

Institute for Global Environmental Strategies

Towards A Sustainable  
Asia-Pacific  
IGES 10th Anniversary



# JAPAN'S PUBLIC PROCUREMENT POLICY OF LEGAL AND SUSTAINABLE TIMBER

PROGRESS, CHALLENGES AND WAYS FORWARD



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# PUBLIC PROCUREMENT POLICY OF LEGAL AND SUSTAINABLE TIMBER

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**Forest Conservation, Livelihoods and Rights Project  
Institute for Global Environmental Strategies**

August 2007

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PROGRESS, CHALLENGES AND WAYS FORWARD**

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# Foreword

FORESTS contain most of the Earth's terrestrial biodiversity and make our planet habitable by moderating surface temperatures. Across the globe they are critical to the subsistence and cash-based livelihoods of millions of households and provide environmental services that contribute to our daily existence. For many people natural forests hold special cultural significance and are important places of recreation and education. Their contribution to human survival and welfare will only increase as our policymakers and leaders grapple with the growing threat of human-induced climate change.

Unfortunately, our use and management of forests does not reflect their full value to human society. In *State of the World's Forests 2007* the Food and Agriculture Organisation of the United Nations reported that the bio-diversity rich primary forests of Southeast Asia are disappearing at an annual rate of 2% and Indonesia alone has 122 critically endangered tree species. Deforestation as a major driver of climate change can also no longer be ignored with the same report suggesting that forest loss is responsible for 35% of the greenhouse gas emissions of developing countries.

Within producer countries of the Asia-Pacific region illegal forest activities are amongst the most critical proximate causes of deforestation. While a general trend can be observed across the region to incorporate the concept of sustainability into national forest policies, governments are struggling with policy implementation. In particular, the enforcement of forest law is often poor, resulting not only in deforestation but also knock-on effects such as loss of potential public revenue and undermining of local livelihoods and the sustainability of wood-based industries. Consumer countries have benefited from poor enforcement through lower prices and greater timber volumes, but at the expense of the sustainable development of producer countries and the long-term health of our planet.

As a major timber user, the Japanese government recognises that it has an obligation to contribute to the sustainable management of the world's natural forests. It has made combating illegal logging a top priority, revising its public procurement policy from April 2006 to favour legal and sustainable wood. This is part of a growing trend amongst industrialised con-

sumer countries to use public procurement policy as a means to encourage sustainable forest management in producer countries.

In 2005, the Institute for Global Environmental Strategies (IGES) launched a research programme to monitor and provide an independent assessment of Japan's efforts to develop an effective public timber procurement policy. Independent monitoring and assessment were considered necessary because designing an effective procurement policy is a lengthy and a complex process that can be pulled in various directions by competing interest groups.

This report presents the results of IGES research on public timber procurement policy to date. It includes a comparative analysis between Japan's policy and those of several European countries. In addition to providing recommendations for further strengthening Japan's policy, the report identifies a generic set of elements that public timber procurement policies must include to be effective. The report is thus directed not only at Japan's policymakers, but at a broader audience concerned that procurement policies should support the wise stewardship of natural resources. I sincerely hope that this report will promote informed and construc-

tive thinking on how public procurement policy can contribute to an international timber trade that promotes the sustainable management of the world's forests.

Mr. Duncan Brack, the Royal Institute of International Affairs, UK, provided invaluable comments as an independent reviewer of this report. Dr. Hwan Ok Ma, International Tropical Timber Organisation (ITTO), and Dr. James Mayers, International Institute for Environment and Development (IIED), also provided insightful comments on the report. From the Forest Conservation, Livelihoods and Rights Project of IGES, Dr. Kimihiko Hyakumura participated in interviews with informants in Japan and Ms. Kanaru Segawa offered a high level of secretarial assistance.

Any errors of fact, omission, interpretation and conclusions of this report are those of the authors and editors alone.

Hironori Hamanaka  
Chair,  
IGES Board of Directors

Hayama, Japan  
*August 2007*

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# Executive Summary

- Japan, the world's third largest importer of wood, has laid out a range of measures to assist producer countries in combating illegal logging and to curb the resultant timber trade. Of these, the development of a public timber procurement policy that favours legal and sustainable timber is the most significant and challenging step that the government has taken.
- The importance of public investment in Japan and the use of imported timber by public agencies, especially the use of concrete forming plywood for public works projects, suggest that Japan's public procurement policy is significant for the regional trade in timber. Public procurement policies are important not only because of the volumes of timber involved, but also because they could spur the private sector to take action.
- The new timber procurement policy has been introduced by revising the Basic Policy of the Green Purchasing Law to include legality in the "criteria for decision" and sustainability in the "factors for consideration" for selected wood and wood products. In effect, the timber procurement policy gives greater weight to legality than sustainability; the legality of the specified wood items must be considered in public procurement, whereas sustainability need only be considered as desirable.
- The Forestry Agency Guideline for Verification on Legality and Sustainability of Wood and Wood Products provides three modalities for verifying legality and sustainability: forest certification and chain of custody systems; codes of conduct of wood industry associations; self-established procedures of individual companies. Through the codes of conduct approach, the government has passed a great deal of the responsibility of policy implementation on to the private sector.
- Progress by Japan's private sector in establishing codes of conduct has been fairly rapid. By 16 March 2007 all 19 national timber industry associations and 104 prefecture timber industry associations had established codes of conduct for the purpose of supplying public contracts. Company

accreditation has also progressed steadily. Only one association has utilised the third modality of the Guideline.

- When Japan's timber procurement policy is viewed through the lens of forest realities in a "high risk" country (Papua New Guinea), the policy is found wanting in a number of areas:
  - The policy's definition of legality, which describes timber as legal when it is "harvested in legal manner consistent with procedures in the forest laws", is too narrow. By only focusing on harvesting, Japan's national public entities could find themselves inadvertently procuring timber that is linked with the unjust acquisition of timber harvesting rights and violations of laws not specific to forestry.
  - The policy does not provide a set of minimum legality criteria that could be used to provide consistency in encouraging the development of national legality standards.
  - The policy does not provide a process or a set of minimum criteria for assessing existing verification systems, including forest certification, in a consistent, comprehensive and transparent manner.
  - The policy does not have an operational definition of sustainable forest management.
- A review of Japan's and EU member countries' timber procurement policies (focusing on the UK, France and the Netherlands) found that:
  - EU consumer countries have developed their policies independently, though harmonisation is now being discussed.
  - Experience shows that procurement policy evolution can be gradual and incremental, or it can be erratic. The evolution of policy can be marked by key events or turning points.
  - Providing assurance of legality and sustainability of wood products is complex and contested, which partly explains why policies evolve over a long period of time.
- NGOs have been a major driver for the introduction of the policies and have successfully lobbied governments.
- For some policies, the personal engagement of parliamentarians/government officials has been an important driver, albeit to varying extents.
- The policy formation process is of keen interest to the private sector and NGOs. Governments have sought their participation in policy development through multi-stakeholder processes.
- All policies share a number of essential elements, such as instruments to verify sustainability and/or legality and the informational needs of the procuring agents.
- The elements of each policy are responsive to many variables, particularly the relative influence of actors, their institutional relationships and the historical context of the policy.
- Definitions of legality and sustainability in the policies vary widely from vague descriptions to detailed sets of criteria and indicators.
- An institutional framework must be constructed to implement the policy. Often, new institutions are established for this purpose.
- Procurement policies usually distinguish between legality and sustainability and set the latter as a higher objective.
- Policies usually have their own modalities to verify legality.
- All schemes accept forest certification for assurance of legality and sustainability and some allow for other verification providing equivalence to the certification standards. Some require forest certification schemes to be assessed against sets of process and performance criteria.
- Verification of legality is usually based on official documentation and self-declarations throughout the supply chain.
- Policies differ widely with respect to whether the private or the public sector assesses documentary evidence.

- Policies can be shaped by, as well as influence, the private sector.
- The report's comparative analysis contrasted the design of four policies – Japan, UK, France, the Netherlands - with respect to requirements for verification of legality and sustainability and means for implementation. The comparative analysis suggested that there are a number of elements that all procurement policies must contain to be effective. There are notable commonalities and differences in the way in which the compared policies treat these essential elements. Differences in treatment are justifiable because of the different contexts in which the policies are located, but can also result in variations in policy effectiveness. Table 1 provides an overview of the observations made in the report, distinguishing whether elements are missing (hyphen), reflected in a rudimentary fashion (hyphen in brackets), partially included (tick in brackets) or fully included (tick) in the respective policy designs.
- Drawing on both the comparative analysis and the case study of forest realities in a high risk country, the final chapter elaborates on the *essential elements* that a public timber procurement policy should include to be robust. These are:
  1. apply to major types of wood products from all regions
  2. contain broad generic definitions/criteria of legality and sustainability
  3. if the policy accepts existing legality and sustainability assurance schemes,
    - a) define adequate criteria for assessing these
    - b) employ a third party to conduct the assessments and publicise results
    - c) allow freedom to pay price premiums

**TABLE 1 – Essential elements of robustness in the compared policies' designs**

ELEMENTS OF ROBUSTNESS	UK	NETHERLANDS	FRANCE	JAPAN
1. Major wood product categories	✓	✓	✓	✓
2. Generic definitions/criteria of legality and sustainability	✓	(✓) (to be revised)	(-) (broad definitions, no criteria)	(-) (broad definitions, no criteria)
3. Provision of definitions/criteria to procurement agents (or expert bodies on their behalf) to assess evidence of legality/sustainability	✓ (criteria to agents)	✓ (criteria to expert body)	(-)	(-)
4. Assessment of legality and sustainability assurance schemes using minimum criteria	(✓) (5 schemes so far)	(✓) (procedure to be revised)	—	—
5. Effective system for case-by-case assurance of legal origin and compliance, and chain of custody	(✓) (to be evaluated)	(✓) (UK system to be adopted)	(-) (private sector to establish)	(-) (private sector to establish)
6. Third party investigation if concern over legal origin and compliance and chain of custody	✓	✓	(✓) (in principle demanded, not detailed)	(✓) (if "considerable evidence" for illegality)
7. Be mandatory to the extent possible	✓	✓	(✓)	✓
8. Participation from all levels of public administration encouraged	✓	✓	(-)	✓
9. Freedom to pay a price premium	(✓)	✓	(✓)	(✓)
10. Comprehensive guidance to procurement agents	✓ (support service)	(✓) (considering support)	(-) (information)	(-) (information)
11. Internal monitoring of public purchases	(✓)	(✓)	(✓/-) (depends on amount)	✓ (legal requirement)
12. Participatory & transparent revision procedure	✓	✓	(✓)	✓

4. if the policy has alternative modalities to existing assurance schemes, these modalities should
    - a) for legality assurance, cover legal origin, legal compliance and chain of custody
    - b) for sustainability assurance, include those criteria that are broadly recognised by the international consensus reflected in sustainable forest management criteria and indicators processes
    - c) include neutral assessment of documentary evidence
  5. monitoring of suppliers and third party investigation when there is concern over legal origin, legal compliance, chain of custody or sustainability
  6. be mandatory to the extent possible
  7. provide sufficient guidance for procuring agents to implement the policy
  8. encourage participation from all levels of public administration, i.e., both horizontally (government agencies and (semi) public administrative bodies) and vertically (national and subnational)
  9. include internal monitoring of procuring agents familiarity with and adherence to the policy
  10. include a participatory and transparent revision procedure for policy strengthening
- The report makes the following recommendations for Japan to strengthen its public timber procurement policy:
- create a broad generic legality standard to provide consistency in policy application in producer countries regarding the scope of legality definitions
  - use the generic legality standard as the basis for participating in processes to formulate national definitions/standards of legality
  - provide a definition/standard of sustainable forest management (SFM) in line with the international consensus on SFM criteria
  - combine the recommended legality and sustainability standards with a chain of custody standard to establish a minimum set of criteria for the systematic and comprehensive assessment of legality and sustainability assurance schemes
  - assess assurance schemes using these criteria and incorporate the findings in the industry codes of conduct
  - ensure neutrality by having public procurement agencies assess the accuracy and veracity of documentary evidence provided by their suppliers
  - establish or employ a professional service to guide the implementation and strengthening of the policy, to handle grievance claims and to provide advisory support
  - request the Council for Tackling Illegal Logging Issue to accommodate some of the recommendations from this study, particularly to a) develop minimum legality/sustainability standards, b) assess assurance schemes in a consistent, rigorous manner, and c) advise on the documentation required for each country
  - specify comprehensive, systematic and transparent procedures to review documentary evidence when there is concern over its accuracy or veracity
  - collaborate with the EU to officially recognise the VPA licensing schemes, as one step towards developing a global wood licensing system
  - make use of FLEGT achievements and consider collaborating in formulating a global licensing scheme

# Acronyms

<b>ACP</b>	Africa, Caribbean and Pacific region
<b>AFP</b>	Asia Forest Partnership
<b>ATO</b>	African Timber Organisation
<b>BoE</b>	Board of Experts (under Keurhout system)
<b>BRIK</b>	<i>Badan Revitalisasi Industri Kehutanan</i> (timber export permit, Indonesia)
<b>BRL</b>	<i>Nationale Beoordelingsrichtlijn</i> (National Assessment Guideline for the Certification of Sustainable Forest Management and the Chain of Custody for Timber from Sustainably Managed Forests)
<b>CEDAW</b>	Convention on the Elimination of all forms of Discrimination Against Women
<b>CElCoR</b>	Centre for Environmental Law and Community Rights
<b>CIRAD</b>	<i>Centre de coopération internationale en recherche agronomique pour le développement</i> (Centre for International Research Cooperation on Agriculture for Development)
<b>CSA</b>	Canadian Standards Association
<b>CITES</b>	Convention on International Trade in Endangered Species
<b>CoC</b>	Chain of custody
<b>ConFor</b>	Confederation of Forest Industries
<b>CPET</b>	Central Point of Expertise on Timber Procurement
<b>Defra</b>	Department for Environment, Food and Rural Affairs
<b>EAP FLEG</b>	East Asia and Pacific FLEG
<b>EGD</b>	exchange good document
<b>ERM</b>	Environmental Resources Management
<b>EUR</b>	Euro
<b>FAO</b>	Food and Agriculture Organisation of the United Nations
<b>FERN</b>	Forests and the European Union Resource Network
<b>FFPRI</b>	Forestry and Forest Products Research Institute

<b>FLEG</b>	Forest Law Enforcement and Governance
<b>FLEGT</b>	Forest Law Enforcement, Governance and Trade
<b>FMU</b>	forest management unit
<b>FSC</b>	Forest Stewardship Council
<b>FY</b>	Fiscal year (in Japan, from April to March)
<b>G8</b>	Group of Eight
<b>GBP</b>	Great Britain pound
<b>GOJ</b>	Government of Japan
<b>GPEM-DDEN</b>	<i>Groupe Permanent d'Etude des Marchés "Development Durable, Environment"</i> (Permanent Study Group on Public Procurement for Sustainable Development and the Environment)
<b>IFIA</b>	Interafrican Forest Industries Association
<b>ITTO</b>	International Tropical Timber Organisation
<b>JFWIA</b>	Japan Federation of Wood Industry Associations
<b>JLIA</b>	Japan Lumber Importers Association
<b>JPA</b>	Japan Paper Association
<b>LCB</b>	Le Commerce du Bois
<b>LEI</b>	Lembaga Ekolabel Indonesia
<b>LNV</b>	Ministry of Agriculture, Nature Management and Fisheries (Netherlands)
<b>MAFF</b>	Ministry of Agriculture, Forestry and Fisheries (Japan)
<b>MOEJ</b>	Ministry of the Environment (Japan)
<b>MTCC</b>	Malaysian Timber Certification Council
<b>NGOs</b>	Nongovernmental organisations
<b>NATA</b>	Netherlands Association of Timber Agents
<b>NTTA</b>	Netherlands Timber Trade Association
<b>NWGTR</b>	<i>Groupe National de Travail sur les Forêts Tropicales Humides</i> (National working group for tropical rainforests)
<b>PEFC</b>	Programme for the Endorsement of Forest Certification
<b>PNG</b>	Papua New Guinea
<b>PNGFA</b>	PNG Forest Authority
<b>RECOFTC</b>	Regional Community Forestry Training Centre for Asia and the Pacific
<b>RPP</b>	Responsible Purchasing Policy
<b>SGEC</b>	Sustainable Green Ecosystem Council
<b>SFI</b>	Sustainable Forestry Initiative
<b>SFM</b>	Sustainable forest management
<b>SGS</b>	<i>Société Générale de Surveillance</i>
<b>SKSHH</b>	<i>Surat Keterangan Sahnya Hasil Hutan</i> (timber transport permit, Indonesia)
<b>TF/AG</b>	Task Force and Advisory Group
<b>TTF</b>	UK Timber Trade Federation
<b>UAD</b>	unique administrative document
<b>UK</b>	United Kingdom of Great Britain and Northern Ireland
<b>UNESCO</b>	United Nations Educational, Scientific and Cultural Organisation
<b>USD</b>	United States Dollar
<b>VPA</b> s	Voluntary Partnership Agreements
<b>WSSN</b>	World Standards Services Network
<b>WTO</b>	World Trade Organisation
<b>WWF</b>	World Wide Fund for Nature



# Japan's Public Procurement Policy of Legal and Sustainable Timber:

## Context, Features, Implementation and Strengthening

I *Federico Lopez-Casero and Henry Scheyvens*

### 1.0 INTRODUCTION

Forests are critical to human survival and development. They contain most of the planet's terrestrial biodiversity, contribute to stable landscapes for agriculture and human settlement, replenish the atmosphere with oxygen, modify local and global climate systems, provide forest products for local subsistence and cash-based economies, and are the basis for a wood industry that provides millions of jobs and a wide variety of goods that we have come to take for granted. While the value of forests to human existence is well-understood, conserving forests has proved a challenge that we are struggling to meet. Roughly six million hectares of the world's primary forests have been lost or degraded each year since 1990 and there is no indication of this rate slowing (FAO 2006).

Some of the clearance of natural forests in the Asia-Pacific region is sanctioned by states as part of their broader national development programmes. However, their intention is mostly to maintain their existing forest cover and in some cases to increase this. Much of the forest clearance or the removal of wood is in fact illegal, i.e., it takes place without approval from the authorities or is conducted in a manner that violates national laws and regulations. In some countries timber that is harvested illegally is thought to be of a greater volume than legal timber, providing a sense of the enormity of the scale of the problem. It is not only scale that we should be concerned with, however. The implications of illegal logging extend well beyond the forests themselves to broader governance issues such as accountability and the rule of law.

Increasingly, major timber importing countries are acknowledging that they have a responsibility to contribute to combating illegal logging. They have benefited through access to large volumes of high quality, cheap timber, but at the cost of forest destruction in the producer countries. Japan, the world's third largest importer of wood, has laid out a range of measures to assist producer countries in combating illegal logging and to curb the resultant timber trade. Of these, the development of a public timber procurement policy that favours legal and sustainable timber is the most significant and challenging step that the government has taken. This policy is part of a growing trend in industrialised timber importer countries of using public procurement as a means to encourage effective forest law enforcement and transparent and accountable forest governance in producer countries.

Japan deserves acknowledgement as the first country in Asia to implement a public timber procurement policy. Devising and implementing an effective procurement policy is a difficult, lengthy task and there is a danger of a weak policy emerging, especially if the financial interests of the firms involved in the timber trade are threatened. Japan's approach to developing a procurement policy is somewhat unique in that it introduced the policy in a relatively short period of time without taking major preparatory steps to ensure that the policy was robust. The government acknowledged that the policy would need to be strengthened and established a process and allocated funding for this purpose. A year after the policy was introduced it is timely that its features and implementation and the strengthening process be independently reviewed.

## 2.0 OBJECTIVES AND ANALYTICAL FRAMEWORK

The objectives of this study are fourfold:

- to describe and analyse the context and features of Japan's public timber procurement policy;
- to undertake a preliminary assessment of the strengths and possible weaknesses of this policy;
- to elaborate the essential elements that a public timber procurement policy should include for it to be robust in curbing the use of illegal wood by public agencies;
- to identify options and recommend further steps for strengthening the policy.

Our major research question is: What would a robust and effective public procurement policy for Japan entail?

Because the policy has only been recently implemented our assessment is based on an analysis of its design, not its impacts. The ana-

lytical framework of this study is based on the following three assumptions:

- All *good policies* (not just public procurement policies) share some essential design elements (e.g., monitoring of policy implementation, feedback of information from monitoring and allowance for revision).
- All *good public procurement policies* (not just timber procurement policies) share some essential design elements (e.g., guidance to procurement agents and independent assessment of evidence provided as proof that the procured items meet government criteria).
- All *procurement policies that favour legal and sustainable timber*, whether public or private, share some essential design elements (e.g., informed guidance on legal verification).

To assess the design of Japan's procurement policy we elaborate on these assumptions by highlighting the legality and sustainability risks of timber procurement and consider how these risks have been treated in relatively advanced procurement policies.

In Chapter 1 we first discuss the issue of illegal logging and the range of measures that Japan has pursued to assist producer countries in tackling this problem and to reduce imports of illegal wood into Japan. We position Japan's timber procurement policy within these broader contexts to assess its significance as a policy response to illegal logging. Having established this backdrop, the chapter next describes how the policy was introduced, its features and progress towards implementing the policy. Our discussion concludes with a number of initial observations on implications for policy implementation.

Chapters 2, 3 and 4 elaborate on the essential elements of a robust public timber procurement policy and assess the strengths and possible weaknesses of Japan's policy against these through a two-pronged analysis. First, in Chapter 2 we juxtapose Japan's procurement policy against the realities of forest management in one "high risk" country - Papua New Guinea. Our intention is to assess whether the

policy's modalities for verifying legality and sustainability are robust in a setting which places difficult demands on the policy. Second, in Chapters 3 and 4 we analyse the approach of other industrialised countries to developing public timber procurement policies by considering their relative merits and potential shortcomings against the generic elements of robust public timber procurement policies. This allows us to consider not only the demands placed on the policy by producer countries, but also the demands placed on the policy within the consumer country. In particular, we explore whether Japan could take instruction to strengthen its policy from the experiences of other industrialised countries with a longer history of policy development, though we do not assume that a longer history of policy development necessarily equates with superior policies. Rather, by exploring policy development in other countries we seek to extract lessons for how Japan might avoid mistakes as well as learn from how strong elements have been incorporated into these policies.

In Chapter 5 the report concludes by elaborating on the essential elements for an effective public timber procurement policy and presenting options for strengthening Japan's procurement policy.

### 3.0 OVERVIEW OF ILLEGAL LOGGING AND WOOD IMPORTS BY JAPAN

The destruction of natural forests continues to be the greatest challenge to forestry in the Asia-Pacific region. The Food and Agriculture Organisation of the United Nations (FAO) reported that the area of primary forest in Asia decreased at an average rate of 1.5 million hectares per annum from 1990-2005 (FAO 2006, 135). Illegal logging is broadly recognised as

one of the most critical proximate causes for deforestation and forest degradation in the region. There is no internationally agreed definition of this term, though it is often used synonymously with illegal harvesting, as in the Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan, which describes illegal logging as taking place when timber is

harvested in violation of the laws of the country of origin<sup>1</sup>. Illegal harvesting can include cutting outside of concession areas, cutting in protected areas (such as national parks), cutting above quotas or established harvesting rates, felling trees that are not recognised as part of the concession agreement and cutting undersize trees (Callister 1999). Some definitions of illegal logging extend beyond forestry operations to include the transportation, buying and selling of timber in violation or circumvention of national laws. In this paper we use this wider perspective of illegal logging, as summarised by the Royal Institute of International Affairs:

*Illegal logging takes place when timber is harvested, transported, bought or sold in violation of national laws. The harvesting procedure itself may be illegal, including corrupt means to gain access to forests, extraction without permission or from a protected area, cutting of protected species or extraction of timber in excess of agreed limits. Illegalities may also occur during transport including illegal processing and export, misdeclaration to customs, and avoidance of taxes and other charges (Brack and Hayman 2002).*

Illegal logging occurs for a variety of reasons and may be either greed or need based. "Greed based" illegal logging occurs, for example, when concession holders seek to externalise costs, reduce their overheads, maximise profits and/or reduce risks by engaging in illegal forestry activities. "Need based" illegal logging occurs when forest-dependent communities resort to illegal timber harvesting or forest clearance because they have no other livelihood options. Contreras-Hermosilla (2002) classifies the underlying factors that facilitate illegal actions in the forestry sector as: a faulty legal system; insufficient knowledge and poor knowledge management; excessive discretionary power in both the public and private sector; poor implementation capacity of the public forest administration and enforcement agencies, and lack of transparency.

The exact scale of illegal logging is difficult to measure because of its illicit nature, but estimates provided in the literature, which are mostly based on anecdotal evidence and discrepancies in trade statistics, show agreement that the scale is immense and that illegal logging affects many parts of Asia (see Table 1).

**TABLE 1 – Estimates of illegal logging**

COUNTRY	ESTIMATE OF ILLEGAL LOGGING
PNG	One third of operations on logging concessions are fundamentally illegal. Illegalities could be found in all 32 logging concessions (Contreras-Hermosilla 2002).
Indonesia	The government was losing USD 600 million per year in public revenue because of "stolen timber" - more than double the public expenditure on subsidised food programmes for the poor in 2001 (Kishor and Rosenbaum 2003). About 80% of logging in Indonesia is thought to be illegal (Marijnissen, Ozinga, Richards and Risso 2004).
Russia	Between 20-50 per cent of logging in the Russian Federation is illegal (Toyne, O'Brien and Nelson 2002). About 6.4 million trees are harvested illegally each year resulting in a loss of government revenue of 72 billion rubles (USD 2.7 billion) (Kommersant 21 Aug. 2006).
Cambodia	By 1997, over half of all forest land in Cambodia was licensed to 30 companies. In the same year 4 million m <sup>3</sup> of timber was estimated to have been logged illegally – equivalent to eight times the total sustainable yield (RECOFTC 2006). 94% of wood supplies in Cambodia are in some way illegal (Contreras-Hermosilla 2003).
Philippines	46% of domestically consumed wood is illegal (ibid.).
Global	As much as 23% of global plywood exports are "suspicious" and that up to 17% of roundwood on the international market could have been harvested illegally (Seneca Creek Associates/Wood Resources International 2004).

1. The FLEGT Action Plan can be downloaded from [http://europa.eu.int/eur-lex/en/com/cnc/2003/com2003\\_0251en01.pdf](http://europa.eu.int/eur-lex/en/com/cnc/2003/com2003_0251en01.pdf).

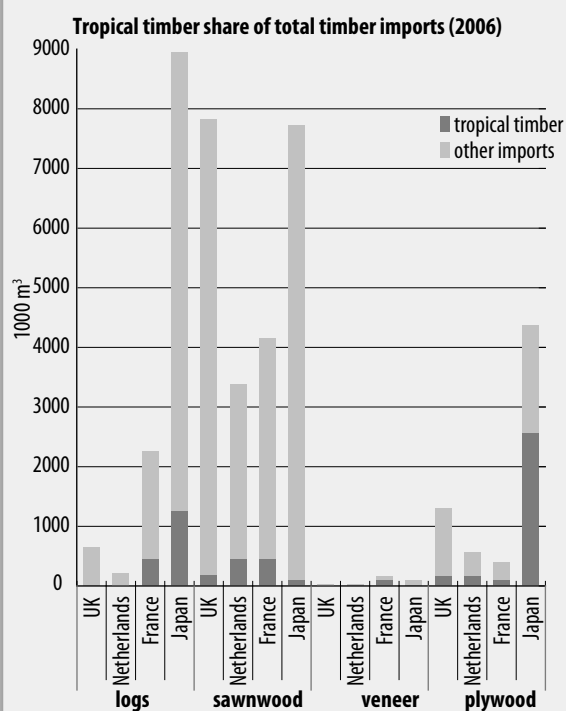
Illegal logging is a serious issue for policy makers not only because of its scale, but also because of its wide-ranging consequences. In 1998, under its Action Programme on Forests the G8 formally recognised that “illegal logging robs national and sub-national governments, forest owners and local communities of significant revenues and benefits, damages forest ecosystems, distorts timber trade markets and forest resource assessments and acts as a disincentive to sustainable forest management”. According to a World Bank report, each year governments lose approximately USD 5 billion in revenues and producer countries lose about USD 10 billion from their economies because of illegal logging (Toyne, O’Brien and Nelson 2002, 5). Consequently, the world prices of forest products are estimated to be from 7 to 16% lower than their true value (Seneca Creek Associates/Wood Resources International 2004). Greed based illegal logging and the consequent trade in illegal timber have serious implications for governance as they are usually associated with money laundering, drug trafficking, corruption in the public sector and tax evasion (FAO 2005, 7). Illegal logging is also a frequent cause of local disputes and has funded armed conflicts (FAO 2005, 17).

The extent and serious consequences of illegal logging are now well-known. Consumer countries contribute to these problems by importing timber and wood products without ensuring that they are legal or sustainable. The onus for tackling illegal logging lies not only with the producer countries but also with importer countries, which have benefited from the trade in illegal wood through lower prices brought about by cost externalisation and the avoidance of prescribed duties.

Japan is the world’s third largest wood importer after China and the US and thus has a major responsibility to adopt measures that reduce the likelihood of illegal wood products entering its domestic market. This assertion is accepted by the Japanese government, which has stated that “our country will not use timber that has been harvested illegally” as its basic position on this subject (Forestry Agency 2007). The total

timber demand in Japan is about 89,000,000 m<sup>3</sup> annually, of which about 80% is imported (Forestry Agency 2006). Japan is by far the largest consumer of tropical plywood, importing 4.6 million m<sup>3</sup> in 2005 (see Figure 1); 53% and 44% of Japan’s plywood imports are sourced from Indonesia and Malaysia, respectively (ITTO 2006). Japan is the world’s third largest importer of tropical logs, of which 74% are sourced from the Malaysian state of Sarawak (ibid.). As the most accessible tropical forests in Asia are largely commercially exhausted, Japanese importers and manufacturers have turned to softwoods and hardwoods from non-tropical forests. Russia is now Japan’s largest log supplier. Siberian larch (*Larix sibirica*) is increasingly used by Japanese plywood manufacturers as an alternative to tropical hardwood, as it is one of the hardest softwoods available. Hardwood imports from Far East Russia, such as Manchurian Ash (*Fraxinus mandshurica*) and Mongolian Oak (*Quercus mongolica*) are also rising, although logging of these species is legally restricted.

**FIGURE 1 – Tropical and total timber imports in 2006: UK, Netherlands, France and Japan**



Source: Data from ITTO (2007, appendix 1).

Various estimates of how much illegal timber is imported by Japan have been produced. These are usually derived by dividing imports on a country-by-country basis, calculating the import volumes of “suspicious” (i.e., potentially illegal) timber from each country based on national estimates of illegal logging and then totalling the volumes. Using this type of methodology, the American Forest and Paper Association provided the estimates presented in Table 2 for the percentage of “suspicious” wood products imported by Japan in 2002.

Employing a slightly different approach, Friends of the Earth Japan estimated that as much as 33%

and 17% of illegal wood exports from Indonesia and Russia, respectively, both countries where illegal logging is considered to be widespread, is imported by Japan (Nakazawa 2005).

Discrepancies in timber trade statistics are also used as evidence of trade in illegal wood. Traffic International noted that from 1978 the volumes of imported Filipino timber recorded by Japanese customs were consistently higher than the exports recorded by their Filipino counterparts and suggested this was evidence of illegal wood imports by Japan (Gulbrandsen and Humphreys 2006). However, discrepancies in trade statistics can also arise because of different measurement, classification and taxation systems (FFPRI 2005).

**TABLE 2 – Estimates of suspicious wood products imported by Japan (2002)**

WOOD PRODUCT	PERCENTAGE SUSPICIOUS
Hardwood roundwood	20
Softwood roundwood	15
Hardwood sawnwood	32
Softwood sawnwood	4
Hardwood plywood	38
Softwood plywood	10

Source: Seneca Creek Associates/Wood Resources International (2004, 142-6).

Regardless of the crudeness of the methodologies used to estimate illegal timber imports, it is clear that considerable volumes of illegal timber must enter the Japanese market. Japanese firms that import timber from countries where illegal logging is known to be prevalent mostly do not attempt to verify product legality. A study conducted by the Japan Federation of Wood Industry Associations (JFWIA) in 2004 found that of the 115 firms surveyed only 12% claimed to make any effort to assess the legality of the timber they were handling (JFWIA 2005, 9).

## 4.0 THE RESPONSE IN JAPAN TO ILLEGAL WOOD IMPORTS

Since the G8 Kyushu-Okinawa Summit in 2000, the Japanese government has repeatedly expressed its commitment to tackling illegal logging and the resultant timber trade. In describing its response to the illegal logging issue, in addition to its public procurement policy the government commonly cites its involvement in various forms of international

co-operation and the adoption of measures in accordance with the G8 Action Programme on Forests. To understand the significance of the public timber procurement policy for the government of Japan we provide a brief discussion of its other measures to assist with tackling illegal logging in producer countries and to reduce illegal wood imports.

## 4.1 Bilateral agreements

Japan has forged two bilateral agreements that are particularly relevant to illegal logging. Its first bilateral agreement, signed on 24 June 2003, consists of the Joint Announcement and Action Plan with Indonesia on "Cooperation in Combating Illegal Logging". The Joint Announcement describes the principle of bilateral cooperation and the Action Plan spells out various measures for bilateral cooperation to combat illegal logging, including:

- development of a mechanism to verify and track legally harvested timber;
- monitoring and inspection of the implementation of the mechanism through the participation of civil society;
- studies on the necessary measures against distribution and export of illegally harvested timber.

Thus far, concrete action has been limited to some remote sensing work, application of Japanese technology in forestry (FFPRI 2005, 14) and the development of a two-dimensional bar code system to track timber.

The "Agreement between Malaysia and Japan for an Economic Partnership" signed in December 2005 is Japan's second bilateral agreement with direct relevance to illegal logging. Appendix 1 of the Agreement is a joint statement on "Sustainable Forest Management and Trade in Legally Obtained Timber". The attention given to timber legality is particularly notable, as the agreement is for a general economic partnership and is not specific to forestry. It is not clear what activities are planned under the Agreement in relation to Appendix 1.

## 4.2 Regional initiatives

Recent years have seen a proliferation in regional initiatives to tackle illegal logging as United Nations institutions, particularly the

United Nations Forum on Forests, has struggled to deal with this complex issue (Gulbrandsen and Humphreys 2006). Two regional initiatives of particular significance to Asia, which provides most of Japan's imported wood, are the Forest Law Enforcement and Governance processes and the Asia Forest Partnership.

### 4.2.1 FLEG

The Forest Law Enforcement and Governance (FLEG) processes are regional initiatives co-ordinated by the World Bank with the objective of harnessing national efforts and enhancing international collaboration to address forest crimes. Three FLEG processes exist: East Asia, Africa and Europe and North Asia. Each have held ministerial conferences (for East Asia and the Pacific in Bali, September 2001; Africa in Yaoundé, October 2003; Europe and North Asia in St Petersburg, November 2005) that have concluded by adopting wide-ranging ministerial declarations.

Of the three FLEG processes, the East Asia and Pacific FLEG (EAP FLEG)<sup>2</sup> is potentially of greatest significance to Japan as a wood importer, though North Asia FLEG also has relevance because of the involvement of Russia. In 2001, a Ministerial Conference produced the Bali Declaration that launched EAP FLEG. To generate commitment towards implementing the principles of the Bali Declaration a specific EAP FLEG Task Force and Advisory Group (TF/AG) was created, representing governments, international organisations, non-governmental organisations (NGOs) and the private sector.

Japan participated in the Ministerial Conference and subsequently expressed its support for EAP FLEG (e.g., MOEJ 2006, 142). However, its involvement has been weak. The TF/AG met in Manila in March 2006, but Japan was not well represented. It appears that some Japanese officials view EAP FLEG as a product of European interests; the World Bank, which was prompted into action by the US, and Indonesia provided the initial driving forces for the creation of EAP FLEG (Gulbrandsen and Humphreys 2006) and

2. This process is also referred to as "Asia FLEG" and "East Asia FLEG". The term EAP FLEG emerged more recently, reflecting a desire within the process to acknowledge and encourage greater participation from Pacific Island countries.

the UK government is a strong supporter. Some Japanese bureaucrats also feel that NGOs have too much influence in the process.

#### **4.2.2 AFP**

In May 2002, the governments of Japan and Indonesia launched the Asia Forest Partnership (AFP) as an egalitarian, voluntary association of government, intergovernmental and civil society organisations. The AFP has a broader thematic scope than the FLEG processes consisting of three topics — the control of illegal logging, the control of forest fires, and the rehabilitation and reforestation of degraded lands. Of these, illegal logging has been the major subject of discussion at recent annual AFP meetings. AFP's completed and proposed work plans on illegal logging deal with developing minimum standards of legality, harmonising existing initiatives to combat illegal logging in the region, promoting co-operation among customs agencies, formulating guidelines to assess the legality of timber, establishing a legal origin verification system, reviewing existing agreements and announcements on illegal logging, analysing the market access of illegal timber, and developing market linkages for the products of forest communities to prevent their involvement in illegal logging. Japan has been a significant driving force behind AFP, playing a major role in financing, hosting and organising AFP meetings.

### **4.3 Global initiatives**

#### **4.3.1 International Tropical Timber Organisation**

Japan invited the International Tropical Timber Organisation (ITTO) to establish its headquarters in Yokohama and contributes substantial funds through the ITTO to producer member countries' projects that are intended to develop their human resources and institutions. These include efforts to develop statistics and information systems relating to the production and trade of forest products, which are important for detecting timber smuggling. Japan has provided funding for all ITTO projects in the field of forest law enforcement since 1999, which

include the management of tree species listed under the Convention on International Trade in Endangered Species (CITES), the development and implementation of guidelines to control illegal logging, and the development of remote sensing technology and information systems to support forestry legislation monitoring.

#### **4.3.2 G8 Action Programme on Forests**

In May 1998, the G8 launched its "Action Programme on Forests" to address five issues of importance to addressing pressure on the world's forests, one of which was illegal logging. Actions under the programme included assessments of the nature and the extent of the international trade in illegally harvested timber, measures to improve market transparency, and assessments of the effectiveness of international measures to control illegal forest activities. According to FFPRI (2005), Japan contributed financially to activities that aimed to improve economic data and the market transparency of the timber trade. However, Gulbrandsen and Humphreys (2006, 9) concluded that the four year Action Programme was a "misnomer" because it did not result in a collective work programme. Horst (2001) argued that for developing countries it was largely meaningless as the programme did not lead to substantially new strategies or financing. Nevertheless, the Action Programme did signal that Japan and other G8 members were treating illegal logging as a serious issue and it may have provided momentum for later initiatives. Overall, Japan has taken a strong position on illegal logging in the G8. To prepare for its Presidency of the G8 and the G8 summit to be held in Japan in 2008, the Japanese government organised an International Experts Meeting on Illegal Logging in Tokyo in March 2007.

### **4.4 Putting Japan's public timber procurement policy in context**

While the financial and administrative support Japan has provided to various regional and international organisations deserves recogni-



tion, these can be categorised as “soft” policy options in that the government has avoided directly confronting actors in producer countries or in Japan who are involved (wittingly or unwittingly) in the production and trade of illegal wood. For example, in providing funding for ITTO projects the Japanese government is supporting forest law enforcement, but it is not involved directly in designing or implementing these projects.

This approach is understandable given the political sensitivity that surrounds the subject of illegal logging and the fact that it is the laws of the producer not the consumer country that are being violated. However, while soft policies have merit, hard policies are also required to stem the illegal harvesting of timber and the resultant trade. An example of a hard policy option that Japan could take would be to establish a system to identify and seize suspected shipments of illegal wood. The Japanese government has avoided this type of politically difficult option to curb the trade in illegal timber, preferring non-confrontational measures to promote the trade in legal timber.

Under Japan’s Climate Change Initiative that was announced at the G8 Gleneagles Summit in July 2005, the government stated that “Japan will take actions to tackle illegal logging through

a government procurement policy, effort to work out a voluntary ‘code of conduct’ on the regulation of trade, assistance to timber producing countries and follow-up of the G8 Action Programme on Forests”. In line with this statement, the government revised its “Green Procurement Policy” to favour legal and sustainable wood products and effected the revisions in April 2006. This revision could represent the first hard policy option the government has taken to combat illegal logging.

The potential for the revision to the public procurement policy to be a hard policy option derives from the fact that the wood product suppliers and public works contractors will have to provide evidence of legality for designated procurement items. Specifically, firms negotiating public procurement contracts will have to implement supply chain management systems and provide a documentation trail to verify the legality of the wood/wood products they will use or supply under the contract. This requires changes in supply chain management procedures by firms that have, until the revision, been free to participate in public procurement regardless of the legality of their wood/wood products. If they have been wittingly or unwittingly dealing with illegal timber, then, at least for public procurement, they will have to find alternative suppliers.

## 5.0 WHY PUBLIC PROCUREMENT POLICY?

We have discussed the significance of the revision of Japan’s public procurement policy from the perspective of the Japanese government’s strategy to combat illegal logging and the resultant timber trade. Before examining the details of the policy, we should also consider whether public procurement is significant for the trade in illegal wood.

In some countries public procurement accounts for a significant proportion of imported wood

products. Toyne, O’Brien and Nelson (2002, 5) estimated that the governments of the G8 procure 18% of the timber products imported by their countries, worth approximately USD 23 billion per year. They also estimated that the share of government procurement of imported wood and wood products is 17% in Japan, 19% in the UK and 23% in France. However, the estimate of 17% for Japan is not supported by Japanese officials, who have indicated that the

government is responsible for only about 3% of total wood product use<sup>3</sup>. The reason for these different estimates is unclear.

Wood products that are procured by public agencies in Japan include office stationery, furniture and, of particular significance, wood that is used in public works projects. Annual public investment in Japan is higher than in other industrialised countries (Ministry of Finance 2001) and includes the construction of roads, ports and harbours, housing, water supply and sewerage, and river embankments and dams (Budget Bureau, Ministry of Finance 2003). Japanese construction firms have commonly favoured tropical plywood for concrete moulding ("concrete forming plywood") to construct such infrastructure. According to a Japan South-sea Lumber Conference survey, of the estimated 1,391,000 m<sup>3</sup> of tropical logs that Japan was expected to import in 2006, 90% would be used to produce plywood (Global Wood Trade Network 2006). Therefore, despite the low estimate produced by Forestry Agency officials for public timber procurement, the importance of public investment in Japan and the use of imported timber by public agencies, especially the use of concrete forming plywood for public works projects, suggest that Japan's public procurement policy is significant for the regional trade in timber.

Public procurement policies are important not only because of the volumes of timber involved, but also because they could spur the private sector to take action. Fripp (2005) found that in the UK the government's procurement policy led to the creation and revision of environmental codes of conduct and timber procurement policies within the private sector. Japan's public procurement policy could likewise catalyse a voluntary response from the private sector and, indeed, this is what the government is expecting:

*The Government and Independent Administration Institutions (hereinafter referred to as "the Government") play a major role in the national economy and have huge influence on the other entities. Their role is very important in promoting a ripple effect in the market, by prioritizing and popularizing the purchase of eco-friendly goods. That is to say, the Government's initiative promoting the planned purchase of eco-friendly goods will have a priming effect; expanding this commitment to local governments and the private sector, promoting the shift in demand toward eco-friendly goods in Japan as a whole (MOEJ 2006a).*

A growing number of countries, including Denmark, New Zealand, France, the Netherlands, Belgium, Germany and Norway are revising their public procurement policies, in effect acknowledging that government purchases are important to the trade in illegal wood.

## 6.0 REVISION OF THE PROCUREMENT POLICY TO FAVOUR LEGAL AND SUSTAINABLE WOOD

The government of Japan promotes the public procurement of products considered to be "eco-friendly" through its "Basic Policy on Promoting

Green Purchasing"<sup>4</sup>. The legal basis for the policy is the Green Purchasing Law<sup>5</sup>, which was introduced in 2000. The objective of the Green Pur-

3. Interviews with Forestry Agency officials in 2006.

4. The Basic Policy can be downloaded from [http://www.env.go.jp/policy/hozen/green/g-law/basic\\_policy.html](http://www.env.go.jp/policy/hozen/green/g-law/basic_policy.html).

5. This is the direct translation of the Law's commonly used short name in Japanese: *Gurin Kounyu Hou*. According to a provisional translation by the Forestry Agency the full name of the Law in English is: *Law Concerning the Promotion of Procurement of Eco-Friendly Goods and Services by the State and Other Entities* (Law No. 100 of 2000) (Forestry Agency 2006).

chasing Law is to encourage ministries and public agencies to procure eco-friendly goods with the ultimate goal of establishing a society that “can enjoy sustainable development with a lower environmental impact” (Forestry Agency 2005). The Green Purchasing Law is implemented through 1) the Basic Policy agreed by the Cabinet that specifies environmental requirements of designated procurement items, and 2) the establishment of procurement policies by government organs according to the Basic Policy.

The government decided to implement a procurement policy for timber by revising the Basic Policy of the Green Purchasing Law and developing a separate guideline. The Ministry of Environment was responsible for the first task and the Forestry Agency under the Ministry of Agriculture Forestry and Fisheries was responsible for the second. Figure 2 presents the timeline of the policy reform process.

## 6.1 Green Purchasing Law and Basic Policy on Promoting Green Purchasing

The Green Purchasing Law obliges national public entities (the parliament, government

ministries and agencies, and other institutions)<sup>6</sup> to formulate purchasing policies that take account of environmental impacts, to promote the procurement of products based on these policies, to keep records of their purchases and to make these available to the general public. This legal obligation does not extend to local governments; however, they are expected to make efforts (*doryoku gimu*) to adhere to its prescriptions.

The Basic Policy on Promoting Green Purchasing facilitates the implementation of the Law by defining the basic policies for the procurement of goods that are considered “eco-friendly”. It spells out 1) the basic direction for green purchasing, 2) the designated procurement items, evaluation criteria and other matters related to their purchase, and 3) other important matters regarding green purchasing. Among the environmental problems it seeks to tackle, the Basic Policy mentions global warming and waste.

The Basic Policy lists the products that the Green Purchasing Law applies to as “designated procurement items”. For each item the Basic Policy provides evaluation criteria. The evaluation criteria for each item are divided into “criteria for decision” and “factors for considera-

**FIGURE 2 – Timeline of the introduction of Japan’s timber procurement policy**

DATE	EVENT
2000	Enactment of Green Purchasing Law
Feb. 2005	Cabinet Resolution to revise the Basic Policy on Promoting Green Purchasing to include the legality and sustainability of designated wood items is passed
July 2005	At the G8 Gleneagles Summit Japan states it will take actions to tackle illegal logging as part of its Climate Change Initiative through, inter alia, a government procurement policy
10-31 Jan. 2006	The Forestry Agency calls for public comments on the proposed outline for revisions to the Basic Policy on Promoting Green Purchasing
15 Feb. 2006	The Guideline for Verification on Legality and Sustainability of Wood and Wood Products developed by the Forestry Agency is published
1 April 2006	The amendments to the Basic Policy on Promoting Green Purchasing by Cabinet Resolution to include legality and sustainability of designated wood items are enacted
23 May 2006	The Council for Tackling Illegal Logging Issue is established by JFWIA, as part of the Forestry Agency Project to Promote a Comprehensive Response to Illegal Logging
20 July 2006	JFWIA organises three working groups under the Council for Tackling Illegal Logging Issue, which hold their first meeting on 20 July 2006.
10 October 2006	Implementation of the timber procurement policy effectively starts

6. According to the Basic Policy, the consideration of its principles by local authorities, the private sector and citizens would be “desirable.”

tion". The "criteria for decision" must be taken into account when establishing procurement targets, whereas the "factors for consideration" are factors that are important for reducing environmental impact, but cannot be applied as uniform criteria at the present point in time (MOEJ 2006a). Public works are included in the designated procurement items related to services as they have a large impact on the national economy (ibid.).

The new timber procurement policy has been introduced by revising the Basic Policy to include legality in the "criteria for decision" and sustainability in the "factors for consideration" for selected wood and wood products. The five categories of wood and wood products are 1) paper, 2) stationary, 3) office furniture, 4) interior fixtures and beddings, and 5) wood and wood products used in public works projects such as lumber, glued laminated timber, plywood and laminated veneer lumber. In effect, the timber procurement policy gives greater weight to legality than sustainability; the legality of the specified wood items must be considered in public procurement, whereas sustainability need only be considered as desirable.

To illustrate how legality and sustainability have been introduced into the Basic Policy,

Figure 3 presents the criteria for decision (evaluation criteria) and the factors for consideration for non-coloured printing paper. Under Evaluation Criteria, legality is discussed in point (2), whereas sustainability is discussed in point (2) of Factors for Consideration.

By revising the Basic Policy, the Japanese government has given apparent legal backing to its decision to differentiate between legal and illegal wood products in public procurement. Closer inspection reveals that the Policy is not legally binding, as it is not part of the law. However, as an official government policy with detailed provisions to guide implementation of the law, it still carries considerable weight.

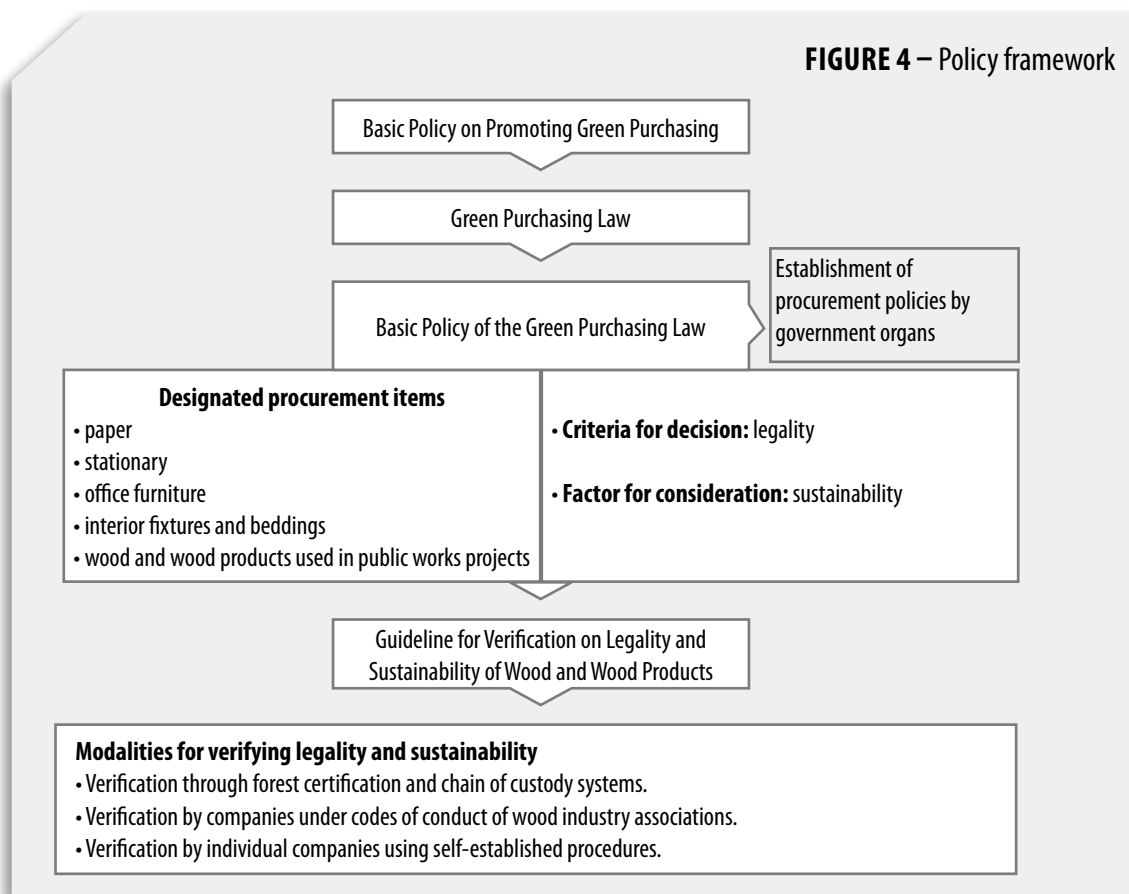
Article 6 of the Green Purchasing Law allows for revision by Cabinet of the Basic Policy on Green Purchasing. The Basic Policy is reviewed on an annual basis and revisions are common. Therefore, the path taken by the Japanese government to reform its timber procurement policy was already well-trodden and proved a relatively efficient way to tie the policy in with existing legislation. Figure 4 depicts the relationship between the various components of the policy framework.

**FIGURE 3 – Incorporation of legality and sustainability in public procurement of printing paper**

Printing Paper (excluding colored printing)	<p><b>Evaluation Criteria</b></p> <ol style="list-style-type: none"> <li>1) At least 70% recycled pulp content.</li> <li>2) If virgin pulp (with the exception of virgin pulp manufactured with lumber obtained from thinning, or with recycled wood pieces obtained from plywood or lumer factories) is used as the raw material, the pulpwood used is to be in compliance with the regulations concerning forestry in its country of orgin.</li> <li>3) Non-coated printing paper: no more than approximately 70% bleaching.</li> <li>4) Coated printing paper: both sides totaling no more than 30 g/m<sup>2</sup>.</li> <li>5) Not processed in a way that makes it difficult to recycle.</li> </ol>
	<p><b>Factors for Consideration</b></p> <ol style="list-style-type: none"> <li>1) Packaging is to be as simple as possible and take into account ease of recycling and reduced environmental impact if incinerated.</li> <li>2) If virgin pulp (with the exception of virgin pulp manufactured with thinning wood, or with recycled wood pieces obtained from plywood or lumber factories) is used as the raw material, the pulpwood used is to be obtained from a forest that is conducting a sustainable operation.</li> </ol>

Source: <http://www.env.go.jp/en/laws/policy/green/2.pdf>.

**FIGURE 4 – Policy framework**



## 6.2 Guideline for Verification on Legality and Sustainability of Wood and Wood Products

The Basic Policy on Green Purchasing mentions a Guideline to be formulated by the Forestry Agency as a reference document for the verification of legality and the sustainability of wood and wood products. The Forestry Agency released its final version of the “Guideline for Verification on Legality and Sustainability of Wood and Wood Products” in February 2006, which became effective from 1 April 2006.<sup>7</sup> The Guideline is not legally binding, but as a reference document for the Basic Policy it is considered to be mandatory for central state authorities. The Guideline applies to both domestic and imported materials, which is in accordance with the Agreement on Public Procurement (1994), of which Japan is a signatory. This agreement is based on the principle of non-discrimination; Article 3 states that Parties to the Agree-

ment must give the products, services and suppliers of any other Party “no less favourable” treatment than that they give to their domestic products, services and suppliers.

### 6.2.1 Objectives

The two main objectives of the Guideline are:

1. to create methods for verifying the legality and sustainability of wood and wood products, and
2. to promote verified products as appropriate items for procurement of ministries and agencies, independent administrative institutions, special legal entities and other national public entities.

### 6.2.2 Definition of legality and sustainability

The Guideline gives minimal treatment to definitions of legality and sustainability. The definitions are as follows:

- “Regarding legality, it should be described in the verification that the timber was

7. See Forestry Agency (2006a) for the guideline in Japanese and Forestry Agency (2006) for a provisional translation into English.

harvested in legal manner consistent with procedures in the forest laws of timber producing countries and areas”.

- “Regarding sustainability, it should be described in the verification that the timber was harvested from the forest under sustainable management”. (Forestry Agency 2006, 4)

### **6.2.3 Modalities for verifying legality and sustainability**

The Guideline provides the following three modalities for verifying the legality and sustainability of wood products:

1. Verification through forest certification and chain of custody systems.
2. Verification by companies under codes of conduct of wood industry associations.
3. Verification by the self-established procedures of individual companies.

The three modalities are explained to some extent in both the Japanese and provisional English translation of the Guideline provided by the Forestry Agency. We detail each modality separately below, but our descriptions are limited by the fact that the Guideline is rather vague on modalities 2 and 3.<sup>8</sup>

#### **1. Verification through forest certification and chain of custody systems**

The first modality requires that wood products are certified under an international or national forest certification scheme. Forest certification consists of two components: 1) an assessment of forest management by an accredited body using an independent standard, and 2) an assessment of the chain of custody (CoC) to ensure that the certified wood can be traced back to the harvesting site. Public procurement agents employing this modality are required to verify legality and sustainability by “the certification seal on wood and wood products, payment or receiving slips and so forth connecting with CoC certification” (Forestry Agency 2006, 3).

The Guideline makes no distinction between certification schemes, but appears to accept all of them as credible based on the fact that they employ third party auditing and independent standards. The Forestry Agency has listed the certification schemes that are acceptable for different countries/regions. These include the local scheme in Japan (Sustainable Green Ecosystem Council (SGEC)) and five overseas certification schemes (Forest Stewardship Council (FSC), Programme for the Endorsement of Forest Certification (PEFC), Canadian Standards Association (CSA), Sustainable Forestry Initiative (SFI) and the Malaysian Timber Certification Council (MTCC)). This selection appears to be based entirely on availability of certification schemes.

#### **2. Verification by companies under codes of conduct of wood industry associations**

The second verification modality for legality and sustainability requires that associations of forest owners and other segments of the forestry sector and the wood industry formulate their own voluntary codes of conduct for supplying wood/wood products. The Guideline calls on the associations to decide upon and publicly announce a code of conduct that will guarantee that association members supply wood/wood products verified as legal and sustainable. Once a code of conduct is established, the association authorises companies to participate in the product chain for public procurement. A paper trail is established in which each authorised company in the chain receives and issues documents to verify the legality and sustainability of the wood products. This includes documentation that provides evidence of segregated management.

The Guideline makes some further observations (“notes”) that set a rather rudimentary framework for this verification method. In general terms, at every stage of the product chain a “verification number” (*nintei bangou*) should be attached to the wood product to demonstrate

8. While some of the passages we use in this paper are from the provisional English translation by the Forestry Agency, our analysis is based on the official Japanese version and we present an alternative English translation of some parts where we feel this provides a more correct reading.

that verification has taken place in accordance with the voluntary code of conduct. In addition, this number should be accompanied by basic information such as a description of the article and volume. The Guideline requires the naming of the concession site and the verification of legality and sustainability at the harvesting stage – the start of the paper trail – but it does not prescribe detailed procedures.

The Guideline makes similar notes with respect to processing, distribution and delivery stages. It calls for a description at every stage that the materials or products received have been verified as legal and preferably sustainable. Finally, the Guideline provides for a variant of documentary evidence under which the actual paper trail of documents can be substituted by a statement of delivery that contains references, or in which copies of existing documents can be used.

### 3. Verification by self-established measures of individual companies

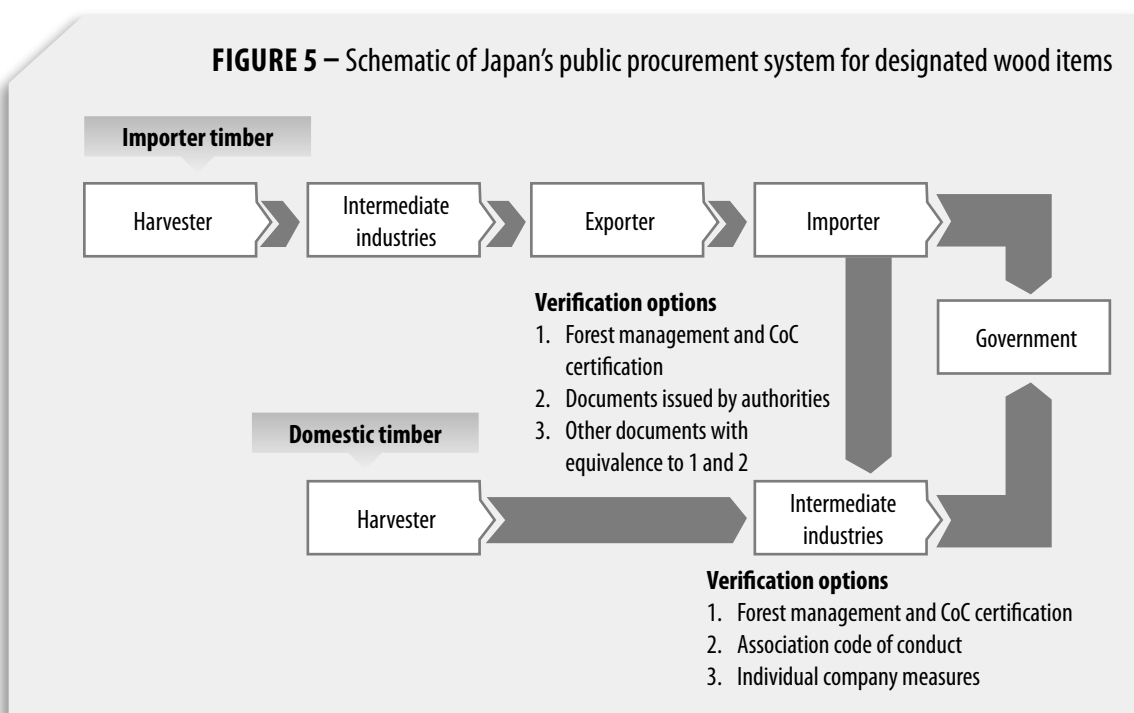
The third verification modality is for individual companies to develop their own “original measure[s]” to verify the legality and sustainability of the wood products they supply. It

appears that the justification for this modality is that large companies can establish their own verification procedures without the need of the assistance of industry associations. The Guideline, again, sets a rather loose framework. The main requirement is that the verification must comprise the whole distribution process, from harvesting to delivery, as with modality two.

With respect to all three verification methods, the Guideline calls on the suppliers to keep all the relevant documentation, which must be presented on demand. Allowing for future improvement, the Guideline includes a provision for its assessment and revision through regular multi-stakeholder meetings. Figure 5 provides a schematic of how the Basic Policy and the Guideline are expected to operate.

## 6.3 Preparation for policy implementation

The period between when the government announced it would revise its public procurement policy to favour legal and sustainable timber (July 2005) and when the revision to the Basic Policy became effective (1 April 2006) was



short. On this date, neither the national public entities nor their industry sector suppliers were able or expected to adapt to the requirements of the Guideline, which had been published only on 15 February. Rather, the government entrusted the industry sector, primarily the Japan Federation of Wood Industry Associations (JFWIA), to establish a functioning verification system for legal and sustainable wood/wood products by 1 October 2006, which became the actual starting date for implementing the policy. The government and the private sector undertook of the following activities to achieve implementation of the policy.

### 6.3.1 Government activities

Since the Basic Policy and the Guideline became effective in April 2006, the government has focused on establishing functioning procedures for verifying legality from the initial logging stage to the final stage of government procurement. This has included both engagement with governments in the main producer countries and the private sector in Japan.

The government acknowledged that for the policy to become fully operational a considerable amount of preparatory work was required in Japan. The Ministry of Agriculture, Forestry and Fisheries (MAFF) included in its budget request for FY2006 a project titled "Project to Promote a Comprehensive Response to Illegal Logging" (*Ihou Bassai Sougou Taisaku Suishin Jigyō*) to be managed by the Forestry Agency.<sup>9</sup> Despite the broad subject matter suggested by its title, the Project is primarily concerned with the procurement policy. MAFF received JPY 120 million (USD 1.0257 million) for this three year project in FY2006 and the Forestry Agency, which operates under MAFF, gave the responsibility and a budget for implementing the Project to the Japan Federation of Wood Industry Associations.

In addition to the work under this Project, which we describe below, the Forestry Agency held

consultations with some of the producer countries to consider whether their existing legal verification processes would meet the requirements of the procurement policy. However, as will be explained below, the private timber industry and trade sector has been entrusted with deciding which schemes or documents they will accept as evidence of legality for producer countries.

### 6.3.2 Private Sector Activities

The Japan Federation of Wood Industry Associations, the umbrella organisation for sawmill owners and lumber dealers,<sup>10</sup> established a code of conduct to meet the requirements of the second modality for verification of legality in March 2006. In Article 1 of its "Code of Conduct Concerning Measures Against Illegal Logging" (*Ihou bassai taisaku ni kan suru zenkoku mokuzaikai kumiai rengoukai no koudou kihan*: JFWIA 2006) the JFWIA states that it "strongly opposes all illegal activities that may impair the health of forests". The Code announces that JFWIA supports the procurement policy of the Japanese government (Article 3) and that in the international arena it is committed to "showing respect" to the efforts of international forest conservation/forestry organisations and the producer countries (Article 2).

An "Operating Procedure" (*jisshi youryou*: JFWIA 2006a) is attached to the Code which regulates the accreditation of businesses with respect to verification of legality and sustainability of wood products. The Operating Procedure also prescribes on-site inspections (*genchi shinsa*) when they are deemed necessary. Businesses belonging to the JFWIA member associations are required to provide information during such inspections, which are to be announced in advance. In case of infractions, such as evidence falsification, accreditation may be withdrawn and the infraction may be publicised on the corresponding association's website.

The JFWIA Code of Conduct has served as a prototype for the majority of its member asso-

9. 1 USD = 117.004 JPY on 29 August 2006 (<http://www.xe.net/ucc/>).

10. According to the JFWIA website, its members include 47 wood industry associations localised in each prefecture boundary and 17 national associations organised separately by the type of wood related businesses ([http://www.zenmoku.jp/sosiki/invente/gaiyo\\_e.html](http://www.zenmoku.jp/sosiki/invente/gaiyo_e.html), 23 October 2006).



ciations. An exception is the Japan Lumber Importers Association (JLIA), which formulated an independent code in November 2005. The JLIA member companies represent around 40% of timber importers in Japan. As Table 3 shows, by 16 March 2007 all 19 national timber industry associations and 104 prefectural timber industry associations had established codes of conduct for the purpose of supplying public contracts. The revised procurement policy appears to have particularly exerted pressure on wood importers: 79% of JLIA members are accredited under the policy compare with 19% of all associations' member companies.

Both processes of establishing codes of conducts and of accrediting member companies continued after 1 October 2006, the starting date for policy implementation.

Japan's procurement policy entrusts the private sector suppliers with the decision as to which documents to accept and provide as evidence of legality in order to meet the policy requirements. This applies to both domestic and imported timber. Wood importers, their associations and the JFWIA have explored options to accept existing verification schemes in producer countries, particularly Indonesia, Malaysia and PNG, which would greatly simplify policy implementation (table 4). At the "International Seminar in Tokyo for Tackling Illegal Logging", organised by the JFWIA in February 2007 and sponsored by the Forestry Agency, representatives from these countries introduced their schemes. The JFWIA did not raise concerns that might signal the reluctance of importers to accept any of the schemes.<sup>11</sup>

**TABLE 3 – Number of participating associations and their share of accredited members (16 March 2007)**

ASSOCIATION TYPE	ASSOCIATIONS WITH CODES OF CONDUCT	ACCREDITATION OF MEMBER COMPANIES		
		TOTAL MEMBERS	ACCREDITED MEMBERS	RATIO OF ACCREDITED MEMBERS
National timber industry associations	19	1,886	1,029	55%
JLIA	1	48	38	79%
Prefectural timber industry associations	104	23,400	3,876	17%
<b>Total</b>	<b>123</b>	<b>25,286</b>	<b>4,906</b>	<b>19%</b>

Source: JFWIA 2007.

Complete timber tracking and monitoring management systems do not exist in either Russia or China, but options are presently being explored by timber trade associations and a working group under Japan's Council for Tackling Illegal Logging Issue.

The third modality of the Guideline has only been utilised by the Japan Paper Association, the major representative of the pulp and paper industry in Japan, allowing individual companies to establish their own verification procedures.

### 6.3.3 Collaboration between government, private sector and civil society

The JFWIA is responsible for managing the MAFF Project to Promote a Comprehensive Response to Illegal Logging, as explained above. The Project involves government officials, private sector representatives, environmental

**TABLE 4 – Verification schemes/documents of main producer countries being considered by Japan's wood industry associations as evidence of legality**

COUNTRY	SCHEMES/DOCUMENTS
Indonesia	BRIC ( <i>Badan Revitalisasi Industri Kehutanan</i> , timber export permit); SKSHH ( <i>Surat Keterangan Sahnya Hasil Hutan</i> , timber transport permit)
Malaysia	Statement on Legality of Timber Source issued by Malaysian Timber Industry Board; Export Declaration, Form 2
Papua New Guinea	Monitoring of all round log exports by Société Générale de Surveillance (SGS)
Russia	Dalexportles Association of Timber Exporters Far East Russia (DEL) Verification System; Being further explored by Japan Lumber Importers Association and its partners in Russia
China	Presently none, but options being explored by working group under Japan's Council for Tackling Illegal Logging Issue

11. For the Seminar's report, see JFWIA (2007a).

NGOs and academics/researchers; therefore, while the Forestry Agency is ultimately responsible for the Project, it is perhaps best characterised as a collaborative enterprise. The basic project design was formulated by the Forestry Agency and consists of the following set of activities:

- the formation of a committee comprising representatives from environmental NGOs and timber associations, and academic experts;
- a project to survey case studies of supply of wood verified as legal and sustainable (*gouhousei/jizokukanousei shoumei mokuzai kyoukyuu jirei chousa jigyou*);
- a project to assess systems to verify legality and sustainability (*gouhousei/jizokukanousei shoumei shisutemu kenshou jigyou*);
- a project to build understanding and expand the availability of systems to, verify legality and sustainability (*gouhousei/jizokukanousei shoumei shisutemu fukyuu/keihatsu jigyou*).

Under the first activity JFWIA formed the Council for Tackling Illegal Logging Issue (*Ihou bassai sougou taisaku suishin kyougikai*).<sup>12</sup> The Council held its first meeting on 23 May 2006, during which the Forestry Agency announced that the Verification System Study Group (*Shoumei houhou kentou bukai*) would be placed under the authority of the Council.<sup>13</sup> In order to implement the other three project activities, the Forestry Agency indicated that three working groups should be established (see Figure 6).

Under the guidance of one working group, research will be conducted on case studies of wood verified as legal and sustainable. This will be further divided into three areas: a survey of case studies within Japan; a survey of case studies in producer countries, and a study of existing supply chains. The second working

group will advise on work to evaluate systems to verify legality and sustainability. The responsibilities of these two working groups are not to undertake a programme of work, but to advise on work programmes and to evaluate their outcomes. These two working groups are effectively operating as one.

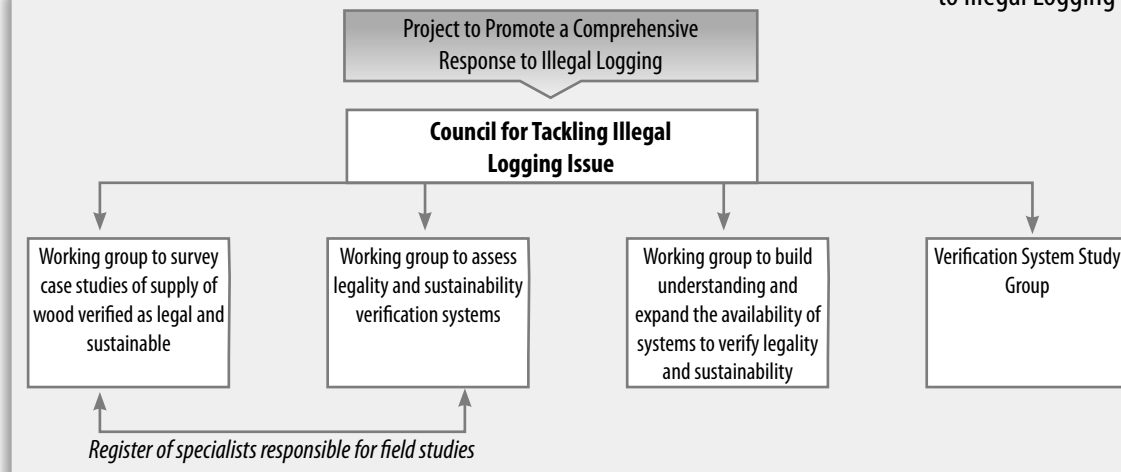
JFWIA has composed a register of specialists to take responsibility for the field studies that will be guided by the two working groups. For FY2006, the work programme under the first working group was: surveys of case studies in Japan, including progressive companies supplying and procuring legal wood and prefecture accreditation systems to promote the use of local wood; a survey of legal systems related to transportation, processing and harvesting in major export countries, and a survey of systems to verify legality/sustainability in exporting countries (China, Russia and Indonesia) and case studies of overseas companies with progressive timber procurement policies. The second working group was tasked with advising on research related to: the committees established by associations to accredit companies under the second verification modality of the Guideline; the inspection of accredited companies, and the procurement of legal wood in the case study localities.

The third working group was established to implement the fourth project activity and is involved in the development of a website (<http://www.goho-wood.jp/>) and pamphlets to provide information on activities in Japan to prevent illegal logging and the resultant trade.

12. The precursor of the Council was the "Illegal Logging Working Group" which was established by the Forestry Agency in February 2005 to assist in refining Japan's strategy on illegal logging in preparation for discussion on this subject at the G8 Summit held in the following July at Gleneagles. The Council's website is <http://www.goho-wood.jp/>.

13. The Verification System Study Group, for which the JFWIA acted as the secretariat, was established to study the verification systems set out by the Guideline and efforts by the private sector to implement the verification modalities stipulated under the Guideline.

**FIGURE 6 – Organisational structure of the Project to Promote a Comprehensive Response to Illegal Logging**



## 7.0 INITIAL OBSERVATIONS

At this point in our discussion it is possible to make some initial observations about Japan’s public procurement policies and the preparations that have been undertaken to implement the policy. The approach that Japan has taken to establishing a public procurement policy appears rather unique. The government gave the procurement policy the strength of a legal foundation in a short period of time and in doing so placed pressure on officials to move quickly to ensure the policy could be implemented. The process of strengthening the policy was left for after its implementation. As explained in the document “New government procurement policy of Japan for global sustainable forest management” the government views the reform to the Basic Policy as the first step of countermeasures against illegal logging that will be improved through a “step by step” approach (GOJ 8 February 2006).

### 7.1 Modality 1

Forest certification is being used by a number of countries to verify legality and sustainability as

part of their procurement policies. As the Japanese government has noted, the strength of forest certification is independent, third party auditing of forest management employing an independent standard. However, the uptake of certification in developing countries that are major timber suppliers to Japan and where forests are under greatest pressure has been very slow. Only eight per cent of the total area of certified forests is located in developing countries and only three per cent of all forest management certificates have been issued for tropical and subtropical broadleaf forests (Scheyvens 2006). The certification process can also add considerably to production costs and this, combined with low volumes, suggests that the first modality will not be very significant for public procurement of timber from developing countries in the immediate future. Nevertheless, Japan’s procurement policy can be commended for providing encouragement for forest certification and legal verification schemes.

Forest certification is supported by many prominent international NGOs and is probably the least likely of the three modalities to raise contro-

versy. Nevertheless, it is important for the government to realise that forest certification cannot provide complete assurance of legality. Elliot and de La Rochefordiere (2003) point out that forest certification depends on good faith and does not include frequent monitoring. Moreover, forest certification standards, the standard development procedures, and verification and accreditation procedures differ significantly between schemes. Some appear to have been driven more by an industry concerned to maintain market access than by a multi-stakeholder process concerned for the full range of forest functions. A comparative study of eight certification schemes by the Forests and the European Union Resource Network (FERN) concluded that in six of the schemes "forestry industry interests have dominated the standard-setting process" (FERN 2004, 14). Some schemes have been heavily criticised for prioritising industry interests in the granting of certificates at the expense of the welfare of other forest stakeholders (e.g., see Greenpeace 2005, 13). These observations suggest that if certification is to be used as verification of legality/sustainability for public procurement, there needs to be a review of individual schemes against a set of minimum standards for legality and sustainability. This issue is discussed further in later chapters.

Another important observation is that the first modality will benefit producer countries where the area of certified forests is already quite large. For example, New Zealand, where about 30% of plantation forests are certified by the Forest Stewardship Council, is likely to benefit more than Papua New Guinea, where less than 1% of production forests are certified. Japan's domestic forest managers will benefit as Japan has its own certification standard and the area of certified forest is expanding steadily. One concern raised in the literature is that certification could act as an informal trade barrier that gives advantage to wood from developed countries at the expense of developing countries, as forest management is likely to be more advanced in the former. If public procurement is to encourage and reward forest law enforcement and sustainable forest management through forest certification, it

would be most effective if it promoted certification in countries where forests are under greatest threat. The Japanese government should thus explore options for expanding the area of certified forests in developing producer countries under its Project to Promote a Comprehensive Response to Illegal Logging.

## 7.2 Modalities 2 and 3

Modalities two and three allow the private wood industry sector a lot of leeway to design and implement their own verification systems. MAFF has entrusted the design and implementation of the second modality to the wood industry associations, primarily to JFWIA, and has delegated responsibility for managing the Project to Promote a Comprehensive Response to Illegal Logging to JFWIA. Why the government has given so much autonomy to the "private sector" deserves to be explored further.

JFWIA is an umbrella organisation, comprising virtually all associations related to wood industry in Japan as its members. Its member associations, in turn, have a high rate of membership amongst the private industry sector. One of the functions of the JFWIA is to represent the private interests of its member associations' member companies. In this sense, it is comparable to the wood industry/timber trade federations existing in other industrialised countries. However, JFWIA is distinct from these in having strong formal and informal linkages with the government, specifically the Forestry Agency which operates under the Ministry of Agriculture, Forests and Fisheries. This close relationship is evidenced by a high interchange of leading officials between MAFF and JFWIA. Moreover, government funding constitutes a significant share of the annual income of JFWIA, roughly 17% in FY2004 (Forestry Agency 2006c). Therefore, rather than being characterised as a representative of the wood industry that lobbies government, the JFWIA is more correctly interpreted as an institutional link between the government and the private sector. This also explains why the JFWIA is playing a key role in facilitating policy implementation by

providing guidance to the private sector suppliers. The JFWIA has organised a number of events to explain the policy requirements to the domestic timber industry and trade associations and their member companies. One example is the abovementioned International Seminar held in February 2007 in Tokyo, in which the private sector was informed about which schemes and documents might serve for verifying timber legality from the major producer countries.

Modality three, the self-established measures of individual companies, will be utilised only by the paper and pulp industry sector. In a parallel process to the formulation of codes of conduct

by the JFWIA and its member associations, the Japan Paper Association (JPA) established a one-page "Guideline of Conduct" (*koudou shishin*) on 20 March 2006 (JPA 2006) with a three-page explanatory document (JPA 2006a). The main reason why the JPA and its paper industry members decided not to follow the second modality under the guidance of JFWIA is that the large-scale plantation concessions held by these companies have increasingly been certified in recent years. This enables the companies to largely proceed under the first modality, forest certification, and in this sense they are in a more advantageous position than other sectors of the Japanese wood industry.

## 8.0 CONCLUSION

Illegal logging has emerged as one of the greatest contemporary threats to natural forests and as a barrier to the development of mature governance structures. Wood importer countries are increasingly acknowledging that they have a responsibility to contribute to combating illegal logging in producer countries and to curb the resultant trade in illegal timber. In line with a growing number of industrialised countries, Japan has revised its public procurement policy to favour legal and sustainable wood. This represents the most significant and challenging measure Japan has taken to combat the global problem of illegal logging. It introduced this policy in a relatively short period of time and is now sponsoring a process to strengthen the

policy, which involves a programme of work in Japan and in the producer countries. The private sector, environmental NGOs and researchers/academics are working with the government in this policy strengthening process.

In this chapter we have described the legal basis of the procurement policy, its features and modalities and the strengthening process. In Chapter 2 we consider how effective the policy as it currently stands might be in reducing the use of illegal and unsustainable wood products by juxtaposing it against the realities of forest management in one "high risk" country, namely, Papua New Guinea.



# Japan's Procurement Policy viewed through the Lens of Forest Realities

I *Henry Scheyvens*

## 1.0 INTRODUCTION

In the first chapter we described the context and features of Japan's public timber procurement policy. A year after the procurement policy became effective it is timely that the policy be independently reviewed with respect to Japan's official position on illegal logging, as captured in the statement "our country will not use timber that has been harvested illegally" (Forestry Agency 2007). In this chapter we examine Japan's procurement policy from the perspective of whether it could meet the demands placed on it by a "high risk" country, i.e., a country where there is a strong possibility that exported wood products are linked with illegal forest activities.

Papua New Guinea (PNG) has been selected for this purpose. We classify it as high risk because it is a country for which it is particularly difficult

to provide assurance at the point of export that wood is legal; i.e., that the harvesting, transportation, buying or selling of wood was not in violation of national laws. This point has been made clear by a number of independent reviews of forest management in PNG that were conducted over the past two decades. PNG is also of relevance for the procurement policy as it is a major supplier of timber products to Japan, particularly tropical logs. In 2003, PNG was Japan's sixth largest supplier of industrial roundwood and second largest supplier of non-coniferous roundwood (FAOSTAT Sept. 2006).

This chapter first describes the nature and extent of illegal logging in PNG to provide an understanding of the challenges that Japan's public procurement policy must face to be effective. We

next assess how applicable and effective the verification modalities developed for the procurement policy are likely to be in PNG. Based on this

assessment we discuss activities that should be included as part of the government's process to strengthen its timber procurement policy.

## 2.0 REALITIES OF LOGGING IN PNG

In 1989, a Commission of Inquiry headed by Justice Thomas Barnett was organised to investigate allegations of widespread malpractices in the forestry sector in PNG. The excerpts in Box 1 from the Commission's Final Report (commonly referred to as the Barnett Report) revealed that corruption within the forest administration was deeply entrenched, that the harvesting practices of timber rights holders were ecologically destructive and unsustainable, and that logging companies were widely engaged in illegal tax avoidance.

The Commission's report prompted the government to publish a National Forest Policy and to draft a new Forestry Act in 1991. These reforms were an attempt to bring forest exploitation within the boundaries of a rational National Forest Plan and to bring future concessions into a 40 year rotational regime. The objectives of the new policy stem from the Act and the Constitution. Its main objectives are: (i) the management and protection of the nation's forest resources as a renewable natural asset,

and (ii) the utilisation of the nation's forest resources to achieve economic growth, employment, greater Papua New Guinean participation in industry, and increased viable onshore processing. Table 1 lists the measures subsequently introduced by government to give operational effect to the policy.

To implement the new forest policy, the institutional framework for forest management was overhauled. The PNG Forest Authority (PNGFA) was created in 1991 under the provisions of the Forestry Act. It succeeded the former Department of Forests, the 19 provincial forest divisions and the Forest Industry Council and was established as a statutory corporation with regulatory and administrative responsibility for the management of the forest sector throughout the country. The PNGFA has the objective of pursuing the management, development and protection of the nation's forest resources and environment in such a way as to conserve and renew them as an asset for succeeding generations.

### BOX 1 – Barnett Report excerpts

"the New Ireland [one province of PNG] timber industry is out of control and has blighted the hopes of landowners and devastated a valuable timber resource for very little gain to the people or government of Papua New Guinea."

"A major concern . . . is the evidence of blatant corruption at high levels of government and the practice of ministers and senior public servants of negligently, and sometimes deliberately, ignoring and contravening the laws of Papua New Guinea's Parliament and the policies of its government."

"Another major concern . . . is the irrefutable evidence of full-scale transfer pricing and other fraudulent marketing practices of the foreign companies. . ."

"Timber companies have been allowed to carry out destructive operations, to log the slopes and to remove undersized trees with virtually no effective monitoring system. . ."

"timber companies which bribed politicians are still receiving political support and, it is alleged, are still offering substantial payments."

*Source: Barnett 1989.*



**TABLE 1 – Measures to operationalise the new forest policy**

YEAR	MEASURE
1991	Forestry Act (amended in 1993, 1996 and 2000)
1993	Specific Guidelines for Forestry Harvesting Operations
1993	National Forestry Development Guidelines
1995	Planning, Monitoring and Control Procedures for Natural Forest Logging Operations Under Timber Permit
1995	Set-up Monitoring and Control Logbook
1995	Key Standards for Selection Logging in Papua New Guinea
1995	Waste Assessment Manual
1996	National Forest Plan
1996	Procedures for Environmental Plan Assessment
1996	Guidelines for the Preparation of Environmental Monitoring and Management Programs for Commercial Forestry Harvest Operations
1996	Guidelines for the Preparation of Waste Management Plans for Commercial Forestry Harvest Operations
1996	Procedures for the Identification, Scaling and Reporting (including Royalty Self-Assessment) on Logs Harvested from Natural Forest Logging Operations
1996	The Logging Code of Practice 1996
1998	Forestry Regulations (amended in 2004)

Through these initiatives PNG is now considered to have a reasonably sound framework for forest management. Based on a review of the current policies, laws, regulations, guidelines and other mechanisms, the 2003/2004 Review Team under the Inter-Agency Forestry Committee concluded that “the PNG Government and its regulatory institutions have all the necessary policies, laws, regulations and guidelines required to ensure that sustainable timber production can be achieved” (2003/2004 Review Team, August 2004, x).

While the regulatory framework for forest management has been considerably strengthened since the Barnett Report was released, its implementation remains problematic, which is why in 2006 the UK Timber Trade Federation (TTF) warned its members not to purchase timber originating from PNG and the Solomon

Islands: “our own investigations... found that little evidence can be obtained to give even a minimum guarantee of legality. Any wood from these countries must therefore be deemed very high risk”.<sup>14</sup> As will be explained below, it appears that importers can have confidence that the timber they purchase from PNG is sourced from state sanctioned logging operations. The problem of legality for exported timber is not one of harvesting without permits or of timber smuggling. Rather, the questionable legality of PNG timber, as described by the TTF, stems from a significant and persistent degree of non-compliance with forest regulations in the concession areas and problems with timber rights acquisition. In its synthesis of five government-commissioned independent studies<sup>15</sup> of the logging sector Forest Trends concluded that:

14. Note from UK TTF Chief Executive John White to Trader, 28 June 2006 (<http://www.greenpeace.org/raw/content/international/press/reports/rh-fiction.pdf>, 25 November 2006).

15. The following reviews can be accessed at <http://www.forest-trends.org/documents/publications/PNG2006/png.php#>:

- 2003/2004 Review Team. August 2004. Towards Sustainable Timber Production – A Review of Existing Logging Projects. Final Report, Volume 1. Main Report – Observations and Recommendations. (A Police Committee Review Submissions report and 14 Project Reports are also available.)
- Forest Revenue Review Team. 13 March 2002. Review of the Forest Revenue System, Final Report.
- Independent Forestry Review Team. October 2001. Review of Forest Harvesting Projects being processed towards a Timber Permit or a Timber Authority - Observations and Recommendations. (A methodology report and 32 individual project reports produce by the Review Team are also available.)

*... although all timber harvesting operations may be officially licensed, there are serious issues of legal non-compliance at almost every stage in the development and management of these projects. For these reasons the majority of forestry operations cannot credibly be characterized as complying with national laws and regulations and are therefore 'unlawful' (Forest Trends 2006, 2).*

This problem of poor compliance stems from weakness within the institutions responsible for enforcing the forest law and the contractual obligations of the concessionaries. Logging companies are inadequately regulated, with the main role of the PNG Forest Authority being reduced to acquiring the forest resources and allocating them to logging companies (Bun 2006). The 2003/2004 Review Team under the Inter-Agency Forestry Committee found that:

*many breaches of the logging standards go unreported and are not actioned. Field based PNGFA [PNG Forest Authority] monitoring officers have lost faith that their attempts to impose sanctions on non-complying logging companies will be backed up by senior management, who in turn take their cue from the current political leaders (2003/2004 Review Team, August 2004, viii).*

In March 2001, a PNG Forest Authority economist concluded that notable problems within the logging sector include "still virtually no sustainable forestry projects; poor logging practices with little compliance to the Logging Code of Practice; widespread environmental damage; very few long-term benefits, causing social upheaval; corruption a persistent problem at all levels of the industry; minimal domestic processing investment, and many proposed projects too small to be viable" (PNGFA 2001).

Despite the serious deficiencies in current forest management practices, the present government has strongly defended large-scale logging of natural forests under concessions. Indeed, it has sought to accelerate the granting of timber permits, which will further stretch the capacities of the Forest Authority. In its review of forest harvesting projects being processed towards a timber permit or a timber authority, the Independent Forestry Review Team (2001) concluded that "by attempting to respond to the political call for more new forestry projects quickly, the National Forest Service has initiated far more new project developments than it has the capacity to process properly". More recently, an International Tropical Timber Organisation diagnostic team sent to PNG to identify weaknesses of the forestry sector found that:

*the more significant issues are to do with the compliance of the government itself with the laws of PNG when deciding to designate a forested area for logging purposes; negotiating the agreement with landowners; managing, monitoring and enforcing the agreement; and when extending current agreements. It is believed that the narrow focus of the PNGFA on exploitation of the forest resource for the primary financial benefit of the national government presents a conflict of interest which colors decisions made by the government at all levels (ITTO 2007a).*

These observations of the context, extent and consequences of illegal forest activities in PNG illustrate the seriousness of the problem and why procurement policies that favour legal and sustainable timber are highly desirable. They also provide a sense of how challenging it might be to implement procurement policies that effectively distinguish between illegal and legal timber.

## 3.0 VERIFYING LEGALITY

As explained in Chapter 1, the Japanese government has specified three modalities for verifying the legality and sustainability of wood products, namely forest certification and chain of custody systems, verification by companies under a code of conduct of their association, and self-established procedures of individual companies. In a paper drafted in February 2006 to explain the public procurement policy to overseas wood and wood product companies the Japanese government stated that “at the present time, once exporter or harvester make rational explanation, no further question of investigation by Japan side are planned (unless the existence of illegal logging is undoubtedly sure with considerable evidence)” (GOJ 08 February 2006). The “rational explanation” refers to a declaration that the company is providing legal wood and must be supported by documentation. The government has identified three categories of documentation as evidence of legality: forest certification; official documents, and other documents providing equivalent verification. What constitutes evidence within these categories for PNG?

The application of the first category of evidence — forest certification — to forestry operations is relatively straightforward. The Forestry Agency of Japan has gone so far as to identify certification schemes that can be used. At present, in PNG two FSC group certificates are the only evidence under this category that a few suppliers of small volumes of timber could supply.

The second category of evidence — official documents — is potentially more complicated than simply providing forest management and chain of custody certificates as each country has its own set of documents for forestry operations. In some producer countries governments are providing a single document as proof of legality that consolidates the entire documentation trail to provide assurance that all documents are in

order. This greatly eases the demands on companies made by the procurement policy. PNG employs Société Générale de Surveillance (SGS) to implement a third party log export monitoring system and the Forestry Agency has suggested that the documentation provided under this system could be used as verification of legality for Japan’s procurement policy.

In the case of PNG, it is unclear what third category evidence — other documents providing equivalent verification — might refer to. Therefore, our analysis focuses on forest certification and the independent log export monitoring conducted by SGS.

### 3.1 Forest certification

The total area of certified natural forest in PNG is about 22,000 hectares, all of which has been certified to FSC group certificate standards. This figure is very low. The few examples where forest certification has been granted are the result of community forestry programmes and the efforts of “eco-forestry” groups.<sup>16</sup> PNG has a FSC National Working Group that has developed a national FSC certification standard, which places it in an advantageous position to expand the area of certified forests. However, the volume of certified wood exported by PNG is unlikely to increase significantly in the near future. Local and international NGOs operating in PNG are strong advocates of forest certification, but their capacity is highly constrained. The government does not have a clear and consistent policy on certification. Some large logging companies operating in the country have expressed interest in forest certification, even as far as sending key personnel to training on certification conducted twice in PNG by SGS. However, certification of their logging operations can, at best, only progress very

16. The PNG Eco-Forestry Forum defines eco-forestry as a term that collectively describes activities that sustainably utilise forest resources with as much benefit as possible being retained by the traditional resource owner (Eco-Forestry Forum 2004).

slowly because current forestry practices in concession sites appear well below those prescribed by the certification standards (at least partly due to inadequate monitoring and enforcement by the forest authorities). An illustration of this gap between current forestry practices and those prescribed by the certification standards is provided by one SGS audit of a logging company in 2003 which concluded that the company's management of forests suffered from a lack of demonstrated "long term commitment towards proper environmental control/forest management in respect to legal requirements and FSC principles". From these observations it is apparent that, for the near future, certification will not be of great significance to the application of Japan's procurement policy in PNG.

### 3.2 Independent log export monitoring conducted by SGS

Largely in response to reports that it was losing significant amounts of public revenue because

of illegal accounting practices and misreporting in the forestry sector, in May 1994 the government contracted SGS to provide independent monitoring of all log exports, to ensure that logs exported were sold at the prevailing market prices and to ensure that export shipments were correctly declared with respect to log volume and species.

The SGS monitoring system is designed to provide assurance to log buyers that a reputable independent inspection company has verified that logs exported from PNG are of the quantity, quality and value (with taxes paid) and from the area as approved by the government. Box 2 provides a description of the main features of the SGS log export monitoring system.

The question for Japan's timber procurement policy is whether the SGS log export monitoring system and the Inspection Report it produces can provide assurance of legality. According to SGS, their log export monitoring system provides overseas buyers with assurance that the logs have not come from smuggled sources (i.e., all exported logs were sourced from forests

#### BOX 2 – Features of SGS log export monitoring system

"The SGS involvement in the verification process begins at the time of initial log measurement (at the forest landing) where all companies are required to affix an official bar-coded tag provided by SGS. This log number (which includes a unique site-code identifier) is used right through the verification process to export. SGS will only issue these tags when advised in writing by the PNGFA that the company has authority to harvest the area under one of the permit arrangements outlined earlier.

Then, at least two weeks prior to the impending log shipment an exporter must notify SGS so that inspection arrangements can be put in place. At the export port exporters must provide the SGS inspector with a log list in both electronic and hard copy format. The SGS inspector undertakes a pre-shipment inspection which involves a scaling check (10%); species check (100%) and verification that the volumes and species mix are as per the PNGFA [Papua New Guinea Forest Authority] Export Permit. Exporters are notified of any discrepancies and only if the results are satisfactory will the PNGFA officer on site permit ship loading to commence.

The SGS inspector then monitors the actual ship loading by removing a section of the bar-coded log tag and produces an independent tally of loaded logs. SGS has provided the inspectors with bar-code readers and portable computers to facilitate efficient and accurate preparation of all reports during the inspection process.

An SGS Inspection Report is issued at the completion of loading. This Inspection Report is used by all Government Authorities to check the commercial and shipping documentation and clear the shipment for export.

All field inspection documents and reports are sent into the SGS head office which also receives copies of all shipping and commercial documents directly from the exporter. All this information is entered into a central database. A number of checks are made, for example, to confirm that the export volume and prices for each species in a shipment are as approved by the PNGFA (through the Export Permit issued prior to shipment); that a project is operating within its approved log export quota and that the export tax paid has been calculated correctly."

*Source: Telfer (2007)*

that have official approval for harvest). The SGS inspection also checks that log measurements and species identification are accurate and that the volume and invoiced amounts on commercial trade documents are as legally approved by the PNG Forest Authority.

The log export monitoring system established and implemented by SGS contains some, though not all, of the necessary elements of a robust legal verification system. The system was designed according to concerns that transfer pricing was resulting in large public revenue losses; it was not designed to provide assurance of legality for exported wood products. This explains why SGS monitoring does not cover two of the most serious legality issues troubling the forestry sector in PNG, i.e., lack of legal compliance at the harvesting sites and improper timber rights acquisition. The SGS independent log export monitoring system appears to have significantly improved timber tracking and forest law enforcement with respect to export processes. However, as the independent forestry sector reviews reveal, regardless of the activities of SGS, non-compliance with forest regulations remains a widespread problem in concession areas. An SGS official recently explained why assurance of legality is difficult

to provide under the current institutional forest management framework in PNG:

*On paper, the regulations and monitoring systems of the PNGFA are very strong but in practice, as is often the case in developing countries, resources such as sufficient staff and logistical backup are lacking due to funding constraints. Also, Government Departments other than the PNGFA are responsible for monitoring key aspects such as social and environmental issues. These Government Departments also have funding and performance issues that prevent them from performing all their mandated tasks. Thus it is very difficult for the PNG Government to be certain that all its laws and regulations are being followed (Telfer 2007).*

SGS also acknowledges that its log tracking does not represent a formal chain of custody system (ibid.). Its tracking system does allow logs to be tracked back to the concession and landowner area, but this is not easy as the production records are held by the provincial forestry offices. Based on these observations, Japan's procurement policy cannot be considered robust if it relies on the SGS log export tracking system for providing evidence of legality of exported logs from PNG.

## 4.0 OPTIONS FOR JAPAN TO APPLY ITS TIMBER PROCUREMENT POLICY TO PNG AND OTHER HIGH RISK COUNTRIES

The Japanese government introduced its procurement policy in a relatively short period of time with the intention of later strengthening the policy to make it effective in ensuring that national public entities are not using illegal wood. This has placed Japanese officials in a difficult position where they must move quickly

to provide guidance to the wood industry on evidence that can be used to verify legality. In PNG, documentary evidence which provides assurance that wood exports are legal is simply not available for almost all export orders. The SGS Inspection Report covers some important aspects of legality in the forestry sector, but it

does not cover compliance with harvesting regulations or the process of timber permit acquisition. Under Japan's procurement policy certification can be used as evidence of legality, but the total area of certified forest is too small to be significant. How, then, should the government apply its timber procurement policy, particularly to high risk countries such as PNG?

It is clear that the government will have to invest resources in working with the governments of high risk countries to establish a strategy for each country to achieve effective implementation of the procurement policy. The government's "step by step" approach to strengthening the policy will have to include high level engagement with producer countries. Several steps that could be included in this process are now discussed.

#### 4.1 Broaden the definition of legality

The basic argument behind public timber procurement policies is usually explained in terms of the detrimental impacts of illegal logging (e.g., illegal logging undermines the rule of law, is responsible for extensive forest destruction, may destroy the livelihoods of forest-dependent communities and may lead to localised conflict). In nation-states, citizens give up certain freedoms in order to enjoy the protection and services provided by the state. The obligations of the state to its citizens include the wise management of natural resources and the creation of a social and economic environment that is conducive to their well-being. The assumption underlying public timber procurement policies is that in meeting these obligations governments have established sound legal frameworks for the equitable negotiation of forests rights and the wise management of forests. By distinguishing between illegal and legal timber in its procurement policy, the Japanese government is supposedly supporting the implementation of sound legal frameworks for forest management in producer countries.

Assuming that high risk countries have reasonably sound frameworks, such as PNG, legality must be defined to fully encompass these frameworks. Japan's narrow definition, which describes timber as legal when it is "harvested in legal manner consistent with procedures in the forest laws", is found wanting in this regard. By only focusing on harvesting, Japan's national public entities could find themselves inadvertently procuring timber that is linked with the unjust acquisition of timber harvesting rights and violations of laws not specific to forestry.

The need for Japan to broaden its definition of legality is aptly illustrated by forest realities in PNG. Based on interviews with landowners, the Centre for Environmental Law and Community Rights (CELCoR), a PNG-based public interest environmental law NGO, found examples of: the denial of due process in appropriating property; arbitrary detention and physical brutality by police against landowners; intimidation and abuse of women; contamination of food and water sources; the destruction of cultural sites, artifacts and grave sites, and unjust working conditions (CELCoR 2006). The brutality faced by staff who protested against their working conditions at one mill in Western Province was exposed in a 2004 SBS *Dateline* documentary, "Jungle Justice". Box 3 presents a description of the *Dateline* documentary provided in the CELCoR report "Bulldozing Progress".

Such abuses of human rights extend beyond the harvesting stage and forest-specific laws. They are in contradiction of International Conventions ratified by the PNG Government, such as the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), as well as the Constitution. In interviews with local people CELCoR also noted that common grievances included perceived injustices in the acquisition of timber rights. Local people who were illiterate reported being pressed to sign documents that they could not read or understand. The excerpts in Box 4 from "Bulldozing Progress" are particularly enlightening:

**BOX 3 – Excerpts from CELCoR report, “Bulldozing Progress”**

The program interviewed a former police officer of the Southern Command task force, Emmanuel Bani. Mr Bani told Dateline [police] task force members were essentially deployed as private security for the [logging] company and officers were instructed by ... [the logging company] managers to use violence against landowners who caused trouble. When asked to explain how the task force dealt with disgruntled workers ... , Mr Bani recalled:

“We handled those suspects good and proper... we bashed them up, we hit them with huge irons and when we mobilized there we made sure that these people who complained against the rights of their benefits were being manhandled...”

We belt them good and proper. Yes, some were flown to a Daru hospital, some broke jaws, some broken hands, legs, beaten black, deep cuts on their hands, the pain they got was just so big – they bled you know.”

Mr Bani said he was paid “some sort of bribery-type money” by ... [the company] official for this work: “[He] paid us appreciation money, some sort of money which I call some sort of like bribery type of money ... when he hands this over to me hiddenly he gives it to me and tells me that I’ll see you back next week again.”

Source: CELCoR (2006, 11).

**BOX 4 – Excerpts from “Bulldozing Progress” highlighting injustices in timber acquisition**

“I did not know what I was signing. I cannot read or write. They told me to put my mark on the paper and I did. They did not tell us exactly what was going to happen ... I was totally confused with what was going on. I was confused when I signed the paper ... The company came into my area in 1991 and they started to cut my trees. When they started to cut the trees I began to see that the bush and the rivers were being spoilt and I began to get upset.” (landowner, Western Province)

“He put a map on the ground and we all sat around the map on the ground. All of us sat down and signed the agreement ... We did not get a copy of the paper or read it because at the time we could not read or write. They were forcing us to sign the paper so we signed it. We held the pen and they held our hands and put our X on the paper.” (landowner, Southern Highland Province)

CELCoR (2006, 14)

Another grievance of local people whose forests are, or have been, commercial logged is that the companies that have acquired the logging rights have not upheld their contractual obligations. The Forestry Act gives the PNGFA the authority to acquire timber rights from customary owners pursuant to a Forest Management Agreement with the owners. A timber permit may be granted to a “registered forest industry participant” after a Forest Management Agreement has been completed. The responsibilities of the state under the Agreements include the provision of social and economic services to landowners and the construction of infrastructure. These responsibilities are transferred to an investor through the granting of a timber permit. The logging companies thus have a legal obligation to construct the infrastructure that is specified under the timber permit. Independent reviews of logging projects reveal instances of non-compliance with the infra-

structural benefits specified by the timber permits. For illustrative purposes, Box 5 presents excerpts from a government-commissioned report of one of 14 logging projects that were reviewed.

From these observations it is clear that Japan should consider expanding its definition of legality from the harvesting stage to all stages beginning with timber rights acquisition through to the final export of the wood product and should include all laws with important implications for forest management, not just those specific to forestry.

In practical terms, the broader the definition of legality, the more difficult it will be to verify that wood is legal. If verification of legality is limited to providing timber permits and other documents to show that the logging company has the authority to fell the timber, then verifi-

### BOX 5 – Examples of non-compliance with the Project Agreement regarding landowner infrastructural benefits in one logging project

Under the Project Agreement, landowners are entitled to a number of funds that can be used to develop infrastructures such as classrooms, teacher's houses, clinics and aid posts and other items that the committee tasked with the management of the funds approves. The Review Team observed . . . In some

cases the amounts allocated annually were far less than the amounts stipulated in the Project Agreement and in some certain cases there was no allocation at all. The following infrastructures were to have been constructed under the Project Agreement:

INFRASTRUCTURE	QUANTITY/QUALITY	NO. CONSTRUCTED	STATUS
Medical clinics	3 - standard determined by the provincial government	3	Size and quality unacceptable. Not being used.
Community school classrooms	3 - standard determined by the provincial government	2 plus one under construction	Incomplete; size and quality unacceptable
SBB Radios	3 - one for each FMA area	3	Completed but not operational.
Roads	Komaiao-Kebini		Incomplete
	Kebeni-Omati		Complete
	Siberi-proposed ply mill site		Yet to start
	Wabo-headwaters of Era River		Yet to start

Source: Review Team (2004)

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## 4.2 Participate in processes to formulate national definitions/standards of legality

A broad definition of legality can be expanded from a general statement of legality into a

generic legality standard, consisting of a set of criteria, which the consumer country can then use to consult with the producer country to determine which laws apply to the standard. In this way, a legality standard could be constructed for each producer country in a consistent fashion. Ideally, the legality standard would be formulated through a multi-stakeholder process involving all major forest interest groups. In practice, however, developing a legality standard, especially through a multi-stakeholder process, can be very difficult, costly and time-consuming. It is worth reviewing the development of a national legality standard in Indonesia to understand how involved this process can be.

The UK specified action under the Indonesia-UK Memorandum of Understanding on Illegal Logging to adopt a working definition of illegal logging based on a multi-stakeholder process. The NGO Yayasan Madanika was recruited to undertake regional and national consultations the following year that resulted in the identification of the major principles of legality. These were used to draft the outline of a legality standard, which was further developed with the addition of auditable criteria and indicators



and the addition of guidance notes for auditors. The Nature Conservancy was given responsibility for field testing the standard, which highlighted that some of the principles were difficult to apply in practice. The process was delayed by the development of other legality standards in Indonesia (e.g., by the Tropical Forest Trust and the Indonesia's Forest Industry Revitalisation Agency). Lembaga Ekolabel Indonesia (LEI) was given the responsibility of harmonising the standards, with further field testing required. The entire process was complicated by the fact that in Indonesia there are over 900 laws, regulations and decrees that govern the origin, production, transportation, processing and trade of timber.

The standard includes provisions on land tenure and use rights, social and environmental impacts, community relations and workers rights, timber harvesting laws and regulations, forest taxes, log identification, transfer and delivery, timber processing and shipping. Based on a review of case studies of forest-sector verification, Wells (2006) concludes that:

*In all cases, a legality standard will need to enjoy broad buy-in, as well as be sufficiently applicable and specific to enable effective verification. This, however, implies complex trade-offs in determining the scope of a standard. The need to prioritise laws and regulations for inclusion in a standard may be especially contentious as it implies subordination of rights and/or increased transaction costs on the part of some parties. Furthermore, underlying laws may be so contested as to render agreement on a standard unlikely without radical legal and institutional reform.*

In contrast to the difficult and drawn out process of developing a legality standard through a multi-stakeholder process, in its current form Japan's policy adopts a more flexible, minimalist approach. In essence, modalities two and three allow the associations/organisations involved in the product chain to decide

which documents they should provide as evidence of legality. While this approach will be applied in Japan, it appears that Japanese officials will consult with their counterparts to determine which documents should be used in producer countries. The government is essentially leaving it up to the producer countries to decide what constitutes legal wood, explaining its position in terms of the need to recognise state sovereignty.

While the approach is attractive in that it will speed up the implementation of the procurement policy, it is unlikely to win broad support in the high risk producer countries. Governments that receive significant public revenue from industrial forestry operations are likely to define legality very narrowly so as not to obstruct current forestry practices. This is unlikely to satisfy all important forest stakeholders. Despite the difficulty of establishing legality standards in producer countries through a multi-stakeholder process, this option remains attractive as it will engender more public support in both the producer and consumer countries and will accommodate a wider range of concerns. The idea of developing national legality standards is quite removed from current thinking on the procurement policy in Japan, but the concept of legality standards is not alien to the Japanese government. The government itself recognised that developing minimum standards of legality were essential steps to combat illegal logging and funded an Asia Forest Partnership work plan to establish a set of minimum standards of legality, timber tracking and chain of custody.<sup>17</sup> The objective of the work plan was "by developing minimum standards of legality, timber tracking and chain of custody (CoC) systems and verification systems among AFP partners, to establish the basis for the systems of verification of legal compliance among partners of AFP in order to combat illegal logging effectively".<sup>18</sup> The Council for Tackling Illegal Logging Issue should revisit these standards and explore how they could be used as a basis for consultation with producer countries.

17. The legality standard can be retrieved from [http://www.asiaforests.org/files/\\_ref/about/activities/ongoing.htm#a](http://www.asiaforests.org/files/_ref/about/activities/ongoing.htm#a).

18. See [http://www.asiaforests.org/files/\\_ref/about/activities/workplan/wp\\_legality.htm](http://www.asiaforests.org/files/_ref/about/activities/workplan/wp_legality.htm) for a description of the work plan.

There are also existing agreements and processes that Japan could use to facilitate the development of national legality standards. For example, in Malaysia and Indonesia, government and the EU have launched formal negotiations for Voluntary Partnership Agreements under the FLEGT process. Japan could use the national legality standards that are being developed for FLEGT purposes in these two countries. In PNG, Japan could work with the Forest Authority, which is already examining options for developing a legality standard for forest operations.

Regional forums that could be used to initiate discussion on national legality standards include the Asia-Pacific Forestry Commission, the Asia Forest Partnership and the East Asia and Pacific Forest Law Enforcement and Governance process. These all count producer and consumer countries as their members and include responses to illegal logging in their work programmes. The Asia Forest Partnership is a particularly appropriate forum that the Japanese government could use to initiate discussions on national legality standards. Unlike regional intergovernmental processes the AFP is informal and inclusive and provides a relatively "safe" environment to explore sensitive forest issues in Asia such as legality. Its partners include European countries with public timber procurement policies and major producer countries in Asia; hence, through the AFP Japan may be able to build consensus amongst countries on the best way to move forward with the development of national legality standards.

### 4.3 Support the development of independent, credible legal verification

The position of officials has been that Japan must respect the national sovereignty of the producer countries. While this cannot be dis-

puted, it should not be assumed that governments are always independent arbitrators of competing interests and that their systems to monitor and ensure legal compliance are effective. In high risk countries such as PNG, corruption within the public sector is well-documented (e.g., see Barnett 1989), and, as has been explained above, verification systems may not exist or be inadequate. Problems in the private sector might also be encountered which impair the effectiveness of codes of conduct as a verification modality. Under the codes of conduct developed by their associations, companies participate in a document trail designed to ensure that wood has been legally harvested. In the producer country, these documents should be "issued by authorities concerned on legality and sustainability of wood and wood products (Permission on harvesting, exporting, etc.)" or other documents with the same level of reliability.<sup>19</sup> The assumption here is that official documents have a high degree of reliability, yet misreporting and documentation forgery is a serious issue for the forestry industry in some of Japan's main supplier countries.<sup>20</sup>

There does appear to be some space within Japan's procurement policy to deal with document forgery and fraud. As noted above, the government has explained that "no further question of investigation by Japan side are planned (unless the existence of illegal logging is undoubtedly sure with considerable evidence)". Therefore, if evidence can be provided of illegal logging, regardless of all documents appearing in order, the government can organise an investigation. For this system to be effective, the government needs to establish and publicise an institutional structure and a formal procedure for receiving and handling claims of illegal logging.

An option provided for in the procurement policy is for a third party to verify the legality of wood products. Some countries already have

19. See "Documents Required for Verification on Legality and Sustainability of Wood and Wood Products -Example Illustrated for Company Overseas" (<http://goho-wood.jp/world/doc/illustration1.pdf>).

20. For example, a study by the European Forestry Institute found that the paper-based system for issuing logging licenses in North-Western Russia is vulnerable to fraud and forgery (EFI 2005).

systems that are presented by their governments as providing independent verification of legality. Chapter 1 listed the existing verification systems that Japan is considering accepting under its procurement policy. MAFF officials have visited some producer countries including Papua New Guinea to discuss with government officials whether these systems provide assurance of legality. For the general public to have confidence in this process, these assessments must be systematic, rigorous and transparent. To be systematic, the government must establish a sound framework to guide the assessments and apply this consistently to each country. To be rigorous, the frameworks must be comprehensive and include a set of minimum criteria that all verification systems must meet. To be transparent, the set of minimum criteria and the results of the assessments should be made publicly available. In cases where the minimum criteria are not met, the government has the option of providing support to bolster the system. For example, SGS recognises that its log export monitoring in PNG does not constitute a complete legal verification system, but suggests that it could be used as the building blocks for constructing such a system (Telfer 2007).

What are the basic elements of an independent legal verification system that the government would need to consider in its assessments? To establish an independent legal verification system is a complex process that requires verification of legal origin, including ownership, and verification of legal compliance (Mitchell, Elliot and La Rochefordiere 2003). Verification of legal origin is necessary to determine that wood has been derived from a legal source and requires a reliable timber tracking system to trace timber from its source to the point of export. To be reliable the tracking system should not only include a documentation system that covers all stages in the supply chain, as the Japanese government prescribes under modality two of its procurement policy, the documents should also be difficult to forge. The system should be bolstered by continuous monitoring and independent auditing (ibid.). Verification of legal compliance is needed to show that wood is

managed in accordance with forest-related legislation and regulations. Mitchell, Elliot and La Rochefordiere (2003) argue that a key element in verifying legal compliance is surprise inspections of forest management.

As described in Chapter 1, the MAFF Project to Promote a Comprehensive Response to Illegal Logging includes a sub-project to assess systems to verify legality and sustainability (*gouhousei/jizokukanousei shoumei shisutemu kenshou jigyou*). In FY2006, one of the working groups established under the Project contracted researchers to conduct surveys of systems to verify legality/sustainability in China, Russia and Indonesia. Therefore, the Japanese government clearly understands the importance of scrutinising existing verification systems. The Council for Tackling Illegal Logging Issue should build on these surveys to organise consistent and rigorous assessments of legal verification systems in producer countries using a set of minimum criteria and should publicise the criteria, the assessment process and the assessment reports.

#### 4.4 Provide a broad definition of sustainable forest management

Under Japan's Basic Policy on Promoting Green Purchasing sustainability is a "factor for consideration" for "designated procurement items". The Japanese government has not provided a clear definition of sustainability, which it vaguely describes in terms of "the material timber of items [that] was harvested from the sustainably managed forest". In fact, no definition of a "sustainably managed forest" is provided, making this concept impossible to operationalise in a precise manner. Officials within the Forestry Agency acknowledge that this definition is deficient (interviews 2006).

There is no single internationally agreed definition of sustainable forest management (SFM), but there is an international consensus that this concept includes ecological, social and economic

concerns. Japan's procurement policy should include a broad definition of legality in line with the international consensus.

## 4.5 Assess forest certification schemes

This definition could be expanded into a sustainability standard that could be used to assess systems which claim to verify sustainable forest management. Japan's procurement policy allows for forest certification to be used as evidence of legality and sustainability under its first verification modality. Certification has been selected because it is conducted by a third party and based on an independent standard. In PNG, only Forest Stewardship Council stand-

ards have been used, but numerous standards exist, some national, others global, that apply different criteria and indicators to evaluate forest management and chain of custody systems. As noted in Chapter 1, some schemes appear to have been unduly shaped by industry interests; hence, Japan's confidence in certification schemes based on the observation that they include a standard and an independent assessor may not be justified. For Japan's procurement policy to be effective, just as there is a need for the government to review independent legal verification systems, there is also a need for it to assess forest certification schemes. As with a review of legal verification systems, the assessment of forest certification schemes should be systematic, rigorous and transparent.

## 5.0 SUMMARY

When Japan's public timber procurement policy is viewed through the lens of forest realities in a high risk country such as PNG, it is clear that much work is required before the policy can be considered effective in achieving the government's objective of not using illegal timber. Japan has established and funded a process to strengthen the policy and the recommendations drawn from our analysis are directed at this process. The programme of work under this process should include:

- broadening the definition of legality to include the acquisition, harvesting, processing, transportation and export of timber, and all laws with important implications for forest management, not just those specific to forestry;
- collaborating with producer and consumer countries to formulate national legality standards according to a generic standard comprising minimum legality criteria;
- conducting consistent and rigorous assessments of legal verification systems in

- producer countries using a set of minimum criteria, publicising the criteria, the assessment process and the assessment reports;
- providing a broad definition of sustainable forest management in accordance with the international consensus, and
- conducting consistent and rigorous assessments of forest certification schemes using a set of minimum criteria and publicising the criteria, the assessment process and the assessment reports.

This comprises a large programme of work that will require prioritisation and a pragmatic approach, which are discussed further in the concluding chapter of this report. The following two chapters assess Japan's timber procurement policy from a rather different perspective by comparing it with the policies of selected EU member states that have a longer history of policy development.

# Selected Member Countries' Timber Procurement Policies in the Context of the EU's FLEGT Initiative

I *Federico Lopez-Casero*

## 1.0 INTRODUCTION

In the European Union (EU) procurement policies for legal and/or sustainable timber have been introduced by the Netherlands, Germany, Denmark, the UK, France and Belgium. Other countries in the EU - Spain, Sweden and Latvia - are presently considering developing timber procurement policies, while, outside the EU, Norway and New Zealand<sup>21</sup> have timber procurement policies and Australia<sup>22</sup> is considering developing one.

The primary purpose of this chapter is to provide essential background information on selected EU member countries' timber procurement policies that will be used in the compara-

tive analysis with Japan's policy in Chapter 4. This includes: a description and discussion of the supranational context of the EU's FLEGT initiative to prevent illegal timber imports; an outline of all timber procurement policies in EU member countries, including the reasoning for selecting three policies for the comparative analysis, and a detailed description of the individual processes in which the three selected procurement policies emerged, followed by broad observations on the policies.

21. See <http://www.maf.govt.nz/forestry/illegal-logging/nz-policy-on-illegal-logging/page-05.htm>.

22. See DAFF (November 2006).

## 2.0 THE EU FLEGT TIMBER LICENSING SCHEME AS A SUPRANATIONAL FRAMEWORK

The FLEGT Action Plan, particularly its key component of a timber licensing scheme, is discussed first as it represents the supranational response of the EU and its member states to illegal logging and has relevance to their public timber procurement policies.

### 2.1 Basic elements and progress

In response to the regional FLEG processes, the EU launched its own initiative, the Forest Law Enforcement Governance and Trade (FLEGT) Action Plan, to combat illegal logging and the resultant timber trade. Many EU member states and the European Commission had become aware that there is currently no practical mechanism for identifying and excluding illegal timber from the EU market. The FLEGT Action Plan, adopted in May 2003, seeks to develop a voluntary licensing scheme for the trade in legal wood products under bilateral agreements between EU member countries and producer countries. In addition, the Action Plan sets out the following range of measures to increase the capacity of producer countries to control illegal logging, while reducing the trade in illegal timber products between these countries and the EU:

- support for improved governance and capacity building in producer countries;
- development of legality standards through Voluntary Partnership Agreements with individual producer countries;
- establishment of a timber licensing scheme to reduce the EU's consumption of illegally harvested timber, and
- efforts to discourage investments by EU institutions that may encourage illegal logging (European Commission 2004).

The principal instruments to implement the FLEGT Action Plan are Voluntary Partnership

Agreements (VPAs) as bilateral agreements between producing countries (FLEGT partner countries) and the EU. The VPA's main objectives are to reinforce the partner countries' ability to control illegal timber production and to offer a mechanism to exclude illegal timber from EU markets. Although the details of each partnership agreement are expected to vary taking into account the conditions of each prospective partner country, some elements will probably be common to all agreements and will be components of a future FLEGT timber licensing system (European Commission 2004a). Under the licensing scheme, (officially referred to as *timber legality assurance system*) each partner country will implement a system to verify that its wood product exports to the EU have been legally produced (European Commission 2005). Such exports would be identified by means of licences issued by accreditation bodies and involve independent monitoring systems. The issuance of licences, in turn, would require credible evidence that the products in question had been produced in compliance with the specified laws of the partner country. Once the timber licensing scheme is established, the EU's border control authorities would allow imports only of licensed products from partner countries.

The basic elements of the timber licensing scheme are expected to include:

- a definition of legally-produced timber that sets out all the laws and regulations that must be complied with in the production process;
- a secure chain of custody that tracks timber from the forest where it was harvested through different owners and stages in processing to the point of export;
- a verification system to provide reasonable assurance that the requirements of the definition have been met for each export consignment;

- the issuance of licences to validate the results of legality verification and chain of custody;
- independent monitoring of the whole system to assure its credibility and to provide transparency (European Commission 2005).

Development assistance for improved governance and capacity building in the producer countries is another important aspect of the VPAs. The European Commission and member states have earmarked substantial resources around the FLEGT Action Plan. The budget line for FLEGT projects in 2006 amounted to 13.3 million EUR, of which 11.4 million EUR were for projects related to indigenous peoples and forests.

After protracted preliminary discussions, the first VPAs are presently being negotiated with key producer countries. The EU expects the VPAs with Indonesia, Malaysia and Ghana to be concluded by the end of 2007. Agreements with Cameroon, Liberia and Congo-Brazzaville are likely to follow. Informal discussions and preparatory work are ongoing in Central African Republic, Democratic Republic of Congo, Gabon, Viet Nam, Cote d'Ivoire and Ecuador. The FLEGT 2006 budget included an additional 10 million EUR for VPA preparations in the Africa, Caribbean, and Pacific (ACP) region. Moreover, 34 million EUR were designated for funding new thematic programmes with a governance focus.<sup>23</sup>

Provided that the ongoing VPA negotiations lead to the conclusion of agreements that include adequate legality standards, the FLEGT Action Plan could become a framework for a comprehensive and consistent strategy to exclude illegal wood from the EU and could improve forest management in producer countries. Development assistance will focus on establishing credible technical and administrative structures with adequate systems to verify that exported timber is legal, which could entail considerable institutional strengthening and

capacity building. The licensing system will reward the implementation of these systems through assured access to the EU market.

Providing assurance that the licensed goods are stemming from legal sources will require careful tracking of products from the point of harvest to the point of export. The EU has expressed its determination to ensure that the VPAs allow for a verification procedure that is based on the chain of custody. The EU is inclined to accept paper-based documentation that is cross-checked at various stages of the chain (European Commission 2004b); however, this does not include independent monitoring. Whether credible verification systems will be developed under the VPAs is yet to be seen.

One shortcoming of the EU FLEGT licensing scheme is that it presently aims at covering only a limited number of product categories. A particularly serious risk that the scheme has still to address is that of "circumvention". Unlicensed products originating from a producer country that has signed a VPA could enter the EU through a non-signatory country. This is a major concern in the Asia-Pacific region where large volumes of timber are imported by China and Viet Nam, to be processed and exported as finished products to lucrative Western markets. For the scheme to work effectively, all producer countries in a particular region that are major suppliers to the EU would have to sign VPAs (Brack 2006, 4). Intermediate countries in the trade chain would have to formally recognise the VPAs by only accepting licensed products from VPA producer countries for further processing and onward export to the EU. The licensing scheme would be most effective if non-EU major importer countries participated.

Overall, the EU has made considerable progress in developing an integrated strategy incorporating a broad range of measures to reduce illegal logging in producer countries and to reduce imports of illegal wood into the EU.

23. Presentation by EU representative at the Illegal Logging Update and Stakeholder Consultation, Chatham House, January 2007.

## 2.2 Options for Japan

Japanese officials have recently acknowledged that progress was made with the VPA negotiations and expressed their interest in exploring options for participating in or making use of the FLEGT licensing scheme.<sup>24</sup> There are two basic options for Japan. First, Japan could establish its own VPA system, incorporating ODA and product licensing, entirely separate from the efforts of the EU. This option, however, would not be sensible as it would result in large-scale duplication. Second, Japan could collaborate with the EU by establishing a formal connection with the EU Action Plan to officially recognise the VPA licensing schemes and to have the EU

recognise any schemes that Japan develops. This makes greater sense as Japan could pool its resources with EU countries and take advantage of work that is taking place or is planned under the FLEGT Action Plan, including accepting national legality definitions. For Japan's timber procurement policy, national licensing schemes developed through a multi-stakeholder process could provide strong assurance of legality. At the GLOBE International Legislators Forum of the G8 Illegal Logging Dialogue held in Berlin in June 2007, a Japanese government official hinted that Japan might support a global licensing scheme if it also covered trade between Japan and the EU.

## 3.0 DEVELOPMENT AND GENERAL OUTLINE OF TIMBER PROCUREMENT POLICIES IN THE EU

Unlike trade, in the EU public procurement is a member state competency – though the design of procurement policy is subject to basic rules set out in a series of EU directives. The final decision is one for individual governments. The FLEGT Action Plan recommends that member states make use of their competency pertaining to procurement. Presently six EU governments – Denmark, France, Germany, Netherlands, Belgium and the UK – have developed or are in the process of developing timber procurement policies that require evidence of legal and sustainable sourcing. Before describing in detail the three policies that will be used in the comparative analysis in Chapter 4 – namely those of the UK, France and the Netherlands –, we provide a brief overview of all six policies in EU member countries. The development processes and general features of these policies, as well as those of Japan's, are illustrated in Table 1 and outlined in the following discussion.

### 3.1 Policy development: Enactment date and underlying instrument(s)

The **Netherlands** was the first consumer country to introduce a public timber procurement policy in 1997. Four years after its implementation, the original policy based on the *minimum requirements* was considered insufficient by the government. A multi-stakeholder process formulated and eventually approved the *Nationale Beoordelingsrichtlijn* (BRL) guideline in October 2005. During the comparatively long implementation and revision process, which included the establishment of the *Keurhout* system, the Dutch policy has matured to become one of the most advanced timber procurement policies.

24. For example, such interest was expressed at the GLOBE International G8 Illegal Logging Dialogue Legislators Forum in Berlin, June 2007.



**TABLE 1 – Public timber procurement policies: Basic features**

COUNTRY AND PRODUCT COVERAGE (ALL PRODUCT CATEGORIES UNLESS SPECIFIED)	POLICY ENACTMENT DATE AND INSTRUMENTS	BINDING ON: 1. CENTRAL STATE AUTHORITIES 2. SUBNATIONAL AUTHORITIES	GOVT. CRITERIA TO EVALUATE SCHEMES/ EVIDENCE	VERIFICATION OF EVIDENCE FOR LEGALITY/ SUSTAINABILITY OF PROCURED TIMBER BASED ON:			
				FOREST CERTIFICATION SCHEMES		ALTERNATIVE MODALITIES	
				PRESENTLY ACCEPTED SCHEMES	PRIOR & REGULAR ASSESSMENT	AVAILABILITY	IMPARTIAL MONITORING
Netherlands	February 1997 <i>Directive</i> (BRL guideline awaiting implementation since October 2005)	1. Compulsory 2. Recommended	✓	All schemes approved by <i>Keurhout</i> ; In future: BRL & BRL equivalent schemes	✓ (by <i>Keurhout</i> Foundation; Future: BRL Assessment Board)	—	—
Germany	First measures: 1970s, 1998 New policy: January 2007 <i>Joint instruction</i>	1. Compulsory, but initially small practical effect 2. No effect	—	New policy: FSC or PEFC, or comparable certification or specifications	—	—	—
UK	July 2000 <i>Advice note &amp; guidelines</i> (by CPET)	1. Compulsory 2. Recommended	✓	FSC, PEFC, SFI, CSA; MTCC (only recognised for legality)	✓ (by CPET)	Evaluation of other evidence of legality/ sustainability	✓ (if concern)
Denmark (Initially: tropical timber; future: all)	June 2003 <i>Voluntary guidelines</i> (presently revised)	1. Compulsory to develop own policy 2. Recommended	✓	Public buyers' individual decision, following voluntary guidelines	✓ (by: advisory steering committee)	— (Introduction planned)	—
France	April 2005 <i>Advice note &amp; "notice of information" brochure</i>	1. Compulsory 2. Recommended	—	FSC, PEFC, CSA, SFI, MTCC, LEI, <i>Keurhout</i> , further schemes listed by ITTO	—	4 alternative modalities	✓
Belgium (Paper not covered)	March 2006 <i>Administrative circular</i>	1. Compulsory 2. Separate guidelines	✓	FSC, PEFC	✓ (by <i>Expert Group</i> )	Evaluation of other evidence against government criteria	✓
Japan	April 2006 (implementation since October 2006). <i>Guideline</i>	1. Compulsory 2. Efforts to adhere are expected	—	FSC, SGEC, PEFC, SFI, CSA, MTCC, LEI	—	2 alternative modalities	—

Selected Member Countries' Timber Procurement Policies in the Context of the EU's FLEG Initiative

Germany's federal government introduced an administrative instruction in the 1970s requiring tropical timber used in federal building projects to be certified as sustainable. However, neither this policy, nor that based on a newer instruction<sup>25</sup> in 1998 were monitored or implemented effectively.<sup>26</sup> The federal government

attempted to undertake a more significant revision of the procurement policy from 2003 - 2005, but a change in government in 2005 led to an abrupt but temporary cessation of these efforts. In January 2007, the government announced a new timber procurement policy, which limits purchases to wood/wood products certified by

25. Federal Ministry of Economics and Technology's instruction IV B 7 – 5076 12/6 of 19 January 1998.

26. Interview with German government official in June 2007.

FSC or PEFC, or for which alternative evidence to show equivalence with the FSC or PEFC criteria can be produced.

The **UK** was the third country to enact a timber procurement policy, issuing voluntary guidance in 1997 and announcing a binding policy in 2000. In the following years, the UK policy has experienced gradual but constant evolution. In 2004 the government released a Timber Procurement Advice Note. The five major certification schemes were assessed, an alternative modality to the schemes was developed, an advisory body (Central Point of Expertise on Timber) was established and criteria for evidence assessment were formulated. The UK policy is usually viewed as the most advanced.

The next country to establish a public procurement policy of legal and sustainable timber was **Denmark** in 2003, initially based on voluntary guidelines and targeting only tropical timber. The Danish government has recently undertaken a series of steps to improve its guidelines and to make them mandatory and to largely harmonise them with the Dutch and UK policies. The Danish government has formulated a "9-point plan" that includes efforts to:

- expand the procurement policy to all kinds of timber;
- introduce guidance towards the different needs of users;
- encourage all ministers and mayors to develop green procurement policies which include timber and follow the recommendations in forthcoming revised guidelines;
- further promote the certification of forests, and
- continue overall efforts to promote green and environmentally friendly procurement.<sup>27</sup>

In April 2007 the government published a draft of revised criteria for legal and sustainable timber and criteria for assessing certification schemes, with the purpose of receiving public

comments by 31 May. These efforts indicate that the Danish government is committed to developing a more effective procurement policy.

Two years after Denmark, in 2005, **France** enacted a procurement policy for legal and sustainable timber following a personal initiative by the President of the Republic. The French policy, like that of the UK, is based on an Advice Note - the prime minister's "*circulaire*". Yet neither this note nor the Notice of Information that was distributed included guidelines to adequately assist procuring agents in their timber purchases. Although there is a noticeable personal engagement of government officials in developing proposals for improving the policy design and monitoring its implementation,<sup>28</sup> their initiatives have not been taken up at higher political levels.

Fulfilling a commitment for green timber procurement made in 2003, the federal government of **Belgium** approved a policy in November 2005, which became operational and was enacted in March 2006. While still not fully implemented, the progress made so far places the Belgian policy among the most promising. The Belgian policy accepts forest certification schemes that have been positively assessed by an Expert Group as one modality to demonstrate compliance with 11 criteria for sustainable timber developed by the government.<sup>29</sup> An initial assessment of the Forest Stewardship Council (FSC) and the Programme for the Endorsement of Forest Certification (PEFC) national schemes against the criteria found that while all FSC schemes meet the criteria, some PEFC national schemes do not fully comply. This resulted in two Positive Lists for PEFC national schemes. When they purchase timber, contracting agents should give preference to the certification schemes on list 1, which fully meet the criteria. As an alternative modality, other types of evidence will be accepted, as long

27. Information obtained from a government presentation given at the Illegal Logging Update and Stakeholder Consultation, Chatham House, July 2006.

28. Impression from interviews with French government officials (July 2006).

29. Information obtained from a government presentation given at the Illegal Logging Update and Stakeholder Consultation, Chatham House, July 2006.

as the supplier proves that the wood originates from sustainable sources that meet all 11 criteria.

Enacted one month after Belgium's policy in April 2006, **Japan's** policy is the most recent. One of its key instruments, the Forestry Agency's Guideline, is comparable to the administrative guidelines, directives or circulars of most other policies. The list of specified items for procurement, which mentions legality as a criterion for evaluation and sustainability a factor for consideration for specified wood items, has strong implications for compliance as it is part of the Basic Policy of the Green Purchasing Law.

### 3.2 Binding effect on central and local authorities

All timber procurement policies considered in this study are compulsory for central state authorities, with the exception of Denmark. While the Danish guidelines are voluntary, the law obliges central government agencies to develop their own green procurement policies, which extend to tropical timber. Similar to Japan, public timber procurement in Denmark is part of a broader green procurement policy: Since 1996, the Danish Ministry of the Environment has launched around 50 environmental guidelines on public purchasing of various products. Although voluntary, the detailed Danish timber guidelines can be considered more advanced than the binding German directive, which has a narrow focus on tropical timber for public construction, merely requiring "federal procuring agents to use wood from sustainable forest management provided with credible certification depending on the possibilities of the market" (Bundesregierung 2001, 101).

With respect to subnational (i.e., regional and local) authorities, none of the policies is compulsory. In the Netherlands, UK and France, subnational agencies are encouraged to follow the principles of the procurement policies. No implication for subnational authorities emanates from the policies in Germany, Denmark and Belgium. The effect of Japan's policy on local authorities

could potentially be the greatest of all policies, as the Japanese wording to encourage local entity compliance — *doryoku gimu* or "obligation to cooperate" — is very strong.

### 3.3 Government criteria and modalities for assessing evidence

The governments of the Netherlands, Denmark, UK and Belgium have established their own criteria and indicators to help procuring agencies assess the evidence of legality and/or sustainability of timber and timber products. Government criteria have not been formulated in Germany, France and Japan.

Acceptance of forest certification schemes is a modality for the verification of legality and/or sustainability that all seven timber procurement policies have in common. However, while the policies in the Netherlands, UK, Denmark and Belgium accept certification schemes according to a prior assessment (and regular reassessment) of the schemes, the German, French and Japanese policies accept all major existing schemes without assessing their procedures and probative force.

A general principle of WTO and EU internal market rules is that trade-affecting definitions should not rest on membership of schemes or bodies, but on clear criteria that anyone can meet regardless of which organisation they have signed up to. However, the requirements of the Dutch, German and Danish policies require equivalence to the rules established by existing certification schemes. All three policies originated from the recognition of specific certification schemes without having their own definition of sustainability against which to assess the schemes.

In contrast to the Dutch, German and Danish policies, the policies of the UK, Belgium, France and Japan have clear alternative modalities to forest certification, exclusively for legality verification. While the alternative modalities of the

UK and Belgium policies include a number of criteria for procuring agencies to verify legality and sustainability, those of Japan's and France's policies primarily rely on verification by the private sector. The UK policy, for instance, has developed a detailed list of criteria for procuring agencies to assess what is termed category B evidence. In contrast, the Japanese and French policies expect the industry associations (and, in Japan's case, alternatively individual suppliers) to autonomously establish procedures in voluntary codes of conduct for verifying the legality and/or sustainability of timber supplied to public entities. Once developed, the respective procedures were recognised by both governments as effective means to provide proof of legality and/or sustainability. By placing the onus on their private sectors, the two governments do not expect procurement agents to assess the veracity of the documentary evidence provided by their suppliers.

Conducting an in-depth comparative analysis of all seven procurement policies listed in Table 1 is beyond the constraints of this research exercise; hence, we have focused on those policies that will likely offer the most insights in terms of deepening our understanding of, and lessons for developing, robust policies – UK, France, Netherlands. The policies of Germany, Denmark and Belgium will not be considered in the subsequent in-depth analysis for the following reasons:

- Before its revision in January 2007, the German policy did not specify which certification schemes should be accepted as evidence of sustainability and effectively the policy was not implemented.
- The Danish timber procurement guidelines include criteria for procuring agencies to assess evidence and the Danish government is considering establishing alternative modalities to forest certification. However, given the initially voluntary character of the guidelines and the large number of individual procurement policies, we have not included Denmark in the comparative analysis.
- The Belgian government plans to reform its policy in 2008, which will include a comprehensive assessment of all major certification schemes.<sup>30</sup> Therefore, it makes more sense to include Belgium in a comparative analysis after the policy is reformed.

Before conducting the comparative analysis it is necessary that the features of each policy are clearly described and understood. In Chapter 1 we described the context in which Japan's policy emerged, its major elements and the ongoing process to strengthen the policy. For the other three policies that are covered in the comparative analysis we now provide a description of timber imports, government strategies to combat imports of illegal wood, policy elements and their implementation, their institutional framework, planned steps to strengthen the policy, and private sector responses. The focus of our discussion on each policy varies according to where most progress has been made, e.g., with institutional development, the provision of support services, the development of alternative modalities, the assessment of verification schemes and so forth.

## 4.0 TIMBER PROCUREMENT POLICY IN THE UK

One of the UK government's first major responses to the issue of illegal logging dates back to July 2000, when it announced a procure-

ment policy for timber and timber products. This policy has gradually been implemented since 2004.

30. Interview with Belgian government official (November 2006).

## 4.1 Background of UK timber imports and initial responses to illegal logging

The UK is the world's 4th largest wood importer, after the US, China and Japan. The volume and value of wood and wood product imports (including associated products) in 2004 was 52 million m<sup>3</sup> (UK Forestry Commission 2005: Table 3.1.), worth GBP 8.5 billion (ibid.: Table 3.4.). Environmental NGOs estimate that a substantial part of these imports stem from illegal sources. For example, the World Wide Fund for Nature estimates that 28 per cent (2.2 million m<sup>3</sup>) of the total timber imported from six regions<sup>31</sup> into the UK in 2004 (7.9 million m<sup>3</sup>) was logged illegally (WWF 2005, 5). Greenpeace, likewise, implied significant imports of illegal timber in the following passage:

*Today, the UK is awash with Chinese plywood. In June 2005, hardwood plywood imports from China made up nearly 30% of the UK trade in hardwood plywood. [China] is the number one importer of timber from many countries affected by illegal logging (Greenpeace 2005).*

Perhaps, in part, prompted by this type of criticism, the UK has in the last few years become a pioneer in policy formulation against illegal logging and the trade in illegal wood products. In 1997, the UK government initiated voluntary guidance on timber procurement to its departments and agencies (Brack 2004, 8). In July 2000, the government announced a procurement policy for timber and timber products and invited trade representatives and NGOs to discuss the timetable for its implementation.

In 2002, the UK government commissioned the consultancies Environmental Resources Management (ERM) and ProForest to undertake a scoping study on contract and variant specifications for legal and sustainable timber. Apart from defining these specifications and paving the way for policy formulation, their report also recommended the establishment of an advisory

service to provide government procurement personnel with information and advice to support the implementation of the policy.

The Timber Procurement Advice Note from January 2004 established new procedures for procuring wood and wood products, creating a binding commitment on all government departments and agencies. While legal and sustainable timber procurement is not a legal requirement, it has become a "self-imposed voluntary code of purchasing". Current guidance includes a contract clause to ensure the supply of timber from legal sources and a variant specification for the option of supplying sustainable timber. This requires that the suppliers produce documentary evidence.

Initially, buyers were left to judge what is and is not credible evidence and to decide whether to accept certificates of forest management and chain of custody. The government believed there was a clear need for independent assessment of forest certification schemes against criteria of legality and sustainability.<sup>32</sup> In August 2005, the government commissioned ProForest, a private forest consultancy with recognised experience in advising on responsible timber purchasing, to operate the Central Point of Expertise on Timber (CPET) for both formulating the criteria and assessing the schemes.

## 4.2 Advisory Board and Consulting Service: CPET

The role of CPET is twofold. First, it discusses and contributes to the formulation and implementation of the public timber procurement policy through an advisory board – the "CPET reference board". Second, it provides a consulting service for public procurers and their suppliers.<sup>33</sup> Unlike its reference board (as will be explained in more detail later), CPET is not an organisation, but a service provided by the UK government through the Department for Environment, Food and Rural Affairs (Defra).

31. These are the Amazon Basin, the Baltic States, the Congo Basin, East Africa, Indonesia and Russia.

32. Interview with Defra official (January 2006).

The service's main objective is to provide guidance and support to the UK public sector buyers and their suppliers. This includes assessment of evidence to determine whether forest sources qualify as legal and/or sustainable. CPET offers a helpline, which is only available to public sector buyers and their suppliers. The public bodies eligible for the service are:

- central government departments (executive bodies)
- central government agencies (non-executive bodies)
- affiliated bodies (e.g., some schools)
- local authorities

CPET provides guidance on the procedures departments should undertake when purchasing wood or wood products. This includes an assessment of evidence and a monitoring programme to determine if the contract requirements of legality and variant specification of sustainability are being met. Another CPET service is organising regular training workshops on the procurement policy for public authorities. While the procurement policy is only a binding commitment on central government authorities, both central and local authorities – as well their suppliers – are equally encouraged to use the CPET service.

CPET does not provide advice on technical timber specifications nor on how to identify certified suppliers. As the government, through ProForest, assessed the schemes against specific criteria, CPET only recommends schemes based on the results of this assessment. CPET assumes no responsibility for any purchase; this remains with the purchasing agency.

A government official involved in formulating the timber procurement policy since its inception explained that CPET was established because legality and sustainability verification

is a complex issue, which requires the means for writing contracts, engaging stakeholders and providing guidance, while at the same time allowing for transparency of the verification criteria and procedures. Enquiries received by CPET so far have been very diverse, ranging from: "What is the government's timber procurement policy?" to "What type of evidence should we collect?"<sup>34</sup> The primary reason for why the operation of CPET was delegated to the external consultancy ProForest is their possession of technical skills, which immediately offered a workable system. ProForest has for a long time been involved in forest audits and is widely recognised as an impartial entity. Another reason for why the government contracted the service to a consultancy is that the alternative of operating CPET within the government would have been unreasonably expensive.<sup>35</sup>

The CPET reference board is a multi-stakeholder institution, which was created to discuss and further advance policy formulation and implementation. Board members include the UK Timber Trade Federation (TTF), the WWF, the Forests and the European Union Resource Network (FERN) and the Confederation of Forest Industries (ConFor). It has regular meetings (three or four times a year) and ad hoc meetings.<sup>36</sup>

According to one of its members, at board meetings a negotiation process takes place that is meaningful and adds value, but requires a search for compromises and balance.<sup>37</sup> The government can choose to ignore advice given by the reference board. For instance, demands of environmental NGO board members to have social criteria included in the policy were ignored for a long time.<sup>38</sup>

33. Interviews with CPET Coordinator and ProForest Deputy Director (January 2006).

34. Interview with CPET representative (July 2006).

35. Interview with WWF representative (January 2006).

36. Interview with Defra official (January 2006).

37. Interview with WWF representative (January 2006).

38. Interview with WWF representative (January 2006).

### 4.3 Policy outline and initial implementation

The basic principles of the UK public timber procurement policy are laid down in two official documents. The *UK Government Timber Procurement Policy: Definition of 'legal' and 'sustainable' for timber procurement* (second edition: CPET 2006b) sets out what legal and sustainable sources are under the policy, whereas the *Timber Procurement Advice Note* (Defra 2004) advises central government authorities of the procedure for purchasing legal and sustainable timber.

For UK government procurement, legal timber and wood derived products are those which originate from a forest where the following requirements are met (CPET 2006b, 2):

- 1.1 The forest owner/manager holds legal use rights to the forest.
- 1.2 There is compliance by both the forest management organisation and any contractors with local and national legal requirements including those relevant to:
  - Forest management;
  - Environment;
  - Labour and welfare;
  - Health & safety.
  - Other parties' tenure and use rights
- 1.3 All relevant royalties and taxes are paid.
- 1.4 There is compliance with the requirements of CITES.

For the procurement policy, sustainable timber and wood products must come from a forest which is managed in accordance with a definition of "sustainable" that meets the requirements set out below:

- 2.1 The definition must be consistent with a widely accepted set of international principles and criteria defining sustainable or responsible forest management at the forest management unit level.
- 2.2 The definition must be performance-based, meaning that measurable outputs must be included.

2.3 Management of the forest must ensure that harm to ecosystems is minimised.

2.4 Management of the forest must ensure that productivity of the forest is maintained.

2.5 Management of the forest must ensure that forest ecosystem health and vitality is maintained.

2.6 Management of the forest must ensure that biodiversity is maintained.

To achieve the types of management stated in criteria 2.3 to 2.6, the government policy requires the definition of sustainable to include specific requirement listed in the document (CPET 2006b, 3). Criterion 2.7 states that the process of defining sustainable must seek to ensure balanced representation and input from the economic, environmental and social interest categories. Criterion 2.8 prescribes that the process of defining sustainable must seek to ensure that a) no single interest can dominate the process, and that b) no decision can be made in the absence of agreement from the majority of an interest category.

More recently, a number of environmental and social NGOs are demanding that the government includes *social criteria* in its definition of sustainability. Until mid 2006, the government argued that these cannot be considered under the current EU procurement directives. According to recent government presentations, however, it is now considering the introduction of social criteria.<sup>39</sup> Another demand from at least one NGO is for the assessment of forest certification schemes to differentiate between the national schemes under the FSC and PEFC.

In accordance with the *Timber Procurement Advice Note*, the procedure should include a contract condition to ensure supply of timber from legal sources and a variant specification for the option of supplying sustainable timber. A requirement of the contract condition and variant specification is that suppliers must be able to provide evidence to the public purchaser that the timber or wood products they supply are from legal and, if promised by the supplier,

39. E.g., joint UK, Dutch and Danish governments' presentation at the Illegal Logging Update and Stakeholder Consultation, Chatham House, January 2007.

sustainable sources. Evidence of legality is a minimum requirement, which may require independent verification. Evidence of sustainability is an additional criterion for consideration and decision, which always requires independent verification.<sup>40</sup> The CPET reference board has been responsible for further developing an overall framework for assessing evidence of legality and sustainability. This process has taken four to five years, which includes the activities of Defra prior to the establishment of CPET.<sup>41</sup>

The framework for assessing evidence recognises two categories of evidence: certified material (Category A evidence) and other types of documentation (Category B evidence). With respect to both categories, the primary criteria for the government concerning legality and sustainability include transparency (particularly traceability) and stakeholder involvement.<sup>42</sup>

#### 4.3.1 Category A Evidence

For procurement agents, the most straightforward option for meeting the requirements of the procurement policy is to purchase timber from sources certified by schemes accepted by the policy. In 2004, the UK government contracted ProForest to assess the five major (from the point of view of UK imports) forest certification schemes, namely FSC, PEFC, the Canadian Standards Association (CSA), the Sustainable Forest Initiative (SFI) and the Malaysian Timber Certification Council (MTCC) using a framework developed by ProForest. This assessment partially disqualified the PEFC, SFI and MTCC schemes for not meeting the government's requirements for verifying sustainability and they were given a timeframe in which to undertake revisions of their standards. While PEFC and SFI revised their criteria in order to meet the UK government's requirements, MTCC did not. As a result, public authorities in the UK can consider MTCC certified wood as legal only if it contains 100% certified raw material and cannot use MTCC certification as verification of sustainability (ProForest 2006).

40. Interview with Defra official (January 2006).

41. Interview with Defra official (January 2006).

42. Interview with Deputy Director ProForest (January 2006).

43. Interview with a CPET expert (July 2006).

Biennial annual reviews of the schemes are undertaken to determine whether the schemes continue to provide assurance of legality and sustainability. The UK government decided that it needed a framework for regularly assessing which schemes provide assurance that its contract requirements for legal and sustainable timber sources are being delivered. To provide that framework, CPET developed criteria for the policy, which can be found in a reference document on *Criteria for Evaluating Certification Schemes*, the second edition of which is dated May 2006 (CPET 2006). A total of 26 criteria are grouped into four sections, reflecting the four main components of a forest certification scheme: forest management standard, certification, accreditation, chain of custody (*ibid.*, 5-18).

It is one of the tasks of the CPET reference board to score compliance with the requirements of each criterion on a 3-point scale: 0 = inadequately addressed and not acceptable; 1 = partially addressed; 2 = acceptable. For a scheme to serve as assurance of legality, a minimum score of 1 is required for each criterion identified as relevant to legal requirements. Assurance of sustainability requires a minimum score of 1 for each criterion identified as relating to sustainable requirements, and an overall score of 75% of the total possible score for criteria relating to sustainable requirements; if the latter is not achieved, a scheme will be assessed as *progressing to sustainable*. The final decision whether to accept a scheme is made for the scheme as a whole and not on a country basis. CPET will only disqualify a certification scheme after its acceptance once the internal complaint procedures of the scheme have been utilised unsuccessfully.<sup>43</sup>

Within the CPET reference board, some members have criticised the two global certification schemes. The FSC interim standards developed for some countries were criticised as unsatisfactory and some of the NGOs on the board have criticised PEFC for not having a tri-



partite decision-making system comparable to that of FSC, thereby providing industry with veto power.<sup>44</sup> Regardless of these concerns, the government decided to accept all FSC national schemes, as well as PEFC, after the latter revised its standards.

In practice, certified wood and wood products stem predominantly from temperate boreal forests, which represent the vast majority of timber imports into the UK. Category A evidence will thus be particularly important for temperate and boreal forests, but much less so for tropical and subtropical forests.

#### 4.3.2 Category B Evidence

Category B was primarily introduced to accommodate EU principles on public procurement that encourage governments to use objective criteria in tendering and contract award procedures. The range of Category B evidence accepted under the policy is very broad, thus the government has decided that this evidence usually needs to be evaluated on a case-by-case basis. The types of Category B evidence usually are audit statements, government documentation or supplier declarations. The CPET reference board has completed a full review of its assessment criteria, producing the first edition of a *Framework for Evaluating Category B Evidence* in June 2006 (CPET 2006a). This framework distinguishes between:

- criteria for assessing evidence;
- checklists to assist suppliers in providing all the information required in a format which can be systematically and consistently assessed by procurement staff, and
- guidance annexes, which are being developed by CPET and “will be continually improved and updated to provide background information to help both suppliers and procurement officers” (ibid., 3).

The framework distinguishes between two groups of requirements for assessing evidence, reflecting the main factors that determine the adequacy of Category B evidence, namely:

1. The requirements for information and evidence to demonstrate supply chain management, which provides traceability from the forest source to the point of supply.
2. The requirements for information and evidence to demonstrate that forest management meets the UK government requirements for legality and/or sustainability.

Under the framework, compliance with each criterion will be assessed as either “adequate” or “not adequate”. Evidence from existing assurance programmes and ad hoc evidence must achieve adequate compliance with every criterion. With respect to the first criterion, *supply chain management*, for each stage in the supply chain it must be clear:

- “what controls are in place to make sure that there is no mixing or substitution – accidental or intentional – with materials from other sources” (ibid., 4)
- “how the information on control has been verified” (ibid.).

According to the framework, the latter requirement (verification) might include a range of different approaches such as:

- statements from the organisation implementing the control (1<sup>st</sup> party checks);
- checks made by the supplier to the government of their suppliers (2<sup>nd</sup> party verification);
- verification by an independent third party (3<sup>rd</sup> party audits);
- official documentation showing official checks that have been carried out, and
- “external programmes” providing supply chain management.

The UK government considers it “important that the approach used to verify information is appropriate. The higher the risk that adequate control is not in place, the more formal and robust the verification mechanism should be”. Suppliers can either provide copies of the evidence or describe where it is available. *Independent verification* is required “If there is any concern

44. Interview with WWF representative (January 2006).

about the adequacy, robustness or veracity of the evidence provided" (ibid., 5).<sup>45</sup>

Specific information is also required under the second criterion for assessing evidence – requirements for evidence to demonstrate that forest management meets the UK government requirements for legality and/or sustainability. This information should include the location of the forest or forests where the timber originated. A distinction is made between evidence for sustainable sourcing and for legality. For sustainability, the information provided must be the forest management unit or units from which the timber was sourced. For legality, only the country of origin need be described. However, if timber originates from forests in countries where legal use rights are unclear, forest governance is weak or mechanisms for monitoring and public reporting of compliance are absent or not functioning, the forest management unit/units of the sourced timber must be described (ibid., 6).

A further requirement of the forest management criterion is that suppliers have information on compliance with a set of criteria stated in two different checklists — one for claims of legality, and one for claims of sustainability — that they must complete for each forest source.<sup>46</sup> The mechanisms accepted for providing information on compliance and adequacy are the same as in the case of supply chain management: 1st party checks, 2nd party verification, 3rd party audits and external programmes (see above). Again, "if there is any concern about the adequacy, robustness or veracity of the evidence provided then independent verification of the evidence will be required" (ibid., 7).

#### 4.3.3 Initial implementation of the policy

It is still too early to assess implementation of the policy. According to an interviewed govern-

ment official, officials responsible for public procurement who are familiar with the policy tend to reject bids in which only verification of legality is offered in favour of bids that provide assurance of both legality and sustainability.<sup>47</sup> However, the degree to which procurement agents are familiar with the existence of the policy, in general, and with the complex requirements, in particular, may not be satisfactory for the government. At the International Experts Meeting on Illegal Logging, hosted by Japan in Tokyo in March 2007, the UK Minister of Biodiversity, Landscape and Rural Affairs informally expressed the government's concern over the initial results of the monitoring of policy implementation conducted by CPET. In July 2007, a government official conceded that the current policy might be "too flexible".<sup>48</sup> Further issues that would need to be addressed according to the official include lack of engagement of subcontractors in policy implementation and inconsistent site supervision and contract management.

These shortcomings notwithstanding, policy implementation has raised imports of certified timber to a 55% share.<sup>49</sup> A limiting factor that may influence implementation of the policy are the price premiums that some certified woods command. The market signals for certified wood are mixed. Certified tropical hardwood species can command high premiums (e.g., up to 20% for African *ekki* wood)<sup>50</sup>, whereas premiums tend to disappear when supply is high, which has been observed for plantation timber. Because of their usually tight budgets, procuring agents may source cheaper, legal verified timber, rather than certified timber, as permitted by the policy.<sup>51</sup> However, if public purchasers only seek legal timber, the policy requires them to present a justification for their decision.

45. "Independent verification" for the UK means that an evaluation is "undertaken by an individual or body whose organisation, systems and procedures conform to ISO Guide 65 or equivalent and who is accredited to audit against timber production standards by a national or international body whose organisation, systems and procedures conform to ISO 17011 or equivalent" (ibid.).

46. Checklist 2 and 3

47. Interview with Defra official (January 2006).

48. Presentation of a Defra official at Chatham House Illegal Logging Update (July 2007).

49. Ibid.

50. Interview with a Defra official (January 2006).

51. Interview with government and private sector experts (January 2006).

A recent revision of the UK procurement policy in March 2007 will require legal and sustainable timber from 2009, with an exception for FLEGT-licensed legal-only products until 2015.<sup>52</sup> This ought to be considered a major development which is causing a lot of disquiet amongst suppliers sourcing from developing countries.

An important question is whether the policy has succeeded in achieving take-up by local authorities, which are one of the explicit target groups of CPET in its effort to disseminate the procurement policy to all public buyers. Between August 2005 and December 2006, 18 local authorities used the CPET helpline and five attended workshops. (Brack 2007, 10). Twelve case studies conducted by Brack “do not suggest that local authorities in aggregate are making much progress in developing timber procurement policies” (2007, 23), although exceptions do exist. Brack argues that the steady subjection of local government to central direction has not proved politically popular (Brack 2007, 25).

#### 4.4 Private sector response

Many firms in the UK are working with their suppliers to ensure the provision of suitable documentation to meet the government's requirements. However, has the procurement policy prompted the private sector to target legal and sustainable wood in private contracts?

Public procurement accounts for 15-20% of total wood product sales in the UK (Speechly 2005), a share large enough to potentially influence the timber market. The government's procurement policy is commonly cited by the UK wood industry as a major driver for change in its own behaviour. Trade and industry associations have voluntarily developed their own procurement policies and codes of conduct for their members, and some relationships with the public procurement policy can be observed. Suppliers see price premiums developing for some products and also detect an increase in demand for certi-

fied products. Because in general importers and retailers prefer not to handle different types of the same products (i.e., certified and non-certified), this is having a knock-on impact in encouraging importers to move heavily into certified products – to the extent that supply now appears to be outstripping demand. In a study for the UK Timber Trade Federation (TTF) and Department for International Development (DFID), Oliver concludes that “there is no doubting the influence of the UK government's Central Point of Expertise on Timber (CPET) in boosting interest in certified products and guiding demand for these products where it exists” (Oliver 2006, 5).

The case of the Timber Trade Federation (TTF) as the main representative of the trade sector in the UK serves an illustrative example. In 2002, the TTF established a code of conduct to ensure their members' timber supplies are legal and originate from well-managed forests. The Federation also developed a Responsible Purchasing Policy (RPP), which is a toolkit to assist agents, importers and merchants of timber and timber products to manage their supply base and in doing so to meet the requirements of the TTF Code of Conduct and the government procurement policy. The RPP offers member companies one way that they can prove due diligence and continuous improvement towards only offering certified sustainable timber. In the absence of certification, signatories to the RPP are required to seek alternative evidence for the legality and sustainability of their timber products. The RPP also requires signatory companies to develop:

- a company policy, with environmental commitments towards procurement activities;
- a risk assessment procedure to evaluate the suppliers' ability to support the company policy;
- a management report to summarise the company's achievements, and
- an annual third-party audit to assure compliance to the policy and continuous improvement.

52. Presentation of a Defra official at Chatham House Illegal Logging Update (July 2007).

According to the head of Environment and Corporate Social Responsibility in the TTF, one of the next steps for the RPP is to obtain more recognition from customers, banks, insurance, companies, NGOs and private sector initiatives. Another target is to keep the RPP aligned with

CPET's development of legality standards.<sup>53</sup> The TTF is also involved in international initiatives, such as the Timber Trade Action Plan conducted in association with other European trade associations and supported by the EU.

## 5.0 TIMBER PROCUREMENT POLICY IN FRANCE

France's procurement policy of wood and wood products, introduced in April 2005, is the second approach that this study includes in its comparative analysis.

### 5.1 Background of French timber imports and the government's initial responses to illegal logging

Covering a total of 15 million hectares, France's temperate forest area is one of the largest in the EU. Domestic timber production is significant — around 7.9 million m<sup>3</sup> in 2005, of which 977,000 m<sup>3</sup> were exported (LCB 2006, 2). None the less, France is Europe's top importer of tropical timber, with an estimated imported volume of 1,280,000 m<sup>3</sup> in 2005 (ITTO 2006). France possesses eight million hectares of tropical forests in its overseas territories (especially French Guiana), but its tropical wood imports are predominantly from the francophone Congo Basin in Africa. A number of French enterprises have leading positions in the global tropical timber business. The public sector, on the other hand, is responsible for one quarter of the total consumption of tropical timber in France. This is partly due to a rather large involvement of the public

sector in housing, where it is responsible for an estimated 13-15% of timber consumption.<sup>54</sup>

By early 2004, the demand of environmental NGOs to exclude illegal and unsustainable tropical timber from the French market began to elicit government responses. In March 2004, the French government established a "Permanent Study Group on Public Procurement for Sustainable Development and the Environment" (GPPEM-DDEN),<sup>55</sup> composed of technical experts, professionals and public buyers, including representatives of local authorities.<sup>56</sup> The main functions of the Permanent Study Group are to produce technical documents to guide public buyers and to make specific recommendations in order to further develop the policy. On 7 April 2004, the government approved an Action Plan for Tropical Forests,<sup>57</sup> which aims mainly at:

- improving the conservation of French tropical forests and the development of sustainable forest management;
- strengthening forestry assistance to the francophone African producer countries in particular;
- creating a National Working Group for Tropical Rainforests (NWGTR)<sup>58</sup> composed of government departments, forestry and trade professionals, NGOs and independ-

53. Presentation by the head of TTF Environment and Corporate Social Responsibility at the Illegal Logging Update and Stakeholder Consultation, Chatham House, July 2006.

54. Interview with government officials and private sector representative (July 2006).

55. In French: *Groupe Permanent d'Etude des Marchés "Development Durable, Environnement"* (sic).

56. Interview with government official (July 2006).

57. In French: *Plan d'action du gouvernement en faveur des forêts tropicales* (French Government 2004).

58. In French: *Groupe National de Travail sur les Forêts Tropicales Humides*.

ent experts, which is expected to produce white papers on the French policy on tropical forests, and

- preparing a prime minister's advice note (*circulaire*) to public buyers, with the ultimate target of raising the share of wood from legal sources under sustainable forest management (or at least progressing toward SFM) of the total publicly procured wood/wood products to 50% in 2007 and 100% in 2010.

From May 2004, the Advice Note was formulated under the cooperation of three ministries: Finance; Agriculture (responsible for forest policy), and Ecology and Sustainable Development. In October and December 2004, the NWGTR held consultations with professional forestry and timber sector representatives, such as producers, traders and industry members. According to a government official, the role of the French timber trade federation Le Commerce du Bois (LCB) in shaping the new policy was particularly important.<sup>59</sup> At the United Nations Educational, Scientific and Cultural Organisation (UNESCO) International Conference on Biodiversity, Science and Governance in January 2005, the President of the French Republic, Jaques Chirac, announced that "from this year on, the State in France will use only eco-certified timber for big building works. In 2010, the totality of public purchases will have to conform to this commitment". On 5 April 2005 the French prime minister approved the Advice Note on Public Wood Purchases for Sustainable Forest Management.<sup>60</sup>

## 5.2 Policy outline

The Advice Note consists of a letter signed by the prime minister and a technical annex, which includes specifications for public procurement. The policy is mandatory for central authorities, which are required to demand evidence of the legality of the forestry activities and/or of sus-

tainable forest management, with the proviso that there is sufficient potential supply. The policy is recommended to local authorities.

While no distinction is made between tropical and non-tropical forest products, the Advice Note differentiates between two categories of products related to two types of purchase, respectively. The product categories are:

- I. timber (sawn and veneer products) and plywood
- II. all secondary-processed products (particle boards, windows, furniture and paper)

The types of purchase are public works (specific cases) and product purchasing (general case).

### 5.2.1 Requirements for Category I products

Suppliers who offer Category I products to public buyers must provide at least one of the following five certificates or an equivalent:

1. certificate delivered by the producer and verified by an independent body proving that timber was legally logged or, alternatively, a licence of legality delivered by the producer country, which must be verified in compliance with international agreements;
2. sustainable forestry management certification verified by an independent body;<sup>61</sup>
3. document attesting to the existence of a forest management plan that was approved by a local authority and verification of its implementation by an independent body that has forestry experience;
4. document attesting that the forest manager or owner has subscribed to a code of conduct which includes legal and sustainable forest management commitments and which is regularly verified by an independent body, or
5. document attesting that the supplier subscribes to a code of good conduct which includes commitments of buying timber from legally and sustainably managed forests and which is regularly verified by an independent body.

59. Interview with government official (July 2006).

60. In French: *Nouvelle circulaire sur les achats publics de bois pour une gestion durable des forêts*; published on 8 April 2005 in the Official Journal of the French Republic.

61. In the French government's understanding, existing forest management certification schemes provide a "good guarantee" if they include independent auditing of the forest management unit and the chain of custody (according to a government presentation given in 2005).

Public buyers must reject any bid that fails to present evidence under one of the five modalities or an equivalent. A provision included in the Advice Note at the Ministry of Finance's instigation stipulates that an equivalent document to any of the five enumerated types has to be accepted and at least examined by public buyers.<sup>62</sup>

### **5.2.2 Requirements for Category II products**

For any product that they want to purchase from this category, public buyers must require the detailed specifications set by an official eco-label or a logo of a forest certification scheme. Suppliers, in turn, can either prove that the products they offer meet the environmental requirements set by the public bid by providing a certificate from a certifying body, or make self-declarations. The latter require an endorsement by an independent control body.

### **5.2.3 Policy implementation**

Policy implementation follows a step by step approach. Having to start from a situation with no regulations, French officials have urged public buyers to use existing instruments such as eco-labels on wood products providing assurance of sustainable forest management and legality certificates verified by independent and reliable bodies. To provide information and guidance on the new regulation, the Permanent Study Group GPEM-DDEN (on behalf of the government) produced a 30-page information brochure, which was distributed to all public authorities (GPEM/DDEN 2005).

It should be noted that the availability of certified timber in France is comparatively high, with all central state-owned and 60% of municipality-owned forests PEFC certified. According to a government official, the achievement of the target ratios of legal/sustainable timber set out in the Advice Note will be less relevant than the actual implementation of the modalities.

The Advice Note prescribes a preliminary evaluation of policy implementation to be undertaken by 2006. The government has commissioned this assessment, which commenced in early 2006, to CIRAD (*Centre de coopération internationale en recherche agronomique pour le développement*), a France-based centre for international agricultural research for development. Government officials expected CIRAD to submit a report on this evaluation between September and December of 2006; it was unclear whether the report will be published.<sup>63</sup>

According to government officials, a comprehensive assessment would have to focus on two key issues: (1) ensuring traceability of verified timber products, and (2) data gathering on public purchases of timber products.<sup>64</sup> The officials acknowledge that shortcomings concerning both issues exist. While traceability can be assumed for certified wood, it may not be satisfactory (or existing) for other forms of legality/sustainability evidence. Another major problem is a lack of data on public purchases. In France, data are systematically registered only for public trade actions worth more than EUR 236,000. Even these data are not readily available in a workable format and it is difficult to identify which contracts may include timber. The French procurement policy does not require public institutions to conduct annual planning of their timber purchases, nor to report on these purchases. Consequently, government officials admit not to have an overview of how the regulations in the Advice Note are considered by the 200 central-state and over 200,000 total public buyers in France.

## **5.3 Proposed future steps**

To ensure traceability for evidence of legality/sustainability, other than using forest certification schemes the French government has identified two options: 1) to rely on private chain of

62. Interview with a French government official (July 2006).

63. Interviews with French government officials (July 2006).

64. Presentation of French government official at the Illegal Logging Update and Stakeholder Consultation, Chatham House, July 2006, and later interview with the official.

custody and to assess the legality/sustainability at the end of the chain (purchaser responsibility), or 2) to make use of existing customs documents to qualify products as legal/sustainable when they enter the EU markets. With respect to the first option, the government sees the presently low expertise at the tender and purchaser level as a problem. In terms of the second option, it would be customs officers who need expertise on proofs of legality/sustainability. Additionally, the unique administrative document (UAD), for products entering the EU market, and the exchange good document (EGD), for within the UK market, would have to be modified. This, in turn, would require a review of EU legal provisions on customs. Moreover, this would also require supervision of all imported wood, even if not purchased by the public sector. Another concern is that it could cause a market distortion between national and imported wood products. To address the lack of data, French government officials consider sampling as the only possibility at present to obtain quick indicative results. For permanent/long term monitoring of the impacts of the procurement policy and to facilitate its implementation, the French government is considering the option of creating a *national reference centre*. According to government officials, such a centre could also integrate the function of observing public markets and advising individual public buyers and their suppliers, in contrast to the abovementioned GPEM/DDEN study group. The centre could act at different stages as:

- a technical adviser to formulate the calls for proposals;
- an official approval body to evaluate proofs of legality/sustainability provided by tenders;
- a data centre.

Thus far, no official decision has been made on any of these measures to further develop the procurement policy and its implementation. The correspondent decision-making process would not only require cooperation between the three

ministries involved (Finance, Environment, Agriculture), but would also involve the National Working Group for Tropical Forests. Finally, it should be noted that the French government expects the FLEGT initiative developed by the EU to become the most appropriate instrument to address legality issues of imported timber.<sup>65</sup>

## 5.4 Private sector response

There are two main players that represent the private sector in France in the trade of wood and wood products: Le Commerce du Bois (LCB), as the main timber trade association in France, and the Interafrican Forest Industries Association (IFIA), which represents some 300 enterprises in a number of (mainly francophone) African nations, provides them with financial and technical support for forest management (including on certification), and promotes the trade in African wood.<sup>66</sup> This study limits its scope to the LCB, which represents 170 trade businesses.

The LCB participated in the National Working Group for Tropical Rainforests, exerting considerable influence in the formulation of the French public procurement policy. The fifth of the abovementioned modalities for Category I material can be considered tailor-made for LCB members, as it refers to suppliers who subscribe to a code of good conduct.<sup>67</sup> At the LCB General Assembly in December 2005 the 120 attending members approved with unanimity its *Environmental Charter on Wood Purchases and Sales* (LCB 2005), which came into effect in June 2006. The Charter will become compulsory for LCB members in 2008, but they are free to adopt it earlier.

The Charter commits its signatories to:

1. *Responsible purchase*, which above all means "to increase from year to year our purchases of wood and wood products stemming from forests that have received a certification of

65. Interview with government official (July 2006).

66. Interview with the director of the IFIA (July 2006).

67. Interview with a French NGO representative (July 2006).

sustainable management or are progressing toward certification" (LCB 2005, 3). LCB accepts all internationally recognised certification schemes, i.e., those recognised by the ITTO or by regional or international processes. Attention must be paid to CITES regulations and the UN recommendations concerning conflict areas that should be avoided.

2. *Responsible selling*, which includes improving the information provided to LCB customers by pointing out three main characteristics of the purchase (common tree species name in French for timber and commercial technical name for other products; the country of origin; eventual certification), providing customers with a technical file and advice on their purchase options, and promoting certified and sustainably produced wood.
3. *Other activities*, particularly to finance and facilitate the verification of compliance with the Charter through a third party, and to show progress in a biennial audit by achieving a higher grade each time and obtaining a determinate grade for the enterprise's general performance by 2010.

The biennial audit is mandatory for LCB members starting one year after adopting the Charter. The evaluation uses two key criteria: 1) the percentage of certified timber purchased (measured on a value-basis in the case of wood products), and 2) to provide customers with the above information and a technical file. With respect to the first criterion, the evaluation differentiates between four types of wood,<sup>68</sup> requiring, for instance, a lower percentage of certified material for hardwood from Africa than from Europe. While the evaluation considers both indicators, priority is given to the first one when assessing the general performance of an enterprise.

In late July 2006, five members had adopted the Charter. The LCB management has stressed its determination to convince the remaining 165

enterprises to join the Charter before it becomes mandatory in 2008.<sup>69</sup> The Charter has its own Steering Committee with 15 members, which represent the French government, environmental NGOs<sup>70</sup> and the French consultancy Utopies, which advises companies on the definition and implementation of their corporate social and environmental responsibility (Utopies 2006). As a major representative of the private timber trade sector in France, the timber trade federation LCB has thus demonstrated increasing commitment to promote trade in legal and sustainable wood.

In contrast to the code of conduct of its UK counterpart, the LCB's charter is not yet binding on all members and allows member companies to adopt a gradual approach to implementing responsible purchasing and selling policies. However, future developments, such as its mandatory status from 2008 for all members, and a scheme that gradually commits companies to engage in responsible purchasing and selling, can be considered promising. Overall, the LCB's initiatives are more progressive than the response to illegal and unsustainable logging by timber trade federations in some of the other EU importer countries of tropical wood, such as Italy and Germany, where federations have not yet established codes of conduct.

While the establishment of the LCB's charter a few months after the introduction of the French government's procurement policy can be interpreted as a reactive measure, the LCB and industry associations were heavily involved in the policy formulation process. In France, one can say that the private sector has more shaped the public timber procurement policy than responded to it. This observation is supported by the current stagnation in the development and implementation of the government's policy, which contrasts with the ongoing implementation of the LCB charter.

68. Sawn wood; hardwood from Asia, South America or Africa; hardwood from Europe and others; panels

69. Interview with the director of the LCB (July 2006).

70. Namely WWF, *Amis de la Terre* (Friends of the Earth) and *France, Nature, Environnement* (FNE).



## 6.0 TIMBER PROCUREMENT POLICY IN THE NETHERLANDS

The third timber procurement policy that will be described in-depth is the timber procurement policy of the Netherlands, the first such policy in Europe dating back to February 1997.

### 6.1 Background of Dutch timber imports, the initial procurement policy and its revision

In the Netherlands, which is one of the major consumer countries of timber in Europe, total imports reached 4,348,000 m<sup>3</sup> in 2005, 743,000 m<sup>3</sup> of which was tropical timber (ITTO 2006). Tropical hardwoods are used for interior decoration and outdoor construction, which requires water-resistant woods. Around 75% of imported tropical wood originates from Southeast Asia, mainly Indonesia and Malaysia. Twenty per cent of wood imports are from Cameroon and Gabon in the Congo Basin and 5% from South America, predominantly Brazil and Surinam (ITTO 2006).

The public procurement of timber from forests under sustainable management arose as a policy issue in the Netherlands earlier than in any other European country. High-profile NGO campaigns acted both as initiators of and the driving force behind the reform of government procurement; the reform, in turn, elicited a vigorous response from the private sector and contributed to the increasing demand for certified wood products on the Dutch markets. Domestically, this demand is reflected by the fact that over one third of the total forest area – more than 110,000 hectares - has been FSC certified.

In an effort to promote the sustainable production of timber and as a joint initiative with the

industry sector, the government created the Keurhout Foundation in April 1996. This institution became responsible for ensuring the consideration of “minimum requirements” of sustainable forest management in public procurement. These requirements, established by a government white paper for the Dutch parliament in February 1997 (LNV 1997), became the basis for the Keurhout system, under which certificates for sustainable forest management were assessed in the following years. By February 2005, Keurhout's Board of Exports had already approved around 40 million hectares of certified forest (NTTA 2005, 3). From December 2004, the Keurhout Foundation began assessing the legal origin of timber, based on the *Keurhout Protocol for the Validation of Claims of Legal Timber*. However, after a disagreement between the private sector and the government, the Keurhout system was placed under the Netherlands Timber Trade Federation and was no longer the official assessment body, thus becoming less relevant for government procurement.

Initially, the Dutch government adopted a target of having all timber on the Dutch market (not only public procurement) sustainable by the year 2000, but this was impossible to achieve. In June 2004 the government issued a mandate according to which “all public institutions at national level are obliged to procure verifiably sustainable timber where possible.... In addition public buyers should at least ensure themselves that timber comes from a verifiably legal source”.<sup>71</sup> More recently, the Dutch parliament adopted the motion *Koopmans/de Krom* requiring central government authorities to consider sustainability criteria in all public tenders by the end of 2010. Before 2010 it should preferably come from a sustainable source and at the least from a legal source.

71. Translation in “Dutch Public Procurement Policy for Timber: Background and Current State of Play”, VROM 2005 (unpublished).

Following an evaluation of the minimum requirements in 2001, the parliament asked the government to develop a certification system, which in turn initiated a multi-stakeholder process, the *Broad Consultations (Breed Overleg)*, in which both environmental NGOs and the industry sector were represented. After three years of regular meetings and intense discussions, on 12 October 2005 the *Broad Consultations Committee* approved the "National Assessment Guideline for the Certification of Sustainable Forest Management and the Chain of Custody for Timber from Sustainably Managed Forests"<sup>72</sup> (known under the Dutch acronym BRL). Once fully implemented, the policy set out in the BRL will become the new basis for public procurement of sustainable timber, replacing the minimum requirements.

Although the National Assessment Guideline was approved, during the final negotiations on the details of the BRL system, the environmental and social NGOs stepped out of the process. The reasons for this, according to a representative of one of the NGOs, were disagreement about the composition of the implementation bodies and the government's reluctance to give clear preference to FSC over other certification schemes in the planned assessment.<sup>73</sup> The NGOs argued that the acceptance of FSC on the World Standards Services Network (WSSN) list of international standards implied that FSC could be unconditionally used in procurement, without any need of independent assessment. The government countered that representatives from ISO had informed them that being on the WSSN list does not imply any formal recognition, certification, accreditation or approval. Government officials also argue that some FSC national schemes might turn out not to be robust enough to pass the BRL requirements.<sup>74</sup>

Despite these tensions, the government announced that it would go ahead with setting up the BRL system in cooperation with the

other stakeholders.<sup>75</sup> The Dutch Ministry of the Environment appointed experts for the Equivalence Assessment Board to assess which existing forest certification schemes (at national level) are equivalent to the Dutch certification system, including the BRL. These systems include both national stand-alone systems as well as national schemes endorsed by international systems such as FSC and PEFC (VROM 2007).

## 6.2 Revision of the timber procurement policy, its outline and future implementation

The BRL National Assessment Guideline has the overall purpose of providing clear and transparent criteria for the certification and verification of timber and timber products from sustainably managed forests. The BRL identifies two objectives which coincide with the two basic functions of the BRL system. One is to establish the BRL as a forest certification scheme in itself and the second is to set up a system for recognising other certification schemes as "equivalent".<sup>76</sup>

### 6.2.1 First objective

In terms of the first objective, the BRL establishes requirements for sustainable forest management, chain of custody systems and certification bodies. When assessing forest management regimes (in the Netherlands or abroad) and enterprises along the supply chain, the BRL certification bodies must take into account these requirements. Four bodies are involved in the conformity assessment:

- the certification body, which carries out the conformity assessment
- the Central Appeals Board, which deals with appeals
- the Central Board of Experts, which is responsible for the standards
- the Accreditation Council

72. In Dutch: *Nationale Beoordelingsrichtlijn duurzaam geproduceerd hout*.

73. Interview with NGO representative (August 2006).

74. Interview with NGO representative (August 2006).

75. Official statement made by the state secretary Van Geel.

76. See the non-binding English translation of the Guideline (VROM 2006).

Chapter 3 of the Guideline, in combination with a Specific Standard (in Annex I to Chapter 3), sets out the criteria for the certification of sustainable forest management regimes. The criteria constitute the requirements for the forest management systems and the quality of the actual management practices. Conformity with the criteria is assessed by a certification body accredited by the Accreditation Council.

Chapter 4 establishes the handling and tracking requirements for sustainably produced timber, focusing on the management systems of individual businesses which form part of a supply chain or chain of custody. Again, conformity with the standards of Chapter 4 is assessed by an accredited certification body.

### 6.2.2 Second objective

Apart from its own certification procedure, the BRL allows for the recognition of other forest management and chain of custody certification schemes as equivalent to the Dutch certification system "in order to minimise the costs to those who have obtained certificates under these systems while ensuring that the certification standard is acceptable to the Netherlands".<sup>77</sup> Independent assessment of the equivalence of a certification system to the Dutch system is conducted by the Equivalence Assessment Board. Equivalent requirements to those stated in Chapters 3 and 4 of the BRL must be found in the certification schemes that seek recognition. In addition, the working methods of the other systems should also be equivalent.

A novelty of the BRL is that the Equivalence Assessment Board will assess international certification schemes such as PEFC or FSC at the national level; therefore the national schemes endorsed by PEFC and FSC will be assessed individually, including interim standards. According to Dutch officials, this is necessary because of the considerable differences existing between the endorsed national schemes. The number of schemes to be assessed will depend

on which certification schemes will seek recognition as BRL equivalent.

The first meeting of the Equivalence Assessment Board, composed of seven experts (of economic, social/cultural, forest management, normalisation, ecological issues etc.) was scheduled for 10 November 2006. An assessment of six certification schemes was undertaken from October 2006 to March 2007, including two FSC schemes (one in a developing and one in a European country) and two PEFC schemes.<sup>78</sup> Subsequently the government plans to formally approve the BRL, publishing it in the Gazette. After conducting a formal assessment of the equivalence of existing certification schemes, the Dutch procurement policy would then be finally implemented.

### 6.2.3 Principles, criteria and indicators

The principles, criteria and indicators laid out in Chapters 3 and 4 constitute the requirements used in the assessment of forest management and CoC, and that of other certification schemes. Principles are overall objectives that have to be met for a forestry regime to be regarded as sustainable or a chain of custody as verifiable. Criteria separate out and develop the elements that constitute a principle. Indicators comprise variables, documents, records, procedures and other items which can demonstrate that a criterion has been met. As the BRL is to be used worldwide, it acknowledges that the criteria of Chapter 3 (forest management) will not be applicable in all situations or locations.

With respect to assessing forest management systems, the National Assessment Guideline claims to make an effort to bring their ecological, socioeconomic and sociocultural aspects into balance. Chapter 3 includes definitions of a variety of relevant items, such as forest conversion, forest manager, group manager, indigenous people, landscape, natural forest, precautionary principle, prior consent, protected features and stakeholders. Grouped under categories, Chapter

77. See the non-binding English translation of the Guideline (VROM 2006).

78. Interview with government official (August 2006) and information obtained from a government presentation given at the UNECE/FAO Annual Policy Forum in Geneva, 5 October 2006.

3 lists a number of principles and criteria, which also consider the impacts of forest management on local communities and indigenous people, as well as their rights and participation.

The BRL can be regarded as a comprehensive system to a) certify sustainable sources of timber and chain of custody, and b) to assess existing certification schemes. The detailed list of ecological and socioeconomic criteria is comparable to that of the most advanced existing certification systems and may even exceed national standards. However, a recent study by the Dutch NGO Milieudefensie revealed that only 20% of recent public construction projects procured sustainable (which they equated with FSC certified) timber (Milieudefensie 2006), suggesting that it will be a challenging task for the BRL to meet the government's target of procuring 100% sustainable timber by 2010.

It should be noted that the Dutch procurement policy has thus far focused on the verification of sustainability. Sustainability can be viewed as a more ambitious target than legality and the Dutch government can be commended for this focus. Moreover, forest certification schemes – the evidence of sustainability accepted both under the Keurhout system and the future BRL system – commonly require legal compliance, and therefore are viewed as a proxy for legality verification.

Nevertheless, separate verification of legality can be expected to become a new focus of the Netherlands's timber procurement policy. The government has recently announced its decision to use the criteria for legality verification developed by the UK policy for Category B evidence, as part of a joint effort to harmonise the policies of the UK, the Netherlands and Denmark.

Although not an explicit requirement under the Dutch policy prior to the introduction of the BRL system, procurement agencies in the Netherlands had the option to seek legality verifica-

tion of wood items under the Keurhout system. The assessment scheme is outlined in the Keurhout Protocol for the Validation of Legal Timber from 2004 and includes a Board of Experts assessing claims of legal timber and chain of custody (CoC) made by producers/suppliers who are members of Keurhout. (Keurhout 2006). Although this system is detailed, the Dutch government decided not to make use of it for the same reasons mentioned above with respect to the Keurhout system of sustainability verification (i.e., primarily that the Keurhout Foundation is now placed under the Netherlands Timber Trade Association). Moreover, a harmonisation of its legality standards with those of the UK government appears to be a priority for the Netherlands's government.<sup>79</sup>

#### **6.2.4 Latest developments**

The abovementioned Equivalence Assessment Board has preformed a test run on six certification systems. The purpose of this test run was to see if the BRL system works in practice. Although the final report was due on 15 July 2007, informally the Dutch Ministry of the Environment and the parliament were informed in advance that none of the tested certification schemes could pass the BRL-test. According to the Dutch government, this means that the BRL system does not work in practice in its current form (VROM 2007).

Therefore, the government is presently developing an improved set of criteria (simplified system) on the basis of the experiences gained during the test run. The government intends that this improved and simpler set of criteria will be solely used for the purpose of timber procurement, even though BRL was originally set up as a forest certification scheme as well as a system for equivalence assessment. The government expects that the new assessment system will be operational before the end of 2007 after a round of consultation-meetings planned for September.

79. Joint presentation by the UK, Dutch and Danish governments at the Illegal Logging Update and Stakeholder Consultation, Chatham House, January 2007.

### 6.3 Private sector response

The Netherlands Timber Trade Association (NTTA)<sup>80</sup> is an umbrella organisation representing roughly 300 timber wholesalers. There are a number of related trade associations that are extraordinary members: the Netherlands Association of Timber Agents (NATA), and the importers' association *Vereeniging van Importeerende Groot-handelaren in Hout*. The NTTA is also closely engaged in various European timber trade organisations.

The NTTA has both formulated a Mission and adopted a Code of Conduct. One of the commitments expressed in the Mission is that "the NTTA promotes trade in timber demonstrably originating from sustainably managed forests and sees to it that its members take the interests of both the employees and the environment in the Netherlands as well as in the producing countries into consideration" (NTTA 2006, 7-8).

The primary objectives of the NTTA are:

- By 2009, to have achieved certainty as to the origins of 100% of the timber traded by NTTA members.
- By 2009, 75% of all timber imported and traded by NTTA members should originate from demonstrably sustainable forests.

Its secondary objectives are related to product segments:

- Softwood: By 2009, 100% of the softwood imported by members should originate from demonstrably sustainable forests.
- Hardwood: By 2009, 50% of the tropical hardwood imported should be demonstrably legal timber, while 25% of all hardwood should originate from demonstrably sustainable forests.
- Sheet material: By 2009, 75% of the imported sheet material should originate from sustainable forests.

The NTTA adopted a code of conduct in 2003, which was endorsed by all members in 2004, who are "legally obliged to observe it" (NTTA

2006, 8). In turn, the members are entitled to call themselves *Approved Timber Traders*, an expression the NTTA holds the copyright for. The code of conduct prescribes that "NTTA members shall exclusively bring timber on the Netherlands market in conformity with current legislation and regulations (agreed nationally as well as internationally)" (ibid.). Among six further commitments is one to "preferably deal in timber demonstrably originating from sustainably managed forests" (ibid.). The NTTA adopted a system of sanctions, which is applied in case members fail to observe any of the provisions of the code. A complaints system allows dealing with third party complaints related to the code of conduct. In the event that the NTTA Mandatory Advisory Committee considers a complaint justified, it may impose one of the following sanctions in accordance with the gravity of the offence:

- A warning in the event of the first offence
- A fine of up to 45,000 EUR
- Suspension
- Expulsion (ibid., 22).

While NGO pressure can be seen as the initial key factor for the NTTA's responsiveness to implementing a responsible purchasing policy for its members, the NTTA has increasingly shown initiative when approaching the problem of illegal logging. The NTTA goes as far as suggesting a ban on the import of illegal timber into the EU: "The NTTA is against the import of illegally felled timber and in favour of both an international, global approach to the problem and a statutory ban of the import of illegal timber at European level" (ibid.). Additionally, the NTTA stresses its cooperation with national and international organisations to develop methods to combat the trade in illegal timber. The association is involved in developing the EU Timber Trade Action Plan with the UK and Belgian federations. Furthermore, the NTTA opts to assist selected producer countries, by monitoring the suppliers' legal production, identifying and listing instruments for the distinction of legal from illegal timber, in order to set up a chain of custody to be monitored by a certifying body.

80. In Dutch: *Vereeniging Van Nederlandse Houtondernemingen (VNNH)*.

These initiatives should be seen as largely independent of the procurement policy. Most timber traders in the Netherlands deal with a sufficiently large share of certified wood to be able to respond to a government procurement policy that focuses on sustainability assurance. None the less, the policy envisaged by the BRL guideline will be tough in terms of accepting

existing certification schemes as equivalent with its standards. This, as well as the new additional requirement of legality verification, will increase the pressure on timber suppliers to provide procurement agents sustainable and legal wood from BRL assessed forest and supply chain management or equivalent.

## 7.0 SUMMARY

Before beginning the comparative analysis, it is worthwhile summarising this chapter by drawing out broad observations of both the shared and distinct features of public timber procurement policies. These include the following points:

1. Consumer countries have developed their policies independently, though harmonisation is now being discussed.
2. Experience shows that procurement policy evolution can be gradual and incremental, or it can be erratic. The evolution of policy can be marked by key events or turning points.
3. Providing assurance of legality and sustainability of wood products is complex and contested, which partly explains why policies evolve over a long period of time.
4. NGOs have been a major driver for the introduction of the policies and have successfully lobbied governments.
5. For some policies, the personal engagement of parliamentarians/government officials has been an important driver, albeit to varying extents.
6. The policy formation process is of keen interest to the private sector and NGOs. Governments have sought their participation in policy development through multi-stakeholder processes.
7. All policies share a number of essential elements, such as instruments to verify sustainability and/or legality and the informational needs of the procuring agents.
8. The elements of each policy are responsive to many variables, particularly the relative influence of actors, their institutional relationships and the historical context of the policy.
9. Definitions of legality and sustainability in the policies vary widely from vague descriptions to detailed sets of criteria and indicators.
10. An institutional framework must be constructed to implement the policy. Often, new institutions are established for this purpose.
11. Procurement policies usually distinguish between legality and sustainability and set the latter as a higher objective.
12. Policies usually have their own modalities to verify legality.
13. All schemes accept forest certification for assurance of legality and sustainability and some allow for other verification providing equivalence to the certification standards. Some require forest certification schemes to be assessed against sets of process and performance criteria.
14. Verification of legality is usually based on official documentation and self-declarations throughout the supply chain.
15. Policies differ widely with respect to whether the private or the public sector assesses documentary evidence.
16. Policies can be shaped by, as well as influence, the private sector.

# Comparative analysis of the timber procurement policies of Japan, UK, France and the Netherlands

I *Federico Lopez-Casero*

## 1.0 INTRODUCTION

The purpose of Chapter 4 is to deepen our understanding of Japan's timber procurement policy by systematically contrasting its design and first steps of implementation with the policies of the UK, France and the Netherlands. In addition to enhancing our interpretation of Japan's policy, comparative analysis can reveal options for strengthening the policy. These three countries were selected because their longer history of public timber procurement policy development may provide direction to Japan's evolving policy process in terms of both

acknowledging shortfalls to avoid and promising approaches to follow.

The value of comparative analysis stems from the rapid evolution of public timber procurement policies and the significant differences that exist between the policies. Yet, there are few studies on public timber procurement policies and even fewer that systematically compare existing policies to draw lessons from their experiences.<sup>81</sup>

81. Toyne et al. (2002) undertook limited individual assessments of public procurement policies in the countries of the G8 and China and recommended options for introducing policies to favour legal and sustainable wood. A report conducted by the Fridtjof Nansen Institute for the Norwegian Ministry of the Environment (Gulbrandsen et al. 2006) includes a brief comparative section on existing policies with the purpose of identifying options for Norway to respond to the issue of illegal logging. The study uses five criteria to compare three policies, but does not discuss their differences. The report also lists six elements of what it considers to be a "robust and strong policy" but does not justify these elements.

An additional objective of this chapter is to explore some of the essential elements for public timber procurement policies to be robust. These essential elements will extend from legal origin and compliance in the producer countries to the informational needs of procurement agents in the consumer countries. In the course of discussing these elements we assess whether or how they are currently treated in Japan's procurement policy and those of the three countries taken up for the comparative analysis.

Our analysis of the essential design elements of public timber procurement policies is based on the following three assumptions:

- All *good policies* (not just public procurement policies) share some essential elements (e.g., monitoring of policy implementation, feedback of information from monitoring and allowance for revision).
- All *good public procurement policies* (not just timber procurement policies) share some essential elements (e.g., guidance to procurement agents and independent assessment of evidence provided as proof that the procured items meet government criteria).
- All *procurement policies that favour legal and sustainable timber*, whether public or private, share some essential elements (e.g., informed guidance on legal verification).

We do not assess the impacts of the policies because some of their major features have only recently evolved. Therefore, to assess the relative merits of the design features of the policies we use a "second best" approach in which the features are considered against several refer-

ence points; namely, the legality and sustainability risks of timber procurement, the complexity of wood product production and trade chains, and the informational needs of procurement agents.

The comparative analysis contrasts the design of the four selected policies with respect to the following features:

1. Requirements for verification of legality
  - a) Evidence of legal origin and supply chain management
  - b) Impartial monitoring/auditing
  - c) Accreditation of producers/suppliers
2. Requirements for verification of sustainability
  - a) Sustainable forest management standards
  - b) Assessment of verification schemes
3. Means (tools and mechanisms) for implementation
  - a) Guidelines
  - b) Hotline support
  - c) Cooperation between central and local governments
  - d) Public-private cooperation
  - e) Monitoring of agents' familiarity with and adherence to the policy
  - f) Evaluation

It is important to emphasise that an investigation of policy implementation is generally beyond the scope of our comparative analysis, except for referring to information based on interviews with government officials, who have pointed out progress or admitted shortfalls in the implementation of their country's timber procurement policy.

## 2.0 VALUE OF COMPARATIVE ANALYSIS AS A TOOL OF POLITICAL SCIENCE

Unlike natural phenomena, political processes are generally not the object of experimental science. Neither the manner in which a social

system regularises itself nor the manner in which groups are formed can be tested. Instead, the non-experimental category of methods



includes the case study design, the statistical method and the comparative method.

In policy science, case studies are common as they are “systematic records of a process with the objective of learning and communicating” (Clark 2002, 142). They place boundaries around a particular location, time, and set of events, illustrating complexities and subtleties of the policy process. The case method thus represents “intensive but uncontrolled analysis of single cases” (Faure 1994, 311). Strictly speaking, a case in this regard is an entity which is thoroughly studied once but where there is no variation in independent and dependent variables during the period of investigation. The fact that this method does not warrant any justifiable generalisation makes its scientific status somewhat suspect. Our study includes a total of four case studies on procurement policies in Japan, the UK, France and the Netherlands. Subsequently we seek to overcome the constraints pertaining to case studies by placing them in the framework of an overall comparative approach.

The logic of the *comparative method* is also similar to the logic of the experimental method, although it does not conform to the physical

requirements of *ceteris paribus* inherent in experimental design (Lijphart 1971, 683-84). As a substitute for experimentation, comparison allows for control, holding certain things constant while examining and accounting for observed differences. Sociologists like John Stuart Mill, Auguste Comte, and Émile Durkheim were the first to perceive the comparative inquiry as the best substitute for the experimental method in social sciences. In domains where experimental approaches fail – as in the case of public forest policies – comparison is a theoretical approach seeking to make an inventory of similarities (analogies) and differences (contrasts) between two or more situations (Lijphart 1975, 162). In conclusion, comparative politics is a non-experimental social science that seeks to make generalisations based on the best available evidence.<sup>82</sup>

This study uses the method of international and interregional comparison. Comparison between countries sufficiently highlights each national case’s specificity, regardless of what separates them. The characteristics of each country stand out whether one compares France with distant Japan or with the neighbouring Netherlands.

### 3.0 VERIFICATION OF LEGALITY

Public procurement policies that favour legal timber must include guidance for verifying the legality of wood products. This is a new task for consumer country governments and has posed a significant challenge for their procurement policies. To be effective in avoiding the use of illegal timber there are three fundamental legality principles that procurement policies must respond to, namely, *legal origin of timber*, *legal compliance* and *legal supply chain management*. Our descriptions of the four compared policies

reveals that some contain additional requirements designed to ensure more efficient or effective verification, namely *impartial assessment/monitoring* and the *accreditation of manufacturers/suppliers*. Table 1 provides an overview of requirements for verifying timber legality in the compared policies.

This comparison is in principle based on the conceptual design of the policies, except for where the policy in practice builds upon private

82. For more on the method of comparative analysis see López-Casero (2005, 29-34).

**TABLE 1 – Requirements for verifying timber legality in the compared policies**

	EVIDENCE REQUIREMENTS			ADDITIONAL REQUIREMENTS	
	LEGAL ORIGIN AND COMPLIANCE (FOREST MANAGEMENT)	SUPPLY CHAIN MANAGEMENT (CHAIN OF CUSTODY)	SEGREGATED MANAGEMENT	IMPARTIAL ASSESSMENT/ MONITORING	ACCREDITATION OF PRODUCERS/ SUPPLIERS
UK	<p>Category A: Certification schemes assessed against standards for legal compliance</p> <p>Category B: Checklist 2 requires:</p> <p>a) Forest owner/ manager holds legal use rights</p> <p>b) Compliance with local &amp; national laws, including:</p> <ul style="list-style-type: none"> <li>– environment</li> <li>– labour &amp; welfare</li> <li>– health and safety</li> <li>– other parties' rights</li> </ul>	<p>Performed by accredited body or auditor complying with ISO 65 or equivalent</p> <p>Category A: Details depend on each scheme, but</p> <p>Category B: Checklist 1 requires:</p> <p>a) Location &amp; each stage of supply chain</p> <p>b) Mechanism for verification</p> <p>c) Evidence provided</p>	✓	(✓) (if concern about adequacy, robustness or veracity of the evidence)	—
Netherlands	<p>The government announced in 2007 that verification will be conducted by an accredited body or auditor complying with NEN-EN-ISO 45012 based on the above UK criteria for legal timber. Previously, the requirements on legal timber were established in the <i>Keurhout Protocol for Legality Validation</i> and in each of the Keurhout validated certification schemes.</p>				
France	<p>Alternatives for Category I products:</p> <ol style="list-style-type: none"> <li>1. legality license by producer country</li> <li>2. forest certification</li> <li>3. attestation of management plan</li> <li>4. manager's or</li> <li>5. suppliers' compliance with industry/trade association's code of conduct</li> </ol> <p>Category II: eco-label or certification</p>		(✓) (Mentioned only in the <i>Notice of Information for public buyers</i> )	(✓) (for category I products, i.e., timber, sawn wood, veneer, plywood)	—
Japan	<p>3 alternative modalities to provide evidence of legality (&amp; sustainability)</p> <p>Modality 1: Forest certification</p> <p>Modalities 2 &amp; 3: Trail of evidence documents for each stage: logging, processing, trade (specified by industry associations/ individual companies code of conducts)</p>		✓ (for modalities 2&3 under association's/ company's code of conduct)	— (JFWIA plans random monitoring under modality 2)	✓ (for modality 2, by JFWIA for domestic producers & suppliers)

sector engagement, as is the case with legality verification under the Keurhout Protocol in the Netherlands or the suppliers' accreditation in Japan.

### 3.1 Evidence required for legal origin and supply chain management

Japan's policy offers government suppliers of timber and timber products three alternative modalities to provide evidence of legality (and sustainability): forest certification (modality 1)

and voluntary procedures established by industry associations (modality 2) or individual companies (modality 3). The latter two modalities rely primarily on a paper trail that extends from the logging site to final public procurement.

Japan's policy resembles France's policy with respect to all modalities. Both governments accept all major forest certification schemes without prior assessment against standards of timber legality. Neither of them develops criteria for their procuring agents to assess the legal origin and supply chain management of the

timber and timber products they procure under the modalities other than forest certification. Instead, they rely on measures adopted by their private industry/trade sectors.

In Japan, modality 2 allows the industry sector, under the lead of the Japan Federation of Wood Industry Associations (JFWIA), to further specify the verification procedure in codes of conduct. The JFWIA code establishes a paper trail from the forest owner/manager to the final government supplier, with all actors in the supply chain issuing and receiving documents to verify the legality and sustainability of the wood products they handle. This includes documentation that provides evidence of segregated management. Requirements for modality 3, the self-established procedures of individual companies for legality verification, do not vary considerably, as they must be modelled on modality 2.

In France, alternatives 3, 4 and 5 for Category I products also heavily rely on measures taken by the private sector. Procuring agencies can purchase timber and timber products from suppliers which have subscribed to the Environmental Charter of either the country's main timber trade federation or industry association. A difference to the JFWIA's Code of Conduct is that the Charter of Le Commerce du Bois (LCB) will become compulsory for all members in 2008, regardless of whether they supply the government or not.

The Japanese procurement policy is the only policy that considers accepting existing verification schemes in place in producer countries (e. g., BRIK for Indonesia, Export Form 2 for Malaysia) if their governments consider them to provide a general proof of legality. The French government has recognised private sector initiated verification schemes, such as that of the Interafrican Forest Industries Association (IFIA), without a comprehensive prior assessment based on government set criteria, but it has not accepted schemes based on the official position of the producer country's governments. For both countries, the lack of gov-

ernment established legality standards makes the policies of Japan and France fully dependent on existing verification schemes (forest certification and private sector initiated verification schemes such as BRIK or IFIA) whose credibility they have not assessed.

In contrast, the policies in the UK and the Netherlands focus on the public buyer side, requiring evidence assessment by procurement agencies (with the support of commissioned expert bodies, namely CPET, Keurhout or BRL) rather than relying on voluntary measures of the private sector.

In both the UK and the Netherlands, expert bodies – on behalf of the government – assess forest certification schemes, namely the CPET Reference Board in the UK, and the Keurhout Foundation and more recently the BRL Board of Equivalence in the Netherlands. Both assessments are based on sets of criteria for legality, distinguishing between evidence for legal origin, compliance and supply chain management. However, while in the UK verification of timber legality is an explicit policy requirement, in the Netherlands the focus is higher on the sustainability of the procured timber and timber products. The Dutch policy has been and will continue to mandate public buyers to buy certified timber and timber products, and certification schemes commonly include compliance with forest laws as one of their principles. For legality verification, public procurement agents presently still make use of assessments undertaken by Keurhout on the basis of the *Keurhout Protocol for the Validation of Claims of Legal Timber* introduced in December 2004, a system to assess claims of legality of Keurhout members, as described above. However, following an announcement by the Dutch government in 2007, in the near future the Netherlands will start making use of the UK's criteria for assessing legal timber, in an effort to harmonise the timber procurement policies of the UK, Netherlands and Denmark. Together with their Danish counterpart, the UK and Dutch governments held two meetings on policy harmonisation - in Amsterdam in March and in Copenhagen in

September 2006. They stated that the primary reason for harmonisation was a call from industry. Over the long term, both the UK and Netherlands governments plan to leave it for the EU FLEGT Action Plan to introduce a more systematic approach to legality verification based on licenses, which could replace case-by-case assessment of legality evidence.

The UK policy includes an *alternative modality* to forest certification, namely, the Category B evidence. Under this modality, the assessment of timber legality (and sustainability) is not conducted by an assessment body, but by the procurement agents, which can make use of the free advisory service provided by CPET experts. The criteria to assess legal origin, compliance and supply chain management are both included in the Framework for Evaluating Category B Evidence, the 1st edition of which CPET completed in June 2006. They are based on the generic definition of what "legal" timber means for the UK policy as described in detail in Chapter 3. Checklist 2 requires procuring agents to assess legality evidence by assuring that:

- a) the forest owner/ manager holds legal use rights;
- b) local and national laws are complied with, including environment, labour and welfare, health and safety, and other parties' rights;
- c) all relevant royalties and taxes are paid, and
- d) the regulations of CITES are complied with.

Regarding legal supply chain management, checklist 1 requires:

- a) a description of location and each stage of supply chain;
- b) a mechanism for preventing mixing or substitution;
- c) a mechanism for verification, and
- d) evidence available or provided.

In conclusion, the UK procurement policy is presently the only one of the compared policies that requires a separate assessment of legality evidence against its own criteria, but the Netherlands will follow once it adopts the UK's criteria.

Compared to the reliance of France and Japan on the private sector, the UK and Dutch approach of assigning responsibility to procurement agents to assess evidence of legality for purchased wood and wood products or, alternatively, have it assessed by an independent expert body established by the government, hold a stronger promise of the government being able to have ultimate control of its timber purchases as well as the prior stages of the supply chain. In other words, in the UK and the Netherlands it is both the supplier and buyer side that are involved in providing assurance of legality, which exerts pressure on the suppliers to deliver evidence that is adequate and veracious enough to pass the procurement agents' case-by-case assessments.

### 3.2 Additional requirements: Impartial monitoring and suppliers' accreditation

Because verifying legality and sustainability are complex tasks, especially in countries where forest crime is thought to be prevalent, it is reasonable to expect that public procurement policies would have to allow for independent investigations when the credibility of the evidence supplied is questionable. Moreover, a system of impartial monitoring of the evidence would also appear desirable. All compared policies address the issue of impartial monitoring or investigation, but through different approaches.

The Netherlands policy requires forest certification and thus has the most consistent treatment of third party monitoring; forest certification involves impartial auditing of the FMU and annual monitoring.

The UK policy prescribes independent monitoring only "if there is any concern about the adequacy, robustness or veracity of the evidence". "Independent verification" for the UK means that an evaluation is undertaken by an individual or body whose organisation, systems and procedures conform to specific ISO guidelines as was described in Chapter 3.

The French policy is, at least in its conceptual outline, stricter than the UK policy, as it explicitly requires impartial monitoring for each of the modalities to assure legality and/or sustainability. However, in practice, procuring agents in France may not insist on impartial verification, given their generally low familiarity with the policy.<sup>83</sup>

In Japan, the government stated that “at the present time, once exporter or harvester make rational explanation, no further question of investigation by Japan side are planned (unless the existence of illegal logging is undoubtedly sure with considerable evidence)” in a paper drafted in February 2006 to explain the public procurement policy to overseas wood and wood product companies (GOJ 08 February 2006), as mentioned in Chapter 2. Thus, while Japan’s government has provided for the option to investigate, unlike the UK, it has not elaborated that they require impartial monitoring. The wording of the above statement also appears more reactive if compared to the more proactive formulation in the UK policy. The Japanese government should consider providing greater clarity to its statement on investigations.

In Japan, it is not the government guideline but the Code of Conduct of the Japan Federation of Wood Industry Associations (JFWIA) that establishes monitoring, which is conducted at random, and not by an impartial third party but by the JFWIA. Moreover, the monitoring by JFWIA is of its association member companies and not their suppliers. This is quite a separate issue from an investigation by the government to consider complaints about the veracity of the evidence. Therefore, in Japan’s policy there is potential for two types of monitoring/investigation to be strengthened: government and industry sector monitoring.

A strength of Japan’s policy is the accreditation procedure under the JFWIA Code of Conduct of producers and suppliers that provide timber and timber products to public departments and agencies, in accordance with modality 2 of the

Forestry Agency Guideline. No other policy requires a comparable accreditation of government suppliers, though the Dutch Keurhout Protocol for Legality Verification, which is not explicitly part of the Dutch policy, entitles positively assessed forest managers to refer to their timber as “Keurhout validated legal origin timber”.

In terms of adherence to international agreements, the policies of the Netherlands, the UK and France explicitly require compliance with CITES. While Japan’s procurement policy does not, it could be argued that it is the role of customs agencies to prevent the import of wood/wood products banned by CITES. However, as it is doubtful whether customs can effectively exclude such wood, there is good reason to include the CITES requirements in Japan’s timber procurement guideline, as, for instance, the French policy does in the Notice of Information (GPEM/DDEN 2005, 21-7).

### 3.3 Key observations and messages from comparative analysis

The four compared policies vary significantly in terms of the procedures they require for assessing/verifying the legality of timber. The UK policy is the only policy so far that includes a specific and mandatory assessment procedure for legality. In the Netherlands, so far legality issues have been either only indirectly considered as part of sustainability assessment or based on the non-mandatory Keurhout legality validation. What is the reason for the evolution of these two rather different approaches, with the UK focusing on legality and the Netherlands on sustainability verification?

The Dutch policy has centred on purchasing certified timber since its inception in 1997, a time when forest certification was gaining recognition, particularly in the Netherlands. At that time legality issues were not broadly discussed; this changed in the very first years of

83. Interview with French government officials (August 2006).

the new millennium when “illegal logging” emerged as a “hot topic” on the political agenda, particularly in the UK. Another reason for the focus on legality verification in the UK has been the limited availability of certified timber and the price premiums commanded by certified tropical timber, as recognised by government officials.<sup>84</sup> However, the UK and Dutch approaches look likely to shed some of their differences as the Dutch government plans to largely adopt the UK assessment procedure of legality, the UK policy intends to make sustainability verification a mandatory requirement, and both governments have committed to further policy harmonisation.

Drawing from the UK policy design that has a particularly strong and systematic approach to legality assurance, a public timber procurement policy could be strengthened by including the following:

1. A well defined understanding of timber legality, which allows for consistent application through assessment procedures (e.g., checklists).
2. Government criteria that provide guidance to private sector suppliers by informing them of the details of legality evidence expected by their public customers.
3. Systematic and expert-based assessment of evidence against government criteria to ensure that procurement agents exclusively purchase timber and timber products which meet the government requirements.

An important question is whether these elements, which are presently not part of France's and Japan's policies, could be incorporated into their private sector based “codes of conduct approach” to strengthen their policies, or whether a more fundamental shift to an “assessment by procuring agent approach” is needed. In the case of France and Japan the industry sectors are rather autonomous in defining the standard of evidence that they deem necessary/appropriate to provide to public purchasers. As an initial step this approach could have the advantage of generating self-commitment

amongst the domestic industry sector towards responsible purchasing policies through codes of conduct. However, there is an inherent risk of ineffective implementation in public procurement policies that rely heavily on measures taken by the private sector.

One way of strengthening the codes of conduct approach is to provide further specification of the policy requirements. Both the Japanese and French policies would be strengthened by providing precise definitions of legality and sustainability and requiring these to be observed in the industry codes of conduct developed under the policies. The codes of conduct policy approach could also be strengthened by the government organising a systematic assessment of certification schemes and requiring the industry associations to reflect the results in their codes.

Based on these observations, the governments of France and Japan should consider adopting precise generic standards for timber legality. As consumers who have committed themselves to purchasing legal timber products, governments have the ultimate responsibility for verifying legality and should not pass this responsibility entirely on to their suppliers, placing their faith entirely in self-declaration. The close working relationship that exists between the timber trade federations and the governments in both countries might justify a certain degree of trust in the domestic industry sector. However, it is questionable whether this trust should go as far as to *de facto* renounce the government's responsibility for verifying that the procured timber originated from legal and sustainable sources.

Generic legality standards could also be used to identify the specific legal requirements of each producer country that must be met for timber to be considered legal. This would provide consistency to the application of the policy in different countries with their different laws governing forest management. The UK policy's Category B checklist for evidence of legality

84. Interviews with UK government officials (July 2006).

provides a good example of general legal principles that can be expected to be shared by all producer countries.

With respect to the institution responsible for conducting the assessment, there are various options depending on the basic policy approach. In the case of the UK, and in the future also the Netherlands, the policies provide for expert services that the procurement agents can refer to for case-by-case assessments. In France and Japan, under their private sector based approaches, one option would be to have the timber trade federations/associations play a more active role in providing expert advice to the government suppliers. The basis for this “advice” (i.e., on what documents are accepted) should be made publicly available and should be responsive to public comment.

Some Japanese officials have argued that Japan should not set generic minimum standards of legality and should accept the documents that the governments of producer countries present as an assurance of legality, without systematic and impartial scrutiny. Following this logic, the government has discussed recognising BRIK certificates from Indonesia, export declarations from Malaysia and SGS documents from Papua New Guinea as legality evidence. However, the reliability of such schemes has been questioned by some importer countries and NGOs, as cases of document misuse, forgery and other deficiencies in the schemes have been discovered.

This indicates the need for independent, structured assessment of existing verification schemes, if they are to be used to implement the procurement policy. Such an assessment has not been conducted or commissioned under any of the compared policies. For instance, neither the UK government, nor CPET on its behalf, have systematically assessed BRIK or the SGS log export monitoring system in PNG in terms of whether – or to what extent – they serve as evidence of legality. Such schemes

would only be examined *ad hoc* in the case-by-case assessments by CPET. Systematic, consistent and comprehensive assessments would require generic standards of legality and chain of custody, which the Japanese, French and (partly) Dutch policies presently lack.

Monitoring the supply chain in the producer countries is critical to effectively ensure legal origin of timber, as it can uncover cases of document misuse and forgery. In contrast to the other three policies, the Guideline formulated by Japan’s Forestry Agency does not prescribe independent monitoring of the procedures for providing and handling legality evidence in the supply chain. As mentioned above, only the JFWIA Code of Conduct includes random monitoring by the JFWIA; however, this cannot be viewed as entirely independent. Accreditation of government suppliers seems to be the primary tool included in Japan’s policy under modality 2 to verify the suppliers’ capability to provide legality evidence and to ensure their commitment to the principles and regulations included in their industry association’s code of conduct. To be robust, this needs to be backed up by independent third party monitoring of suppliers’ performance against their codes of conduct.

A general recommendation for European countries, and in an (initially) observatory role also for Japan, would be to take a more proactive role in negotiations between the EU and the major producer countries on individual definitions of legality of timber/timber products for each producer country under the voluntary partnership agreements (VPAs). A number of European countries have not participated in any negotiation process so far. Once such definitions of legality for each producer country have been negotiated, they could be accepted not only by EU consumer countries but also by other major importers such as Japan.

## 4.0 VERIFICATION OF SUSTAINABILITY

All of the examined policies favour sustainable products. To be effective, they must (and indeed do) include instructions for verifying sustainability. However, as with legality verification, both the design and implementation of verification procedures for sustainability vary greatly between the compared policies. One general difference is the extent to which the policies differentiate between the verification of legality and sustainability. The Dutch, French and (in the future) UK policies “aim high” by focusing on the verification of sustainability and positioning legality within their broader requirement of sustainability. In contrast, Japan’s policy clearly separates legality from sustainability and prioritises the former as a “criterion for decision”, whereas the latter is referred to as a “factor for consideration”. Moreover, Japan’s policy does not distinguish between tools and procedures for verifying evidence of legality and of sustainability. The UK policy, which presently requires procurement agents to ensure that timber comes “at least” from a legal, but “preferably” sustainable, source, has separate criteria for assessing these two dimensions. An interim policy from 2009 to 2015 will demand timber/timber products from sustainably managed forests, unless they are licensed under the FLEGT scheme, and from 2015 only sustainable timber will be procured.

### 4.1 Requirements for sustainable forest management standards and CoC

As with legality, it is again the policies of the Netherlands and the UK that include government criteria to assess sustainability, whereas those of France and Japan rely on the criteria and procedures of existing certification schemes. Table 2 provides an overview of the main categories of criteria to assess sustainability evidence required by the four countries. The Dutch and

UK policies cover all the same categories, except for socio-economic criteria, which are only part of the Dutch policy.

The current Dutch policy based on the *minimum requirements* still relies on certification schemes validated by Keurhout based on government criteria. Under the not yet implemented BRL system, extensive principles, criteria and indicators for sustainable forest management and CoC will have to be met, either by obtaining BRL certification (to be established) or having certification by an existing scheme recognised as BRL-equivalent. The main principles were described in detail in the above outline of the Dutch policy.

With respect to forest management, principle 1 of the policy states that at the planning stage “sustainable forestry must be practiced through a management system”, and criterion 1.1 specifies that “the management system comprises the entire cycle of policy and planning, implementation, monitoring evaluation and corrective action, aimed at attaining sustainable forestry objectives”. The policy not only is broad in scope but is also very detailed. The next principle prescribes that relevant features of sustainable forestry must be identified. Criterion 2.1 specifies that “the features to be protected are described and determined on the basis of expert research where the preservation of the ecological function is concerned and with the prior consent of the local community or indigenous peoples where the preservation of property rights and rights of use is concerned”.

With respect to CoC, the revised Dutch policy includes a number of definitions and requirements that are stated in Chapter 4 of the BRL Guideline. According to Principle 1, “there must be a chain of custody system which systematically indicates, within each link in the supply chain, whether timber and timber products originate from a sustainably managed forest”.



Criterion 1.1 requires that “a chain of custody enterprise has introduced and implemented a chain of custody system”, and criterion 1.2 that there is a designated management body that is responsible for the implementation of the chain of custody system”. Further criteria seek to ensure segregated management and traceability.

These examples illustrate how comprehensive and precise the Dutch government standards are in their conceptual outline. Whether they will be met on the ground will heavily depend on the actual implementation of the BRL system and on the rigour of the required third party assessment.

responsible forest management at the forest management unit level” (Checklist 3, CPET 2006a, 11). In addition, “the process of defining ‘sustainable’ must seek to ensure balanced representation and input from the economic, environmental and social interest categories”, that “no single interest can dominate the process” and that “no decision can be made in the absence of agreement from the majority of an interest category”. The remaining criteria require forest management to ensure that harm to ecosystems is minimised, and productivity of the land, ecosystem health and vitality, as well as biodiversity are maintained. While the UK government long argued that the inclusion of

**TABLE 2 – Requirements for sustainable forest management standards**

	UK	NETHERLANDS	FRANCE	JAPAN
1. Legal, policy and institutional framework	✓	✓	—	—
2. Extent of forest resources (conversion)	(✓)	✓	—	—
3. Forest health and vitality	✓	✓	—	—
4. Production functions of forest resources	✓	✓	—	—
5. Protection functions of forest resources	✓	✓	—	—
6. Biological diversity	✓	✓	—	—
7. Socio-economic functions	Under review	✓	—	—

*Source: Based on a joint presentation of the Danish, Dutch and UK governments at the Illegal Logging Update and Stakeholder Consultation, Chatham House, UK, January 2007.*

The UK policy does not include the development of an independent certification scheme comparable to that of the Dutch BRL guideline, but provides an alternative procedure for assessing sustainability evidence (Category B) other than through forest certification schemes (Category A).

Under the Framework for Evaluating Category B evidence, there are a number of criteria for sustainable forest management. In contrast to the Dutch BRL, which has very detailed criteria to assess what are considered to be all the aspects of sustainable forestry, the UK policy limits itself to establishing a small number of criteria and indicators. It requires forest management units to produce their own definition of sustainability, which has to be performance based and cover all the issues set out by the UK policy: “There must be a definition of sustainable based on a widely accepted set of international principles and criteria defining sustainable or

socio-economic criteria would contravene EU procurement guidelines, according to government presentations given at the UNECE/FAO Policy Forum in October 2006 and at the Illegal Logging Update and Stakeholder Consultation in Chatham House in January 2007, this position is presently under review.

Similar to the Netherlands policy, the Framework for Category B evidence includes the following four criteria on supply chain management (chain of custody):

- the supply chain is clearly described and complete from point of supply back to the forest source;
- for each stage in the supply chain an adequate mechanism for preventing uncontrolled mixing is prescribed;
- information is provided on how these mechanisms are checked and verified;
- evidence provided or available is adequate to confirm the information provided.

In conclusion, both the Dutch and UK policies include government criteria for the assessment of sustainable forest management and CoC. The Dutch criteria are more comprehensive and detailed and will serve for assessing forest management systems and supply chains under the BRL certification scheme and assessing the equivalence of existing schemes. Therefore, it is sufficient for procurement agents to require BRL certification or equivalent. In contrast, the UK has two ways to verify sustainability: 1) use of forest certification systems after assessing them as reliable (Category A), 2) assessment of Category B evidence using a set of criteria. The first method is similar to that of the Dutch policy, only that the latter will include its own BRL certification scheme. The UK approach of a case-by-case assessment of Category B evidence for is a unique approach that, different from legality verification, will not be adopted by the Netherlands policy.

While both the implementation of the BRL system as a government initiated certification scheme and the assessment of BRL-equivalence of existing schemes can be expected to be two quite ambitious, lengthy, resource consuming and complex tasks, the approach of the Dutch policy has the advantage of giving the responsibility of verifying sustainability to an expert board, and not to the non-expert procurement agents. A further strength of the Dutch approach is that it has established a very detailed set of criteria for forest management. One can thus expect its standard of sustainability to be higher, overall, than those verified by Category B evidence. The weakness of this approach is that it will be difficult to implement; this could explain why the Dutch is moving towards differentiating between legality and sustainability in its policy.

The UK policy, instead, places the burden of verification on the procurement agents, but they can seek assistance from the Central Point of Expertise on Timber (CPET) as will be discussed later; the advantages of the UK policy

are that non-certified timber can be procured and that procurement agents can be expected to gain expertise over time. A positive aspect of the UK policy is that it provides clear directions for developing sustainability standards, which are likely to be welcomed by many forest stakeholders; namely, that widely accepted criteria and indicators should be used and elaborated through a multi-stakeholder process.

## 4.2 Assessment of forest certification schemes

The French and Japanese governments have accepted all major global and national schemes without assessing them. For the French government, forest certification schemes provide a “good guarantee” if they include verification by an independent body.<sup>85</sup> The Notice of Information from 2005 states that all certification schemes “mentioned” by the ITTO and the African Timber Organisation (ATO) are acceptable for public procurement of tropical wood (GPEM/DDEN 2005, 6). The Japanese government has taken a similar approach, accepting Japan’s local scheme and five overseas national/international schemes. According to one official, the government is wary of evaluating private sector initiatives as it might be regarded as biased if it prefers one scheme over another.<sup>86</sup> However, as noted in Chapter 1, certification schemes should be assessed because they are not always founded on true multi-stakeholder participation and as there is no factual grounds for assuming that they will capture all the elements of sustainable forest management.

In contrast, the policies of the UK and the Netherlands include a number of key elements for the assessment of forest certification schemes, which they have recently succeeded in harmonising through collaboration (in which the Danish government also participated). As Table 3 reflects, both policies explicitly require from certification schemes:

85. According to a government presentation given in 2006.

86. Interview in July 2005.

- consistency of both certification and accreditation processes with the same ISO guidelines;
- balanced representation and decision making in the scheme;
- consultation with the main forest stakeholders prior to certification;
- public availability of certification reports;
- chain of custody performed by an accredited body or an auditor complying with ISO standards;
- controlled origin of recycled material, and
- clear, credible and non-misleading rules on labelling.

The governments of France and Japan did not specify standards of sustainability for the timber they procure and therefore have no frame of reference for evaluating certification schemes, which, indeed, they have no intention of doing. Rather, they uncritically accept forest certification as proof of sustainability on the basis that certification involves third party monitoring (and, for Japan, an independent standard). In contrast, the UK established standards to assess whether certification schemes meet the government’s requirements for legality and sustainability and contracted ProForest to undertake

**TABLE 3 – Criteria for assessment of certification schemes**

KEY REQUIREMENTS ON CERTIFICATION SCHEMES		UK	NETHERLANDS	FRANCE	JAPAN
Standard setting		ISO Guide 59 Balanced representation and decision making			
Certification	Accredited body	✓	—	—	—
	Consistency with applicable ISO guidelines	62, 65, 66 or equivalent	—	—	—
	Consultation with stakeholders	✓	—	—	—
	Information from certification reports publicly available	✓	—	—	—
Accreditation	Consistency with ISO guidelines	17011 or equivalent	—	—	—
Chain of custody	Performed by accredited body or auditor complying with ISO	65 or equivalent	—	—	—
	Recycled material of controlled origin	✓	—	—	—
Labelling	Clear credible and non-misleading rules	✓	—	—	—

Source: Based on a joint presentation of the Danish, Dutch and UK governments at the *Illegal Logging Update and Stakeholder Consultation*, Chatham House, UK, January 2007.

An important final question is whether procurement agencies have the option to pay a price premium for certified products. All four policies promote public purchasing of certified timber, which implies a certain leeway for public purchasers to pay more for such products. However, if public buyers lack awareness of this type of policy detail, they may source cheaper, uncertified products over certified ones. This is a risk inherent in all compared policies that can only be addressed by adequately informing or instructing public procurement agents.

### 4.3 Key observations and messages from comparative analysis

All four countries accept forest certification as evidence of sustainable forest management.

the initial assessments. It also created another category of evidence (Category B) for sustainability and its advisory service, CPET, has developed a checklist that allows procuring agents to conduct a case by case assessment of this evidence. The Netherlands has adopted a tighter approach that only accepts forest certification as verification of sustainability, but like the UK (and unlike Japan and France) has not assumed that all certification schemes are credible, i.e., meets its standards. The Dutch policy prescribed the establishment of a certification scheme (BRL) based on government standards of sustainability, which both certifies forests and assesses the equivalence of existing certification schemes. Public purchasers thus have the option to choose between timber certified under BRL or under certification schemes assessed as equivalent to BRL.

Public procurement policy should enable procuring agents to identify products that are legal and sustainable. Forest certification can aid them in doing so, but the government should systematically assess existing certification schemes according to its own minimum standards. As with legality standards, the governments of Japan and France should introduce sustainability standards, which could serve for case by case assessment of evidence other than certification and to construct a framework for the assessment of certification schemes. Such an approach could have the additional benefit of encouraging certification schemes to improve their standards and performance: for example, after a government commissioned assessment of the PEFC scheme was completed by the forest consultancy Pro-Forest, PEFC revised its scheme to meet the UK's sustainability requirements.

Japanese officials argue that they have no authority to assess private sector initiatives and that they may be accused of being biased if some schemes are assessed favourably and others are not. Addressing both issues and drawing from the experiences in the UK and the Netherlands, a possible solution is for the government to commission the assessments to an external consultancy or expert group.

The Japanese government should also increase the awareness of procuring agents of the advantages of forest certification over the other two verification modalities of its procurement policy and encourage them to pay premium prices for certified products.

A final question is where the process of developing government standards should lead to. The policy of the Netherlands has shown a progress from "minimum requirements" towards the inclusion of social criteria, which is widely regarded as necessary to complete government standards for sustainable timber. In the case of the UK, social criteria for assessing forest management and timber production were long rejected by the government until the autumn of 2006, when the official government position changed to "considering" their inclusion. The inclusion of social criteria provides government standards of sustainable timber with full integrity in terms of contributing to sustainable development in producer countries, but it requires political support from policy-makers, which, in turn, seems to be conditioned by a sufficiently high degree of awareness of forest dependant stakeholder issues in producer countries.

## 5.0 MEANS FOR POLICY IMPLEMENTATION

Considerable differences can be identified between the four policies in terms of the means (tools and mechanisms) they provide for their implementation. Table 4 provides an overview of the primary means for implementation of the compared policies.

### 5.1. Guidelines

At present, of the four compared policies, three are based on guidelines, namely those of Japan,

the UK and France. Japan's policy is based on the Guideline developed by the Forestry Agency. In the UK, apart from the government Advice note, CPET has developed two frameworks, one for category A evidence and one for category B evidence. Although the relevant document in France is officially an Advice Note (*circulaire*), it essentially constitutes a form of guideline for government procurement, especially in combination with the Notice of Information. The Dutch government is preparing the implementation of the BRL Guideline,

**TABLE 4 – Means for policy implementation**

	UK	NETHERLANDS	FRANCE	JAPAN
Guidelines	✓	New BRL Guidelines in preparation	Advice note and “notice of information” brochure	✓
Hotline Support	To procurement agents ✓ (CPET)	Considered	—	—
	To suppliers ✓ (CPET)	Considered	By industry/trade associations (LCB & IFIA)	By industry associations (JFWIA etc.)
Cooperation between central & local governments	Developing strategy (Local govts can use CPET)	✓ (guidance & support)	— Information delivered to local governments	Information provided to local governments
Public-private co-operation	✓ “Very positive” [govt.]	Considered	✓ Government represented in LCB Steering Committee	Close relations between govt. & JFWIA
Monitoring of agents’ familiarity with & adherence to the policy	Developing strategy (CPET task)	✓	— Developing strategy (sampling planned)	— Questionnaire surveys planned
Evaluation and Reporting	Developing strategy (CPET task)	✓	Evaluation by research institute CIRAD	Developing strategy

Comparative analysis of the timber procurement policies of Japan, UK, France and the Netherlands

which has multi-stakeholder approval, but its implementation requires further time and continued stakeholder support. How the guidelines are officially referred to does not necessarily reflect their content, i.e., the extent to which they represent detailed and useful guidelines for assessing evidence of legality/sustainability or verification schemes. France and UK advice notes and Japan’s guideline are rather vague, whereas the (future) Netherlands BRL guideline is more detailed, including criteria for assessing verification schemes; in the case of the UK policy, however, details are included in the accompanying assessment frameworks developed by CPET. The French Notice of Information is a small 30-page brochure with some general information that may succeed in making concerned procurement agents understand the need for procuring sustainable timber. Compared to the UK criteria, it does not offer any concrete guidance on how to verify evidence for legal and sustainable wood. The two documents relevant for Japan’s timber procurement policy, the Basic Policy under the Green Purchasing Law and the Forestry Agency Guideline, lack detail on how to verify legality and sustainability, as concretisation of verification modalities is to be undertaken autonomously by the private sector. As a result, public

agents in France and Japan have to exclusively rely on existing certification schemes or on their suppliers’ efforts to provide assurance of legality and sustainability based on industry sector codes of conduct.

## 5.2 Hotline support

The UK policy is presently the only of the examined policies which includes hotline support to public procurement agents and their private suppliers. This service is provided by government commissioned forest consultancy experts through the Central Point of Expertise on Timber. Under the Dutch policy, institutional support is much less important, as procurement agents must seek certified wood and thus do not have to assess evidence. In contrast, Japan’s and France’s policies include alternative verification modalities to certification, similar to the UK policy. For these modalities to be effective, the procurement policy must give the procurement agents the responsibility for assessing whether the documents accompanying their orders provide assurance of legality and/or sustainability. Relying on the suppliers to implement codes of conduct without regular independent and neutral monitoring places too

much faith in the private sector. However, public buyers cannot be expected to possess the expertise required to assess documentary evidence of timber legality and sustainability; therefore, the hotline support for case-by-case assessment of Category B evidence provided under the UK procurement policy would appear to have considerable merit.

### 5.3 Cooperation between central and local governments

Cooperation between central and local governments is essential for public timber procurement policies to be effective. The four studied policies all encourage local government adherence. The central government of the Netherlands has provided systematic guidance and support to local governments. In the UK, CPET services are available to local authorities to assist them in procuring legal and sustainable timber, but take-up has been generally low (Brack 2007). In Japan and France, contact between central and local governments regarding the timber procurement policy has been largely limited to information exchange. In Japan, prefectures and municipalities have been informed of the guideline and they are expected to make efforts (*doryoku gimu*) to comply. A recent interview with government officials of Kanagawa Prefecture revealed that the Prefecture has not yet developed a strategy of how to implement the policy. However, 16 of the 33 municipalities in this Prefecture are in the process of undertaking steps to implement the national Green Procurement Policy – including the guidelines for purchases of legal and sustainable timber (written reply from the Prefecture Forestry Department, 30/03/2007). In France, the Advice Note does not mention local authorities, but the Notice of Information was sent to them.

### 5.4 Public-private collaboration

In designing and implementing public timber procurement policies, collaboration between the private and public sectors is desirable to enlist private sector support for the policy, though care must be taken to ensure this does not undermine the robustness of the policy. Collaboration between public purchasers and suppliers to refine and implement the policies is ongoing in all four countries. The UK Timber Trade Federation is represented in the CPET reference board which assesses certification schemes and further develops the UK timber procurement policy, and informal collaboration also takes place. The government has evaluated this collaboration as “very positive”.<sup>87</sup> In the Netherlands, collaboration suffered a setback when the Keurhout Foundation was placed under the Netherlands Timber Trade Association (NTTA) and was no longer the official assessment body. However, the NTTA has participated in formulating and approving the BRL guideline. The Dutch government is considering public-private sector cooperation in the implementation of the BRL system.<sup>88</sup> In France and Japan, collaboration has been very close. The French timber trade association LCB has actively cooperated in formulating France’s public procurement policy through its involvement in the National Working Group for Tropical Forests. The fifth of the abovementioned modalities for *category I* material can be considered tailor-made for LCB members, as it refers to suppliers who subscribe to a code of good conduct, but the only existing one is that of the LCB. In Japan, the Federation of Wood Industry Associations, which has traditionally cooperated very closely with the Forestry Agency, was commissioned to establish the working groups responsible for further developing the timber procurement policy. The focus on the private supplier rather than the public buyer side in France and Japan may have one advantage in that their wood trade associations were effec-

87. Joint government presentation delivered at the UNECE/FAO Forum in Geneva in October 2006.

88. *Ibid.*

tively required to establish voluntary codes of conduct, which they may choose to apply to both public and private contracts. However, the implementation of codes of conduct may compete with other interests of private sector timber suppliers, such as profit maximisation; therefore, their implementation should be independently monitored.

## 5.5 Monitoring of familiarity with and adherence to the policy and evaluation

An essential element for any policy to be robust is systematic monitoring and evaluation, including a mechanism to feedback findings into the policy refinement process. Major differences between the examined policies exist with respect to whether and how the procurement agents' familiarity with and adherence to the respective procurement policy has been monitored. In the UK, CPET is developing a strategy of how to organise this monitoring. In the Netherlands, monitoring has been conducted by the Keurhout Foundation, but in the future it will be conducted as part of the BRL system. In France, where no monitoring had occurred until mid 2006, based on an ad hoc decision the government is planning to conduct a sampling exercise to obtain quick indicative results of the procuring agents' adherence to the policy. In Japan, the government claims to regularly conduct thorough monitoring of the Green Purchasing Law's implementation; monitoring of the timber procurement policy will be part of this process.

Evaluation of policy implementation has only occurred in the Netherlands, where it led the government to replace the previous Keurhout-based policy with the BRL guideline. On behalf of the UK government, CPET claims to be developing a strategy for policy evaluation. In France, government officials were expecting the *Centre de coopération internationale en recherche agronomique pour le développement* (CIRAD) to submit a report on the evaluation of the policy by mid 2007. In Japan, a strategy for policy evaluation still needs to be developed.

## 5.6 Key observations and messages from comparative analysis

Once the BRL Guideline is implemented, the Dutch policy will be the most ambitious, as it will include an extensive list of criteria and indicators both for establishing its own forest certification scheme and for assessing the equivalence of existing schemes. While the Netherlands' policy is the most advanced in terms of sustainability standards, it lags behind with respect to its treatment of legality. The Dutch government aims to address this shortcoming by adopting the UK's legality standards. Based on the UK government's advice note, the Central Point of Expertise on Timber has elaborated both a framework to assess existing verification schemes (Category A evidence) and one to deal with evidence for legality and/or sustainability based on a case by case assessment (Category B evidence).

Presently, both the policy processes in the UK and the Netherlands have progressed to a stage where they are capable of assessing timber legality and sustainability (either directly by verifying evidence or indirectly by assessing certification schemes). Since the Dutch policy was introduced in 1997 in the form of *minimum requirements*, its progress has not been gradual or consistent. However, the knowledge all major stakeholders gained from the implementation of the *minimum requirements* certainly facilitated the formulation of the BRL Guideline. Formulated in 2004, the UK policy has developed incrementally, with components being added for the policy to gain its present shape.

France's and Japan's policies have taken a fundamentally different approach by offering their industry sectors the option to develop autonomous verification procedures under codes of conduct. The similarity of their conceptual designs can be explained by a history of policy formulation that has a number of parallels. In both countries the policies were developed after international commitments were made to combat illegal logging by their heads of state,

without the extensive preparations seen in the UK and the Netherlands. In France, policy formulation seems to have come to a standstill, except for the ongoing efforts of the main timber trade association to commit an increasing number of members to its Environmental Charter, which includes legality and sustainability requirements. In Japan, the government, civil society and the private sector continue to be engaged in activities to strengthen the policy.

The UK policy can be regarded as innovative in terms of the hotline support the government has provided to its procurement agencies through CPET services delivered by commissioned forestry experts. A clear advantage of this approach is that institutional support enables public purchasers to examine evidence for legality and/or sustainability provided by their suppliers, rather than relying on the self-declarations of suppliers. The Dutch government has recognised the advantage of having such institutional support and is planning to offer a similar service to its procurement agents for the verification of legality.

Japan and France should include evidence assessment in their policies, which could be conducted either by procurement agents or by a contracted expert body. If they choose the former approach, as the UK did, they should consider establishing a support service to provide expert advice to procurement agents and their suppliers for case-by-case assessments. This would represent a major step towards a more balanced policy design that identifies appropriate roles for both the private supply and the public demand side. A critical issue is whether experts on international forest management issues comparable to those of the consultancy ProForest are available in these two countries.

In France, the institute CIRAD (*Centre de coopération internationale en recherche agronomique pour le développement*), which assessed the timber procurement policy in 2006 as mentioned in Chapter 3, could be an option for the govern-

ment to consider contracting to raise the awareness of and provide expert guidance to procurement agents.

In Japan, the government could also consider contracting an expert body or organisation to provide an advisory service to public procurement agents, in a similar vein to that provided by CPET in the UK. However, a major concern is whether or not a body with the required level of impartiality and of expertise on international timber trade presently exists in Japan. In order to identify an appropriate organisation the Ministry of Agriculture, Forestry and Fisheries should invite tenders for the work. However, it can be anticipated that establishing the support service would require a longer preparatory phase in order to secure the necessary degrees of expertise and neutrality for advising procurement agents.

A number of organisations in Japan have recently looked into the verification of legal and sustainable timber, which could be employed for this purpose. These include the Forestry and Forest Products Research Institute (FFPRI), as one of the largest institutions with expertise on forestry issues in Japan. Another option would be to contract the Japan Federation of Wood Industry Associations as a nexus between the government and the private sector. Although the JFWIA is a federation of industry associations, as we have highlighted earlier, it is more accurately described as a semi-public organisation. Since the establishment of its Code of Conduct, the JFWIA is increasingly gaining expertise on options for legality and sustainability verification procedures in the most significant timber exporter countries to Japan. So far it has provided guidance to government suppliers through its member associations. The main concern to expanding this role to advising procurement agents is how the JFWIA staff involved in this service could assume an impartial role. An alternative could be to institutionalise the multi-stakeholder Council for Tackling Illegal Logging Issue, expanding its role to providing guidance on Japan's procurement policy to public purchasers. While this body could



claim a more independent status than the JFWIA, its “life” is currently bounded by the three-year time frame of the funding provided under the Project to Promote a Comprehensive Responsive to Illegal Logging. Moreover, the Council is organisationally loose, consisting of a group of experts who belong to diverse organisations and meet infrequently. In order to provide advisory services the Council would require a significant departure from its current status, function and composition toward a legal

person able to employ experts for impartial support services.

Regardless of the institutional arrangements, the establishment of a service that provides expertise to assess documentary evidence for non-certified wood items would significantly strengthen the legality verification process. The government would have to consider each option from the perspectives of feasibility, expertise and neutrality.

## 6.0 CONCLUDING DISCUSSION: ELEMENTS OF ROBUSTNESS IN THE COMPARED POLICIES

Ensuring that wood is legal and sustainable is potentially politically difficult as powerful actors may benefit by maintaining the status quo of wood production and trade. Moreover, providing assurance that wood is legal/sustainable is a complex process that must include the entire production chain. It is technically challenging, time consuming and potentially expensive. In order to successfully address these challenges and ultimately avoid the purchase of illegal and unsustainable wood, a public timber procurement policy must be robust. Drawing on our comparative analysis, this concluding discussion elaborates on some of the essential design elements of a robust public timber procurement policy.

### **1. Major wood product categories from all producer and intermediary countries**

In Chapter 3 we pointed out that two procurement policies, those of Germany and Denmark, initially required evidence for sustainability only for tropical timber, and that not all the policies cover all major categories of wood products (e.g., Belgium). For a procurement policy to be robust, it must apply to all major categories of wood products from all producer and intermediary countries. The four compared

policies essentially include all major wood categories and apply to all supplier countries.

### **2. Generic definitions/criteria of legality and sustainability**

A key element of a robust policy is generic definitions and criteria of legality and sustainability to allow consistency in application. Although they are not an explicit part of the conventional policy in the Netherlands, public purchasers in the Netherlands have been encouraged to seek timber certified under the Keurhout system and validated under the Keurhout Protocol for Legality Validation described in Chapter 3. The new BRL guideline is impressive but also may be tough to meet in that it includes a broad definition of, and an extensive list of generic criteria for, sustainability. The UK policy includes basic criteria for both sustainability and legality in the framework for evaluating category B evidence and the Dutch policy has expressed its intention to adopt the UK’s legality criteria. In contrast to France, Japan’s policy includes a generic definition for legality, but both policies only have vague definitions of sustainability, considered insufficient even by government officials.

### **3. Provision of definitions/criteria for assessing evidence**

Another essential element is that these definitions and criteria are provided as a basis for case-by-case assessments of evidence for legality, as well as for sustainability under a modality other than forest certification. The private sector based approaches of the French and Japanese policies do not presently guarantee the objectivity required to verify legality and sustainability based on evidence other than certification. Under both policies, procurement agents do not have an explicit mandate to conduct assessments of the evidence they receive, nor is there a standard procedure or guidance service in place to deal with the complexity of verification. In the Netherlands, the policy is based on forest certification, which means that there is no need for public purchasers to assess evidence. While this will not change for sustainability verification under the BRL system, it is expected to change for case-by-case assessment of legality evidence, once the UK criteria have been adopted. The UK model through which procurement agents conduct individual assessments supported by an expert service is one way to bring neutrality into the assessment process.

### **4. Assessment of legality and sustainability assurance schemes using minimum criteria, if the procurement policy includes the option of using these in its design**

A common feature of procurement policies is that they recognise forest certification schemes as one means of providing assurance of legality and sustainability. Other existing assurance schemes include national legality verification systems established by producer governments (such as BRIK in Indonesia) and private sector services. Not all of these schemes were formulated through multi-stakeholder processes and some have been heavily criticised. It is thus desirable that these schemes are assessed before being recognised by the procurement policy.

The UK and Dutch policies developed criteria specifically to assess forest certification schemes.

A number of certification schemes have been assessed under the UK policy and a pre-assessment of six schemes is ongoing under the BRL system in the Netherlands. In both countries, the policy design includes periodic assessment of accepted schemes and assessment of other schemes. Policy designs in Japan and France do not require assessment of forest certification schemes. None of the policy designs extend their assessments to national legality assurance systems or private sector legality assurance services.

### **5. Effective system for case-by-case assurance of legal origin and compliance, and chain of custody**

If the government chooses to create a system to independently verify legality, this system must provide assurance of legal origin and compliance, as well as chain of custody. Of the compared policies, only the UK has established a specific system for providing assurance of legal origin, legal compliance and chain of custody - the framework for evaluating category B evidence - but its effectiveness still needs to be evaluated. In the Netherlands, the government announced in 2007 that verification will be conducted by an accredited body or auditor complying with NEN-EN-ISO 45012 based on the UK criteria for legal timber. Japan's and France's policies require suppliers to the government or their trade associations/federations to autonomously develop systems for legality assurance in their alternative modalities. More detailed frameworks and the option of expert guidance offered to suppliers and procurement agents would strengthen their procedures for legality assurance.

### **6. Third party investigation when there is concern over legal origin and compliance and chain of custody**

Closely related to the previous element is that of third party investigations into accusations of legal violations. The UK policy prescribes monitoring in such cases to provide independent verification of legality. However, as an essential element, an independent investigation (rather than monitoring) would be sufficient. In France, monitoring or surveillance by a third party is

prescribed at least in the policy design. In Japan, the government has stated that “at the present time, once exporter or harvester makes a rational explanation, no further question of investigation by Japan side is planned (unless the existence of illegal logging is undoubtedly sure with considerable evidence)” (GOJ 08 February 2006) to explain the public procurement policy to overseas wood and wood product companies as mentioned above. This statement could be modified to “... (unless the existence of illegal logging is highly probable with considerable evidence)”. Although not part of the policy design, the JFWIA voluntarily established random investigation of its member companies in its Code of Conduct.

### **7. Policy mandatory as far as possible**

Policies must be mandatory to be robust if there is a significant possibility that the affected actors will not adhere to the policy. There is no reason for timber procurement policies to be an exception. All four policies claim to have a binding effect at least on central state procurement agents. However, implementation practice in France has shown that few public purchasers seem to be aware of the policy, and even fewer seem to be strictly applying it. The practical effect on public purchases can be expected to be larger in the other three compared policies, which have designed stricter internal monitoring procedures.

### **8. Participation from all levels of public administration encouraged**

To have a larger impact on the market, it is desirable that public procurement of legal/sustainable timber is not limited to selected central state authorities but applies to all public entities. While in all compared countries for legal or political reasons central state procurement policies are not binding at the local level, the policies should encourage local authorities to either follow the national policy or develop their own policies. The first approach is part of the design of all the compared policies, but their means and degree of implementation varies widely. The UK and Dutch governments are intending

to draw in all local authorities. In Japan, some municipalities have responded to the policy. The impact on local authorities seems to have been lowest in France.<sup>89</sup>

### **9. Freedom to pay a price premium**

The freedom to pay a price premium is essential in terms of enabling procurement agents to favour products certified as sustainable over those for which only legality assurance has been provided. In the policy design, all four compared countries grant public purchasers a certain leeway to pay price premiums, but this requires them to be familiar with the merits of forest certification. In practice, given the lack of active guidance in France and Japan, a concern is that a large number of public buyers in these two countries may continue giving preference to cheaper, uncertified products over more expensive certified products.

### **10. Comprehensive guidance to procurement agents**

Such concerns highlight the need for comprehensive guidance to procurement agents. Consultative services provided by experts is particularly necessary where the policy design requires public buyers to conduct assessment of evidence. Such alternative modalities to certification are presently provided by the policies of the UK, France and Japan. Only the first offers a government service contracted to an expert consultancy to provide comprehensive guidance to procurement agents. The other two do not, as their policies task their private sectors with the responsibility of establishing and implementing systems to assure legality.

### **11. Internal monitoring of public purchases**

While guidance to procurement agents is essential, it has to be complemented with internal monitoring of public purchases. In the UK, CPET has recently initiated a process of monitoring the extent of adherence to the timber procurement policy by public buyers. In France, the government is considering monitoring on a sample basis, but officials state that the purpose

89. Interviews with French government officials (July 2006).

of this monitoring is to obtain a general understanding of the progress of policy implementation. They are not intending to institutionalise the monitoring. In the Netherlands, regular internal monitoring has been conducted in the past and is planned by the government for the new BRL policy. In Japan, internal monitoring of public procurement bids will take place as part of the monitoring of the Green Purchasing Law's implementation.

### 12. Participatory and transparent revision procedure

As alluded to in the previous paragraph, a participatory and transparent revision procedure for strengthening procurement policies is desirable. In principle, this element is shared by all compared policies, but only the policies of the UK, the Netherlands and Japan have well-established procedures for such a process.

Since all the compared policies in their present form are relatively new and some are set to undergo significant changes, it is too early to assess policy implementation. Through comparative analysis we have elaborated on some of the essential design elements for a public procurement policy to be robust and contrasted the treatment of these elements in the four compared policies. Table 5 provides an overview of our observations, distinguishing whether elements are missing (hyphen), reflected in a rudimentary fashion (hyphen in brackets), partially included (tick in brackets) or fully included (tick) in the respective policy designs.

The policy design elements for a robust public timber procurement policy and our recommendations for strengthening Japan's policy are explored further in Chapter 5, based on a synthesis of the results of our analysis in Chapters 2, 3 and 4.

**TABLE 5 – Essential elements of robustness in the compared policies' designs**

ELEMENTS OF ROBUSTNESS	UK	NETHERLANDS	FRANCE	JAPAN
1. Major wood product categories	✓	✓	✓	✓
2. Generic definitions/criteria of legality and sustainability	✓	(✓) (to be revised)	(-) (broad definitions, no criteria)	(-) (broad definitions, no criteria)
3. Provision of definitions/criteria to procurement agents (or expert bodies on their behalf) to assess evidence of legality/sustainability	✓ (criteria to agents)	✓ (criteria to expert body)	(-)	(-)
4. Assessment of legality and sustainability assurance schemes using minimum criteria	(✓) (5 schemes so far)	(✓) (procedure to be revised)	—	—
5. Effective system for case-by-case assurance of legal origin and compliance, and chain of custody	(✓) (to be evaluated)	(✓) (UK system to be adopted)	(-) (private sector to establish)	(-) (private sector to establish)
6. Third party investigation if concern over legal origin and compliance and chain of custody	✓	✓	(✓) (in principle demanded, not detailed)	(✓) (if "considerable evidence" for illegality)
7. Be mandatory to the extent possible	✓	✓	(✓)	✓
8. Participation from all levels of public administration encouraged	✓	✓	(-)	✓
9. Freedom to pay a price premium	(✓)	✓	(✓)	(✓)
10. Comprehensive guidance to procurement agents	✓ (support service)	(✓) (considering support)	(-) (information)	(-) (information)
11. Internal monitoring of public purchases	(✓)	(✓)	(✓/-) (depends on amount)	✓ (legal requirement)
12. Participatory & transparent revision procedure	✓	✓	(✓)	✓

# Elements of a Robust Public Timber Procurement Policy and Options for Strengthening Japan's Policy

I *Federico Lopez-Casero and Henry Scheyvens*

## 1.0 INTRODUCTION

This report began by highlighting the urgency in which illegal logging must be addressed and the importance of public procurement policy as a means of encouraging sustainable forest management in producer countries and reducing the international trade in illegal wood. The development and implementation of a public timber procurement policy by Japan is particularly significant as it is the first country in the region to develop such a policy and also because it is one of the world's largest timber importers. The government introduced the policy in a relatively short period of time, placing the onus on Japan's bureaucrats to strengthen and implement the policy. In turn, the bureaucracy has turned over significant responsibility for creating the systems necessary to implement the policy to Japan's private sector. Implementing

the policy as it stands and strengthening the policy to make it more robust are both challenging tasks that require supportive arrangements for suppliers and procurement agencies in Japan as well as support for the establishment of credible verification systems in the producer countries. The government has made funding available for implementation and strengthening of the policy and an institutional framework has been established for this purpose. This process is the primary target of this report.

Four objectives were set for this study, namely:

- to describe and analyse the context and features of Japan's public timber procurement policy;
- to undertake a preliminary assessment of the strengths and possible weaknesses of this policy;

- to elaborate the essential elements that a public timber procurement policy should include for it to be robust in curbing the use of illegal wood by public agencies, and
- to identify options and recommend further steps for strengthening the policy.

Our approach to explore the strengths and possible weaknesses of Japan's policy in its current form and options for strengthening the policy was to a) juxtapose the policy against forest realities in producer countries, and to b) contrast the

policy with the evolving policies of selected European countries. These two rather different perspectives from which to examine Japan's procurement policy produced a number of distinct and shared recommendations for how the policy can be strengthened. In addition, the analysis has elaborated on a set of essential elements that a public procurement policy must address to be robust. In this final chapter we first describe these elements and second draw together the major recommendations from our analysis for strengthening Japan's procurement policy.

## 2.0 ESSENTIAL ELEMENTS FOR A ROBUST POLICY

Based on the analysis presented in this report, Box 1 lists the *essential elements* that a procurement policy should include to be applied consistently to exclude illegal and unsustainable wood products from public procurement.

### **Apply to major types of wood products from all regions**

For a public timber procurement policy to be robust, it should apply to major types of wood

products from all regions. The risk of illegal wood being exported is higher in some countries than others. It is to these countries that consumer countries should provide assistance for the implementation of their procurement policies. Without such assistance, public timber procurement policies could inadvertently shift supply away from developing countries towards developed countries with more advanced forest management systems.

### **BOX 1 – Essential elements of a robust public timber procurement policy**

1. apply to major types of wood products from all regions
2. contain broad generic definitions/criteria of legality and sustainability
3. if the policy accepts existing legality and sustainability assurance schemes,
  - a) define adequate criteria for assessing these
  - b) employ a third party to conduct the assessments and publicise results
  - c) allow freedom to pay price premiums
4. if the policy has alternative modalities to existing assurance schemes, these modalities should
  - a) for legality assurance, cover legal origin, legal compliance and chain of custody
  - b) for sustainability assurance, include those criteria that are broadly recognised by the international consensus reflected in sustainable forest management criteria and indicators processes
  - c) include neutral assessment of documentary evidence
5. monitoring of suppliers and third party investigation when there is concern over legal origin, legal compliance, chain of custody or sustainability
6. be mandatory to the extent possible
7. provide sufficient guidance for procuring agents to implement the policy
8. encourage participation from all levels of public administration, i.e., both horizontally (government agencies and (semi) public administrative bodies) and vertically (national and subnational)
9. include internal monitoring of procuring agents familiarity with and adherence to the policy
10. include a participatory and transparent revision procedure for policy strengthening

**Contain broad generic definitions/criteria of legality and sustainability**

Essentially, public timber procurement policies are intended to promote good forest stewardship by favouring legal and sustainable wood products. Broad definitions of legality and sustainability are required for public procurement policies to embrace the full range of laws in the producer country that regulates forest management. Narrow definitions that are restricted to forest specific laws and the harvesting of timber could result in the use of wood products associated with social injustices and human rights abuses.

These broad definitions of legality and sustainability should be elaborated into generic standards consisting of criteria for fleshing out the definitions. The generic standards can be used in negotiations with producer countries to determine which of their laws and regulations are relevant for the procurement policy. The standards thus provide consistency in how the policy treats individual producer countries, while encouraging each country to develop a national legality standard that meets the policy requirements. The alternative option of having each country decide what constitutes legal and sustainable wood without the structure of generic standards to provide guidance could result in a great deal of inconsistency. Some countries may produce very narrow standards and others more broadly defined standards. The former is a risk in countries where governments or officials derive significant income from forestry as currently practiced, whereas the latter is more likely where there is a sharp boundary between the rewards of government office and forestry.

*If the policy accepts existing legality and sustainability assurance schemes, it should:*

- a) define adequate criteria for assessing these;*
- b) employ a third party to conduct the assessments and publicise results, and*
- c) allow freedom to pay price premiums.*

Existing assurance systems can be employed for the purposes of public procurement. These range from systems established by governments to provide exporters with documentary evi-

dence of legality, to chain of custody services provided by private consultancies, to forest certification schemes. These should be comprehensively and systematically assessed prior to their acceptance for public procurement. To engender public confidence in this process, the assessment criteria and the assessment results should be publicised. A system to allow public comments on the assessment results to be received and reviewed is desirable.

If consumer countries elect to use forest certification to verify sustainable forest management, they must allow procurement agents to pay a price premium. Certification adds costs to production in the form of compliance and auditing, and an underlying assumption of forest certification is that the final consumers will be willing to pay a premium for products verified as originating from well-managed forests.

*If the policy has alternative modalities to existing assurance schemes, these modalities should:*

- a) for legality assurance, cover legal origin, legal compliance and chain of custody;*
- b) for sustainability assurance, include those criteria that are broadly recognised by the international consensus reflected in sustainable forest management criteria and indicators processes, and*
- c) included neutral assessment of documentary evidence*

Because forest certification schemes and legal assurance systems do not have extensive coverage in most producer countries, consumer countries may decide to formulate alternative assurance modalities under their procurement policy. This is reasonable given that insistence on certification or third party legal verification could result in timber being substituted by less “environmentally-friendly” materials or a shift in supply from developing to developed countries.

Alternative modalities will have to assess the accuracy and veracity of documentation provided for three key elements of timber legality: legal origin, legal compliance and chain of

custody. To be systematic and comprehensive, the modalities must be based on a conceptual framework of minimum requirements for each of these legality elements. Alternative modalities can also be developed to assess documentation, other than forest certification, as proof of sustainability. These assessments would likewise have to be based on minimum requirements that ideally would reflect the international consensus on criteria and indicators for sustainable forest management.

A critical component of assurance provision is the neutrality of the assessor, and this applies equally to existing assurance systems as well as those created as alternative modalities. Two broad approaches to alternative modalities can be identified in public procurement policies. First, some governments have instructed their timber associations or companies to develop and implement codes of conduct to provide assurance of legality. A weakness of this approach is that there is no neutral assessment of product documentation as the private sector has a vested interest in timber supply. A second approach is for the procurement agents to conduct assessments of the documentation they receive from their suppliers on a case-by-case basis. To undertake these assessments, procurement agents must be familiar with the government's legality and sustainability criteria and will require expert advice. There may be other approaches yet to be explored for ensuring neutrality in evidence assessment under alternative modalities.

***Monitoring of suppliers and third party investigation when there is concern over legal origin, legal compliance, chain of custody or sustainability***

Even if strong alternative modalities are created and/or existing assurance schemes are rigorously assessed, examples of policy implementation failure are to be expected. Timber production, processing, transportation and trade are complex processes that can be difficult to fully document and monitor. Periodic monitoring of suppliers (which could be based on sampling) should be conducted. If concern is raised over the accuracy or veracity of evidence provided

for legal origin, legal compliance, chain of custody or sustainability, public timber procurement policies should include an institutional mechanism with the necessary financing and expertise to receive and treat these in a transparent, systematic and just manner. If the initial review of such claims concludes that an investigation in the producer country is necessary, the policy should specify that this will be undertaken by a recognised, independent and suitably experienced organisation and that the results will be made publicly available.

***Be as mandatory as possible***

A procurement policy should be designed and implemented in a way that it ensures a high degree of compliance from the procurement agencies. This may be achieved through legal instruments that make the policy mandatory or other policy instruments that encourage compliance. Ultimately, each consumer country must decide what type of policy instrument (e.g., notice, regulation, directive or guideline) will most effectively encourage compliance with a public timber procurement policy.

***Provide sufficient guidance for procuring agents to implement the policy***

The central government must provide sufficient guidance to those agents who are responsible for implementing the procurement policy. This is particularly important if public procurement agents and their suppliers have to assess evidence other than that provided by a government approved forest certification or legal assurance scheme. Given the complexity and difficulty of assessing legality/sustainability evidence against definitions and criteria, the government could consider providing procurement agents with a support service consisting of expert-based guidance.

***Encourage participation from all levels of public administration, i.e., both horizontally (government agencies and (semi) public administrative bodies) and vertically (national and subnational)***

A procurement policy should encourage compliance by as wide a range of public buyers as



possible to have maximum effect. A national or federal policy primarily targets central state authorities. Constraints might exist both horizontally – with respect to autonomous or semi-public bodies or organisations for which public procurement guidelines are not binding – and vertically – with regard to local/regional authorities for whom national guidelines do not apply. A national/federal procurement policy can address these actors by explicitly encouraging their voluntary participation and by providing an example of good policy practice that encourages local/regional authorities to revise their procurement guidelines accordingly.

***Include internal monitoring of procuring agents familiarity with and adherence to the policy***

A public timber procurement policy should require internal monitoring of the procurement

agents' familiarity with and adherence to the policy to reveal the extent of compliance and to suggest remedial or additional measures.

***Include a participatory and transparent revision procedure for policy strengthening***

Public timber procurement policies are a relatively new policy instrument to combat illegal logging and the resultant timber trade. As the experience of European countries and Japan has shown, creating robust timber procurement policies is a very involved and long process. All timber procurement policies will require periodic structured review to assess their achievements and weaknesses, and ideally this should involve all major interest groups.

## 3.0 RECOMMENDATIONS FOR STRENGTHENING JAPAN'S PUBLIC TIMBER PROCUREMENT POLICY

In addition to, and reflecting, the above listed essential elements for a robust timber procurement policy, the analysis in this report has identified the following recommendations for Japan to strengthen its procurement policy:

***Develop a broad generic legality standard***

Japan's procurement policy is presently based on the unstated principle that the sovereignty of producer countries must be recognised. Japan's officials argue that if the producer country states that a particular document or assurance scheme is acceptable as proof of legality, Japan should accept it as legal. Furthermore, the policy relies heavily on measures by the private sector to determine the documentation that should be supplied as evidence of legal origin and compliance and

product segregation. The outcome of this approach is likely to be a high degree of inconsistency in policy application in producer countries regarding how the scope of legality definitions and the reliability of documentary evidence.

To apply its policy in a consistent manner to producer countries and to provide clearer instruction for its industry associations and procurement agents, Japan should create a broad generic legality standard. The legality standard should ideally cover the three basic "pillars" of sustainable development – environmental, social and economic – to embrace the full range of forest management concerns. To accelerate the implementation of the policy, the standard could be introduced in a phased manner to initially focus on the forest law and

later to incorporate other laws with relevance to forest management.

The idea of developing national legality standards is quite removed from current thinking on the procurement policy in Japan, but the concept of legality standards is not alien to the Japanese government. The government itself recognised that developing minimum standards of legality were essential steps to combat illegal logging and funded an Asia Forest Partnership work plan to establish a set of minimum standards of legality, timber tracking and chain of custody. The Council for Tackling Illegal Logging Issues could revisit these standards and explore how they could be used as a basis for consultation with producer countries.

***Use the generic legality standard as the basis for participating in processes to formulate national definitions/standards of legality***

The generic legality standard could be used as the basis for discussions with producer countries to define legality on a country-by-country basis through a process of negotiation in a manner that does not compromise national sovereignty. The generic standard would provide a basis for consistency between countries for minimum legality requirements. Japan should take advantage of its existing bilateral agreements and should collaborate and pool its resources with likeminded consumer countries/territories in assisting producer countries to develop national legality standards. The development of multiple legality standards in a single country should be avoided. Japan could use regional forums such as the Asia Forest Partnership, East Asia and Pacific FLEG, ITTO and the Asia-Pacific Forestry Commission to promote further collaboration for the development of national legality standards.

***Provide a definition/standard of sustainable forest management***

Effectively, Japan's procurement policy does not define sustainable forest management. Japan needs to provide a precise definition to operationalise this concept in a consistent

fashion. Japan should establish a standard for sustainability, which could be incorporated into a framework for assessing forest certification schemes.

***Assess independent assurance schemes***

Independent legality/sustainability assurance schemes can take the form of national or state level chain of custody systems approved by government, chain of custody services provided by private consultancies, and forest certification schemes. It appears that all of these could be accepted under Japan's public procurement policy on the basis that either the producer country governments or Japan's industry associations accept them as credible. This approach lacks consistency and rigour. Japan should combine the recommended legality and sustainability standards with a chain of custody standard to establish a minimum set of criteria for the systematic and comprehensive assessment of assurance schemes. Japan should publicise the criteria and the results of the assessments to engender public confidence in the assessment process. The results of the assessments should also be incorporated into the industry codes of conduct specified under modalities 2 and 3 to strengthen this approach.

***Make use of FLEGT achievements and consider collaborating in formulating a global licensing scheme***

The EU has made significant progress in developing VPAs with producer countries. As they are being formulated through multi-stakeholder processes, Japan should consider recognising the national legality standards developed under the VPAs. Japan should also consider recognising the national licensing schemes that will be developed under the VPAs, if these are deemed to be robust. Japanese officials have recently acknowledged that progress was made with the VPA negotiations and expressed their interest in exploring options for participating in or making use of the FLEGT licensing scheme.<sup>90</sup> Japan could initiate discussions with the EU on developing a global licensing scheme for legal wood, using the foundations laid by FLEGT.

**Ensure neutrality by having public procurement agencies assess the accuracy and veracity of documentary evidence provided by their suppliers**

Japan's policy includes alternative modalities for legality/sustainability verification. Modality 2 specifies that timber suppliers to the government must have been accredited under the code of conduct of their respective wood industry association, declare that they are providing legal wood and provide documentation received throughout the supply chain to support this statement. Japan's industry associations (under the lead of the Japan Federation of Wood Industry Associations) are left to determine in voluntary codes of conduct which documentation should be provided for each country. Modality 3 differs mainly in that the codes of conduct are developed by companies and not associations.

This approach has some strengths in the context of Japan, as can be observed by the quick progress in which associations have developed codes of conduct and in which companies have been accredited. It can be further bolstered by the government undertaking independent assessments of existing assurance schemes, as recommended above, and having its findings incorporated into the codes of conduct.

For other documentary evidence specified by the policy, a neutral assessment on a case-by-case basis is necessary, which modalities 2 and 3 lack. Neutrality can be ensured by having the final actor in the supply chain submit the documentary evidence to a neutral, expert body for review. This may not be practical, however, because of the large number of procurement orders that include wood items. Another option is to have the procurement agents review the documentary evidence provided by their suppliers against criteria established by the policy. In addition to comprehensive implementation guidelines, they would clearly require expert advice.

**Establish or employ a professional service to guide the implementation and strengthening of the policy, to handle grievance claims and to provide advisory support**

With the above recommendations in mind, the government should establish or employ a professional service with expertise on timber legality/sustainability. The following are key tasks the service could cover:

1. assist in the development of legality/sustainability standards and the assessments of assurance schemes;
2. advise on the documentary evidence required for each producer country;
3. provide ongoing support to procurement agents and private sector suppliers to assess the accuracy and veracity of documentary evidence;
4. guide the implementation and strengthening of the policy, and
5. handle grievance claims.

It is unclear whether institutions independent of government and the private sector with the necessary expertise for this work exist in Japan. Moreover, the current arrangement for implementing and strengthening Japan's procurement policy does not appear to be supportive of assigning such responsibilities to an independent consultancy. One option is for the Council for Tackling Illegal Logging Issue to accommodate some of the recommendations from this study, particularly to a) develop minimum legality/sustainability standards, b) assess assurance schemes, and c) advise on the documentation required for each country.

**Specify comprehensive, systematic and transparent procedures to review documentary evidence when there is concern over its accuracy or veracity**

Where there is concern over the accuracy or veracity of evidence provided for legal origin, legal compliance, chain of custody or sustainability, to be robust a public timber procurement policy must specify third party review and

90. For example, such interest was expressed at the GLOBE International G8 Illegal Logging Dialogue Legislators Forum in Berlin, June 2007.

investigation. In a paper drafted in February 2006 to explain the public procurement policy to overseas wood and wood product companies the Japanese government stated that “at the present time, once exporter or harvester make rational explanation, no further question of investigation by Japan side are planned (unless the existence of illegal logging is undoubtedly sure with considerable evidence)” (GOJ 08 February 2006). Building on this statement, the government should:

- establish an institutional mechanism to receive and treat grievance claims in a transparent, systematic and just manner, and
- specify that this will be undertaken by a recognised, independent and suitably experienced organisation and that the results will be made publicly available.

The circumstances under which an investigation would take place according to the above government citation are too narrow to allow for meaningful monitoring. The government could further define the investigation procedures by prescribing to ISO Guide 65 or an equivalent. With respect to the appropriate entity for the investigation, Japan’s policy should consider an organisation that has an independent status and is accredited to audit against timber production standards by a national or international body conforming to ISO 17011 or equivalent.

## 4.0 PRORITISING RECOMMENDATIONS

The recommendations listed above can be separated into those that can be implemented building on the existing policy design (“low hanging fruit”) and those that would require significant design revision (“high hanging fruit”). Below we summarise and prioritise the recommendations from this perspective.

### “low hanging fruit”

1. develop minimum legality/sustainability standards
2. participate in the development of national legality standards
3. assess assurance schemes using these standards
4. assess and advise on the documentation systems for each producer country
5. incorporate the minimum standards and the assessment results into codes of conduct
6. provide a support service for government suppliers, such as a helpline, for assessing documentary evidence

7. specify comprehensive, systematic and transparent procedures to review documentary evidence when there is concern over its accuracy or veracity

### “high hanging fruit”

1. involve procurement agents in case-by-case assessment of legality/sustainability evidence
2. establish or employ a professional support service to assist in reaching the “low hanging fruit” as well as:
  - a) advise the case-by-case evidence assessments by procurement agents
  - b) guide the implementation and strengthening of the policy
  - c) handle grievance claims

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