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Forestland Tenure Reform in China: Seeking a balance between social equity and economic efficiency

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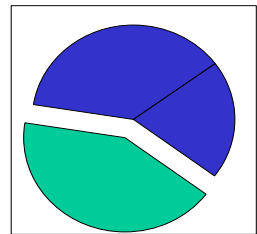


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Introduction

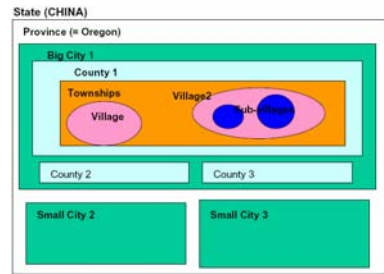
Land tenure reform has always been a priority to the Chinese government to ensure farmers' wellbeing and stability in rural areas. Since collectivization under Communist rule in the 1950s, the government has enacted a series of land reforms intended to increase productivity while ensuring fairness. Efforts to resolve these tenure issues have been explored by government, rural collectives, and farmers over the past two decades and the initial outcome has been positive.

Who Owns China's Forests?



state owned
collective owned

Government Jurisdictions



All of China's forests are publicly owned, either by the Central government or by collectives. There is no private ownership.

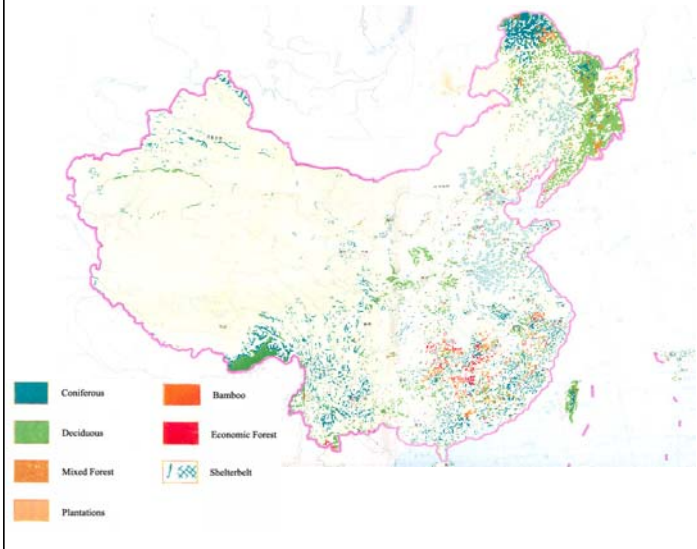
State-owned forestland (central government): 42%

- 135 state forestry industry bureaus and 4200 state forest farms manage state forestland.

Collective-owned forestland: 58%

- Local townships and villages own collective forestland on behalf of the members of the township or the village.
- 34% of collective forests are allocated to individual households for management

Forests cover 18% of China's land area. The government has an aggressive target goal of 26% forest coverage by 2050.



Evolution of Forestland Tenure

The struggle for fairness and productivity



Since 1949, with the founding of the People's Republic of China, forestland ownership has undergone dramatic changes.

Confiscation and Redistribution 1950-1952



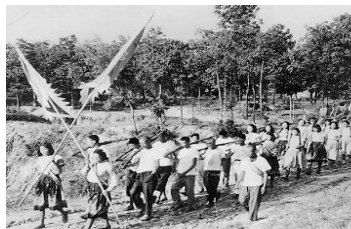
- The land reform law (1950) claimed forests, barren mountains, and barren land for the state.
- Forests owned by landlords, forest enterprises, and the wealthy were confiscated and redistributed to poor farmers.

Collectivization 1953-1956



- All private forestlands were merged into small scale cooperatives.
- Everyone was assigned a job on the cooperative.

Communization 1957-1980



- Small-scale cooperatives were organized into large communes.
- Private production was banned and all the land and equipment given to communes.
- Farmers received an allocated output.
- Forest cover decreased.

Decollectivisation 1980-1987



- Collectives redistributed land equally to members.
- Forestland was allocated in 1) "self-keep plots" for fuel wood and 2) "responsible forestland" for income (farmers could keep products in excess of their quotas).
- Forest cover increased.

Renewal of lease contracts 1997-present



- Land lease contracts can be renewed for up to 70 years.
- Forestland User Rights Certificates are issued to landholders.
- Forestland can be transferred among collectives, farmers, individuals, and forest industries.

Encouraging Private Investment

"Whether it is a black cat or a white cat, as long as it can catch the rat, it is a good cat."

-Deng Xiao Ping
(i.e. call it whatever you want, as long as it works)

Under this new philosophy, China opened up its controlled economy to market forces, at first along the coastal cities and eventually throughout the country.

These new market mechanisms have extended into forestry: Realizing that private companies and individuals have more funding and expertise to manage forests, the government introduced land leasing rights and transferability of leases to stimulate a new generation of private investors.



Who are these private investors?

- Urban people:** believing that forestland investments are profitable, they lease forestland in nearby rural areas.
- Forestry industries:** seeking stable timber supply, industries are collaborating with farmers to establish plantations under the control of farmers or villages.
- Foreign investors:** seeking opportunities to establish plantations in China.

Rules on Leasing Forestland

After land reforms, private investors can now lease forestlands from farmers, collectives and villages to establish plantations. However, they cannot buy the titles to the land.

Q: Who can own user right certificates (titles)?

A: Collectives, individuals, and state-owned companies.

Q: Who can lease land out?

A: Collectives and farmers can lease out their land, under certain restrictions. State-owned forestland cannot be leased (this may change in future).

Q: What are the restrictions?

A: For collectives, they should first allocate suitable arable land to farmers, before any land is leased out to non-collective members. The remaining land is often barren and remote—and is difficult for farmers to manage. This is the land leased out to individuals or non-collective members.



Farmers can transfer user rights to their land to other collective members if they can prove that they have another non-agricultural occupation with stable income. Even though they are not allowed to transfer the title to their land to non-collective members, they can subcontract and lease out their land to non-collective members.

Foreign Plantation Investment

Several foreign companies are investing in Chinese plantations to supply raw material to domestic and foreign processors (e.g. Sino-Forest, Stora-Enso, APP, APRIL/RGM (Rizhao Pulp), Cathay Forest, Oji Paper and Marubeni).

However, economic developments have far outpaced legal frameworks.

Nationally, there are no explicit laws either granting foreigners the right to lease forestland, or excluding them from obtaining user rights to forestland.

Only one province-Guangdong-explicitly regulates foreign investment in forestland:

- Limited to foreign corporations in paper, pulp or other wood businesses
- Requires approval from the provincial government

According to the Commerce Ministry (in charge of foreign investment):

- Policies encourage establishment of plantations
- Paper and pulp corporations are limited to joint-venture corporations

Land Options in the Wild East

Obtaining land to establish plantations is a major challenge.

Options include:

- Obtain user rights to barren lands and try to grow plantations on them, or
- Contract with farmers or villages to grow the timber on their lands, which must be either barren land or forestland, not cropland.

Chinese law does not explicitly give foreign companies any rights in regards to obtaining user rights to forestland, cropland, or barren lands. Any rights that foreign investors have are merely implied, simply because the law does not explicitly say they cannot own the rights. This means that in case of a dispute, the foreign investor has no legal basis on which to mount a defense for their rights.

Forestland Tenure for Foreign Investors:



Foreign companies should only consider barren land or forestland for plantation establishment.

There are 3 broad land categories:

- forestland
- barren land, and
- cropland.

However, there are important limitations to these land categories.

- User right certificates for forestlands are not transferable from farmers to non-farmers.** This means in practice that a foreign company cannot obtain the user right certificate or title for forestlands (even though the law does not explicitly mention foreigners).

However, a farmer is allowed to sub-lease or sub-contract his user rights to a foreign company to plant trees on forestland. The key difference is that without the user right titles, the foreign company can be kicked out of the agreement by the owners of the titles, whether this is the farmer or the village (this relationship is similar to a landlord and tenant). If the farmer/village decides to end the agreement early, and the issue goes to court, the certificate holder can do so, but very likely the judge will order the certificate holder to pay the investor some damages. The investor has little recourse to get back the user rights or the timber.

- Plantations are not allowed to be established on cropland, only on forestlands and barren land.** Also, cropland certificates cannot be transferred from farmers to non-farmers.

- For barren mountains or barren lands, there is no explicit law banning transfer of user right certificates to non-farmers.** In theory then, foreigners should be able to obtain barren land certificates.

Conclusions

China's experiment with the introduction of market reforms into what had been a centrally controlled economy is bearing rich fruit.

Agricultural and forestry output is much higher after land reforms gave farmers the right to decide what to plant, how much to plant, and who they could sell their products to.

However, much more work needs to be done.

Future forestland tenure reforms need to address:

- Regulations on transferability of forestland titles
- Unfavorable forestry taxes or fees that hamper forest development
- Forest resources assessment systems
- How to provide technical, financial and marketing assistance for the private forest sector, especially small forest holders
- Improving forest law enforcement