform at Full Scale (Document No. 10 of 2008).
- ³⁴ The 2007 Property Law, Chapter III.
- ³⁵ The 2002 Rural Land Contracting Law.
- ³⁶ The 1998 Forest Law, art. 15. Forestland is functionally categorized as ecological protection forestland, timber (including bamboo) forestland, economic forestland (used for producing fruits, edible oil, beverages, food ingredients, industrial raw materials, and medicines), firewood forestland, and forestland for special purposes (such as natural reserves, national defense, scientific experiments). See the 1998 Forest Law, art. 4.
- ³⁷ The 2002 Rural Land Contracting Law, art. 3.
- ³⁸ The Central Committee and the State Council Decisions on Speeding Up Forest Development, 2003 (Document No. 9 of 2003), sec. 13.
- ³⁹ The 2002 Rural Land Contracting Law, art. 32. The law uses different terms to refer to leasing of land rights to a person who resides within the same village as the lessor does and leasing of land rights to a person who lives outside of the lessor’s village. If the transaction occurs when both parties are within the same rural community that has collective ownership to the subject land, that lease is referred to as “zhuanbao,” which could be literally translated as “transfer the contract.” In contrast, where the lessee lives outside of the community, the transaction is termed “chuzu,” which is commonly translated as “lease.”
- ⁴⁰ The 2007 Property Law, art. 144.
- ⁴¹ The Third Plenary Session of the 17th Central Committee of the CPC “Decisions on a Series of Key Issues Concerning Pushing Forward Rural Reform and Development,” October 12, 2008.
- ⁴² The 2002 Rural Land Contracting Law, art. 37.
- ⁴³ *Id.*, art 37

- ⁴⁴ Id., art 41.
- ⁴⁵ Id., art 36.
- ⁴⁶ The Central Committee and the State Council Comments on Pushing Collective Forest Rights Reform at Full Scale (Document No. 10 of 2008), sec. 8.
- ⁴⁷ Id.
- ⁴⁸ The 2002 Rural Land Contracting Law expresses a strong legislative intent that all collective land, including forestland, is suitable for household contracting except for wasteland and waste mountains.
- ⁴⁹ Id, art. 44.
- ⁵⁰ Supra, Document No. 10, sec. 8.
- ⁵¹ The 2007 Property Law, art. 59.
- ⁵² The Central Committee and the State Council Comments on Pushing Forward Collective Forest Rights Reform at Full Scale, 2008 (Document No. 10 of 2008).
- ⁵³ The 2002 Rural Land Contracting Law, art. 48.
- ⁵⁴ The State Forestry Administration Comments on Effectively Strengthening Management of Transfers of Collective Forestland Rights, sec. 7 (issued on October 16, 2009), available at <http://www.forestry.gov.cn/ZhuantiAction.do?dispatch=content&id=205357&name=lqgg>.
- ⁵⁵ Id.
- ⁵⁶ Id.
- ⁵⁷ Id.
- ⁵⁸ Document No. 9 of 2003, widely viewed as the document launching the forestland reform, explicitly requires collective-managed forestland, if not contracted to villagers, be converted into shares of stock to be allocated among all households in the village even if the land is not physically allocated. This clearly indicates the central recognition of individual property interest in collective-managed forestland. See: The Central Committee and the State Council Decisions on Speeding Up Forest Development, sec. 13 (Document No. 9 of 2003).
- ⁵⁹ The 2002 Rural Land Contracting Law, art. 37.
- ⁶⁰ Id., art. 39.
- ⁶¹ Id., art. 37.
- ⁶² Id.
- ⁶³ The State Forest Administration Comments on Effectively Strengthening Management of Transfers of Collective Forestland Rights, Sec. 8 (issued on October 16, 2009).
- ⁶⁴ Under Chinese laws, transfer of collective-managed forestland rights to the transferee is treated as contracting out collective-managed forestland to the contracting party, or the transferee.
- ⁶⁵ The 2002 Rural Land Contracting Law, art 48.
- ⁶⁶ Id., art. 33.
- ⁶⁷ Id., art. 35.
- ⁶⁸ Id., art. 61.
- ⁶⁹ The State Council General Office “Urgent Notice on Properly Resolving Rural Land Contracting Disputes,” April 30, 2004.
- ⁷⁰ Id.
- ⁷¹ The Supreme People’s Court “Interpretation of Applicable Laws When Reviewing Cases Concerning Rural Land Contracting Disputes,” 2005.
- ⁷² The Supreme People’s Court “Comments on Provision of Judicial Protection and Services for Pushing Forward Rural Reforms and Development, December 3, 2008.
- ⁷³ The Third Plenary Session of the 17th Central Committee of the CPC Decisions on a Series of Key Issues Concerning Pushing Forward Rural Reform and Development, October 12, 2008.
- ⁷⁴ The State Forestry Administration Comments on Effectively Strengthening Management of Transfers of Collective Forestland Rights, Sec. 10 (issued on October 16, 2009), available at <http://www.forestry.gov.cn/ZhuantiAction.do?dispatch=content&id=205357&name=lqgg>.
- ⁷⁵ Id.
- ⁷⁶ The 2007 Property Law, art. 63.

- 77 Id., art. 54 (4).
- 78 Id., art. 61.
- 79 United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295 (Sep. 13, 2007), available at <http://www.un.org/esa/socdev/unpfii/en/drip.html>.
- 80 Wilson, Emma. 2009. "Company Led Approaches to Conflict Resolution in the Forest Sector." The Forest Dialogue Research Paper no. 4.
- 81 FAO. 2009. "Private Sector Consultation for the Voluntary Guidelines on Responsible Governance of Tenure of Land and Other Natural Resources." FAO conference 25-26, London, U.K. On file with RDI; See also Voluntary Guidelines Discussion Paper, available at <http://www.fao.org/nr/tenure/voluntary-guidelines/en/>.
- 82 See, e.g., Merlet, Michel and Clara Jamart. 2009. "Commercial Pressures on Land Worldwide: Issues and Conceptual Framework," prepared by AGTER for ILC (2009), available at http://www.landcoalition.org/pdf/09_05_Conceptual_framework_ENG.pdf and other reports collected in the Bibliography.
- 83 IFC. 2007. "Stakeholder Engagement: A Good Practices Handbook for Companies Doing Business in Emerging Markets," available at [http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/p_StakeholderEngagement_Full/\\$FILE/IFC_StakeholderEngagement.pdf](http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/p_StakeholderEngagement_Full/$FILE/IFC_StakeholderEngagement.pdf).
- 84 Stora Enso. 2009. Code of Conduct, available at <http://www.storaenso.com/sustainability/ourgamerules/Code%20of%20Conduct/Pages/default.aspx>, (last accessed 3 February 2010).
- 85 Stora Enso. 2007. "Stora Enso Principles for Social Responsibility." Available online. http://www.storaenso.com/sustainability/our-approach/sustainability-policy/Documents/080110_English_Social%20Responsibility%20Principles_%20Final.pdf; Stora Enso. 2006. "Stora Enso Sustainability Policy," available at http://www.storaenso.com/sustainability/our-approach/sustainability-policy/Documents/Final_Sustainability_Policy_English.pdf.
- 86 The interview was conducted with the general manager of the Stora Enso's Hepu operation a few hours before his planned departure for the Christmas holiday in Sweden. Although we requested further clarifications and additional information in several attempts, unfortunately, no response had been given by the time this report was completed. Therefore, the information reported in this report was based on the interview before Christmas.
- 87 It is unclear whether farmers, by converting the land to forestland, obtain a property right to such land in addition to the widely accepted right to profit from the trees. The principle of "whoever cultivates, owns" (shuizhong, shuiyou), which is commonly held throughout the countryside, at least suggests there could be a property interest created. Furthermore, although the concepts of reliance and adverse possession are not explicitly codified in Chinese law, the common practice of allowing the farmers to profit from the land and exercise rights over it suggest a willingness to farmers ownership rights to land they convert from wasteland into forestland.
- 88 According to the county report, the county had acquired nearly 525,000 mu for Stora Enso as of April 2009. See Hepu County Forestry Bureau, *supra* note 16. It appears 200,000 mu has not been legally delivered to Stora Enso.
- 89 Middlemen can be either individuals or corporations. Based on information collected during the fieldwork, middlemen will often be collective cadres, cadres' family members, local government officials, or influential local businessmen, who anticipate the subsequent acquisition of this land by Stora Enso.
- 90 In order to motivate farmers to engage in forestation of unutilized wasteland, the Hepu County government issued a policy in 1985 calling farmers to develop collectively owned wasteland and promising them that they could use that land for growing trees. Under the policy, farmers owned and could harvest such trees. Although there is no document evidencing farmers' rights to such land, farmers had possessed, used, and benefitted from that land since their development of the original wasteland into forestland. Such undocumented rights to land had been locally respected and guaranteed till the moment when Stora Enso moved in.
- 91 The 2002 Rural Land Contracting Law, art. 37.
- 92 Even if they had been aware of their rights, those without documentation may have had difficulty asserting their rights.
- 93 As a member of the collective, they received, or were told they would be receiving, an equal amount of the proceeds from the collective-managed forestland transfers as other members of the collective.
- 94 The Stora Enso's Hepu operation management declined the authors' repeated request for the information on the company's self discipline activities.
- 95 This was also partly confirmed by the UNDP social assessment team, which found that the two-third consent requirement was satisfied in only 29% of the villages where collective-managed forestland was acquired by Stora Enso. See UNDP, *supra* note 12.
- 96 Jintao Xu, et. al, China's Forest Tenure Reforms; Impacts and implications for choice, conservation, and climate change, p. 14, (2010).

- ⁹⁷ An administrative village consists of several villager groups, and therefore is one level higher than villager group under China's rural administration system.
- ⁹⁸ For lands of similar quality, the rent seems higher for recent transactions partly because of increased market price for collective forestland rights and increasing scarcity of available forestland for acquisition.
- ⁹⁹ Although the rent was apparently unfairly determined, farmers received little or none of it at all. See discussions below.
- ¹⁰⁰ We called the company's contract reviewer at the interview spot for explanation and were told that the company is still reviewing the contract.
- ¹⁰¹ In Guangxi, most rural land, including forestland, is owned by members of villager groups most of which do not have administrative capacity. An administrative village consists of several villager groups and is authorized by government to deal with administrative matters within its geographic area. Such authorization is often abused by the administrative village in transferring the villager group's property and pocketing the proceeds.
- ¹⁰² The farmers report that the workers were engaged by Stora Enso. However, given BHC's obligation to plant land it has obtained for Stora Enso, in some cases workers could be engaged by BHC.
- ¹⁰³ The Hepu County Forestry Bureau, *supra* note 16. There is 1.16 million mu of forestland in Hepu, including 1.137 million mu as collectively owned forestland. That is to say, more than half of the county's collective forestland will be eventually in the hands of Stora Enso. See "State Forest Administration Studies Forest Reform in Hepu," available at <http://www.hepu.gov.cn/html/hepu/news-article-6-7011.aspx>.
- ¹⁰⁴ The Hepu County Forestry Bureau, *supra* note 16.
- ¹⁰⁵ In view of the devastating flood in 1998, the Chinese government launched a massive reforestation program throughout the country requiring farmland with a slope of more than 25 degrees be converted back to forestland or grassland. Farmer households that have rights to such land are entitled to a government subsidy of up to 150 kilos of rice per mu per year and 50 yuan in cash for 8 years. The subsidy was extended when the initial 8-year expired. However, farmers with such land or the transferee of such land must apply for reclassification. Once the application is approved and the subject land is designated as reforestation land, the land holder will receive subsidies from government.
- ¹⁰⁶ The discrepancy may only be explained by apparently a government trick to help Stora Enso evade its rent liability and reduce its obligation to pay for subsidies. It seems a two-step approval process is required in Hepu: approval of application and approval of reforestation project contract. By approving the application for reclassification on all 468 mu, the government waived the Stora Enso's liability; through approving only a portion of 468 mu, the government's subsidy burden was substantially reduced.
- ¹⁰⁷ Farmers in one village did get their border dispute case into the local judicial system in 2009, but the court ruled in favor of the defendant village.
- ¹⁰⁸ The Guangxi Autonomous Region's High Court issued an internal circular instructing lower courts not to accept 13 categories of cases, including cases concerning massive termination of rural land contracts by local governments for agricultural industrialization. See "The Guangxi High Court Refuses to Accept 13 Categories of Cases," available at <http://www.china.com.cn/chinese/difang/643257.htm>.
- ¹⁰⁹ The 2007 Property Law, Chapter III.
- ¹¹⁰ The 2002 Rural Land Contracting Law, art. 34.
- ¹¹¹ *Id.*, art. 37.
- ¹¹² *Id.*, art. 33 (1).
- ¹¹³ *Id.*, Chapter III.
- ¹¹⁴ The 2007 Property Law, art. 59 (1).
- ¹¹⁵ The Central Committee and the State Council Comments on Pushing Forward Collective Forest Rights Reform at Full Scale, sec. 15 (Document No. 10 of 2008).
- ¹¹⁶ The 2002 Rural Land Contracting Law, art. 48; the 2007 Property Law, art. 59.
- ¹¹⁷ The 2002 Rural Land Contracting Law, art. 3.
- ¹¹⁸ *Id.*, art. 45.
- ¹¹⁹ *Id.*, art. 47.
- ¹²⁰ In this case, because the transaction is direct and BHC is not involved, there is little possibility that BHC has been responsible for planting trees on the land in question.
- ¹²¹ The 2002 Rural Land Contracting Law, art. 61.
- ¹²² *Id.*

- ¹²³ The 2007 Property Law, art. 106.
- ¹²⁴ The Legislative Work Commission of the National People's Congress of China, "Terminology of the Property Law."
- ¹²⁵ The 2007 Property Law, art. 106.
- ¹²⁶ Stora Enso. 2007. "Stora Enso Principles for Social Responsibility," available at http://www.storaenso.com/sustainability/our-approach/sustainability-policy/Documents/080110_English_Social%20Responsibility%20Principles_%20Final.pdf; Stora Enso. 2006. "Stora Enso Sustainability Policy," available at <http://www.storaenso.com/sustainability/our-approach/sustainability-policy/Documents/Final%20Sustainability%20Policy,%20English.pdf>,
- ¹²⁷ Hepu State Forestry Bureau, Hepu Project Investigation and Study Report (10 Sep. 2009), available at <http://www.hepu.gov.cn/html/hepu/news-article-6-7011.aspx>.
- ¹²⁸ The State Forestry Administration Comments on Effectively Strengthening Management of Transfers of Collective Forestland Rights, Sec. 11 (issued on October 16, 2009) available at http://www.jxly.gov.cn/lyzt/lqgg/lgzc/200912/t20091222_42202.htm
- ¹²⁹ Id., sec 12.
- ¹³⁰ Id., sec 13.
- ¹³¹ According the Stora Enso official, the company has started a review of existing land acquisition contracts There are 14 screening items against which each contract is checked in this review process. However, our request for the data concerning this review was declined.
- ¹³² In our fieldwork several years ago in many parts of China, we found such publicity cards on rural tax reforms, printed on a piece of durable paper, to be extremely useful for farmers in understanding their rights under the tax reform as well as how to communicate with the local government with respect to local implementation of the central policy on the tax reform.
- ¹³³ For example, the Stora Enso's investment is expected to generate a tax revenue of 700 million yuan per year for the local economy, according to the local government claim when it justified its land acquisition for Stora Enso.

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