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Paper for the International Seminar for Tackling Illegal Logging, 2007 II:

**Public procurement policies for legal and sustainable timber in
the EU and recommendations for Japan***

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* Extract from a research report: “Japan’s public procurement policy of legal and sustainable timber: Progress, challenges and ways forward” (Federico Lopez-Casero, Henry Scheyvens eds. 2007), IGES

1. Contextual analysis of Japan's timber procurement policy

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 taken by the government.

The importance of public investment in Japan and the use of imported timber by public agencies 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.

2. Procurement policies in the EU and comparative analysis with Japan's policy

A comparative analysis was conducted to deepen the understanding of Japan's policy by systematically contrasting its design and first steps of implementation with the policies of the UK, France and the Netherlands and to explore options for strengthening the policy. These three countries were selected because their longer history of 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. A broad review of timber procurement policies in 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.

Table 1: Timber procurement policies in EU member states and Japan: 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 accept schemes	Prior & regular assessment	Availability	Impartial monitoring
Netherlands	February 1997 <i>Directive</i> (Since October 2005 due implementation of BRL <i>guideline</i>)	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)	-	-
UK	July 2000 <i>Advice note & 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)
France	April 2005 <i>Advice note & "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	✓
Japan	April 2006 <i>Guideline</i>	1. Compulsory 2. Efforts to adhere are expected	-	FSC, SGEC, PEFC, SFI, CSA, MTCC, LEI	-	2 alternative modalities	-

Source: Lopez-Casero and Scheyvens 2007

- * NGOs have been a major driver for the introduction of the policies and have successfully lobbied governments.
- * 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 policy's historical context.
- * 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.
- * 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 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 2 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.

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	✓	(✓) (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, 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	✓	✓	(✓)	✓

Source: Lopez-Casero and Scheyvens 2007

3. Essential elements of a robust timber procurement policy and recommendations for Japan

- Drawing on both the comparative analysis and the case study of forest realities in a high risk country, we have elaborated on *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
4. if the policy has alternative modalities to existing assurance schemes, these modalities should
 - d. for legality assurance, cover legal origin, legal compliance and chain of custody
 - e. for sustainability assurance, include those criteria that are broadly recognised by the international consensus reflected in sustainable forest management criteria and indicators processes
 - f. included 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

Source: Lopez-Casero and Scheyvens 2007

- We have also formulated 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

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