



Controlling Illegal Logging

Using Public Procurement Policy

Duncan Brack

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Summary points

- The use of public procurement policy by consumer states to create protected markets for legal and sustainable timber is helping to exclude the products of illegal logging, thereby encouraging the legal and sustainable production of timber.
- Many countries already possess some form of green procurement policy into which criteria for legal and sustainable timber can easily be fitted. In general no new legislation is needed, so this offers a relatively rapid route to tackling imports of illegal timber.
- Nine countries currently possess some form of timber procurement policy at central government level. Although they are all very recent in implementation, the evidence already suggests that they are having a positive effect on increasing market share for verified legal and sustainable timber.
- However, the adoption of different criteria and coverage of products risks making it more difficult for exporters to provide supplies of timber; some degree of technical harmonization would be desirable, and seems likely.
- The inclusion of requirements for legal and sustainable timber in building standards provides another route for promoting these products. At present, however, the points-based systems that these standards are based on usually *encourage*, rather than *require*, sustainable timber.

Introduction: using public procurement policy

The shared responsibility of timber-consuming and timber-producing countries in restricting trade in illegal timber has been recognized since the early days of the international focus on illegal logging. Consumer countries contribute to the problem of illegal logging by providing markets for the products of illegal activities, and by failing to implement systems to prevent their import. In the EU, attention is now focusing on the creation of a new licensing system under the Forest Law Enforcement, Governance and Trade (FLEGT) initiative; this will ensure that timber products exported from cooperating partner countries to the EU are licensed (and independently verified) as legally produced. In the US, a bill to extend the Lacey Act (which makes it illegal to import wildlife produced illegally abroad) to cover timber was approved by Congress (as part of the Farm Bill) in May 2008.

Nevertheless, there are other means of creating protected markets in which only legal (or sustainable) products can be bought and sold. Buyers of timber and wood products, whether individuals or organizations, can request proof of legality or sustainability before purchasing the products. Where the public sector – governments and public agencies – adopts this approach, it can have a significant impact on the market.

The use of public procurement policy in this way is not new; governments have used their purchasing power in the market as a tool to achieve public policy objectives since at least the nineteenth century.¹ Early objectives tended to focus on labour issues, such as the prevention of child or prison labour, the hiring of unemployed people, or non-discrimination. In the last few decades, with the growing public awareness of global environmental degradation, governments have increasingly used their buying power to promote environmentally friendly products. The US Energy Star programme, for example, was introduced in 1992 originally simply as a label for energy efficiency standards for office machinery. It helped to change the

entire global market for computers and other appliances because of the sheer scale of US federal government purchasing.

Concern over the impact of global deforestation has been a feature of debates over sustainability policy since at least the 1960s. In the 1970s, the German government legislated to require tropical timber used in federal building projects to be sustainably produced. More recently, action has been stimulated by the 1998–2002 G8 Action Programme on Forests, with its focus on illegal logging and the international trade in illegally logged timber. The EU's FLEGT Action Plan, adopted in 2003, discusses the issue of government procurement and 'draws the attention of Member State governments to the fact that illegal logging can be addressed through the adoption of procurement policies'.²

As a result of all this, several EU member states, and a number of other countries, now possess government procurement policies aimed at ensuring that public purchasers source only legal and/or sustainable timber and wood products. As of June 2008, these include Belgium, Denmark, France, Germany, Japan, the Netherlands, New Zealand, Norway and the UK; a number of other countries, mostly EU member states, are considering adopting similar policies. Regional and local governments in these and other countries also often possess some form of their own procurement policies. National governments also issue regulations or guidelines for building standards which affect the market for timber while not being primarily aimed at sourcing legal and sustainable products.

Inevitably, all these policies differ in their design, implementation and impact. This briefing paper provides a brief guide to how public procurement policies for timber currently operate.

Scale

In all developed countries, government – central, regional and local – is a major consumer of products and services. Purchasing of goods and services by public authorities is

¹ See Christopher McCrudden, *Buying Social Justice: Equality, Government Procurement and Legal Change* (OUP, 2007).

² Communication from the Commission to the Council and the European Parliament: Forest Law Enforcement, Governance and Trade (FLEGT) – Proposal for an EU Action Plan (available at <http://www.illegal-logging.info/papers/flegt.pdf>), Section 4.3.

estimated to account for an average of about 10 per cent of GDP.³

Government purchasing varies significantly across product sectors, of course – from very high proportions (e.g. defence, transport infrastructure) to very low (e.g. consumer goods). Since it is generally very difficult to get hold of detailed figures for different sectors, the assumption is often made that public procurement in any one sector is the same, proportionally, as public procurement in the economy as a whole. For example, since UK public procurement accounts for about 10 per cent of GDP, most reports on timber procurement assume that the UK public sector accounts for about 10 per cent of the market for timber and timber products.

Unfortunately, accurate figures for public-sector consumption of timber and wood products are difficult to obtain, and other estimates can be very different; the Japanese government, for example, has informally suggested that public institutions are responsible for approximately 3 per cent of total national wood product use.⁴ This may reflect differing notions of what constitutes a public agency, the inclusion of different product categories, or other methodological discrepancies.

Nevertheless, given the scale of public purchasing of products such as timber for construction (including contractors' disposable material), office or park furniture, and paper, the overall impact of government activity is still likely to be significant. And as is being demonstrated in some EU countries, this can be magnified by suppliers' preferences for relatively simple supply chains; if they need to supply sustainable timber for public purchasers, for example, the evidence suggests that they are tending to prefer to supply the same products to their other customers too. Research by the Food and Agriculture Organization (FAO) has estimated that government procurement can achieve

market leverage of 10–25 per cent when knock-on impacts such as these are included.⁵

It should also be remembered that the 10 per cent figure relates to the entire public sector, which includes regional and local government, and often many quasi-independent agencies, alongside central government. Across the OECD as a whole, central governments account for about 30–35 per cent of total public sector expenditure. However, this varies substantially between countries, from highly centralized states such as the UK, where central government account for about 70 per cent of the public sector, to more decentralized ones such as Germany, where the corresponding figure is about 20 per cent.⁶ The procurement policies summarized below apply only to central government, although in most countries some regional and local authorities have either mirrored central government's approach or adopted their own variants.

Criteria: sustainable, legal and social

What is government timber procurement policy aiming to achieve? All public procurement policies specify a series of criteria which the products being purchased must meet.

All countries with timber procurement policies have adopted the aim of purchasing timber which is sustainably produced – either as the only requirement or as a desirable one. Precise definitions of 'sustainability' vary but in general revolve around forest management designed to avoid harm to ecosystems, maintain forest productivity, ensure forest ecosystem health and vitality and maintain biodiversity. The definitions often require that the standards specific to any given timber-producing country have been developed through a consultative process, open to participation by all affected parties, including commercial, environmental and social stakeholders. Recycled wood and paper are also generally acceptable.

3 Figures of 15–20 per cent of GDP are frequently quoted, but these relate to total public-sector consumption (i.e. government expenditure excluding transfer payments, such as welfare benefits), which includes substantial expenditure on 'employee compensation': salaries, pensions, etc. Government *purchasing of products and services from third parties* is significantly smaller: about 9 per cent of GDP for OECD countries during 1990–97. UK public expenditure statistics for 2005–06 showed 10.48 per cent of GDP devoted to public procurement. See Donald Marron, 'Greener Public Purchasing as an Environmental Policy Instrument', in *The Environmental Performance of Public Purchasing: Issues of Policy Coherence* (OECD, 2003).

4 Institute for Global Environment Strategies (IGES), interviews with Japanese Forestry Agency, 2006.

5 Marku Simula, 'Public procurement policies for forest products and their impacts', presentation at Joint UNECE/FAO Policy Forum on Public Procurement Policies on Wood and Timber Products, Geneva, 5 October 2006; available at: http://www.unece.org/trade/timber/docs/tc-sessions/tc-64/01_Simula.pdf.

6 Marron, 'Greener Public Purchasing as an Environmental Policy Instrument', p. 43.

Definitions of sustainability also tend to include the requirement that all national and international laws must be respected; these products should therefore be legal.

Denmark, Japan, New Zealand and the UK have also adopted systems to procure legal *or* sustainable timber, recognizing that while sustainable timber is desirable, it may not always be available in sufficient quantities, and therefore a minimum standard of proof of legality should be required for all purchases. ‘Legal’ generally means compliance with laws in the country of origin of the products, covering issues such as legal rights to use the forest, compliance with all relevant local and national laws and codes of practice, including environmental, labour and health and safety laws, and payment of all relevant royalties and taxes.

Initially the Danish and British systems used a step-wise approach, with three levels: legal, legal and progressing towards sustainable, and legal and sustainable. The middle step, ‘legal and progressing towards sustainable’, however, has come to be seen as an unnecessary degree of complexity; it has been abandoned in the UK and probably will be in Denmark. In 2007, the UK announced that it would also move away from the first step of legal-only. From April 2009 only products which are *both* legal and sustainable will be purchased (although, with the aim of ensuring that the FLEGT process is supported, until April 2015 legal products covered by a FLEGT licence will also be acceptable).

The environmental components of the sustainability criteria have proved relatively straightforward. The question of including social criteria, however, over and above those legislated for in the producer country itself – for example, the customary land tenure rights of indigenous forest communities, or the rights of the logging workforce – has sometimes proved controversial. Some of these criteria are reflected in some of the certification schemes which are accepted as proof of sustainability (see below), and most countries with procurement policies encourage or allow the use of social criteria in some way. UK policy,

however, does not allow timber purchasers to specify criteria that are not directly related to the subject matter of the contract; this excludes social or ethical issues which, it is argued, generally have no discernible effect on product quality or performance. Unless such issues are covered by law, therefore, they cannot be included in UK contract specification, selection of suppliers or award of contracts. The UK interpretation of EU procurement rules differs, however, from that of other EU member states, which have all included social criteria in their own specifications. The UK position is currently under review.⁷

Proving legality and sustainability

How can government buyers ensure that they are purchasing products that meet their criteria for legality and sustainability? Table 1 summarizes the various approaches taken in procurement policies so far.

The main mechanism has been to rely on the various private certification schemes that have developed since the mid-1990s in response to the growing demand for environmentally friendly timber. The area of the world’s forests that is certified is growing rapidly, albeit from a low base; as at May 2007, 8 per cent of forest area was certified, a figure that has doubled since 2002. However, only 7 per cent of certified forests was in developing countries, a proportion that has not changed since 2002.⁸

Many certification schemes are national in scope. These include, for example, the Canadian Standards Association (CSA), the US and Canadian Sustainable Forestry Initiative (SFI), the Malaysian Timber Certification Council (MTCC) and the Indonesian Ecolabelling Institute (Lembaga Ekolabel Indonesia – LEI) certificates. The two with the greatest global coverage are the Forest Stewardship Council (FSC), set up in 1993 mainly by environmental NGOs, which accounts for 28 per cent of certified forests; and the Programme for the Endorsement of Forest Certification Schemes (PEFC), founded in 1999 as the European forest owners’ and forest industry’s answer to FSC. PEFC now acts as a recognition mecha-

⁷ Chatham House is currently undertaking a study of social issues in timber procurement policies; for more information, and the latest version of the paper, see <http://www.illegal-logging.info/procurement>.

⁸ Alan Purbawiyatna and Markku Simula, *Developing Forest Certification: Towards Increasing the Comparability and Acceptance of Forest Certification Systems* (International Tropical Timber Organization (ITTO), 2008).

Table 1: Summary of procurement policies as at June 2008

Country	Criteria	Coverage	Acceptable proof	Introduction	Review
Belgium	Sustainable	Not paper	FSC, PEFC or equivalent; for PEFC, preference for products from low-risk countries	2005	2008 (in progress)
Denmark	Legal; legal progressing to sustainable; sustainable	All products, but policy currently not mandatory	FSC or equivalent for sustainable; MTCC or equivalent for legal progressing to sustainable	2001	Review completed 2008; decision awaited on revision
France	Legal and sustainable	Construction products; 'equipment' products (includes paper and furniture)	Any product or chain-of-custody certification, eco-labelling or industry codes of conduct; longer-term aim of independently verified schemes	2005	
Germany	Sustainable	Not paper	FSC, PEFC or equivalent	1970s (tropical timber for construction); 2007 (full policy)	2011
Japan	Legal; sustainable desirable	All products	Certification or chain-of-custody verification; self-declaration under industry associations' codes of conduct; company-determined methods; state-approved export permits	2006	
Netherlands	Sustainable	All products	National criteria (BRL) currently being revised after assessment of main certification schemes indicated none could satisfy the criteria	2004	
New Zealand	Legal; sustainable desirable	All products	Certification or legality verification scheme or supplier's declaration	2006	2008
Norway	Use of tropical timber banned	Timber in buildings	n/a	2007	
UK	Legal; legal and sustainable (legal and sustainable only from 2009 –exemption for FLEGT until 2015)	All products	FSC, PEFC, CSA, SFI, or equivalent for sustainable; MTCC or equivalent for legal	1997 (voluntary); 2000 (mandatory)	Review of main certification schemes conducted on regular basis; social issues currently under review

nism for national schemes world-wide and accounts for 65 per cent of certified forests.⁹

Procurement policies have used certification schemes in one of two ways. Some countries, including Denmark, the Netherlands and the UK, have developed their own criteria for legality and sustainability, and then assessed the extent to which the certification schemes meet them. In the UK, for example, the Central Point of Expertise on Timber (CPET) was established in 2003 to carry out these assessments on a regular basis, and also to provide practical guidance and training to government purchasers. Of

the five certification schemes accounting for the bulk of UK imports of certified products, four (FSC, PEFC, CSA and SFI) have been found to be adequate to guarantee sustainable timber, and one (MTCC) good enough to guarantee legal, but not sustainable products.

Other countries, including France and Germany, have adopted a less elaborate system, deciding that particular certification schemes – always FSC, and generally PEFC – are adequate to meet their criteria.

Partly because the volume of certified material available is so low, and partly (for EU member states) because

⁹ Ibid. PEFC recognizes, among others, the CSA and SFI schemes mentioned above.

EU procurement rules require that procurement policies must rest on criteria, not on membership of any particular scheme, all these countries must also possess some system for assessing claims by suppliers that their products meet the sustainability or legality criteria even if they are not certified by any recognized scheme. In the UK, for example, CPET carries out these assessments (of the so-called ‘Category B’ evidence), while in Germany the Federal Research Centre for Forestry and Forest Products and the Federal Agency for Nature Conservation are responsible for assessing equivalence with FSC or PEFC standards. In practice this assessment of ‘equivalent evidence’ has been relatively little used by suppliers to date, but the appearance, in due course, of FLEGT licences, and the development of other systems for verifying legality, may make it more common in future.

The simplest system is to be found in Japan, which currently accepts almost any evidence of legality or sustainability, including any form of certificate, and even company self-certification. Since it is widely believed that some certification systems or export permits (such as the Indonesian Forest Industry Revitalization Agency (BRIC) certificate), are not adequate to guarantee legality, it is likely that this system will be modified in the future.

Impacts and future developments

As can be seen from Table 1, all these timber procurement policies have only been adopted and implemented quite recently. Many have changed in scope and application in their first few years, and are likely to continue to do so. Table 1 indicates the dates of scheduled reviews of the schemes where these have been announced.

To date, only two countries – the Netherlands and the UK – have undertaken market research studies on the impacts of public procurement policies on overall supply. Both showed that the volume of certified timber products imported had grown steadily since their introduction. In the UK, certified products now account for about 60 per cent of the market (both domestic production and

imports), and the proportion is growing by about 5 per cent a year – a dramatic illustration of the impact of procurement policy (albeit in combination with other government policies, NGO and public pressure and a growing industry commitment to environmental and social responsibility). Owing to plentiful supply, certified softwood products do not command a higher price than similar non-certified products, but in contrast, the availability of certified hardwood products is still limited, and price premiums – in some cases as high as 30 per cent, but more commonly 3–5 per cent – are observed.¹⁰

As mentioned above, timber suppliers are increasingly switching over to certified products for all their customers, for the sake of supply chain simplicity. Indeed, anecdotal evidence from the UK suggests that they are currently supplying more than the market is actually demanding. This helps to keep prices down, which should encourage uptake (though also limiting the returns to the original producers).

This switch has also helped many timber companies become enthusiasts for spreading procurement policy, for example to local government, which is not covered by central government policy. Some sub-national authorities, including a number of US states and British and Dutch local authorities, do possess some form of timber procurement policy – sometimes a requirement for FSC products, adopted after NGO pressure, sometimes a broader requirement for internationally recognized certification schemes – but the extent to which this is implemented in reality is largely unknown. A WWF study of London boroughs in 2005 found that half had no policies in place at all, and less than a fifth claimed to be fully implementing one.¹¹ A more detailed Chatham House study of local authorities in two English regions in 2007 found even lower levels of awareness and implementation, though also a few examples of rigorous and well-monitored procurement policies.¹²

As well as the direct impact on markets, another effect of the introduction of procurement policies has been on

10 See the series of studies of price premiums for verified legal and sustainable timber produced by Forest Industries Intelligence Ltd for the UK Timber Trade Federation and DFID; available at http://www.illegal-logging.info/item_single.php?item=document&item_id=177&approach_id=1.

11 Rich Howorth, Beatrix Richards and Christian Thompson, *Capital Offence: Is London Failing the Forests?* (WWF, 2006).

12 Duncan Brack, *Local Government Timber Procurement Policies* (Chatham House, 2007), available at: http://www.illegal-logging.info/item_single.php?item=document&item_id=517&approach_id=1.

forest certification schemes themselves. In the UK, when CPET's first assessment did not accept either PEFC or SFI as evidence of sustainability, it led to modifications in both schemes.

The rapid growth in the spread of certification schemes is making it easier for government buyers to procure products that meet their criteria. Conversely, however, the proliferation of different public procurement policies, with different criteria, means of proof and product coverage, runs the risk of creating confusion among overseas suppliers, making it more difficult for them to supply certified products in the absence of detailed knowledge of each country's policy. Some degree of harmonization would help meet this problem, and Denmark, the Netherlands and the UK are currently discussing possible moves.

WTO and EU public procurement rules

Government procurement measures are subject to the rules set out in the WTO Government Procurement Agreement (GPA). Unlike most WTO agreements, however, this is a plurilateral agreement to which not all WTO members are parties – in fact, only the EU (and all its member states) and twelve other countries have signed up. Its provisions are based on the core WTO principles of non-discrimination between like products from foreign and domestic suppliers, but exceptions are allowed for reasons of public morals or the protection of human, animal and plant life. Given its limited range, the GPA is of little practical relevance to timber procurement policies.

For EU member states, EU procurement directives are much more detailed, and are therefore the key constraint on legislation. Their key principles are that procurement policies should be non-discriminatory (between contractors from EU member states), operate in a transparent way, and ensure equal treatment of suppliers and value for money. Environmental factors, both product characteristics and production methods, can be incorporated into the technical specifications of the tender and into the decision-making process for awarding the contracts. However, the factors must be related to the subject matter of the contract

– a requirement which, as noted above, has led to some differences of opinion over the extent to which social criteria can be included. The procurement rules are also clear that policies cannot be designed only to allow products certified under particular schemes; there must also be some system for accepting equivalent evidence of meeting the procurement policy's criteria.

Building standards

Alongside public procurement policies, building standards can be important stimulants of demand for certified timber. Governments have the power to establish standards for both public and private construction, and increasingly these relate to environmental performance. The systems used generally award points for satisfying various environmental criteria, and then assess particular designs according to the total number of points accumulated. For example, the LEED (Leadership in Energy and Environmental Design) system, developed by the US Green Building Council, awards an additional point for the use of FSC-certified timber. Similarly, BREEAM, the UK Building Research Establishment's Environmental Assessment Method, awards points for the use of sustainable and recycled timber in new and existing buildings. Such systems, however, do not absolutely guarantee that the timber used is legally or sustainably produced, since high total scores can always be reached even if zero points are scored for timber.

In the US, all new federal government construction projects and substantial renovations must be certified through the LEED system. Similarly, in Canada, all new government buildings must achieve the LEED 'gold', or the BREEAM Canada 'four leaves' standard (each is the second highest), or an equivalent level. Green Building Council estimates suggest that US federal, state and local government agencies combined account for approximately 30 per cent of national construction; 14 states and 42 localities have adopted various mandates, governmental orders, incentives and other mechanisms to encourage green building.¹³ As with procurement policies,

¹³ Thomas Westcot, US Dept of Agriculture, 'Market Aspects of Public Procurement Policies in the USA', presentation, at Joint UNECE/FAO Policy Forum on Public Procurement Policies on Wood and Timber Products, Geneva, 5 October 2006; available at: http://www.unece.org/trade/timber/docs/tc-sessions/tc-64/07_Westcot.pdf.

it is likely that government standards will result in impacts outside the public sector, as construction companies implement responsible purchasing strategies across their entire supply chains. This assumption is backed up by LEED statistics, which suggest that only 44 per cent of LEED-certified construction projects are government-owned.

In the UK, since March 2005 it has been a condition of central government funding that all major school projects, both new-build and refurbished schools, must achieve a minimum BREEAM rating of 'very good' (the second highest). For domestic housing, the Code for Sustainable Homes was launched in December 2006; compliance with the Code is currently voluntary but may become mandatory. As with the other schemes mentioned here, the Code uses a points-based system encouraging, rather than requiring, the use of timber which is reclaimed, re-used or 'responsibly sourced' – though there is a mandatory requirement that all timber must be legally sourced. The points are based mainly on the CPET assessment of certification schemes.

Conclusions

Procurement policies aimed at excluding illegal and unsustainable timber products have proved a valuable weapon in the armoury of consumer states. They can be developed and implemented more rapidly than most other policy options, and the evidence suggests that they can have a much broader impact on consumer markets than simply through the direct effect of government purchases. Nevertheless, key implementation problems remain to be tackled: the danger of too much variability in policies, creating possible barriers to exports; the practical problems of ensuring the policies are followed by the thousands of government buyers; and promoting the approach among regional and local government.

More broadly, governments everywhere are displaying increasing interest in the development of sustainable procurement policies. Valuable lessons can be learned from timber procurement, where these approaches have been developed in far more detail than in most other sectors.

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For more details and further information on all the topics covered in this paper, see www.illegal-logging.info.

Chatham House
10 St James's Square
London SW1Y 4LE
www.chathamhouse.org.uk

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