

[Brief Introduction of the Lecturer]

Dato' Dr. B.C.Y. FREEZAILAH

Freezailah studied at Edinburgh University where he obtained a First Class Honours degree in Forestry (1963) and a PhD in Ecology (1974). His service in the Forestry Department of Peninsular Malaysia included several senior appointments as Deputy Chief Research Officer of the Forest Research Institute; Director of Forestry in the States of Kelantan and Pahang and Deputy Director-General of Forestry.

In 1986, Freezailah was appointed the founding Executive Director of the International Tropical Timber Organisation (ITTO) based in Japan, to promote the conservation, management and sustainable development of the world's tropical forests. Freezailah served the ITTO for 13 years and contributed to its establishment and development into a respected world body. Amongst others, the ITTO under his leadership, pioneered the development of Criteria and Indicators for the sustainable management of tropical forests which provided the basis for forest certification. He was also instrumental in the establishment of transboundary conservation areas between neighbouring ITTO member countries.

Freezailah returned to Malaysia in 1999 and was appointed Chairman of another new organization, the Malaysian Timber Certification Council (MTCC), which was established to plan and implement certification of Malaysia's biodiversity-rich forests to ensure their sustainable Management. The Malaysian scheme has now been endorsed by the Programme for the Endorsement of Forest Certification schemes (PEFC).

Freezailah is currently also Advisor to the Ministry of Plantation Industries and Commodities on negotiations with the European Union (EU) to conclude a Voluntary Partnership Agreement to assure that only legal timber from Malaysia may enter markets in the EU member states.

Freezailah has authored many papers and addressed numerous national and international conferences. He is also active in various initiatives on forests, conservation, environment, sustainable management and related issues.

In appreciation of his distinguished career, Freezailah had been conferred with several awards including Datoships from the States of Kedah and Sarawak. In 2005, His Majesty the Emperor of Japan awarded him the Order of the Rising Sun, Gold Rays with Neck Ribbon.

International Measures Against Illegal Logging and Goho-Wood Promotion in Japan¹

The kind invitation by the sponsor of this Symposium, the Japan Federation of Wood Industry Associations with the support of the Forestry Agency of the Ministry of Agriculture, Forestry and Fisheries of Japan, is both special and significant to me, professionally and personally. It is significant because it amply demonstrates, Japan's serious commitment to address global forestry problems as a major importer and consumer of forest resources, through international cooperation and assistance. This Symposium is special to me personally because it is an opportunity for me to meet some very good friends who have helped me and indeed contributed, to the growth and development of the International Tropical Timber Organisation (ITTO) into a respected world body to promote trade of sustainably produced timber from tropical forests. During my thirteen-year tenure, as the founding Executive Director of the ITTO, I received support from the City of Yokohama and many officials from the Forestry Agency, the Ministry of Foreign Affairs and the Ministry of the Environment in addition to the Japan Lumber Importers' Association and the Japan Plywood Manufacturers' Association. The sustained support by the people and the Government of Japan to the ITTO and other initiatives for the sustainable management of tropical forests, can only be described as outstanding and exemplary. And today we meet again to discuss certain aspects of the global forest crisis and how Japan may contribute to promoting trade of Goho-wood or legal timber. I must therefore once again congratulate the Japan Federation of Wood Industry Associations for organising this very important Symposium.

In my address today, I shall discuss briefly the global forest situation and trade, focusing on sustainable forest management and illegal logging and related trade to put into perspective certain major international measures and initiatives to combat illegal logging and malpractices. I shall then make some conclusions on how Goho-wood as a concept and scheme may be promoted to tackle illegal logging and trade in illegal wood products. In doing so, we must also be mindful that the measures implemented must not disrupt or even kill the trade in tropical timber which is vitally needed to contribute to sustainable forest management. Let me also hasten to add that I am making this address in my own personal capacity but drawing upon my knowledge and experience as Chairman of the Malaysian Timber Certification Council (MTCC) and Advisor to the Ministry of Plantation Industries and Commodities, Malaysia in the on-going negotiations which Malaysia is undertaking with the European Union (EU) to conclude a Voluntary Partnership Agreement (VPA) to ensure the legality of timber products exported from Malaysia to the EU member states. In the preparation of my address my thirteen-year experience serving the ITTO provides valuable information on international cooperation for tropical countries in which Japan continues to be the most substantial donor country.

Due to ignorance, indifference, the greed of a few and the desperation of the many, the world's forest area has shrunk from some six billion hectares during the pre-industrial era, to an estimated present area of 3.6 billion hectares, more or less equally distributed between tropical and non-tropical forests. The tropical forest situation is however most worrisome. Tropical deforestation continues at about 11 – 13 million hectares annually. According to an ITTO report only about 100 million hectares of tropical forests are covered under management plans. About 330 million hectares of forests in the world have been certified as being under sustainable management out of which tropical forests account for only 6 percent. Thus the journey to achieve sustainable management and certification of tropical forests will be most difficult needing enhanced level of understanding, commitment and cooperation at all levels and by all timber exporting and importing countries.

A major factor that undermines sustainable management of forests is illegal logging which

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has become very rampant. Globally, the World Bank estimated that USD 10 billion in assets and revenues are lost annually due to illegal logging on public lands. Losses in the form of government taxes and royalties amounted to USD 5 billion. Another study estimated that 25 percent of globally traded hardwood lumber was of suspicious or illegal origin. A report published by WWF in 2008 found that 16 – 19 per cent of timber imported into the EU was illegal with Russia and Indonesia exporting 10.4 million m³ and 4.2 million m³ of such timber. Malaysia was also reported to export about 0.28 million m³ of illegal timber.

Whilst there is no agreed definition of illegal timber, it is generally accepted that such timber is harvested, transported, processed, bought or sold in violation of national laws. Illegal logging may be directly related to:

- Harvesting without permit
- Harvesting in excess of specified limit
- Avoidance of payment of statutory charges
- Harvesting in totally protected areas, water catchment areas etc, which is prohibited or restricted.
- Violation of international agreements such as export bans as in CITES.
- Unlicensed forest conversion of public and private lands.

Two groups maybe identified as being behind the rampant illegal logging; one group is 'need-based' whilst the other is 'greed-based'. The 'need-based' forest crime is driven by poverty and involves small-scale operations by poor communities to meet their basic daily needs. 'Greed-based' malpractices involve the armed forces and law enforcement agencies, corrupt officials and dishonest persons operating forest concessions, wood-based processing mills etc. Apart from the direct financial losses to governments of exporting countries, illegal logging operations are indiscriminate and therefore most destructive to the ecosystem with adverse impacts on the environment, loss of bio-diversity, pollution of rivers and water systems. Such destructive logging also contributes to global warming, an issue which is high on the international agenda. Indeed, as we meet here in Tokyo today a major World Summit is being held in Copenhagen to discuss how we may address the problem of global warming due to the emission of green-house gases.

The problem of tropical forests and how they may be managed sustainably and certified, is high on the international agenda. Indeed, the whole world is brainstorming on how to save tropical forests. Such problems are also on the agenda of the G-8 countries, thanks to the initiative of Japan. But progress in the sustainable management of tropical forests has been extremely slow and insignificant in spite of the concerted efforts by all of us. Nevertheless it is not mission impossible as about 21.2 million hectares of tropical forests have been certified which is six percent of the total forests area certified. Sustainable forest management needs knowledge, skills, strong institutions and resources both financial and human. All these essentials are in short supply in many tropical countries. The complexity of the tropical forest ecosystem and poverty in tropical countries further compound, the difficulties in achieving more rapid progress in the sustainable management and certification of tropical forests. A major factor which undermines sustainable management is illegal logging which we are here gathered to discuss and seek preventive measures.

Undoubtedly, sustainable forest management and certification must remain our ultimate objective, but in view of the problems being confronted, it is a very ambitious goal for tropical countries. Prudence will therefore dictate that we adopt a phased approach; initially, develop and ensure the implementation of measures to assure legality after which we may focus on measures to achieve sustainability. Therefore, if sustainable forest management and certification is a long and difficult journey, legality is a defining milestone on such a journey. It is within this context that Japan's Goho-wood initiative, and the EU's Voluntary Partnership Agreement and the US Lacey Act and other initiatives should be viewed. All these measures focus on legality of timber from somewhat different approaches. All of them have merit and I wish to review them briefly so that their strengths may be considered to make progress in the evolving process of forest management

and enforcement to achieve legality on the path of achieving sustainable forest management.

The US Lacey Act is a well-established tool to combat trafficking in illegal wildlife, fish and plants and it has now been amended to provide a tool to assist the US and other countries to tackle illegal logging. This Act makes it unlawful to import, export, transport, sell, receive, acquire or purchase in interstate or foreign commerce any plants or products made from plants that have been harvested in violation of a domestic or foreign law. The Lacey Act thus extends the reach of foreign laws and regulations by making it a violation of United States laws to trade in such products. The Plant Import Permit under this Law requires basic information about the timber consignment including scientific name of the plant, value, quantity and the name of the country in which the timber is harvested. It is noteworthy that the Lacey Act does not establish standards or require certification or information on legality or chain of custody. Penalties for violation under the Lacey Act include seizure of the product, monetary penalties, fines and potential imprisonment. An important feature of this Act is that the burden of proof of illegality is with the US Government or in other words it is the authorities of the United States Government which have to prove in the court of law that the timber imported or traded is illegal. This law in effect will compel timber importers to satisfy themselves that they are dealing with legal timber in the context of the legal framework of the exporting country. Without solid evidence, importers will shun suspicious timber. This is expected to contribute to a reduction in illegal logging in timber exporting countries.

Another major initiative to address illegal logging and related trade is the EU Action Plan which was adopted in 2003. Central to this Action Plan is the Forest Law Enforcement, Governance and Trade (FLEGT) Voluntary Partnership Agreement (VPA) which the EU is negotiating with various timber exporting countries. The VPA will be supported by a Due Diligence Regulation which is in the process of being enacted. When it enters into force, the Due Diligence Regulation will compel timber importers in the EU member states to seek evidence from suppliers that they are trading in legal timber. In addition some EU member states implement Public Procurement Policy demanding sustainable and/or legal timber for government projects. Both these demand-side measures, FLEGT VPA-licensed timber and Public Procurement Policy in EU member states, are expected to squeeze out illegal timber exported into the EU and thereby curb malpractices in the timber and forestry sectors in exporting countries in the context of their relevant legal framework.

As I have some knowledge about the negotiations between Malaysia and the EU to conclude a FLEGT VPA, let me share with all of you the more important features of VPAs which I believe have much merit. Negotiations commenced at the end of 2006 after informal discussions during which certain understanding and agreement in principle had been reached. These include:

- It is understood that although the Agreement is voluntary, once it is concluded it will become obligatory and only timber which has been verified through an agreed system, called Timber Legality Assurance System (TLAS) may enter the EU countries.
- The definition of legal timber is based on Malaysia's relevant laws and legislation in the forestry and timber sectors. The EU does not seek for Malaysia to enact new laws or amend existing legislation.
- The system developed will be based on Malaysia's existing licensing system
- The principles to define legal timber agreed upon include Right to Harvest; Forest Operations; Statutory Charges; Other Users' Rights; Mill Operations and Trade and Customs
- The TLAS lists relevant laws under the six agreed Principles and the Procedures to demonstrate how compliance with these laws may be verified in an auditable form.
- In the development of the TLAS inputs from all stakeholder groups obtained through stakeholder consultations in a transparent and participating manner will be conducted.
- Compliance with the laws included in the TLAS to define legal timber will be monitored by a Third Party Monitor.
- Where necessary, implementation of the TLAS may be undertaken in stages.
- The EU will provide assistance for capacity building to implement the TLAS and development of more efficient procedures based on modern technology where found appropriate.

- The EU gives assurance of market benefits for Malaysia's VPA timber.

Formal negotiations commenced in December 2006 and to date two Senior Officials Meetings (SOM) and nine Technical Working Group (TWG) Meetings have been held in addition to several video-conferences. Malaysia established three Working Groups dealing with Legal Drafting, TLAS and Market Benefits and Capacity Building which provide inputs to a National Steering Committee to establish Malaysia's negotiating position. Major issues such as the development of the TLAS and Market Benefits were subjected to consultations to seek inputs from all stakeholders on these two major issues. Inputs and consideration of proposals by stakeholders is an important feature in the development of the TLAS and implementation of the VPA which may be summarised as follows:

Development of TLAS

- Five stakeholder consultations
- Briefings
- Written submissions by stakeholders
- Dialogue with Minister
- Informal meetings
- Technical evaluation of the TLAS

During implementation of VPA

- Governance of VPA includes seeking views and feedback from stakeholders.
- Stakeholder consultations.

It is therefore evident that there had been extensive consultations with stakeholders on the VPA. It is also envisaged that such consultations with stakeholders will continue during the implementation of the VPA.

A major issue in the negotiations of the VPA revolve around market benefits. Implementation of the VPA is expected to increase cost of production. Also, the VPA is legally binding. Thus to ensure reciprocity in terms of rights and responsibilities, Malaysia seeks assurance of market benefits from the EU including:

- Full acceptance of Malaysia's VPA timber
- No unilateral action on the part of EU member states
- Green premium
- Acceptance of certified timber
- Promotion campaigns
- Tax incentives for companies using VPA timber

In order to ensure that the market benefits are obtained, Malaysia proposes that an independent consultant will monitor the market situation on these issues. Whilst mindful of WTO regulations, it is expected that the EU Due Dilligence Regulation and Public Procurement Policy will create the necessary demand for VPA licensed timber resulting in the market benefits requested by Malaysia. It is noted that substantial progress has been made in the negotiations to conclude the VPA between Malaysia and the EU but nevertheless it is not a done deal because the TLAS needs some refinement whilst issues including market benefits need further negotiations.

Let me now focus on the perspective from the export side and I wish to use our experience in Malaysia as an example. Malaysia is a green country with almost 60 per cent of its land area covered with tropical forests which are very rich in flora and fauna being one of the twelve mega-biodiversity countries in the world. Permanent Reserved Forests and conservation areas (National Parks and Wildlife Sanctuaries) cover 16.31 million hectares or about 50 per cent of Malaysia's land area. Sustainable forest management started more than a century ago and today about one third of its Permanent Reserved Forests have been certified under the Malaysian Timber Certification Council (MTCC) with one small forest area under the Forest Stewardship Council (FSC). The Malaysian Timber Certification Scheme (MTCS) has now gained wide recognition being endorsed by the Programme for the Endorsement of Forest Certification (PEFC) earlier this year. Under these circumstances, the question may be asked why is Malaysia negotiating with the European Union to conclude the FLEGT Voluntary Partnership Agreement (VPA)? The answer is because :

- Permanent Reserved Forests are under sustainable management and therefore only timber harvested from such forest may be certified as being sustainable timber. Currently only about one third of Malaysia's Permanent Reserved Forests have been certified whilst efforts are being undertaken to implement sustainable forest management in the rest of the Permanent Reserved Forests. It is therefore important for Malaysia to give assurance that timber harvested from Permanent Reserved Forests which have not yet been certified as being legal under the FLEGT VPA.
- Timber is also being harvested from non Permanent Reserved Forests (State Land Forests) and alienated land. These areas are being converted into other forms of land-uses and are therefore not under sustainable management but the harvested timber is legal and the Timber Legality Assurance System (TLAS) under the VPA gives that assurance to importers.

I have now discussed sustainability and legality of timber and put into perspective the US Lacey Act and the EU FLEGT Voluntary Partnership Agreement as major initiatives to give assurance of legal timber and thus combat illegal logging and illegal trade. I have also discussed the situation in Malaysia in order to give assurance that Malaysia's timber is at least legal if not sustainable as an example of the response from a timber exporting country. At this juncture let me now briefly discuss other international measures dealing with Procurement Policy, both public and private, which demands sustainable or legal timber. On procurement policy, I wish to draw upon the findings of a study undertaken by Dr. Markku Simula for the International Tropical Timber Organisation (ITTO) recently. The key objective of both public and private procurement policy is to ensure that the timber products purchased are sourced from legal sources and the laws in the exporting countries are complied with throughout the production chain. Some of these policies also go beyond legality to require timber sustainability and maybe backed by regulatory measures such as the EU Due Dilligence regulations noted earlier in my presentation. The ITTO study reported that currently a total of twelve countries are implementing public sector procurement policy for timber products. The EU is actively promoting this approach and at present six member states of the EU including Belgium, Denmark, France, Germany, the Netherland and the UK are implementing timber public procurement policy. Outside Europe, Japan together with China, Mexico, Norway, New Zealand and Switzerland also implement such a policy which is expected to spread to other countries due to the wave of green consumerism and the awareness and concern about illegal logging and illegal timber trade. Unlike other countries, the Norwegian policy is an exception and prohibits the use of tropical timber. The Minimum requirement for public procurement may be summarised as follows:

- Belgium, France, Germany and UK specify sustainability.
- Japan (Goho-wood) and New Zealand require legality whilst sustainability is preferred.
- Mexico specifies legal origin and sustainability
- The Chinese policy requires meeting the criteria of a domestic eco-labelling scheme.
- Norway's voluntary policy on public procurement prohibits the use of tropical timber in public construction.

The main objective of this Symposium is the promotion of Goho-wood in Japan about which all of us must be familiar with, but allow me to briefly note its essential features in order to put it into perspective to facilitate discussion focusing on the supply-side because in the final analysis, the system developed for implementation must result in reduction and eradication of illegal logging. As a major importer of timber, measures taken by Japan would have significant impact. Under a law for the promotion of procurement of green products or Green Purchasing Policy, the Government adopted a policy in 2006 to preferentially purchase wood and wood products which are verified as being legal and sustainable. To this end the Forestry Agency published Guidelines for verification on Legality and Sustainability. Let me also pay tribute to the Japan Federation of Wood Industry Associations for establishing a Council for Tackling Illegal Logging in May 2006 as part of the Forestry Agency's project to promote a Comprehensive Response to Illegal Logging. Three methods of verification are specified :

- Forest certification which utilises a system in which a third party institution conducts auditing of forest management to demonstrate sustainability in addition to a chain of custody throughout the production chain to the export point and end-user.

- Verification by company under authorisation of an association based on a voluntary code of conduct by the association in a transparent manner. Verification has to be made at each stage of the production chain.
- Verification by a company which does not adopt the two other methods but the same standards for legality and sustainability applicable to verification under authorisation of an association must be complied with.

A fundamental element in any verification process for wood products is the definition of legal and sustainable timber. For Goho-wood, Legality demands that the timber is harvested in a legal manner in compliance with the procedures and laws of the exporting country. Sustainability is also defined in a general way as timber harvested from a forest under sustainable management. In this policy, legality is positioned as 'Evaluation Criteria' whilst sustainability are 'Factors for Consideration'. A chain of custody is also specified. For public procurement it is the responsibility of the contractor to ensure legality and sustainability of wood products supplied for Government projects based on documentation issued by certification bodies, official documents or other documents with the same level of reliability.

After discussing some of the more relevant issues on Japan's important initiative to combat illegal logging and trade in illegal timber through the promotion of Goho-wood, let me now draw some conclusions from the perspective of an exporting country of tropical timber. Supply-side actions coupled with complementary and more pragmatic demand-side measures, will generate synergy for effectiveness to address illegal logging. Let me make the following observations for the consideration of participants at this symposium:

- Most tropical countries face enormous challenges to implement sustainable forest management. Whilst sustainability must continue to be our ultimate objective, let us focus on legality in the short and medium term. To demand sustainable timber under the present circumstances may result in an indirect boycott of tropical timber which will lead to serious unintended consequences. Without trade in tropical timber we shall lose the leverage to influence policies and practices in the forestry and timber sectors in tropical countries. It is on this basis that I feel Norway's policy to ban the use of tropical timber in public projects does more harm than good.
- Even to deliver legal timber many tropical countries will find it challenging because it will need strong institutions, well equipped and trained manpower, adequate level of surveillance and effective legal framework. All these will increase costs of production. How may this extra costs be funded? On this issue, I read a very interesting intervention by Mrs. Wakako Hironaka during the Roundtable Meeting on Goho-wood for G8 Summit held in Tokyo on 27 June 2008 when she suggested that the issue of prices for legal timber must be addressed. There must be some price differential between timber which has been verified as legal when compared to timber without such verification. At that Roundtable, Mrs. Hironaka suggested a surcharge to assist tropical countries. There may be other views and mechanisms to give better prices for legal timber. Perhaps, a price premium may be paid for verified legal timber or Goho-wood for public procurement. I consider a price premium for legal timber as crucial.
- Another issue I consider important is on the need for as much clarity as possible on the definition of legality. The minimum requirement will have to be described in detail to guide exporting countries to respond to these requirements. I think the EU FLEGT VPA is a good model in that it provides a basis and framework on the principles with clarity to provide guidance on the laws and legislation which must be included for compliance. Just to say that legal timber means timber harvested in a legal manner in compliance with the procedures and laws of the exporting country is not adequate.
- Even with a detailed description and definition of legal timber, it is necessary to undertake some bilateral discussions between importing and exporting countries individually because, procedures and laws are country-specific. What laws should be complied with to define legal timber? As an example, a lorry loaded with logs to be exported is inspected. If it is found that no evidence is available to prove that the timber is legally harvested, then the consignment can be deemed to be illegal after due investigation. On the other hand, if it is found through documentation and other means the consignment of logs in the lorry is legal but

the traffic laws have been violated because the lorry is over-loaded beyond the legal limit, is the consignment of logs, to be considered as illegal? It can be argued both ways. This is why I consider the definition of legality needs to be very clear in terms of the procedures and laws that have to be complied to avoid ambiguity and controversy. The listing of the procedures and laws that have to be complied with will have to be agreed upon by both the exporting and importing countries during bilateral consultations.

- Illegal logging is often the result of inadequate enforcement which needs strong institutions, human resources, equipment etc. In addition, better procedures may have to be developed and implemented to enhance efficiency and effectiveness of law enforcement. In some cases the system for collection of forest revenues may need to be reviewed and strengthened. Many timber exporting countries need assistance for capacity building in which training is an important element. Such assistance can be provided on a bilateral basis linking with consultations to develop the definition of legality.
- To ensure transparency in the development of the definition of legal timber, it is necessary to consider inputs from all stakeholders through consultations. As stakeholder groups often hold divergent and extreme views, their inputs must be considered in a balanced manner taking into consideration existing difficulties and constraints in order to make progress in the implementation of a system which must be accepted as an evolving process. A system which is too cumbersome and too stringent will be impractical whilst a system which is at the other extreme will lack credibility. Bilateral consultations between exporting and importing countries must appreciate the difficulties and complexity involved, and where necessary strike a compromise in order to make progress. In any case the overall system will need to be reviewed periodically during implementation and changes made to improve it from time to time based on experience gained.
- In the case of forest certification, an independent third party carries out an assessment to ensure sustainability before awarding a certificate. For the EU FLEGT Voluntary Partnership Agreement, a third party monitor will verify compliance with the relevant laws in the timber and forestry sectors. Many tropical countries will find both systems challenging without adequate assistance for capacity building and a price premium for sustainable or legal timber. May I suggest that as an interim measure, a responsible government-linked body makes a declaration of compliance with the agreed set of legislation. The role of a third party may be considered at a later stage when exporters begin to enjoy a reasonable level of market benefits such as better prices when compared to non-verified legal timber.
- Promotion of trade in Goho-wood will need the active and continuous cooperation of producer and consumer countries especially in the initial stages. To facilitate consultation and cooperation, it will be necessary for a joint body to be established on a bi-lateral basis with the participation of the timber trade and industry associations.

Tropical forests are complex ecosystems and many developing countries, burdened with socio-economic problems, find it most challenging to manage them sustainably. The Goho-wood project, focusing on timber legality is therefore a most pragmatic approach which will play a strategic and catalytic role to achieve sustainable management of tropical forests as a long-term goal. Tropical countries will need assistance for capacity building and markets must respond favourably to verified legal timber compared to non-verified timber. In my presentation I have shared with you some of my views and proposals to promote the highly commendable Goho-wood project from the perspective of tropical countries. To be successful, I believe, we need a soft approach, using the carrot, more than the stick, as a strategy. Undoubtedly, success will depend on an enhanced level of understanding and cooperation between exporting and importing countries of timber, civil society and timber trade and industry associations. As a major consumer of timber with awareness on global environmental problems, Japan and the Japanese people can become leaders in promoting tropical forestry in which the Goho-wood project can play a vital role. It is on this optimistic note that I wish to finally conclude and for your kind attention, I thank you all.