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Public procurement policies for legal and sustainable timber: How to strengthen Japan's policy

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Illegal and unsustainable logging are major causes of deforestation in developing countries of the Asia Pacific region. Timber importing countries have benefited from this logging through access to cheap and massive volumes of wood, but at the expense of the environment, governance and the livelihoods of forest-dependent communities in exporting countries. Recognising that they have an obligation to promote the wise stewardship of forests in developing countries, a number of governments have introduced public procurement policies that favour legal and sustainable wood. This is a very important step towards using international trade as a driver of sustainable development.

This policy brief reviews and compares the designs of procurement policies in Japan, the United Kingdom, the Netherlands and France. It identifies commonalities and differences in their approaches and concludes that there is an essential set of elements that all procurement policies must include to be robust. This set of elements is used to identify how Japan's procurement policy could be



Log pond, concession forest, Sarawak

strengthened to achieve its objective of excluding illegal timber. In particular, Japan's policy requires development of definitions and standards, a process to assess existing assurance systems and to introduce neutrality into the assessment of documentary evidence, and further support and guidance for procurement agents.

Combating illegal logging through public procurement

Forests are critical to human survival and development. Their destruction continues to be one of the greatest challenges facing sustainable development in the Asia-Pacific region and, indeed, globally. The area of primary forest in Asia is reported to have 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. Increasingly, major timber importing countries are acknowledging that they have a responsibility to take concrete measures to avoid importing illegally harvested timber. They have

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benefited through access to large volumes of high quality, cheap timber, but at the costs of forest cover and governance in high risk producer countries, i.e. countries where there is a high risk that exported timber is associated with forest crime.

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 measure is situated within a broader trend amongst industrialised consumer countries of using public procurement to encourage legal compliance and sustainable forest management in producer countries. Public procurement policies are important not only because public procurement can account for a significant volume of domestic timber consumption, but also because they could catalyse further action by the private sector, promote demand for and improvement of existing legal and sustainability verification schemes, and, more generally, raise awareness of illegal logging.

This policy brief stresses the following three points.

- (i) To be effective in avoiding illegal timber and in favouring sustainable timber, public timber procurement policies must contain a set of specific elements, including definitions, neutral evidence assessment, monitoring and guidance for procurement agents.
- (ii) Developing an effective timber procurement policy is a difficult process that requires long-term government commitment and investment. This is mainly due to weak forest governance in high risk producer countries, the complexities of wood commodity chains, the novelty of requiring a check on legality for publicly procured items and vested interests within the private sector in maintaining the status quo.
- (iii) Japan’s policy is not yet sufficiently robust to avoid illegal and unsustainable timber from high risk countries, largely because it places too much faith in self-declarations by actors in the commodity chain and lacks neutral assessment of evidence.

Japan’s timber procurement policy

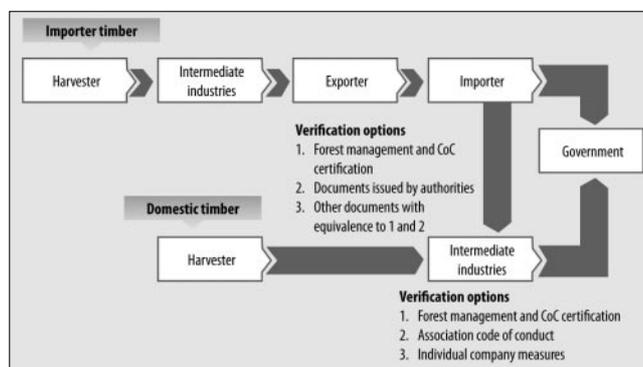
The government of Japan promotes the public procurement of products considered to be eco-friendly through the Green Purchasing Law (2000). This law encourages ministries and public agencies to procure eco-friendly goods with the goal of establishing a society that can enjoy sustainable development with a lower environmental impact. Japan introduced its timber procurement policy in April 2006 by including legality as a criterion for decision and sustainability as a factor for consideration for selected wood and wood products. Basically, legality *must* be considered, whereas sustainability is desirable.

To implement the policy the Forestry Agency was tasked with creating guidelines for verifying legality and sustainability. It elaborated three modalities for this purpose: (i) forest certification and chain of custody systems; (ii) codes of conduct of wood industry associations, and (iii) self-established procedures of individual companies (Figure 1).

A distinguishing feature of Japan’s policy is that through the codes of conduct modality the government has handed a great deal of the responsibility for policy implementation over to the private sector. Under codes of conduct established by their associations, companies are accredited to supply public procurement orders, self-declare that they are not handling illegal timber, and provide documents to prove their claims to the next actor in the commodity chain. Progress by Japan’s private sector in establishing codes of conduct has been fairly

rapid. By February 2008 all 19 national timber industry associations and 111 prefecture timber industry associations had established codes of conduct for the purpose of supplying public contracts. The number of accredited companies by the same date was 5,970.

Figure 1: Verification modalities of Japan's public timber procurement policy



“Procurement policies for legal and/or sustainable timber have been introduced by a number of other countries.”

Public timber procurement policies in other countries

Procurement policies for legal and/or sustainable timber have been introduced by a number of other countries including the Netherlands, Germany, Denmark, the UK, France, Belgium and New Zealand. The evolution of the Dutch, UK and French policies is particularly instructive because their policy guidelines have been mandatory for several years.

■ Netherlands

The Netherlands was one of the first countries to introduce a public timber procurement policy. In 1997, it developed minimum requirements for the assessment of forest certification schemes by the Keurhout Foundation, which was jointly created by the government and the private sector to conduct these assessments. In 2001, the government initiated a multi-stakeholder process to revise the policy, which developed and approved the *Nationale Beoordelingsrichtlijn* (BRL) guideline in October 2005. The BRL lays the foundation for an independent forest certification scheme, which is used to (i) certify sustainable sources of timber and chain of custody, and (ii) to assess the equivalence of existing certification schemes with the BRL. However, selected certification systems that were evaluated in the first half of 2007 all failed because they could not meet the detailed list of ecological and socioeconomic criteria. The government subsequently developed a simplified set of criteria. The Timber Procurement Assessment Committee (TPAC), an expert body established by the government, is using these draft criteria to assess six national certification schemes. For legality assurance the Netherlands has adopted the UK criteria for case-by-case assessment of evidence provided by suppliers, in an effort to harmonise procurement policies within the European Union (EU).

“For legality assurance the Netherlands has adopted the UK criteria.”

■ United Kingdom

The UK issued voluntary guidance in 1997 on the public procurement of timber and announced a binding policy in 2000. In the following years the policy experienced gradual but constant evolution. The government released its Timber Procurement Advice Note in 2004, commissioned a professional consultancy to assess the five major certification schemes, established an alternative modality to forest certification for case-by-case assessment of legality and sustainability, and set up an advisory body, the Central Point of Expertise on Timber (CPET). CPET's main tasks include formulating criteria to assess evidence of legality and sustainability, advising both procurement agents and their suppliers on the policy, and monitoring policy implementation.

■ France

In 2005, France enacted a procurement policy for legal and sustainable timber, which is based on an advice note that differentiates between two categories

of products: (i) timber (sawn and veneer products) and plywood and (ii) all secondary-processed products (particleboard, windows, furniture and paper). The advice note offers a range of modalities for verification of legality/sustainability. For category 1 products, for instance, five different modalities exist, including forest certification, independently verified implementation of a forest management plan, and subscription to an industry association's environmental code of conduct that covers timber legality/sustainability verification.

Comparing procurement policies

The basic features of the Dutch, UK, French and Japanese timber procurement policies are compared in Table 1.

A number of commonalities and differences can be seen in the four policies. All of the policies distinguish between verified legal and certified sustainable timber. They prioritise the verification of legality as a policy requirement and view sustainability as an additional objective. This is because it is more difficult to provide evidence that a forest is under sustainable management than that a forest operation is legal.

All of the policies use forest certification for assurance of both legality and sustainability. Forest certification is attractive as a verification modality as it employs an independent standard for forest management and is undertaken by accredited third party organisations. Japan and France accept certification as a verification modality on this basis. However, recognising that there can be considerable variation in standards, the Netherlands and UK policies require forest certification schemes to be assessed against sets of process and performance criteria before they are accepted.

All policies include alternative modalities to certification schemes for verification of legality/sustainability, which in part is a reflection of the small volume of certified timber on the international market: forest certification has progressed particularly slowly in tropical developing countries (IGES Policy Brief #3 March 2006). Verification of legality is usually based on official documentation and self-declarations throughout the supply chain.

Overall two fundamentally different approaches can be distinguished. The policies of Japan and France rely on measures adopted by their private industry/trade sectors (codes of conduct approach), whereas in the Netherlands and the UK the main responsibility for verification of legality and sustainability is with the government (government verification approach).

“Japan and France rely on measures adopted by their private industry/trade sectors ... in the Netherlands and the UK the main responsibility for verification of legality and sustainability is with the government.”

Table 1: Timber procurement policies in selected EU member states and Japan: Basic design features

Country	Policy enactment date and instruments	Legal effect: 1. Central state authorities 2. Subnational authorities	Govt. criteria to evaluate schemes/evidence	Verification modalities for legality/ sustainability			
				Forest certification schemes		Alternative modalities	
				Accepted schemes	Basis of acceptance	Availability	Existence of impartial monitoring
Netherlands	1997: Directive 2005: BRL guideline 2007: simplified TPAC draft criteria	1. Compulsory 2. Recommended	yes	Schemes positively assessed against TPAC criteria	Regular assessment by TPAC	Case-by-case evaluation of evidence for legality against UK criteria (advice by CPET)	Yes, if concern
UK	2000: Announcement 2004: Advice note 2005: CPET guidelines	1. Compulsory 2. Recommended	yes	FSC, PEFC, SFI, CSA, MTCC (legality only)	Regular assessment by CPET	Case-by-case evaluation of evidence for legality/ sustainability (advice by CPET)	Yes, if concern
France	2005: Advice note & “Notice of Information”	1. Compulsory 2. Recommended	no	FSC, PEFC, CSA, SFI, MTCC, LEI, Keurhout, others listed by ITTO	Perceived merits of certification	4 alternative modalities	Yes, in principle
Japan	2006: Guideline	1. Compulsory 2. Efforts to adhere expected	no	FSC, SGEC, PEFC, SFI, CSA, MTCC, LEI	Perceived merits of certification	2 alternative modalities	Monitoring by industry associations

Note: BRL = National Beoordelingsrichtlijn; CPET = Central Point of Expertise on Timber; FSC = Forest Stewardship Council; PEFC = Programme for the Endorsement of Forest Certification; SFI = Sustainable Forestry Initiative ; CSA = Canadian Standards Association ; MTCC = Malaysian Timber Certification Council; LEI = Lembaga Ekolabel Indonesia; ITTO = International Tropical Timber Organization; SGEC = Sustainable Green Ecosystem Council; TPAC = Timber Procurement Assessment Committee

“Japan Federation of Wood Industry Associations (JFWIA) is a particularly important actor having drawn up the template used by nearly all industry associations.”

■ Industry codes of conduct based verification approach

Japan’s policy specifies three verification modalities of which the code of conduct modality is the most significant in terms of timber volumes. The Japan Federation of Wood Industry Associations (JFWIA) is a particularly important actor having drawn up the template used by nearly all industry associations to draft their codes of conduct. The JFWIA template 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. Monitoring of the compliance of companies with the codes of conduct is the responsibility of the JFWIA and its member associations. In France, three of the five alternatives for Category I products also heavily rely on measures taken by the private sector. Procurement agencies can purchase timber and timber products from suppliers that have subscribed to environmental charters (codes of conduct) of the main timber trade federation or industry association.

■ Government verification approach

In contrast, in the UK and the Netherlands the government recognises the verification of evidence of legality and sustainability as its responsibility. On behalf of the government, an expert body (CPET in the UK and the TPAC in the Netherlands) assesses existing legality/sustainability assurance schemes. The assessments are based on sets of criteria for evidence for legal origin and compliance, sustainable forest management and supply chain management developed by or for the government. In the alternative modality provided under the UK policy and adopted by the Dutch policy for legality, evidence other than forest certification is evaluated by procurement agents supported by CPET on a case-by-case basis.

Essential elements of a robust public timber procurement policy

“IGES research of public timber procurement policies has pointed to a set of essential elements that each policy, regardless of its approach, must contain to be robust.”

IGES research of public timber procurement policies has pointed to a set of essential elements that each policy, regardless of its approach, must contain to be robust (i.e. to achieve its objective of excluding illegal timber and to promote the use of sustainable timber in public procurement). These essential elements were teased out by reflecting on the realities of forest governance in high risk producer countries, the complexities of verifying legality and sustainability for forest and supply chain management, and the informational needs of procurement agents. The essential elements are listed in Box 1.

Box 1: Essential elements of a robust timber procurement policy

- | | |
|---|--|
| 1. apply to major types of wood products from all regions | c) include neutral assessment of documentary evidence |
| 2. contain broad generic definitions/criteria of legality and sustainability | 5. monitoring of suppliers and third party investigation when there is concern over legal origin, legal compliance, chain of custody or sustainability |
| 3. if the policy accepts existing legality and sustainability assurance schemes, | 6. be mandatory to the extent possible |
| a) define adequate criteria for assessing these | 7. provide sufficient guidance for procuring agents to implement the policy |
| b) employ a third party to conduct the assessments and publicise results | 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) |
| c) allow freedom to pay price premiums | 9. include internal monitoring of procuring agents familiarity with and adherence to the policy |
| 4. if the policy has alternative modalities to existing assurance schemes, these modalities should | 10. include a participatory and transparent revision procedure for policy strengthening |
| 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 | |

“ ... a procurement policy requires a generic definition of legality. The policy also requires a generic definition of sustainability.”

“There is no a priori grounds for accepting these schemes as credible.”

“The assessment of evidence must be neutral.”

■ Need for generic definitions of legality and sustainability

Each producer country has a set of laws that govern forest management. Public timber procurement policies are intended to support the implementation of these laws. They thus require a definition of legality for each producer country, i.e. the relevant laws in each country must be specified. If the policy leaves it entirely up to the producer country to decide the scope of the definition, there is a risk that very narrow definitions will emerge in countries that have a powerful forest industry. To promote consistency between producer countries and to ensure that the policy applies to the full range of forest-related laws, a procurement policy requires a generic definition of legality (a strength of the UK and Dutch policies). This can be used in negotiations with producer countries to determine which of their laws and regulations are relevant for the procurement policy. The policy also requires a generic definition of sustainability with criteria to develop or assess existing sustainability assurance systems (as in the UK and Dutch policies). Both Japan's and France's policies require further development of definitions.

■ Need to assess existing assurance systems

Existing legality and sustainability assurance systems include national/state systems to provide exporters with documentary evidence of legality, private chain of custody services and forest certification schemes. There is no *a priori* grounds for accepting these schemes as credible. Before they are to be included as verification options for public procurement, they should be comprehensively and systematically assessed (as in the UK and the Netherlands). To engender public confidence in this process, the assessment criteria and the assessment results should be publicised. Japan's and France's policies lack a systematic assessment of existing assurance systems.

■ Need for impartial document assessment under alternative modalities

Procurement policies that establish alternative legality verification modalities to existing assurance schemes will have to ensure that these modalities assess the accuracy and veracity of documentation provided as evidence that (i) the origin of the timber was legal (legal origin), (ii) laws were complied with (legal compliance), and (iii) no uncontrolled mixing occurred during the commodity chain (chain of custody). To be systematic and comprehensive, the modalities must contain a minimum set of requirements for each of these three legality elements (a strength of the UK and Dutch policies). The assessment of evidence must also be neutral. For alternative modalities, neutrality can be introduced by requiring the procurement agents to conduct assessments of the documentation they receive from their suppliers on a case-by-case basis and to provide them with expert advice. Japan's and France's policies do not contain a minimum set of requirements for each of the legality elements and their alternative modalities lack neutrality of evidence assessment.

■ Need for supplier monitoring and appropriate complaints treatment

Examples of policy implementation failure are to be expected. Therefore, periodic, systematic and independent monitoring of suppliers (which could be based on sampling) should be conducted. In Japan's policy the monitoring of suppliers is regulated by the industry associations' codes of conduct.

Procurement policies should also include an institutional mechanism with the necessary financing and expertise to receive and treat any complaints 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. Japan's and France's policies have yet to establish a mechanism to handle complaints.

“... central government needs to provide sufficient expert-based guidance to the agents implementing the policy.”

“Japan’s policy (i) places too much faith in self-declarations, (ii) lacks broad generic definitions, and (iii) lacks assessment of existing assurance schemes and neutral assessment of evidence provided under codes of conduct.”

■ Need to encourage policy compliance by procurement agents

A procurement policy should be designed and implemented in a way that it ensures a high degree of compliance from the procurement agencies. Given the complexity and difficulty of assessing legality/sustainability evidence against definitions and criteria, central government needs to provide sufficient expert-based guidance to the agents implementing the policy. This is particularly important if agents and their suppliers have to assess evidence other than that provided by a government-approved forest certification or legal assurance scheme (e.g. the UK and Dutch policies). Japan’s and France’s policies could be strengthened by involving procurement agents in neutral assessments of documentary evidence. Moreover, 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.

Evaluating procurement policies employing the set of essential elements

Table 2 examines the design of the four procurement policies compared in this policy brief using the set of essential elements.

The treatment of elements 2 through 5 in Table 2 shows that (i) the formulation of generic criteria of legality and sustainability, (ii) their application to assess existing assurance schemes and case-by-case evidence, and (iii) expert guidance to procurement agents provide the UK and Netherlands policies with a comparatively strong design. In contrast, through its codes of conduct approach Japan’s policy (i) places too much faith in self-declarations by harvesters and other actors in the commodity chain, (ii) lacks broad generic definitions and a process to elaborate these at national level in producer countries, and (iii) lacks assessment of existing assurance schemes and neutral assessment of evidence provided under codes of conduct.

Table 2: 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	✓	(✓) (legality: UK definition adopted; sustainability: draft TPAC criteria)	(-) (narrow & loose definitions, no criteria)	(-) (narrow & loose definitions, no criteria)
3. For existing legality/ sustainability assurance schemes: a) adequate criteria b) assessments by a third party c) freedom to pay price premiums	a) ✓ b) ✓ c) (✓)	a) ✓ b) ✓ c) ✓	a) - b) - c) (✓)	a) - b) - c) (✓)
4. For alternative modalities a) criteria for legality assurance b) sustainability assurance criteria c) neutral assessment of evidence	a) ✓ b) (✓) c) ✓ (by agents)	a) ✓ b) (no alternative modality) c) ✓	a) (-) b) (-) c) (✓)	a) (✓) (harvesting, CoC) b) - c) (-) (by private sector)
5. Monitoring of suppliers and third party complaints investigation	✓	✓ (based on UK policy)	(✓) (in principle, not detailed)	(-) (if illegal origin “undoubtedly sure with considerable evidence”)
6. Be mandatory to the extent possible	✓	✓	(✓)	✓
7. Sufficient guidance to procurement agents	✓ (support service)	(✓) (considering support)	(-) (only policy explanation)	(-) (only policy explanation)
8. Participation from all levels of public administration encouraged	(✓)	(✓)	(-)	(✓)
9. Internal monitoring of public purchases	(✓)	(✓)	(-) (depends on amount)	✓ (legal requirement)
10. Participatory & transparent revision procedure	✓	(✓)	(✓)	✓

Elements are ✓, fully included : (✓), partially included: (-), reflected in a rudimentary fashion : -, missing

“... it is unreasonable to expect Japan to have developed a robust policy in the short period since its introduction. It is necessary for the government to show greater commitment to strengthening the policy.”

Recommendations for strengthening Japan's policy

In Japan, the government chose an opportune moment to introduce the procurement policy, but left the Forestry Agency with only half a year to develop modalities for verifying legality and sustainability. Therefore, it is unreasonable to expect Japan to have developed a robust policy in the short period since its introduction, but it is necessary for the government to show greater commitment to strengthening the policy. It established the multi-stakeholder Council for Tackling Illegal Logging Issue for this purpose. The following recommendations for Japan to strengthen its public timber procurement policy are drawn from the analysis of essential elements and are directed at the government and the Council.

- » *Create a broad generic legality standard to capture the full range of forest management concerns - environmental, social and economic.*
- » *Provide a definition/standard of sustainable forest management (SFM) in line with the general international consensus on SFM criteria.*
- » *Combine these legality and sustainability standards with a chain of custody standard to establish a minimum set of criteria for the systematic and comprehensive assessment of existing legality and sustainability assurance schemes that could be used by the policy.*
- » *Assess existing assurance schemes using these criteria and incorporate the findings into the policy.*
- » *Have public procurement agencies assess the accuracy and veracity of documentary evidence provided by their suppliers as a means to introduce impartiality into evidence assessment.*
- » *Establish or employ a professional service to guide the implementation and strengthening of the policy, with the key tasks of:*
 - a. developing legality/sustainability standards and assessing existing assurance schemes;*
 - b. advising on the documentary evidence required for each producer country;*
 - c. providing support to procurement agents and suppliers to assess the accuracy and veracity of documentary evidence;*
 - d. guiding the implementation and strengthening of the policy and*
 - e. handling complaints.*

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