

Sarawak Penan communities from several villages holding a one-day symbolic protest in Long Nen, Baram in the Miri Division in September 2010 to commemorate their simultaneous blockades against logging companies that took place a year before, which were dismantled by the authorities with a set of promises that have yet to be fulfilled.



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biodiversity

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# From policy to reality:

‘Sustainable’ tropical timber  
production, trade and procurement

A critical analysis on forestry governance in Malaysia  
and the timber importation and procurement policies of  
Japan, South Korea and Australia

October 2013



**Friends of  
the Earth  
International**



## From policy to reality

'Sustainable' tropical timber production, trade and procurement

October 2013

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# Foreword

## Foreword

Malaysia's claims on the sustainability of its timber production system are often made on the basis of the country's highly structured forestry and land governance framework – laws, regulations, guidelines and procedures – evidence of the legal and ecological sufficiency of the system.

However such sustainability and legality claims are in fact challenged by a set of some very real structural problems that cannot be simply resolved by say, a timber certification scheme. These structures are largely systemic in nature, characterised by the lack of governance transparency and accountability and other key mechanisms of good governance – an open timber licence issuance process, guaranteed public access to information, participatory decision-making and the Free, Prior and Informed Consent process as well as other measures to ensure that timber harvesting risks and benefits are shared equitably amongst all stakeholders.

As such, it is no surprise that this system is also continuously linked to the violations of the customary land rights of indigenous communities as well as allegations on rent-seeking activities, corruption and political patronage.

The violations of indigenous customary land rights in Malaysia are indeed rooted in poor governance. Today, Malaysia still lacks a national policy on indigenous peoples' rights. In fact it does not even possess a satisfactorily systematic and highly participatory process to delineate indigenous territories for the purpose of granting them full legal protection. Laws that can be used to protect such rights and territories are used only sporadically, while legislation has been repeatedly amended to progressively minimise their scope. Both the federal and state executive and legislative arms have also yet to institute policy and legislative reforms in order to ensure that they are aligned with landmark court decisions that have ruled on the nature, principles and extent of indigenous customary land rights. At times, the executive has even explicitly taken policy positions that are contrary to these decisions.

Forest-dependent indigenous communities in Malaysia meanwhile have remained mired in poverty until today – their quality of life and health is worsened by the destruction of their forest and river resources, and in many cases, even rice and mixed-culture farms and orchards, which had been providing them with a highly balanced diet, income, extensive medicinal remedies, tools, crafts and spiritual roots.

Meanwhile, the sustainability of the international tropical timber trade itself is questionable. Production and export, usually fuelled by private foreign investments, tend to rise and fall in a given country within three decades. There are certainly indications that today, Malaysia's timber resources have also been largely depleted.

This political and economic backdrop needs to be seriously considered by all timber procurement policies – be they for the public or the private sector – as well as the larger governance framework on timber importation in consumer countries.

Although Japan has established a public procurement policy to address the legality and sustainability of its timber imports within its *Green Purchasing Act* framework, with a set of guidelines specifically addressing the procurement of wood and wood products since 2006, this system nevertheless is only binding upon the public sector and the private sector that conducts business transactions with the former. Australia has only recently enforced its anti-illegal logging legislation – its public sector meanwhile may also voluntarily utilise the *Australian and New Zealand Government Framework for Sustainable Procurement*, launched in 2007. South Korea meanwhile has not done much in instituting special policies for the country's timber importation system and public procurement policy.

However, despite such policy and legislative efforts around the world today, deforestation of Southeast Asian rainforests and logging-related human rights violations still continue, as with global over-consumption of tropical timber products.

We believe that there are structural reasons for this state of incongruity between policy and reality.

Firstly, importer countries appear to lack the full understanding on the actual quality of forestry governance in producer countries. Essentially, all such policy efforts be they in the public or private sector, require that timber legality and sustainability to be accepted on faith, directly or indirectly. This faith in the end rests with the belief on the competency of the forestry governance framework in producer countries to ensure the legal and/or sustainable production of their timber products.

We say faith, because many of such producer countries have not adequately understood the flaws within the various national production systems as well as the realities on the ground for affected communities. Equally important, many

of such policy and legislative efforts seem to have also cut a distinct division between legality and sustainability concerns, prioritising the former at the expense of the latter.

Secondly, timber importer countries in the last three decades have also generally failed to reduce their consumption of tropical timber products to an acceptable level. This situation is compounded by the failures of countries such as Japan and South Korea to revive its domestic timber sector. When confronted by the reality of the depletion in timber resources from natural forests around the world today – such countries simply continue consumption-as-usual by investing in tree plantation projects abroad.

It is thus our hope that this report is able to demonstrate this disconnection between policy – be they in producer-exporter or importer countries – and the reality on the ground. For policy to be able to address the reality on the ground, it cannot afford to ignore systemic corruption, the violations of human rights as well as unsustainable production and consumption patterns. Policy has to be fully grounded on governance transparency and a real understanding on the ecology of natural resources as well as the human lives it affects.

Until all such issues are addressed, policies and legislation on sustainable forestry and timber trade, will never be able to meaningfully address the realities on the ground.

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# List of abbreviations and acronyms

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ABARES	Australian Bureau of Agricultural and Resource Economics and Sciences
ACT	Australian Capital Territory
AFP	Asia Forest Partnership
APA 1954	Aboriginal Peoples Act 1954 (Malaysia)
APEC	Asia Pacific Economic Cooperation
APP	Asia Pulp and Paper
ASEAN	Association of Southeast Asian Nations
AU \$	Australian Dollars
BMP	Best Management Practice
BRIK	Badan Rivitalisasi Industri Kehutanan [Forest Industry Revitalisation Body] (Indonesia)
CBD	Convention on Biological Diversity
CDF2	Customs Declaration Form 2 (Malaysia)
CERFLOR	Programa Brasileiro de Certificação Florestal [Forest Certification Programme of Brazil]
CERTFORCHILE	Certificación Forestal en Chile [Forest Certification of Chile]
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CoC	Chain of Custody
CSA	Canadian Standards Association
DOE	Department of Environment, Malaysia
ECOSOC	Economic and Social Council of the United Nations
EIA	Environmental Impact Assessment
EU	European Union
FAO	Food and Agriculture Organisation of the United Nations
FDPM	Forestry Department of Peninsular Malaysia
FLEG	Forest Law Enforcement and Governance
FLEGT	Forest Law Enforcement Governance and Trade
FMC	Forest Management Certification (South Korea)
FMU	Forest Management Unit
FPIC	Free, Prior and Informed Consent
FR	Forest Reserve
FRIM	Forest Research Institute of Malaysia
FSC	Forest Stewardship Council
HCVF	High Conservation Value Forests
IFF	Intergovernmental Forum on Forests
IPF	Intergovernmental Panel on Forests
ITTA	International Tropical Timber Agreement

## List of abbreviations and acronyms

Continued

ITTC	International Tropical Timber Council
ITTO	International Tropical Timber Organisation
IUCN	International Union for Conservation of Nature
JAKOA	Jabatan Kemajuan Orang Asli [Department of Orang Asli Development] (Peninsular Malaysia)
JATAN	Japan Tropical Forest Action Network
JFA	Japan Forestry Agency
JFWIA	Japan Federation of Wood Industry Associations
JLIA	Japan Lumber Importers' Association
JOANGOHutan	Jaringan Orang Asal dan NGO tentang Isu-Isu Hutan [The Network for Indigenous Peoples and Non-Governmental Organisations on Forestry Issues]
JOAS	Jaringan Orang Asal Se-Malaysia [Network of Indigenous Peoples of Malaysia]
JOIFA	Japan Office Institutional Furniture Association
JPA	Japan Paper Association
KFS	Korea Forest Service
LCDA/PELITA	Land Consolidation Development Authority (Sarawak, Malaysia)
LEI	Lembaga Ekolabel Indonesia [Ecolabel Board of Indonesia]
LPF	Licence for Planted Forest (Sarawak, Malaysia)
MC & I (2002)	Malaysian Criteria and Indicators for Forest Management Certification (2002)
MC & I (Natural Forest)	Malaysian Criteria and Indicators for Forest Management Certification (Natural Forest)
MDF	Middle-density fibreboard
MNRE	Ministry of Natural Resources and Environment (Malaysia)
MoU	Memorandum of Understanding
MPIC	Ministry of Plantation Industries and Commodities (Malaysia)
MTC	Malaysian Timber Council
MTCC	Malaysian Timber Certification Council
MTCS	Malaysian Timber Certification Scheme
MTIB	Malaysian Timber Industry Board
NCL	Native Customary Land
NCR	Native Customary Rights
NGO	Non-Governmental Organisation
PEFC	Program for the Endorsement of Forest Certification
PERHILITAN	Department of Wildlife and National Parks, Peninsular Malaysia
PFE	Permanent Forest Estate
PNG	Papua New Guinea

POASM	Persatuan Orang Asli Semenanjung Malaysia [The Association of Indigenous Peoples of Peninsular Malaysia]
PRF	Permanent Reserved/Reserve Forest
REDD	Reducing Emissions from Deforestation and Forest Degradation
SEIA	Special Environmental Impact Assessment
SFC	Sarawak Forestry Corporation
SFI	Sustainable Forestry Initiative
SFM	Sustainable Forestry Management
SGEC	Sustainable Green Ecosystem Council (Japan)
SOC	Statistics on Commodities (MPIC Annual Publication)
STIDC/PUSAKA	Sarawak Timber Industry Development Corporation (Malaysia)
TLAS	Timber Legality Assurance System
UNCCD	United Nations Convention to Combat Desertification
UNCED	United Nations Conference on Environment and Development
UNCSD	United Nations Commission on Sustainable Development
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
UNFF	United Nations Forum on Forests
US \$	US Dollars
VPA	Voluntary Partnership Agreement
WHC	World Heritage Convention
WSSD	World Summit on Sustainable Development
WWF	World Wide Fund for Nature

## Executive summary one

### Introduction: From policy to reality

## Introduction: From policy to reality

The establishment of various policies on 'sustainable' and 'legal' timber production, importation and procurement around the world today has not in reality, resulted in meaningful changes on the ground. At the core of it, the international tropical timber trade has remained more or less the same in structure and content as it was some twenty years ago. In summary:

- (i) Poor forestry governance still troubles producer countries such as Malaysia, along with their failure to accord full respect to indigenous customary land rights. Many consumer countries do not appear to be fully aware of how systemic such conditions can be.
- (ii) Policies on 'sustainable' or 'legal' timber importation and procurement in importer countries are largely focused on the need to establish clearer chains of paperwork. If a timber import consignment is certified to be from legal and/or sustainable sources, this stamp of approval can just therefore continue to move from one party to another.  
  
In this sense, the burden of proving timber legality and sustainability still largely rests with producer countries. Policies in importer countries appear to be largely unequipped to investigate the veracity of the sustainability and legality claims made by a given forestry governance system, how the system fits into a particular timber certification scheme and on actual conditions on the ground.
- (iii) A disproportionate amount of emphasis seems to have been focused on eliminating the trade of illegal timber, at the expense of the efforts to ensure the sustainable production and consumption of tropical timber products.
- (iv) Consumer countries have also failed to reduce their tropical timber consumption levels to more sustainable levels.
- (v) Involvement of northern countries in various global and regional forestry initiatives is largely self-serving. Japan and South Korea for instance have turned to afforestation and/or reforestation projects abroad in the face of the global depletion of timber resources from natural forests in order to ensure the stability of their timber supply in the future – such projects are certainly not a solution in the right direction for timber over-consumption and global deforestation. Further, such initiatives also tend to serve the opportunity for

such countries to develop and secure stable markets for offshore forest carbon sequestration schemes.

Given the above, such policy choices, even those that utilise timber certification schemes, can only function as rudimentary technical responses that are ill-equipped to address deeply flawed structural conditions, built by poor forestry governance and the irrationality of an unsustainable production and consumption system.

## Executive summary two

### Malaysia

## Malaysia

### 2.1 The reality of sustainability claims

#### 2.1.1 The lack of transparency in forestry governance

A most glaring weakness of Malaysia's forestry governance is the non-transparent way in which logging licences are awarded. Information access on logging concessions, in particular for Sarawak, can be extremely limited. During the consultation sessions of the Forest Law Enforcement Governance and Trade-Voluntary Partnership Agreement (FLEGT-VPA) process between Malaysia and the European Union, the request from civil society coalitions for the process to make publicly accessible all information on forestry and logging matters was twice rejected by the Malaysian Government.

It is thus no surprise that allegations on logging licences in Malaysia being abused as a tool to garner political support and dispense political favours have been rife for a good three decades, in addition to those that suggest incidents of the licences being used by the country's political elites for direct self-enrichment.

#### 2.1.2 Fifty-five percent forest cover or eleven percent conservation areas?

The terminology of forested area/cover neither automatically implies that the forests concerned have received full legal protection in order to ensure their permanency nor protected from timber harvesting activities. While Malaysia may claim that in 2008 the country has maintained some 18.08 million hectares of forested areas, covering 55 percent of the country's total land area, 10.80 million hectares or 59.7 percent of these have actually been reserved for timber production to take place in perpetuity. In short, in 2008, at least 32.7 percent of Malaysia's total land area has been reserved for timber harvesting activities and the country's totally protected areas **stood at only 3.61 million hectares or a mere 11 percent of the country's total land area.**

#### 2.1.3 The rise and fall of timber production in Malaysia

Malaysia's timber production and export first underwent a rapid growth from the 1970s to the 1980s, before undergoing a steady decline. With the exception of plywood, all other primary timber products have followed similar production and export trajectories. Although this decline has been used to demonstrate the country's progressive commitment towards sustainability concerns, there are strong indications that suggest the decline was indeed caused by over-harvesting in the last three decades. This suggestion is

supported by numerous studies since the 1980s as well as the admission on the actual depletion in timber resources by several Environmental Impact Assessment (EIA) reports for plantation projects in Sarawak and Sabah.

### 2.2 The reality of the violations of indigenous customary land rights

Today, Malaysia still lacks a national policy on indigenous peoples' rights. Currently on the ground, affected indigenous communities have continued to protest against logging and plantation encroachments on their land. At present, there are more than 100 civil legal actions filed by such communities in Sarawak. Today, the communities' standard of living and quality of life have remained the same – they still make up some of the poorest, most deprived and marginalised Malaysians.

In the last twenty years, the Malaysian judiciary has produced rulings that have legally clarified on the many important aspects of the nature, principles and scope of indigenous customary land rights. Some of these decisions have very wide-ranging legal implications on existing policies and statutes – the failure to implement them ultimately is a failure in good governance and a failure to live up to the doctrine of the separation of powers in democratic governance. They include the following:

- (i) The principles of common law respect the pre-existing nature of indigenous customary land rights. Indigenous customary land rights therefore do not owe their existence to modern statutes and legislation, but instead to traditional laws and customs. Modern legislation is only relevant for the purpose of determining the extinguishment of such rights.
- (ii) States are under a fiduciary duty to protect the welfare of the indigenous communities including their land rights.
- (iii) Indigenous communities have *usufructuary* rights to continue to live *on* their lands, as well as *proprietary* interests *in* the land itself.
- (iv) Indigenous land rights exist on both the family-owned cultivated land as well as on the communally shared village communal forest that is used for hunting and gathering activities.

Systemic threats to indigenous customary land rights and territories continue to exist as a result of the following governance conditions:

- (i) Malaysia's executive and legislative arms have failed to accord the highest respect to the aforementioned judicial rulings, by not only failing to institute the appropriate policy and statutory reforms but by having its executive agencies taking erroneous and misleading legal positions that are in direct conflict with these decisions.
- (ii) The Malaysian executive arm has continued to rely on legal fictions to support its position on certain aspects of indigenous customary land rights that are in contradiction with various court decisions. In 2008, within the FLEGT-VPA process, the Malaysian Government even resorted to several erroneous, flawed and misleading interpretations of judicial decisions on indigenous customary land rights, in particular those concerning the common law position on such rights, the pre-existing nature of such rights that do not owe their existence to modern legislation and statutes, the extent of such rights to the higher forests and the precedent-setting power of judicial decisions itself.
- (iii) Currently, states have yet to institute a satisfactorily systematic, participatory and consultative delineation process for indigenous territorial boundaries and claims, for the purpose of granting them full legal protection. Hence, the lack of harmonisation between the peoples' claims and those asserted by the state – rendering the peoples' territories highly vulnerable to encroachments.  

In Sarawak, the state tends to rely primarily on aerial photographs taken during the colonial period to distinguish 'forests' from 'cultivated areas' in their mapping of indigenous territories, wherein rights tend to be conceded only on cultivated areas but curtailed on the communal higher forests. This technique is highly simplistic – ignoring the importance of joint ground surveys, consultations of historical, administrative and anthropological records, participatory consultations with affected villages and other evidence on the ground. These aerial photographs are generally not accessible to the public.
- (iv) There are in fact available statutory provisions in Sarawak, Sabah and Peninsular Malaysia that can be used to affirm and protect indigenous communities' customary land rights and traditional territories through the gazetting of the land into specific categories of reserves or areas or the issuance of indigenous land titles. However these provisions are not being actively used by the states.
- (v) Indigenous customary land rights can be legally lost or at least severely minimised through the land acquisition process for purposes that the state deems as fit as well as through the establishment of conservation or production forests – the latter on which the Forest Management Units (FMU) of the Malaysian certification scheme operates. These processes however are largely lacking in Free, Prior and Informed Consent (FPIC) and a highly transparent information-disclosure process. Further, the process can be very prejudicial to communities who live away from administrative centres and are not fluent in the national language or English and lacks fair complaints and objection mechanisms.  

In Sarawak, the minimum notification process to affected communities on the impending termination of their rights for the purpose of the establishment of a production forest or a land acquisition process only requires for the notice to be published in the government's official *Sarawak Government Gazette*, in one newspaper and for it to be displayed at the local District Office. Affected communities are required to submit their claims of rights to the authorities within 60 days of the notification.
- (vi) Indigenous peoples also continue to suffer from the progressive circumscription of their customary land rights through regular statutory amendments, especially in Sarawak and at times, direct policy change.

## Executive summary three

### Japan

## Japan

### 3.1 The Green Purchasing Act and its implementation framework

In Japan, the *Green Purchasing Act* has provided its public sector with the regulatory framework for the procurement of products and services considered to be eco-friendly since the year 2000. The implementation of this law is further elaborated in the document *Basic Policy on Promoting Green Purchasing*. For wood products, the *Guideline [sic] for Verification on Legality and Sustainability of Wood and Wood Products* was established in 2006.

The chief targets of the guidelines for wood products are government ministries, field agencies and the parliament – for which compliance is compulsory. In this way, wood and wood product suppliers for the three public sub-sectors are also indirectly affected by the guidelines. Specifically, the policy introduced the principle of 'legality' as a criterion for decision-making in timber procurement while 'sustainability' was added as a factor to be considered when selecting timber and timber products for purchases. In short, legality shall be complied with, whereas sustainability is to be considered.

The guidelines provide definitions on the following:

**Legality:** The timber to be procured should be harvested in a legal manner consistent with procedures in the forest laws of timber-producing countries and areas.

**Sustainability:** The timber to be procured should be harvested from forests under sustainable management.

There are three modalities for verifying the legality and sustainability of timber and timber products, namely:

- (i) Forest certification and chain-of-custody systems;
- (ii) Verification method by company under 'authorisation of association'; and
- (iii) Verification method by the original measure of each company

### 3.2 Policy weaknesses in existing timber procurement system

#### 3.2.1 Voluntary v. mandatory approach of existing verification system

The private sector is relatively unaffected by the guidelines on timber procurement, in particular if they do not conduct any business with the public sector.

#### 3.2.2 Incomprehensive definitions of legality and sustainability and the absence of standards

The definitions of timber legality and sustainability as spelt out by the guidelines are extremely weak and limited in their capacity, lacking in technical clarity and depth and imply a limited scope of their application. The definition of legality for instance focuses only on harvesting operations. The definition of sustainability meanwhile does not technically define sustainability at all, considering the fact that 'sustainable forestry management' is a highly technical and scientific endeavour and should include the integration of a variety of social and human rights concerns. The definitions also make no mention of the application of international treaties and conventions. Further, the system also does not provide clear and detailed standards, criteria or indicators to further elaborate on legality and sustainability.

#### 3.2.3 Loopholes and exceptions in the various verification processes

The current policy has also made some questionable exceptions in the legality verification process, including:

For paper products – verification is not applicable to virgin pulp, manufactured from forest thinning, to re-used/ recycled materials such as residual material from plymills/ sawmills, from forest residues and small-diameter logs.

For sawn timber – verification is not applicable to sawntimbers manufactured from forest thinning, forest residues and small-diameter logs.

For recycled wood boards or fiberboard – verification is not applicable to products manufactured from residual materials from plymills/sawmills, demolition material, recycled packaging material, unused low-grade paper chips, forest residues/small-diameter logs (including forest thinning).

#### 3.2.4 Lack of penalty

The guidelines do not specify any penalties for non-compliance. As a result, new categories such as 'unverified legal' or 'not yet verified' timber are commonly and informally created in addition to 'legal' and 'illegal' timber in the domestic market.

## Executive summary four

### South Korea

## South Korea

### 4.1 Lack of specialised policy on timber importation and procurement

South Korea's regulatory framework on its timber importation process is fairly narrow, structured around common legal and administrative procedures involving the compliance to the domestic laws on customs, tax clearance, plant quarantine, wildlife conservation, food sanitation, waste management and the movement of waste between countries, as with the the importation of other agricultural and non-domesticated biological commodities or products into the country.

As such, once an imported timber product has successfully passed through these processes and the declaratory paperwork from originating and transitory countries accompanying it is found to be in agreement with the actual physical conditions of the said timber in quantity and quality, the importation process would have fulfilled all existing legal requirements expected of it.

Currently, there is no clear policy guidance in place to promote a more discerning timber procurement process, in which the commitment to ensure that timber and timber products have all been obtained from sustainable and socially responsible sources is an explicit concern – there are no special policy definitions and standards set on the 'sustainability' and 'legality' of its timber imports.

In short, South Korea has not taken much meaningful self-imposed initiative to ensure that its timber imports have been produced in strict legal and sustainable conditions and free from conflicts with indigenous communities, human rights violations as well as other improprieties such as systemic corruption.



## Executive summary five

### Australia

## Australia

### 5.1 Limited policy guidance on sustainable and legal timber procurement

Pending the finalisation of supporting regulations of its anti-illegal logging legislation, currently Australia has limited legislation and policy in place to drive government purchasing of environmentally friendly and sustainable products.

The most notable policy guidance is the *Commonwealth Procurement Guidelines*, which unfortunately provides little guidance for this purpose. The guidelines are primarily focused on fiscal management and do not evaluate a product's procurement against the impact of its source materials and the environment. However they do provide for the following:

- (i) Section 6.22: Agencies must not seek to benefit from supplier practices that may be dishonest, unethical or unsafe.
- (ii) Section 7.4: Accountability means that officials are responsible for the actions and decisions that they take in relation to procurement and for the resulting outcomes. Officials are answerable for such activity through established lines of accountability including the agency's Chief Executive and senior management, the Government and the Parliament.

Coherent application of section 6.22 and section 7.4 of the *Commonwealth Procurement Guidelines* would render the use of products sourced from illegal timber to be dishonest and unethical, and of benefit to the purchasing agency, and thus render the staff and agency executive accountable to the Australian Parliament.

Apart from this, there is also the *Australian and New Zealand Government Framework for Sustainable Procurement*. Launched in 2007, its use however is voluntary, although it is expected to be made mandatory in the near future.

### 5.2 Legal and sustainable forestry – in pursuit of carbon sinks

Australia certainly values its participation in regional financial and technical capacity building and direct bilateral and multilateral engagements on forestry with neighbouring countries, such as the *Asia-Pacific Forestry Skills and Capacity Building Program*, which provided financial support to forestry industry stakeholders (including governments, industry and communities) to improve sustainable forest management. However the country's participation in such programmes also appears to be a self-serving opportunity

to develop and secure stable markets for its offshore forest carbon sequestration schemes to ensure the nation's emissions output and high carbon economy remains competitive through the use of carbon sinks.

### 5.3 The Illegal Logging Prohibition Act 2012

The enforcement of the *Illegal Logging Prohibition Act 2012* will mandate a set of binding requirements to ensure that only legally harvested timber and timber products may enter Australia.

The law provides for the following definitions:

<p><b>Illegally logged:</b> in relation to timber, means harvested in contravention of laws in force in the place (whether or not in Australia) where the timber was harvested.</p> <p><b>Timber product:</b> a thing that is, is made from, or includes, timber.</p>
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This report acknowledges that the Australian Government's legislative initiative to limit the importation of illegally sourced timber is highly measured in its response, and is yet to clearly articulate the true scope and power of the *Illegal Logging Prohibition Act 2012*. If managed to consider concurrent initiatives, specifically those efforts by the EU and the USA, Australia does have the opportunity to leverage from their considerable investment to ensure logging within the Asia Pacific is slowed.

Following years of negotiations with industry and nation states, such as Indonesia and Malaysia, the resulting Australian Government *Illegal Logging Prohibition Act 2012* is poorly constructed and in the short-term provides limited prescribed requirements to enable identification of, or halt the importation of illegally logged timber and timber products into Australia.

Although the *Illegal Logging Prohibition Act* was enacted as law in November 2012, the Australian Government's commitment to curb both international and domestic trafficking and use of illegal logged timber products is yet to be finalised. Development of the *Illegal Logging Prohibition Regulations* has yet to begin, with the initial stages of

stakeholder consultation due in 2013, before their anticipated progression to Parliament in 2014, perhaps 2015 following debate and delays.

#### 5.4 Weaknesses in the legislation

The key vulnerability of the *Illegal Logging Prohibition Act 2012* is the sole reliance on “regulated” timber product/s that are yet to be defined within the *Illegal Logging Prohibition Regulations*.

Additionally the Act includes ‘may include’ [Section 14(3)1] provisions that allow for the incoming regulations to define the exact requirements of compliance companies may be required to undertake under the due diligence process. With the regulations not due to be completed until 2014, along with vulnerability also comes opportunity. The coming years of negotiation with the government will define the success and usefulness of the Australian Government’s response to curb illegal logging.

In summary, at the point of importation into Australia, importers are not required to provide statements or evidence, such as an importation declaration or other evidence if the timber, raw log or timber-derived product is believed to be not regulated.

Without a compliance and evidence-based chain of custody scheme regulating all timber importation – timber product importers, wholesalers and Australian Government Customs officers and inspectors will be unable to access the true status of consignments of timber products deemed to be unregulated.

##### 5.4.1 Definition: ‘Legality’ without sustainability?

The Australian legality definition provides no reference to environmental sustainability. It therefore lacks reference or provision to assess the sustainability of timber products in the legislation, such as ecological sustainability within the timber production and harvesting systems.

##### 5.4.2 Other gaps in the proposed legislation

Firstly, the legislation fails to provide a regulatory context which provides consumers choice, either for environmental or ethically produced product, at the point of purchase. Consumers will not be able to access information on product disclosure which outlines the timber species, country of origin, or mechanism by which its legal authenticity was managed.

Secondly, the legislation fails to provide clear protection to logging-affected communities and those customary forest owners unfairly impacted by legally sourced logging permits granted under corrupt or less than honourable means.

Thirdly, penalties set by the legislation are too low to act as a deterrent. For instance, prescribed penalties for offences against the regulations are 5 years imprisonment or 500 penalty units or both.

Therefore, a ‘maximum’ of AU \$55,000 with a maximum of 5 years jail can be applied to individuals responsible for serious or repeat offences of importation breaches. It is likely the prescribed penalty delivered through court proceedings will be far less than noted above. Further, fines issued are not applicable to the primary entity responsible for the illegal harvesting, as they only impact on institutions that have failed to meet the desired regulatory importation disclosure requirements.

Last but not least, the proposed regime is also unlikely able to assess highly processed timber products from countries such as China and other major manufacturing countries.

## Executive summary six

### Recommendations

## Recommendations

As a way forward, we therefore urge all the parties concerned to seriously heed the recommendations outlined in the sections below.

### 6.1 Collective recommendations from all the member groups involved

- (i) Malaysia, Japan, South Korea and Australia are all signatories to the United Nations' Declaration on the Rights of Indigenous Peoples (UNDRIP). Therefore within the context of the international timber trade, all four have the obligation to ensure that indigenous peoples rights are fully respected at all times. Policies and legislation in these countries must be free from elements that can further promote or contribute towards the violations of indigenous customary land rights in any way.
- (ii) Consumer countries must institute specific governance framework that is able to distinguish timber imports that have been produced within a framework of good forestry governance from imports that have been produced within a framework of poor forestry governance where human rights violations, corruption, tax-evasion, under-declaration and other forms of unlawful behaviours may be widespread.  
In order to do so, such countries must first conduct comprehensive, independent and participatory studies to fully understand the actual conditions surrounding forestry and land governance in producer countries. Such studies can then serve as a reference point that can be utilised to set apart with reasonable effectiveness, the gradation in the quality of timber production systems around the world, which can then be used to strengthen their current governance framework on the importation and procurement of timber products.
- (ii) The introduction of policy and statutory reforms by both federal and regional authorities in order to ensure that judicial decisions on indigenous customary land rights are fully respected. The Malaysian executive arm must also abstain from continuing to take policy and legal positions that are contrary to these decisions;
- (iii) The establishment of a participatory and consultative boundary delineation process for indigenous territories based upon their customary laws and practices for the purpose of granting full legal recognition on them;
- (iv) The institution of the FPIC process for issues and processes that may affect indigenous communities, in order to ensure that logging licences may only be issued in indigenous territories with the communities' explicit permission and in accordance to the terms and conditions that they freely find as acceptable;
- (v) The introduction of greater openness and transparency in forestry and land governance including but not limited to, the free publication of all information on forestry and forest licensing matters including forest classification details, timber licence documents, timber concession details and the land use patterns of forested areas;
- (vi) The enactment of a Freedom of Information Act to ensure governance transparency and accountability; and
- (vii) The introduction of stricter and more transparent processes to prevent systemic rent-seeking and political patronage activities commonly associated with timber production from taking root in the system.

Box 1 contains a proposed definition of legal and sustainable timber, within the context of Malaysia, which has been adapted from a document submitted by two civil society coalitions to the Malaysian Government in August 2008 for the country's FLEGT-VPA consultation process.

### 6.2 Recommendations from Friends of the Earth Malaysia

We believe that in order to improve forestry and land governance in the country and to fully secure the rights of Malaysia's indigenous communities to their land, the following measures must be introduced in the country:

- (i) The establishment of a National Policy on the Rights of Indigenous Peoples through a participatory and transparent multi-stakeholder process;

## Executive summary six

### Recommendations (continued)

#### Box 1: A proposed definition of legal and sustainable timber

1. Timber and/or timber products are legal when:-
  - (a) They originate from and/or are processed within Malaysia; and
  - (b) They are free from aboriginal or native customary claims; or
  - (c) Free, Prior and Informed Consent has been obtained from all strata within the aboriginal or native community if the timber is to be harvested; and
  - (d) They are harvested, processed, transported, traded and exported by licensed person(s) in accordance with all domestic laws, regulations, guidelines and procedures and in good faith.
2. Countries involved in the production and trade of the timber products have explicitly agreed to further reaffirm their obligations as members under international treaties and conventions, including but not limited to, the Convention on Biological Diversity (CBD), the UN Declaration on Rights of Indigenous Peoples (UNDRIP), the Ramsar Convention on Wetlands, the Convention on International Trade and Endangered Species of Wild Fauna and Flora (CITES), the UN Framework Convention on Climate Change (UNFCCC) and agreements made under the International Tropical Timber Organisation (ITTO) process; and shall at all times ensure that the internationally recognised principles and rights are protected.
3. Countries involved in the timber trade agree to the following:-
  - (a) Recognise that it is inappropriate to encourage trade or investments by weakening or reducing the protection afforded in national labour and environmental laws;
  - (b) That timber shall be logged in a sustainable manner;
  - (c) Recognise that the responsibility for forest management, conservation and sustainable development should be done at national, state and local levels of government in accordance with its constitution or national legislation or both;
  - (d) That steps are taken to ensure that any person(s) affected by the production and trade of the timber products shall have appropriate access to administrative, quasi-judicial, judicial, or tribunals for the enforcement of such person's rights;
  - (e) Existing administrative, quasi-judicial, judicial, or tribunal proceedings for the enforcement of laws protecting indigenous peoples and the environment are fair, equitable and transparent; and
  - (f) Interested citizens may request competent authorities to investigate alleged violations of laws protecting indigenous peoples and the environment and that the competent authorities give such requests due consideration in accordance with its national law;

#### Interpretation:

In this document -

1. Aborigine/Native or Indigenous means as determined by Articles 160 (2) and 161A (6) & (7) of the Federal Constitution and Section 3 of the Aboriginal Peoples Act 1954 (Revised 1974).
2. Areas means natural forests and tree plantations on all categories of lands defined under relevant national or local laws.
3. Claims means civil suits filed by aborigines/natives in a court of law or complaints lodged with the federal, state or local authorities or rights asserted by aborigines/natives with the national, state or local authorities.
4. Conventions and Treaties are those that have been signed or ratified or both by governments.

5. Sustainable means a widely accepted set of international principles and criteria defining the same.
6. Timber products refer to logs, sawn timber, veneer and plywood or any other timber products agreed to be covered by this document.

#### Explanatory statements to the proposed definition

Section 1 deals with the definition of what legal timber and timber products are. The origin of timber is important to dispense with the entry of illegal timber from countries like Indonesia. It seeks to distinguish timber from territorial boundaries belonging to aborigines or natives and areas not within these boundaries. It further allows companies to engage with communities if they so wish, to log and extract timber, provided they obtain the latter's free, prior and informed consent. It also does not forbid the aborigines or natives to log and extract timber from their own land if they so wish. This section also highlights the need to first establish a primary mechanism to clearly demarcate aboriginal/native territorial boundaries and claims so as to fully recognise their rights, and secondly to set up the related processes on the arbitration of disputes on such rights as well as those on complaints and corrective procedures. Finally, it deals with the chain of custody issue from the harvesting to the exporting of timber or timber products and that this should be done in good faith free from any bribery, corruption, deception or fraud.

Section 2 sets a minimum standard that should be complied with and these are treaties and conventions that Malaysia and the importer countries are signatories to and other international obligations that are binding upon them.

Section 3 (a) does not allow the weakening of any protection accorded by the national labour and environmental laws when it relates to trade and investment.

Section 3 (b) is self-explanatory and necessary to be included as it serves as a reminder that forests are not to be overlogged and destroyed.

Section 3 (c) provides for good forest management and governance practices to be put in place.

Sections 3 (d) & (e) ensure that aggrieved persons, aborigines and natives have proper access to channel their complaints when and if they are vindicated and the process should be equitable, fair and transparent.

Section 3 (f) explains that the competent authorities should give due consideration to any requests of violations of laws against natives/aborigines and the environment.

Adapted from: *Definition of Legal Timber. Proposal from JOANGO Hutan & JOAS to the Ministry of Plantation Industries and Commodities for the FLEGT-VPA*. August 2008.

### 6.3 Recommendations from Friends of the Earth Japan

The following are requests from Friends of the Earth Japan to both the Government of Japan and the Japanese timber-consuming corporate sector, in relation to the need to improve the regulatory framework and guidelines on legal and sustainable timber procurement and consumption.

#### 6.3.1 Recommendations to the Government of Japan

1. The current *Guideline [sic] for Verification on the Legality and Sustainability of Wood and Wood*

*Products* must be sufficiently strengthened for the following reasons:

- (i) The current guidelines are substantially inadequate as they only superficially verify compliance with existing forest-related laws and regulations in each producer country. Substantial and robust verification measures should be established at each country of origin, and these should involve independent third-party scrutiny.

## Executive summary six

### Recommendations (continued)

- (ii) The guidelines currently have no clear definition of 'sustainability'. A new definition should be adopted to include the following elements in which the system is empowered to:
    - a. secure the rights and respect the will of local and indigenous peoples;<sup>1</sup>
    - b. consider human rights and the safety of workers;
    - c. conserve High Conservation Value Forests (HCVFs); and
    - d. avoid social conflicts and large-scale clear cutting of natural forests.<sup>2</sup>
  - (iii) Japan's *Green Purchasing Act* has excluded legal verifications for timber when the wood is sourced from forest thinning, milling residues, forest residues and small-diameter logs, even though its harvesting may be suspected of being inappropriate. Legality and sustainability of such materials should also be ensured.
2. As a part of the measures to combat illegal logging in the timber trade, the Government of Japan should consider introducing legislation similar to what has been enacted in the European Union and the United States.

#### 6.3.2 Recommendations to Japanese corporations

1. We call upon corporations, in the procurement of raw materials, to make serious environmental consideration on biodiversity and forest ecosystems conservation as well as social considerations on human rights, as stated in our requests to the Government.
2. We call upon corporations that manufacture and trade in commodity-based products, in particular timber, paper and commercial crops (palm oil, soybean, etc.) that could affect forest ecosystems, to prepare a sound procurement policy for each material, in order to avoid adverse effects on ecosystems and human rights. We urge corporations to take into consideration

the views of local civil society groups and to enforce their individual policies with thorough and proper implementation and operation.

#### 6.4 Recommendations from Friends of the Earth Korea

1. The current governance approach of addressing the sustainability and legality of South Korea's timber imports is highly limiting and inadequate. This should be immediately addressed. Currently, sustainability as a term used by the government is heavily tilted in favour of industrial sustainability instead of environmental sustainability. Forests are mainly perceived as a resource for the industry rather than nature itself which needs to be conserved and delivered to our next generation. This narrow view places the interests of investments above the protection of biodiversity and rights of indigenous people.
2. The governance framework on timber importation must incorporate concerns on 'sustainability' and 'legality' that are based on human rights and environmental protection.
3. Efforts must also be made to end timber over-consumption in the country.

#### 6.5 Recommendations from Friends of the Earth Australia

##### 6.5.1 On the import prohibition of illegal timber products

Friends of the Earth Australia welcomes the advances in Australian law and legislation to protect the world's forests from degradation and destruction. The long awaited *Illegal Logging Prohibition Act 2012* will establish further global constraints on harvesters and traders of illegally produced timber.

There is concern however that the legislation does not go far enough to ensure our global forests are protected. Reinforcing this concern is the fact that timber industry officials, being both Australian traders and international timber producing government representatives are working to limit the scope of the legislation. It has been suggested the prohibition only extends to raw/round logs and be limited to a narrow set of timber products yet to be articulated in the *Illegal Logging Prohibition Regulations*. As Australia is a low importer of unprocessed timber, clearly such an action would render the scope of the legislation too narrow to protect forests and

<sup>1</sup> In recognition of the UNDRIP, of which Japan is a signatory, FPIC is paramount in securing the rights of local communities and indigenous peoples.

<sup>2</sup> Please refer to the *Joint NGO Recommendation [sic] on Ecologically Ethical Paper Products Procurement* issued in October 2004 (Box 2) and *Joint NGO Recommendation [sic] on Ecologically Ethical Wood Products Procurement* issued in 2006.

certainly too narrow to warrant further government investment to see the prohibition active and generating results.

1. The *Illegal Logging Prohibition Act 2012* and its regulations must ensure the 'regulated timber products' listing is based on the timber production and harvest method, and must include all South East Asian rainforest tree species, and their ecosystems. The only non-regulated timber product should be those derived from plantation forest timbers produced prior to Royal Assent of the legislation.
2. The *Illegal Logging Prohibition Act 2012 and its regulations* must include a clear set of instructions and Customs Declarations requirements that timber importers are legally bound to provide at the port of import for **all** timber product imports. These terms should include the country location of the timber harvest, the species of the timbers included in the imported goods, and the account for all chain of custody transactions to ensure validity of the declaration. By doing so the Australian Government will be:
  - (i) providing timber retailers the opportunity to market timber products based on their traded credentials, such as country of origin and species, and certification standard, allowing retailers to develop value added product lines such as the products' sustainability and labour force credentials, similar to the Fair Trade branding;
  - (ii) allowing customers to make purchase decisions based on the provided and easily accessible product disclosure information;
  - (iii) establishing mandatory chain of custody requirements that validate the products' legal harvest credentials and movements from the forest, transport, handling and modification through manufacture and distribution to the point of sale. Each timber handling transaction will be required to comply to a set of documented standards and controls. Each transaction requires parties to review and approve of handling documentation during the transaction, thus ensuring inheritance of legal supply;
  - (iv) supporting the use of third party Government approved or Government verifiers to monitor product supplier compliance to the chain of custody scheme;
  - (v) mandating annual due diligence auditing of the importation company declaration records against import trade declarations, harvest statistics and border control records; and
  - (vi) mandating border checks at the point of import to certify the importing company is certified to import.
3. The scope of the yet to be established *Illegal Logging Prohibition Regulations* must ensure highly processed timber products entering Australia are accountable to the legislation. Output from the Australian manufacturing sector of timber based products is relatively small compared to the country's imports. A strong prohibition framework that includes chain of custody verification, import declaration outlining harvest location and species, and border inspections of all imported products will ensure the legislation is effective and meeting its original desired goals.
4. Investing in and working with on-ground logging companies and affected communities to establish a sound base for the industry-led components of the legislation. Providing training and other capacity building targeting improved forest management practices, forest certification accreditation (including FSC), improvements in governance, forest monitoring and law enforcement.

#### 6.5.2 On the Australian Government procurement policy

As stated previously the Australian Government's procurement policy and guidance documents are inadequate and provide little guidance to government officials or businesses in terms of adhering to a set of environmentally sustainable principles for the procurement of goods and resources. Additionally, the framework and guidelines provide no reference to obligations for internationally sourced materials, or reference to enable evaluation of a product's procurement against the impact of its source materials and manufacture on the natural environment or environmental sustainability.

The Australian Government, through the Australasian Procurement and Construction Council has been presented with a leadership opportunity through the 2007 development of the *Australian and New Zealand Government Framework for Sustainable Procurement*. The framework articulates

## Executive summary six

### Recommendations (continued)

a clear and simple set of procurement filters to support agencies to move towards environmentally sustainable purchase decisions.

A strong and proactive approach to environmental sustainability can be achieved through simple changes to the Australian Government's procurement policy. The Government of Australia's annual purchasing is worth around AU \$100 billion per year. Environmentally sustainable purchasing of this magnitude will support retail market reforms, leading to broader mainstreaming of sustainable products.

1. The Australian Government should adopt all aspects of the *Government Framework for Sustainable Procurement* including the relevant standards (definitions, minimum performance and best practice performance criteria) and guides that assist purchasing officers to understand the environmental and social impacts during procurement planning, tender process and contract management of the procurement cycle. The recommendation is premised on the needs for minor amendments, including:
  - (i) Adoption of the *Sustainable Procurement Product Guide – Office Furniture* requires changes to meet current best practices. This includes removal to the support of the *Programme for the Endorsement of Forest Certification Schemes (PEFC) Council*.
  - (ii) Adoption of the *Sustainable Procurement Product Guide – Paper Product* requires changes to meet current best practices. This includes introduction of a definition for 'virgin fibre' that states: Virgin Fibre must not be sourced from native or or naturally occurring forests.



# one Introduction

## Introduction

### 1.1 Introduction

Since the 1960s, unsustainable, destructive and illegal logging operations have continued to pose threats to tropical rainforests and forest-dependent communities around the world.

As a result of such threats, numerous national and international processes have been established around the world in the last two decades, all aiming to promote more responsible timber production and procurement systems. Such efforts include the various regional and global processes on sustainable forestry, international and national forest certification schemes and the development of public and corporate policies as well as legislation on the procurement of sustainable and/or legal timber in timber importer countries.

Since then, much analysis has been done to evaluate the quality and efficacy of the various international forestry processes as well as the different forest certification schemes operating around the world today. Unfortunately however, less focus has been devoted to fully understand the quality of individual national timber procurement policies of key timber importer countries, especially within the context of the forestry and land governance framework of producer countries and their timber production systems.

This report thus aims to analyse the timber procurement policy and governance framework of two major timber importer countries in the Asia Pacific region, namely Japan and South Korea, as well as Australia, which is a major international temperate timber producer, along with the forestry governance framework of a major tropical timber producer country, Malaysia.

### 1.2 Linking forestry governance with timber procurement policies

Historically, the various certification processes for many international commodities in existence today have come to be established as a mere technical response for poor governance systems and unsustainable production models, consumption patterns and other free market mechanisms. Hence, it is important for us to conduct a larger evaluation on such systemic conditions if we would like to evaluate the effectiveness of any commodity certification scheme or a product procurement policy.

Seen from this perspective, the most important function of a timber procurement system, be they for the public or corporate sector, is not just its ability to trace the origins of its timber products but its ability to discriminate between timber production systems that are built from a good forestry governance framework and those that are not. Timber procurement policies should therefore be designed to not merely be an instrument to inspect the trails of a timber product in order to ascertain its legality, but instead it must first be equipped to evaluate the most ecologically and socially responsible timber production systems as well as the most transparent, ethical and sustainable forestry governance practices in existence across the globe today. This approach is much more useful than the sole evaluation of the quality of the timber certification scheme being utilised by a particular timber production system.

For this reason, this report begins with the analysis of the forestry and land governance framework and the realities on the ground in a leading tropical timber producer country, namely Malaysia.

Despite the merits of a national timber procurement policy of an importer country, the meaningfulness and effectiveness of such a system is dependent on its ability to evaluate the forestry and land governance of the country from which it obtains its timber products.

Ultimately, this report is an effort to demand stronger policy responses from governments of timber importer countries to take more responsible and concrete actions in halting the destruction of forests in timber-producing countries and to not leave the future of Southeast Asian forests in the hands of logging corporations and unsustainable consumption patterns spurred by market forces.

### 1.3 Key international processes related to forests, biodiversity and the international tropical timber trade

The review below borrows heavily from a study conducted by the Australian Institute of Criminology, an Australian governmental institution in 2008. The study, titled *The Illegal Trade in Timber and Timber Products in the Asia-Pacific Region*, analysed the current trends of the trade, the role of criminal networks and the policy context which supports them.

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### continued

Within the study, a review of international frameworks covering laws, international organisations and regional conventions has revealed the following:<sup>3</sup>

- (i) Despite the vast array of documents, treaties, agreements and organisations relating to illegal trade in timber, there is not one mechanism specifically designed to suppress illegal logging and illicit trade.
- (ii) The existing international legal and institutional framework is devoid of enforceable mechanisms.
- (iii) There are no penalties and sanctions for countries that exploit timber resources unsustainably.
- (iv) Many countries are reluctant to adhere to the principles of environmental law and do not contribute to forest protection, particularly smaller nations with limited economic and human resources.

Below is a summary of some key international processes that may have direct or indirect impacts on forest and biodiversity protection as well as the international tropical timber trade since the 1970s. The effectiveness of such processes in achieving their objectives however remains uncertain, considering the continuing realities of the depletion in tropical timber resources in timber producer countries such as Malaysia and Indonesia and the high consumption patterns of key consumer countries such as Japan and China.

- (i) *World Heritage Convention (WHC), The Convention concerning the Protection of the World Cultural and Natural Heritage, 1972*  
The purpose of the WHC, which operates under the United Nations Educational, Scientific and Cultural Organisation (UNESCO) is to protect designated cultural and natural sites from destruction, encroachment and exploitation. The process seeks to 'establish an effective system of collective protection of the cultural and natural heritage of outstanding universal value, organised on a permanent basis and in accordance with modern scientific methods'. Unlike CITES, the WHC does not protect particular species, such as types of timber or plants, from extinction. The WHC also contains no enforceable mechanisms and imposes no compulsory obligations on its parties. The process is, for the most part, a set of guidelines to encourage signatories to protect their cultural and natural heritage.<sup>4</sup>

- (ii) *Convention on the International Trade in Endangered Species of Wild Fauna and Flora (CITES), 1973*

Animal and plant species are protected through CITES if they are listed as 'endangered'. CITES requires government permits from exporter and importer countries for any trade in these species – any unauthorised trade is considered illegal. In the short and medium term however, it is not likely that CITES will play a major role in preventing and suppressing the illegal timber trade or destructive logging. The main focus of the treaty is on species protection. While many of the timber species protected may not be heavily traded, many species that are traded illegally or harvested unsustainably are not considered 'endangered' and thus do not qualify for CITES protection.<sup>5</sup>

- (iii) *International Tropical Timber Agreement (ITTA) 1983, 1994 & 2006*

The International Tropical Timber Organisation (ITTO) is an intergovernmental organisation which promotes the conservation of tropical forest resources and their sustainable management, use and trade, established under the ITTA 1983, which came into force in 1985 under the sponsorship of the United Nations Conference on Trade and Development (UNCTAD). This 1983 mandate was then renewed through ITTA 1994, which came into force in 1997 and once again through ITTA 2006, which came into force in 2011. ITTA 2006 aims to promote the sustainable management and legal harvesting of forests that produce tropical timber as well as to promote expansion and diversification of international trade in timber from these forests. The governing body of the ITTO is the International Tropical Timber Council (ITTC).

The ITTO seeks to achieve sustainable development of tropical forests by balancing economic and environmental interests in relation to tropical timber. Its purpose is to encourage sustainable development by helping the tropical timber industry manage, and thus conserve, the resource base upon which it depends. The principal purpose of the ITTAs is then to create a forum for tropical timber producer and consumer countries and to promote and facilitate the trade in tropical timber among its members. The agreements

<sup>3</sup> Schloenhardt (2008, ix). <http://www.aic.gov.au/>.

<sup>4</sup> For more information, please see Schloenhardt (2008). <http://www.aic.gov.au/>.

<sup>5</sup> Ibid.

however do not contain criminal offences. The ITTA and the work of the ITTO, are largely promotional and there are no powers to enforce compliance with principles of conservation, environmental protection or sustainable development.

(iv) *The Convention on Biological Diversity (CBD), 1992*

The CBD, whose secretariat operates under the United Nations Environment Programme (UNEP), seeks to protect ecosystems, including forests. It requires signatories to take steps to limit activities that threaten extinction of species or degradation of ecosystems within their territory. Specifically, the CBD calls on parties to take active steps for rehabilitating and restoring degraded ecosystems, to create and enforce laws and regulations to protect threatened species, establish special protection areas, and conduct environmental impact assessments of development projects. The CBD has few binding measures and makes little practical contribution to protecting tropical forests and suppressing the illicit timber trade. Unlike CITES, it does not protect any particular species and unlike the WHC, it does not protect any particular areas. While the process advocates the protection of natural habitats, it contains no specific and enforceable measures to achieve this end.<sup>6</sup>

(v) *The United Nations Convention to Combat Desertification (UNCCD), 1994*

The principal objective of the UNCCD is 'to combat desertification and mitigate the effects of drought in countries experiencing serious drought and/or desertification'. The UNCCD only rudimentarily touches on the issue of deforestation and illegal logging. There are no specific and practical measures in the process that relate directly to the issues of illegal logging and trafficking in timber and timber products. However, the UNCCD does contain a 'regional Implementation Annex for Asia' (Annex II) that calls for implementation of national action programmes and regional programmes which, among other things, seek to prevent deforestation and environmental destruction. These programmes, if implemented successfully, may have beneficial outcomes for the forests in the region. The process also obliges developed countries to 'actively support...

individually or jointly, the efforts of developing country Parties' and to 'provide substantial financial resources' to them.<sup>7</sup>

(vi) *G8 Action Program on Forests, (1997/1998)*

International efforts to tackle the issue of illegal logging amongst the G8 countries can be traced back to the G8 Denver Summit hosted by the USA in 1997, where members agreed on the concept of the G8 Action Program on Forests, which was based on a proposal for action from the Intergovernmental Panel on Forests (IPF). Members made a formal commitment at the G8 Birmingham summit in the UK in 1998.<sup>8</sup> Based on the programme, G8 countries have begun to take demand-side measures that aim to eliminate international trade in illegally-harvested or illegally-exported timber. These measures include reviewing public procurement policies, controlling the import of illegally-harvested timber, developing tracking systems for verification of legality, and promoting verification of timber origin, labeling, and forest certification schemes.<sup>9</sup>

(vii) *United Nations Forum on Forests (UNFF), 2000*

The 1992 United Nations Conference on Environment and Development (UNCED) held in Rio de Janeiro, Brazil, produced the *Non-legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of all Types of Forests* – also known as the 'Forest Principles'. Chapter 11 of Agenda 21 meanwhile was focused on 'Combating Deforestation'. Under the United Nations Commission on Sustainable Development (UNCSD), the Intergovernmental Panel on Forests (IPF) was established from 1995 to 1997, followed by the Intergovernmental Forum on Forests (IFF) from 1997 to 2000. The IPF/IFF processes ended up producing more than 270 proposals for action towards sustainable forest management, collectively known as the IPF/IFF Proposals for Action – but these are not legally binding on member states. To carry on the policy work on IPF and IFF, in October 2000, through a resolution from the Economic and Social Council of the United Nations (ECOSOC), the United Nations Forum on Forests (UNFF) was established as a subsidiary body, with the main

6 Ibid.

7 Ibid.

8 [http://www.mofa.go.jp/mofaj/gaiko/summit/kananaskis02/g8gai\\_forest\\_01.html](http://www.mofa.go.jp/mofaj/gaiko/summit/kananaskis02/g8gai_forest_01.html).

9 Ibid.

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objective to promote the management, conservation and sustainable development of all types of forests and to strengthen long-term political commitment to this end. Its mandate is based on the Rio Declaration, the Forest Principles, Chapter 11 of Agenda 21 and the outcome of the various IPF and IFF processes as well as other key milestones of international forestry policy. In its seventh session in 2007, the UNFF adopted the *Non-Legally Binding Instrument on All Types of Forests*, which was later adopted by the UN General Assembly at the end of the same year.

- (viii) *Forest Law Enforcement & Governance (FLEG), 2001*  
Ministerial meetings on FLEG commenced with the East Asia FLEG in 2001 in Indonesia and continued with the Africa FLEG in 2003 in Cameroon, and Europe and North Asia FLEG in 2005 in Russia. FLEG is a regional partnership for tackling illegal logging and trade, corruption and crime, and aims to effectively enforce forest and forestry laws and regulations with improved governance. It has the support of the World Bank, International Tropical Timber Organisation (ITTO) and the UN Food and Agriculture Organisation (FAO).
- (ix) *Bilateral MoUs on combating illegal logging*  
As a result of the East Asia FLEG meeting, a series of memorandum of understanding (MoU) for bilateral assistance has been signed between timber consumer countries and supplier countries. These include agreements between the United Kingdom–Indonesia, Norway–Indonesia, South Korea–Indonesia as well as China–Indonesia. Japan for instance also made a joint announcement in June 2003 with Indonesia for cooperation in combating illegal logging and the trade in illegal logging timber and timber products.<sup>10</sup>
- (x) *Asia Forest Partnership (AFP), 2002*  
The AFP was launched for Asia in 2002 at the World Summit on Sustainable Development (WSSD), as a Type II partnership for sustainable development,<sup>11</sup> and initiated by the Governments of Japan and Indonesia.
- (xi) *Forest Law Enforcement Governance & Trade (FLEGT), 2003*  
Under the FLEGT process, the European Union has been negotiating on a series of bilateral Voluntary Partnership Agreements (VPA) with timber producer

countries such as Malaysia and Indonesia. The EU FLEGT-VPA process is based on the FLEGT Proposal for an EU Action Plan which was produced in May 2003. The EU FLEGT process however solely addresses the question of timber legality, “but it should be noted that the EU’s wider objective is to encourage sustainable forest management. Since in many countries forest legislation is based on the premise of sustainable forest management, better law enforcement will in general lead to more sustainable forest management.” The Action Plan goes on to describe that where this is not the case, “the EU should encourage a review of the legal framework. Better forest governance is therefore an important step on the path to sustainable development.”<sup>12</sup>

The EU Parliament in 2010 voted overwhelmingly in favour of a legislative measure to ban the trade of illegally harvested timber and timber products within the EU market. Therefore beginning from 2012, corporations in the EU are required to submit logistics documentations and to clarify the origin of their timber products. The corporations will face sanctions when found to be in violation of the law and the penalty guideline will be set in an accordance with the environmental destruction and the value of timbers involved.

- (xii) *United Nations Framework Convention on Climate Change, (UNFCCC) 1992 & Reducing Emissions from Deforestation and Forest Degradation (REDD), 2005*  
REDD was first proposed in 2005, on behalf of a coalition of developing countries with tropical forests, within the UNFCCC process, the international environmental treaty produced at the Earth Summit in Rio de Janeiro in 1992. REDD aims to support the exchange of carbon emissions reductions for access to international markets for emissions trading – essentially proposing that market and financial incentives can be utilised to reduce emissions of greenhouse gases from deforestation and forest degradation.  
REDD has been widely criticised as an attempt at the commodification of natural resources, in the form of forest carbon. Although it may benefit some communities and biodiversity in certain specific areas, overall it is emerging as a mechanism that has the

<sup>10</sup> <http://www.mofa.go.jp/region/asia-paci/indonesia/pv0306/joint.html>.

<sup>11</sup> [http://www.asiaforests.org/index.php?option=com\\_content&task=view&id=71&Itemid=209](http://www.asiaforests.org/index.php?option=com_content&task=view&id=71&Itemid=209).

<sup>12</sup> Please see Commission of the European Communities (2003). *Forest Law Enforcement, Governance and Trade – Proposal for an EU Action Plan*.

potential to exacerbate inequality, reaping huge rewards for corporate and other large investors whilst bringing considerably fewer benefits or even serious disadvantages to indigenous peoples and forest dependent communities.<sup>13</sup>

Meanwhile, carbon offsetting will undermine current and future emissions reductions agreed to by industrialised countries. Allowing countries with carbon intensive lifestyles to continue consuming inequitably and unsustainably, by permitting them to fund cheaper forest carbon 'offsets' in developing countries, diverts critical resources and attention away from measures to address fossil fuel consumption and the real underlying causes of deforestation.

The commodification of forest carbon is also inherently inequitable. REDD refocuses attention on a key moral and legal dilemma – to whom, if anyone, do forests belong to? And who has the rights to sell forest carbon credits? In the absence of secure land rights, indigenous peoples and other forest-dependent communities have no guarantees that they will receive any form of REDD 'incentive' or reward for their forest conservation efforts.<sup>14</sup>

(xiii) *Lacey Act amendments, 2008 (USA)*

In the US, the century-old Lacey Act was amended in 2008, in which the import, transport, sales and purchase of illegally sourced *plants* and their products, including illegally harvested timbers and timber products from foreign countries, are recognised as being illegal, even when producer countries do not recognise them as such. The new legal provisions prohibit all trade in plant and plant products (e.g. furniture, paper, or woods) that have been illegally sourced from both the USA or any other foreign country, require importers to declare the country of origin of the timber products, the scientific names of all plants contained in their products as well as their quantity and value. They also establish penalties for the violation of this law by way of the forfeiture of goods and vessels, fines and imprisonment. Corporations that trade in paper, furniture, logs, flooring, plywood and other wood products such as

frames are required without exception to comply with this regulation.

#### 1.4 Destructive or illegal logging?

A contentious issue in sustainable forestry discourse today is the divisiveness that has been created between the concepts of timber *sustainability* and *legality*. In more ways than one, a disproportionate amount of emphasis seems to have been focused on eliminating the trade of illegal timber, at the expense of the efforts to ensure the sustainable production and consumption of timber products. Proponents of such a policy plot would often argue, in various variations of the same theme, that legality is a foremost and priority concern while sustainability would remain as a desirable long-term end of the approach.

While the legality of timber products is certainly a great concern on our part, we wish to stress that current sustainable forestry discourse must be more all-encompassing than it currently is. Logging that is being carried out according to existing laws and regulations may still cause tremendous destruction to the ecosystem and communities. Therefore the most meaningful discrimination in this debate is not *just* whether logging operations are legal or illegal but rather, whether logging operations are carried out destructively or are executed according to strict principles of sustainability. The latter then would have to concern itself with a wider range of issues – from the quality of forestry governance framework regulating forest management and its timber production system, the rights of local communities to unsustainable consumption patterns and flawed market conditions.

This report thus is primarily concerned with sustainable timber production and not merely its legal conformity. Therefore apart from questions on legality, it would also be heavily focused on aspects such as the quality of governance regulating timber production and importation, rights of local

<sup>13</sup> For more information please see Hall et al (2010, 10). <http://www.foei.org/en/resources/publications/pdfs/2010/redd-the-realities-in-black-and-white>.

<sup>14</sup> For more information please see Hall (2008, 6). <http://www.foei.org/en/resources/publications/pdfs/2008/redd-myths>.

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communities as well as consumption patterns of importing countries.

## 1.5 Objectives

The main objective of this report is to firstly raise sustainability and legal challenges within the Malaysian timber sector, which we believe are rooted in poor forestry and land governance framework in the country. For more than two decades, these weaknesses have been left largely unstated by the Malaysian timber lobby or when the need arises, their seriousness would often be downplayed. Secondly, this report also aims to draw attention to the inadequacies and flaws within existing timber procurement policies in Japan, South Korea and Australia.

Ultimately, the publication intends to draw attention to the fact that the bulk of such challenges and inadequacies are systemic in nature. In essence, despite the existence of various timber certification schemes, global and regional forestry processes as well as national timber procurement policies – the sustainable production and consumption of tropical timber products today is still out of reach.

This report is particularly important for decision makers to understand systemic challenges preventing the sustainable production and consumption of tropical timber products. Many of our approaches in the last twenty years in this regard have proven to be highly unsatisfactory – deforestation of tropical rainforests and the violations of the rights of local communities around the world continue unabated and global consumption patterns of tropical wood products have yet to be reduced to more acceptable levels. This failure has to be recognised as a systemic failure. Alternative approaches must stem from this recognition and prepare themselves with an overhaul of how forests are managed and their resources consumed.

With this report, we would like the Malaysian government and its timber industry sector to finally acknowledge the existing sustainability and governance problems within its forestry sector and to pave the way for a meaningful governance reform in order to address them. Similarly, we also hope for timber importer countries to re-evaluate the effectiveness of their policies on the importation of timber and timber products

within the context of sustainable production and consumption as well as the quality of forestry governance in the countries from which they source their timber products.

## 1.6 Report structure

This publication begins with this introductory chapter outlining its major concerns and objectives. Chapter 2 is focused on recent trends in the international tropical timber trade – its production, exportation, importation and consumption patterns. Chapter 3 is devoted to analysing the quality of forestry and land governance framework of Malaysia, including the manner in which indigenous customary land rights are addressed in the country. Chapters 4, 5 and 6 are focused on analysing the timber procurement policies and governance framework of three Asia Pacific countries, namely Japan, South Korea and Australia, respectively. The recommendations made by member groups involved in this publication for the attention of the respective parties are discussed in the Executive Summary.

## two Malaysia, Japan, South Korea and Australia: tropical timber trade production, exportation, importation and consumption trends

# Malaysia, Japan, South Korea and Australia: tropical timber trade production, exportation, importation and consumption trends

### 2.1 General introduction

This chapter is focused on the timber production and exportation trends of Malaysia and their linkages with the timber importation and consumption trends of Japan, South Korea and Australia. The analysis of such cross-national trends is captured in this single space since it entails the need to conduct comparative examinations on an interrelated set of statistical data. However, beyond the trade trends exhibited by the aforementioned countries, it is hoped that we will also be able to glimpse into the larger regional trends of the international tropical timber trade in recent years.

The discussion will begin by looking at the international and cross-national data provided by the International Tropical Timber Organisation (ITTO). The ITTO is naturally confronted by the frequent occurrences of statistical discrepancies in its data collection activities – export volume information that originates from an exporter country may not necessarily be reasonably consistent with the import volume information originating from the corresponding importer country. As such, the ITTO tabulates its data in such a fashion to clearly distinguish statistical information that originates from exporter countries from that reported by importer countries, with notations on its data collection sources.

This report however is further confronted by the fact that the ITTO data themselves may again show some discrepancies with the national data that we have obtained directly from the various governmental agencies of the four countries. As such, in order to facilitate the reader's comprehension, particular categories of data from different sources will be analysed collectively.

Although we will abstain from entering into elaborate discussions as to the possible reasons behind the inconsistencies between the ITTO data and those that we have directly obtained at the national levels from the four countries, in principle, we are very much concerned on any significant statistical discrepancies found between importer and exporter countries. In particular, we are especially alarmed if an importer country consistently shows a higher import volume of any product than the corresponding export volume reported by Malaysia. Such occurrences must certainly be thoroughly investigated for although a host of technical issues can well cause the discrepancies, they may well suggest the existence of other possibilities that are less benign, including those that are not necessarily lawful.

### 2.2 Sources

For Malaysia, the most direct source of statistical information on the country's timber exports is the Malaysian Timber Industry Board (MTIB), the federal statutory agency that oversees the country's downstream timber industry development sector, including timber exportation activities. MTIB nevertheless organises its data publication based on the regional inputs from Sarawak, Sabah and Peninsular Malaysia.

Timber production data meanwhile is published by the three regional forestry departments, although the Forestry Department of Peninsular Malaysia, placed under the Federal Ministry of Natural Resources and Environment, itself is made up by eleven federalised state departments.<sup>15</sup> The Sarawak Forests Department on the other hand is placed under its Ministry of Resource Planning and Environment while the Sabah Forestry Department is an agency under its Chief Minister's Department.

The largest timber producer state in Malaysia, Sarawak, has meanwhile set up the statutory corporation Sarawak Timber Industry Development Corporation (STIDC) to undertake activities related to the planning, coordination and development of the timber-based industry in the state through, among others, the promotion of downstream processing and product diversification.<sup>16</sup>

MTIB therefore must work closely with the various regional forestry departments as well as with STIDC in order to ensure the accuracy of its timber production and export data.

The MTIB however is placed under the country's Ministry of Plantation Industries and Commodities (MPIC). STIDC meanwhile is also overseen by the Sarawak Ministry of Resource Planning and Environment.<sup>17</sup> MTIB statistical information therefore is always consulted jointly with MPIC's annual Statistics on Commodities, although the yearly publication credits MTIB, STIDC, the various regional forestry departments as well as the Department of Statistics as its original sources.

For Japan, South Korea and Australia, direct national statistical information was obtained from the Japanese Forestry Agency (JFA), the Korea Forest Service (KFS)

<sup>15</sup> Please see Chapter 3 for more information on the Malaysian political governance structure.

<sup>16</sup> The STIDC's predecessor was in fact established in 1973.

<sup>17</sup> Like its federal counterpart, the executive councils of Sarawak and Sabah are termed Ministries, as opposed to their counterparts in the Peninsular states, where they are referred to as State Executive Councils.

## two Malaysia, Japan, South Korea and Australia

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and the Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES).

### 2.3 Overview: International tropical timber production, import, export and domestic consumption volume in 2008

Although the Malaysian timber export volume has been experiencing a steady decline in the last two decades, based on the data provided by ITTO in its *Annual Review and Assessment of the World Timber Situation 2009*, Malaysia was still the world's largest exporter of tropical logs, sawntimber, veneer and plywood in 2008. China, Japan, South Korea and other Asian nations meanwhile have continued to be the major markets for Malaysia's (and other producer countries') tropical timber product exports.

The overall global volume of the production, import and export of both tropical and non-tropical timber in 2008 can be found in Table 1. Information on the year's top exporter and importer countries is presented in Tables 2-5. All the aforementioned tables were adapted from the ITTO's *Annual Review and Assessment of the World Timber Situation 2009*.

In 2008, the world's tropical timber producer countries exported some 11.8 million m<sup>3</sup> of tropical logs, with Malaysia accounting for some 35 percent of the volume at 4.19 million m<sup>3</sup>. Other significant tropical log exporters included Papua New Guinea (2.51 million m<sup>3</sup>), Gabon (1.76 million m<sup>3</sup>) and Myanmar (1.38 million m<sup>3</sup>). China, India, Japan and Taiwan were the world's top tropical log importers, purchasing some 6.94 million m<sup>3</sup>, 3.30 million m<sup>3</sup>, 0.72 million m<sup>3</sup> and 0.62 million m<sup>3</sup> of tropical logs respectively. South Korea meanwhile occupied the seventh position, importing around 147,500 m<sup>3</sup> of tropical logs during the year.

India was the largest importer of Malaysian tropical logs (Indian source: 1.55 million m<sup>3</sup>/Malaysian source: 1.89 million m<sup>3</sup>), followed by China (Chinese source: 0.81 million m<sup>3</sup>/Malaysian source: 0.67 million m<sup>3</sup>). Japan was placed third (Japanese source: 0.57 million m<sup>3</sup>/Malaysian source: 0.58 million m<sup>3</sup>), slightly ahead of Taiwan (0.52 million m<sup>3</sup>, with Malaysia citing the slightly higher volume by about 2,000 m<sup>3</sup>). South Korea occupied either the sixth or fifth place, depending on the reporting source (South Korean source: 36,700 m<sup>3</sup>/Malaysian source: 59,900 m<sup>3</sup>).

As the world's largest tropical sawntimber exporter, Malaysia exported some 3.71 million m<sup>3</sup> in volume in 2008, taking in 37 percent out of the year's global export volume of around 10.0

million m<sup>3</sup>. Other significant exporters included Thailand (1.62 million m<sup>3</sup>), Brazil (1.03 million m<sup>3</sup>) and Indonesia (0.70 million m<sup>3</sup>).

Thailand, China, the Netherlands and Malaysia itself were the world's top importers of tropical sawntimber, importing around 2.19 million m<sup>3</sup>, 1.95 million m<sup>3</sup>, 428,000 m<sup>3</sup> and 373,700 m<sup>3</sup> respectively. Japan occupied the eleventh position, importing some 176,700 m<sup>3</sup> of the commodity. Thailand was the largest importer of tropical Malaysian sawntimber (Thai source: 2.69 million m<sup>3</sup>/Malaysian source: 1.64 million m<sup>3</sup>), followed by China (Chinese source: 252,600 m<sup>3</sup>/Malaysian source: 237,600 m<sup>3</sup>) and Taiwan or Japan, depending on the source. Taiwan imported 223,700 m<sup>3</sup> (Taiwanese source) or 170,700 m<sup>3</sup> (Malaysian source) while Japan imported between 118,600 m<sup>3</sup> (Japanese source) and 240,000 m<sup>3</sup> (Malaysian source).

For tropical veneer, the world's export volume stood at some 0.80 million m<sup>3</sup> in 2008. Malaysia contributed around 42 percent of the ITTO country exports at 304,000 m<sup>3</sup>, although its exports had declined by 29 percent from the year before, as with the global trend which showed a decline of a similar volume.

South Korea remained as the world's largest importer of tropical veneer, (164,000 m<sup>3</sup>), followed by Taiwan (135,600 m<sup>3</sup>), Italy (90,600 m<sup>3</sup>) and France (77,600 m<sup>3</sup>). South Korea was the largest importer of Malaysian exports (150,900 m<sup>3</sup>) although Malaysian sources as recorded by the ITTO reported a strangely meagre figure – only 14,800 m<sup>3</sup> of its veneer that had headed for South Korea during the year. This was followed by Taiwan, which imported 122,000 m<sup>3</sup> of Malaysian veneer (Malaysian source: 15,200 m<sup>3</sup>) and Japan, which imported 21,800 m<sup>3</sup> (Malaysian source: 5,400 m<sup>3</sup>).

Tropical plywood exports from ITTO countries fell by 17 percent in 2008 to 8.0 million m<sup>3</sup> with Malaysia exporting 4.49 million m<sup>3</sup>. Malaysia's closest competitors were Indonesia (2.14 million m<sup>3</sup>), Brazil (276,000 m<sup>3</sup>) and China (210,300 m<sup>3</sup>).

Japan, the USA, South Korea and Taiwan were amongst the world's biggest importers of tropical plywood, importing 2.37 million m<sup>3</sup>, 0.80 million m<sup>3</sup>, 0.70 million m<sup>3</sup> and 0.51 million m<sup>3</sup> respectively. The largest bulk of Malaysian plywood was headed for Japan (Japanese source: 1.96 million m<sup>3</sup>/Malaysian source: 2.04 million m<sup>3</sup>), followed by South Korea, and either Taiwan or Egypt, depending on the source (South Korean source: 333,800 m<sup>3</sup>/Malaysian source: 0.61 million m<sup>3</sup>; Taiwanese source: 393,300 m<sup>3</sup>/Malaysian source:



397,000 m<sup>3</sup>; and Egyptian source: 0.66 million m<sup>3</sup>/Malaysian source: 133,000 m<sup>3</sup>).

As mentioned earlier, some of these figures did not necessarily tally with the figures reported at the individual country level by the respective national agencies tasked to report on such data. In the following importer country sections, we will also provide the parallel data from Malaysia, alongside figures reported by the ITTO.

**Table 1: ITTO – Summary statistics on global timber production, imports and exports in 2008. ('000 m<sup>3</sup>)**

	Logs		Sawnwood		Veneer		Plywood	
	All	Tropical	All	Tropical	All	Tropical	All	Tropical
<b>Production</b>	1,151.2	141.0	323.8	44.0	10.3	4.1	71.6	18.4
<b>Imports</b>	103.5	12.9	87.8	8.1	2.2	0.8	18.4	6.7
<b>Exports</b>	54.5	11.8	83.0	10.0	2.4	0.8	21.9	8.0

Source: *Annual Review and Assessment of the World Timber Situation 2009*. ITTO (2009). Tables 1-1-a, 1-1-b, 1-1-c & 1-1-d. [<http://www.itto.int/>].

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Table 2: ITTO – Top exporters and importers of tropical logs 2008

Exporters	Malaysia	Papua New Guinea	Gabon	Myanmar	Congo, Rep. of	Cameroon	Dem. Rep. of Congo	Cote d'Ivoire	Guyana	Togo	Ghana	Central African Rep.	Others	TOTAL IMPORTS
China	810,495 670,347	2,229,673	1,076,781	462,125	394,763	201,333	24,021	595	50,378 41,227	53,086	1,400 167	33,718	1,601,503	6,939,871
India	1,553,413 1,891,356	93,650	103,486	741,102	8,182	3,331	-	111,176	31,489 39,210	41,572	191,408 8,217	866	423,325	3,303,000
Japan	572,982 583,864	91,822	2,850	563	410	226	580	-	-	-	-	996	52,986	723,415
Taiwan	519,684 521,832	16,140	27,003	35,484	6,514	1,271	4,837	-	1,096 1,531	-	-	-	10,847	622,876
France	234	-	203,272	23	33,247	13,099	71,921	24	-	-	1,341	16,861	29,968	369,990
Thailand	45,696 53,970	33,123	331	96,628	81,715	350	-	-	-	-	20	-	31,802	289,665
South Korea	36,683 59,943	36,304	6,116	1,085	562	769	223	-	-	-	-	820	64,992	147,554
Portugal	-	-	13,500	-	25,698	6,159	78,094	-	-	-	-	2,426	2,623	128,500
Italy	1,190 29	-	28,632	607	15,667	21,670	3,736	52	648 842	50	-	7,470	11,278	91,000
Germany	3,504 43	389	35,282	5,132	4,390	42,811	1,779	-	-	-	937 59	-	-28,224	66,000
Spain	-	-	23,985	-	38,163	7,281	2,295	311	-	20	-	5,509	-16,424	61,140
Greece	-	-	450,152	-	-	57	118	-	-	-	75	-	-414,167	36,160
Others	406,832	2,514,915	1,757,000	1,377,716	612,000	258,000	225,262	115,806	19,969	94,968	78,567	81,489		
TOTAL EXPORTS	4,188,216	2,514,915	1,757,000	1,377,716	612,000	258,000	225,262	115,806	103,000	94,968	87,085	81,489		

Source: Annual Review and Assessment of the World Timber Situation 2009. ITTO (2009). Table 2-1, Trade of Tropical Logs 2008, p. 123. [http://www.ito.int/]. (Detailed statistical notations available in original report.)

Table 3: ITTO – Top exporters and importers of tropical sawnwood 2008

Exporters	Malaysia	Thailand	Brazil	Indonesia	Cameroon	Rep. of Congo	Cote d'Ivoire	Philippines	Ghana	Peru	Myanmar	Nigeria	Others	TOTAL IMPORTS
<b>Thailand</b>	2,690,060 1,635,301		142,800 1,370	1,688 89	62,278	96	17,585 533	4 0	147 165	- -	46,749	303	-769,710	2,192,000
<b>China</b>	252,582 237,650	790,705 755,738	148,909 109,748	225,627 8,935	26,426	10,313	2,902 1,431	181,260 140,724	3,207 2,833	60,693 9,853	98,422	4,617	146,693	1,952,356
<b>Netherlands</b>	32,593 40,598	931 -	68,216 184,789	6,840 1,337	69,528	1,058	4,304 8,084	15 0	2,078 3,589	488 1,169	371	211	241,367	428,000
<b>Malaysia</b>		219,780 164,817	8,117 6,411	93,063 6,310	7,287	5,602	123 117	13,963 1,512	2,303 748	168 125	6,113	-	17,207	373,726
<b>Italy</b>	8,022 8,693	319 36	9,492 7,882	2,001 507	122,288	9,891	90,302 60,931	- 0	13,463 13,789	727 437	207	1,280	77,998	335,990
<b>USA</b>	18,747 17,492	9,784 220	126,483 40,322	5,980 1,362	28,277	9,614	25,393 19,535	2,556 276	24,802 20,679	19,469 36,684	-	226	33,669	305,000
<b>France</b>	16,456 9,683	95 -	123,576 78,589	7,858 778	65,217	65,217	15,197 9,747	- 0	22,654 12,463	49 69	11	17	-14,327	302,020
<b>Taiwan</b>	223,699 170,659	5,726 596,607	2,839 2,079	7,076 935	360	38	19 33	29,741 42,182	517 191	430 -	1,330	19	28,474	300,268
<b>Spain</b>	28 28	- -	28,814 28,814	140 140			32,471 32,471	0 0	932 932	494 494		-	214,971	277,850
<b>Belgium</b>	9,961 8,484	53 -	22,016 28,182	2,927 305	60,816	3,517	6,930 4,539	- 39	9,995 10,761	113 53	-	188	94,294	201,810
<b>Japan</b>	118,587 240,049	1,048 934	5,482 5,001	27,181 18,879	294	18	61 59	2,159 2,957	79 86	54 43	285	65	21,548	176,861
<b>Germany</b>	15,188 9,118	1,118 5	9,089 4,950	20,381 155	24,871	4,170	10,159 3,503	- 0	20,215 18,725	- 9	2,853	50	43,906	152,000
<b>Others</b>	1,337,132	103,613	530,213	658,249	578,000	264,906	111,118	26,783	106,421	123,334	171,563	161,218		
<b>TOTAL EXPORTS</b>	3,714,887	1,621,970	1,028,350	697,981	578,000	264,906	252,101	214,473	191,382	172,270	171,563	161,358		

Source: Annual Review and Assessment of the World Timber Situation 2009. ITTO (2009). Table 2-2. Trade of Tropical Sawnwood 2008, p. 124. [http://www.itto.int/]. (Detailed statistical notations available in original report.)

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continued

Table 4: ITTO – Top exporters and importers of tropical veneer 2008

Exporters	Malaysia	Cote d'Ivoire	Ghana	Gabon	Cameroon	Brazil	Myanmar	Belgium	Germany	India	Spain	Indonesia	Others	TOTAL IMPORTS
<b>Importers</b>														
<b>South Korea</b>	150,877 14,823	-	-	-	94	989 54,000	615	-	31 17	41 178	0 22	458 419	10,959	164,064
<b>Taiwan</b>	122,060 15,252	-	137 124	-	-	44 0	169	-	13 10	-	-	507 59	12,622	135,553
<b>Italy</b>	-	29,112	6,747	8,355	23,243	918	0	609	1,920	142	3,220	19	16,293	90,577
	-	27,579	9,447	-	-	983	-	566	1,017	478	3,097	429	-	-
<b>France</b>	-	1,099	1,245	35,143	181	272	-	974	573	9	855	9	37,198	77,560
	-	1,911	1,276	-	-	305	-	1,308	235	6	1,501	111	-	-
<b>China</b>	16,521 3,916	15	524 578	396	48	646 901	4,324	0	1,601	28	-	1,487	38,529	64,119
	-	15,661	3,649	1,206	2,709	1,197	-	146	786	89	45	2,330	14,622	40,070
<b>Spain</b>	-	15,258	4,962	-	-	6,347	-	32	184	285	-	25	-	-
<b>Germany</b>	441 386	17,088 17,019	2,293 4,330	464	599	239 3,075	-	252	-	29	200	820	14,174	36,600
	21,834 5,417	-	-	-	-	43 51	51	-	47 66	61 201	9 12	4,318 2,297	985	27,347
<b>United States</b>	1,235 182	3,478 9,546	6,961 21,419	778	387	4,346 17,963	-	6	1,145	1,245	581	338	6,840	27,340
	18,315 4,484	-	-	-	-	22 0	-	-	887	877	344	2,753	1,444	19,784
<b>Philippines</b>	-	-	-	-	-	-	-	-	3	-	-	-	-	-
	933 1,748	0	30 41	0	0	443 717	21	-	401 57	1 4	16 0	-	13,281	15,126
<b>Indonesia</b>	353 97	1,339 4,289	1,207 1,540	-	13	593 461	9,200	-	240 184	26	26	112	2,016	15,099
<b>Others</b>	257,206 303,511	27,216 102,819	25,962 69,679	61,996 61,996	59,000 59,000	-43,803 41,000	27,490 27,490	15,188 18,000	12,302 15,500	12,556 15,169	8,687 14,280	-420 11,398	-	-
<b>TOTAL EXPORTS</b>														

Source: Annual Review and Assessment of the World Timber Situation 2009. ITTO (2009). Table 2-3, Trade of Tropical Veneer 2008, p. 125. [<http://www.itto.int/j>] (Detailed statistical notations available in original report.)

Table 5: ITTO – Top exporters and importers of tropical plywood 2008

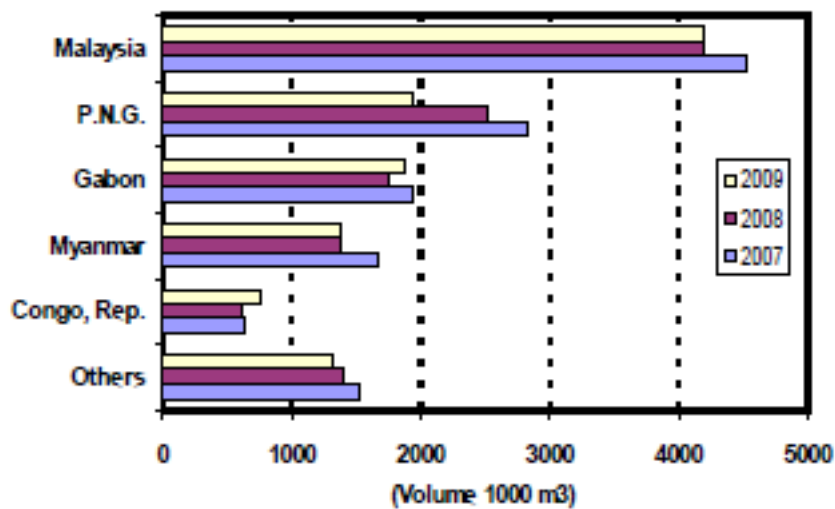
Exporters	Malaysia	Indonesia	Brazil	China	Ghana	Belgium	France	Germany	Italy	Ecuador	Gabon	Peru	Others	TOTAL IMPORTS
<b>Importers</b>														
<b>Japan</b>	1,957,000	869,000	-	584,000	-	-	0	0	0	0	-	0	-1,037,000	2,373,000
	2,042,000	832,637	0	158,295	-	-	-	-	-	-	-	-	-	-
<b>United States</b>	148,392	230,597	81,983	217,823	3,867	132	2,836	1,127	6,981	36,283	-	192	69,803	800,016
	153,000	130,228	37,986	355,052	1,834	-	281	452	1,375	22,076	-	184	-	-
<b>South Korea</b>	333,844	96,206	1	95,625	-	-	143	394	127	-	-	-	174,667	701,007
	606,000	142,967	0	55,529	-	-	-	13	-	-	-	-	-	-
<b>Taiwan</b>	393,333	103,389	-	15,795	-	-	-	3	227	-	-	-	872	513,619
	397,000	221,066	0	44,060	-	-	-	16	-	-	-	-	-	-
<b>Netherlands</b>	16,902	19,938	5,648	27,511	-	22,228	49,015	1,089	4,636	-	13,871	-	102,322	263,160
	20,000	21,773	6,909	65,447	-	47,999	60,410	675	1,614	-	-	-	-	-
<b>United Kingdom</b>	213,978	19,429	108,571	66,133	47	23,971	95,113	2,231	802	-	-	-	-278,678	251,597
	244,000	29,659	93,713	81,573	-	153	3,890	835	3,668	-	-	--	-	-
<b>China</b>	83,119	124,600	0	189	0	189	2	152	64	0	0	0	9,895	218,021
	86,000	164,436	0	-	-	-	-	-	62	-	-	-	-	-
<b>Germany</b>	2,193	39,809	26,209	4,581	34	5,629	17,758	-	39,906	-	144	-	66,128	202,391
	4,000	65,217	14,563	18,222	-	5,039	5,537	-	27,206	-	-	-	-	-
<b>France</b>	16,279	21,651	84,407	54,972	57	34,629	-	38,400	108,317	-	11,808	-	-176,940	193,580
	-	5,533	7,742	14,466	111	47,561	-	38,622	24,085	-	-	-	-	-
<b>Mexico</b>	77,092	13,554	4,313	18,606	-	-	-	12	-	10,272	-	38,523	8,479	170,851
	70,000	11,237	2,299	34,035	-	-	96	-	-	9,434	-	29,940	-	-
<b>Belgium</b>	25,572	59,657	21,059	25,016	2,805	-	5,574	4,573	684	-	140	-	10,920	156,000
	25,000	45,212	12,044	47,980	2,004	-	6,540	456	812	-	-	-	-	-
<b>Egypt</b>	662,199	22,261	2,536	38,091	-	-	36	-	7,457	-	-	-	-579,084	153,496
	133,000	27,816	1,494	38,091	-	-	-	-	31	-	-	-	-	-
<b>Others</b>														
	706,000	448,015	99,250	-702,442	134,443	4,248	25,536	36,478	6,037	20,396	46,188	11,322	-	-
<b>TOTAL EXPORTS</b>	4,486,000	2,145,796	276,000	210,308	138,392	105,000	102,290	77,547	64,890	51,906	46,188	41,446	-	-

Source: Annual Review and Assessment of the World Timber Situation 2009. ITTO (2009). Table 2-4, Trade of Tropical Plywood 2008, p. 126. [http://www.itto.int/]. (Detailed statistical notations available in original report.)

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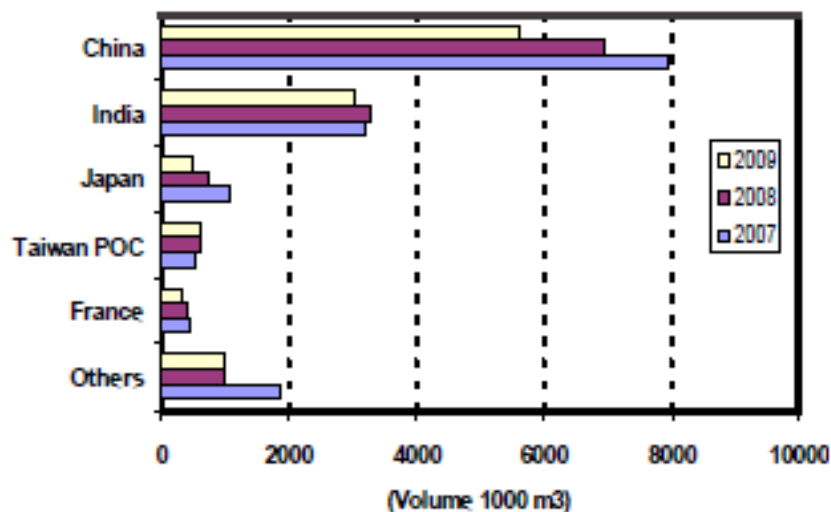
continued

Figure 1: ITTO's major exporters of tropical logs, 2007-2009



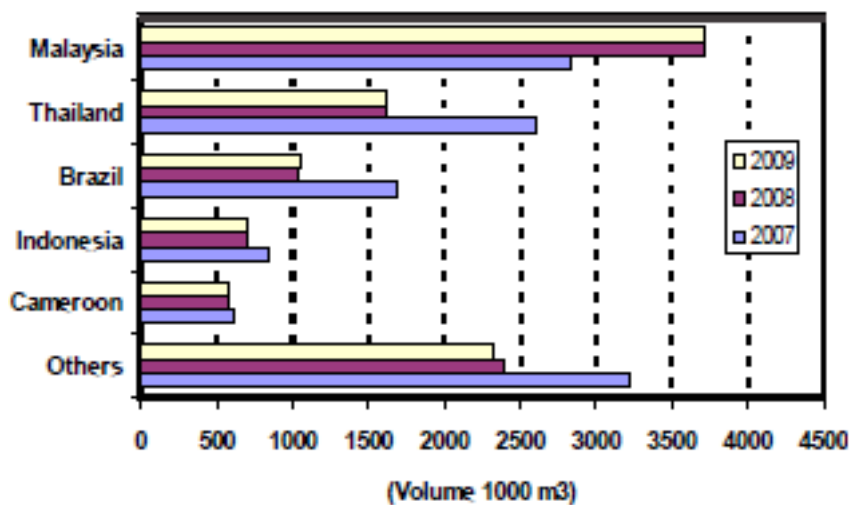
Reproduced from: *Annual Review and Assessment of the World Timber Situation 2009*. ITTO (2009). Figure 2.4, Major Tropical Log Exporters, p. 12. [<http://www.itto.int/>].

Figure 2: ITTO's major importers of tropical logs, 2007-2009



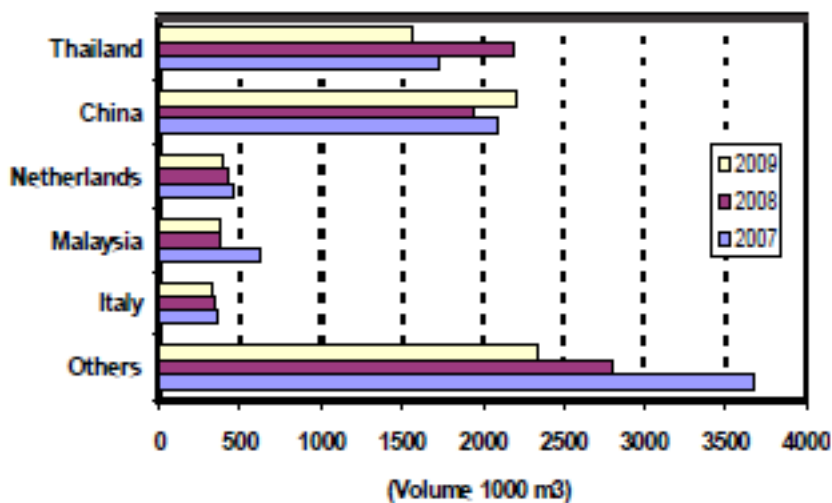
Reproduced from: *Annual Review and Assessment of the World Timber Situation 2009*. ITTO (2009). Figure 2.3, Major Tropical Log Importers, p. 10. [<http://www.itto.int/>].

Figure 3: ITTO's major exporters of tropical sawnwood, 2007-2009



Reproduced from: *Annual Review and Assessment of the World Timber Situation 2009*. ITTO (2009). Figure 2.9, Major Tropical Sawnwood Exporters, p. 15. [<http://www.itto.int/>].

Figure 4: ITTO's major importers of tropical sawnwood, 2007-2009

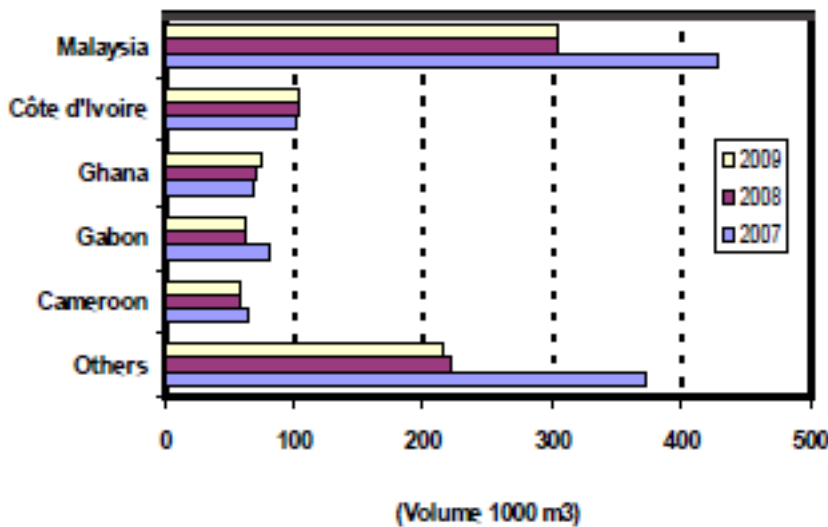


Reproduced from: *Annual Review and Assessment of the World Timber Situation 2009*. ITTO (2009). Figure 2.8, Major Tropical Sawnwood Importers, p. 14. [<http://www.itto.int/>].

## two Malaysia, Japan, South Korea and Australia

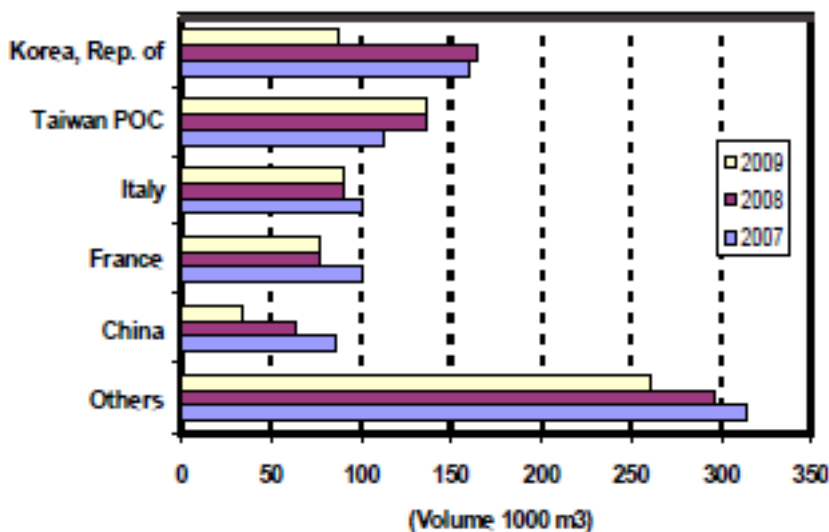
continued

Figure 5: ITTO's major exporters of tropical veneer, 2007-2009



Reproduced from: *Annual Review and Assessment of the World Timber Situation 2009*. ITTO (2009). Figure 2.14, Major Tropical Veneer Exporters, p. 19. [<http://www.itto.int/>].

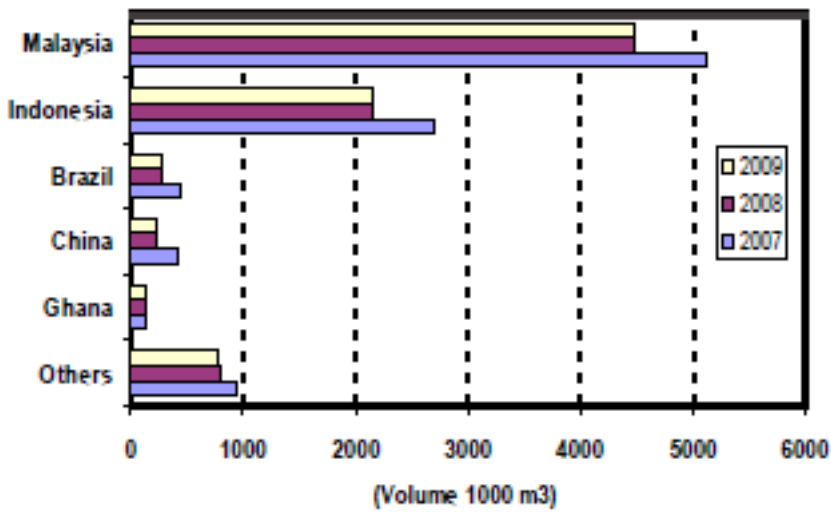
Figure 6: ITTO's major importers of tropical veneer, 2007-2009



Reproduced from: *Annual Review and Assessment of the World Timber Situation 2009*. ITTO (2009). Figure 2.13, Major Tropical Veneer Importers, p. 13. [<http://www.itto.int/>].

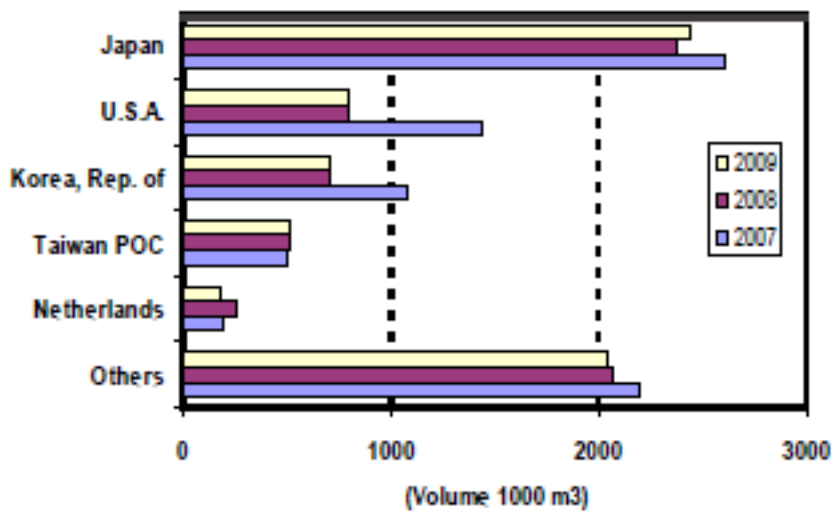


Figure 7: ITTO's major exporters of tropical plywood, 2007-2009



Reproduced from: *Annual Review and Assessment of the World Timber Situation 2009*. ITTO (2009). Figure 2.18, Major Tropical Plywood Exporters, p. 22. [<http://www.itto.int/>].

Figure 8: ITTO's major importers of tropical plywood, 2007-2009



Reproduced from: *Annual Review and Assessment of the World Timber Situation 2009*. ITTO (2009). Figure 2.17, Major Tropical Plywood Importers, p. 21. [<http://www.itto.int/>].

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continued

### 2.4 Malaysia's timber production and exportation trends

#### 2.4.1 Overview: Timber production trends

Malaysia's log production first began to undergo rapid growth between the 1970s and 1980s. In 1975, Malaysia produced some 19.2 million m<sup>3</sup> of logs, of which 8.5 million m<sup>3</sup> were exported. By the 1980s, with the price of timber doubling, the output had increased to 30.0 million m<sup>3</sup> annually, with 240,000 hectares of forests cut per annum, of which over 60 percent were exported as logs.<sup>18</sup>

In the following decade however, a steady decline began to set in, a trend which continues until present time. In actual fact, the decline had commenced much earlier in Peninsular Malaysia by the end of the 1970s. However this was being more than compensated for by the sharp production boom in the Bornean states of Sabah and Sarawak in the 1980s. Nevertheless by the early 1990s, Sabah's production volume too began to fall before Sarawak began to follow suit by the end of the same decade.

Table 6 shows the timber production, import, export and domestic consumption trends in Malaysia from 2005 to 2008, based on ITTO data. We however will pay closer attention to Table 7, which shows the trends in the production and export of logs, sawntimber, veneer and plywood of Malaysia for selected years between 1990 and 2008, including their regional breakdowns, based on data obtained from the country's national agencies.

Principally, logs and sawntimber were the two primary timber products that had been hit hard by the drop in production and export volume in the last two decades. Veneer production and export volume in the meantime were subjected to continuous fluctuations during the period. Plywood was the only primary timber product whose production and export volume had been on a steady increase since the 1980s.

For logs, production volume peaked at 40.10 million m<sup>3</sup> in the year 1990. However it then began to steadily decline thereafter, registering at 31.84 million m<sup>3</sup> in 1995, 23.08 million m<sup>3</sup> in 2000, 22.36 million m<sup>3</sup> in 2005 and by 2008, the figure had declined further to approximately 20.26 million m<sup>3</sup>.

For log production, all the three regions had been suffering the same trend of progressive decline. In 1990, Peninsular Malaysia produced some 12.82 million m<sup>3</sup> of logs, while Sabah and Sarawak produced 8.44 million m<sup>3</sup> and 18.84 million m<sup>3</sup> respectively. Production volume then continued

to decline sharply by the year 2000, with the three regions producing some 5.07 million m<sup>3</sup>, 3.73 million m<sup>3</sup> and 14.27 million m<sup>3</sup> respectively. By 2005, production in Peninsular Malaysia had further declined to 4.40 million m<sup>3</sup>. Production in Sabah bounced back a little to 5.96 million m<sup>3</sup> while in Sarawak it had further decreased to 12.00 million m<sup>3</sup>. In 2008, the declining trend continued with the three regions producing only 4.03 million m<sup>3</sup>, 4.72 million m<sup>3</sup> and 11.51 million m<sup>3</sup> respectively.

Sawntimber production also registered a similar pattern, with production standing at 9.16 million m<sup>3</sup> in 1990, declining to 5.56 million m<sup>3</sup> in 2000, 5.08 million m<sup>3</sup> in 2005 and finally to 4.47 million m<sup>3</sup> by 2008.

For sawntimber, in Peninsular Malaysia production dropped from 6.51 million m<sup>3</sup> in 1990 to 3.30 million m<sup>3</sup> in 2000 to 2.39 million m<sup>3</sup> in 2008. Sabah also registered a similar path of decline, producing 1.91 million m<sup>3</sup> in 1990 to 0.86 million m<sup>3</sup> in 2008. In Sarawak however, sawntimber production had been growing steadily, from 0.73 million m<sup>3</sup> in 1990, registering an all time high in 1995 at 1.76 million m<sup>3</sup>. In the year 2000, production declined slightly to 1.45 million m<sup>3</sup> and during the decade production stayed above the one million m<sup>3</sup> mark. In 2008, Sarawak produced around 1.22 million m<sup>3</sup> of sawntimber.

Meanwhile, as mentioned above, veneer production had been experiencing frequent fluctuations in its production volume. In 1990, production stood at around 479,000 m<sup>3</sup> before rising sharply to 2.30 million m<sup>3</sup> in 1995. Production declined by half by the year 2000 to 1.12 million m<sup>3</sup> and this trend was repeated five years later, when production volume further declined to 436,000 m<sup>3</sup>. However, in 2008, production had increased again, doubling to 1.00 million m<sup>3</sup>.

In Peninsular Malaysia, veneer production had declined to a small volume – in 1990, production volume stood at 172,000 m<sup>3</sup>, in 2008 this figure had been reduced to just 14,000 m<sup>3</sup>. In Sabah, production volume stood at 289,000 m<sup>3</sup> in 1990 before jumping to 0.98 million m<sup>3</sup> just five years later. In the year 2000, production volume stood at 0.51 million m<sup>3</sup> before declining to 213,000 m<sup>3</sup> in 2005 and finally to 191,000 m<sup>3</sup> in 2008. For Sarawak, veneer production volume showed an extremely high level of continuous fluctuations. It leaped from 18,000 m<sup>3</sup> in 1990 to 1.12 million m<sup>3</sup> just five years later before being halved to 418,000 m<sup>3</sup> in the year 2000. In 2005, production was around 126,000 m<sup>3</sup>. By 2008, it had once again increased to around 0.80 million m<sup>3</sup>.

<sup>18</sup> Jomo et al (2004, 87).

Plywood production on the other hand had been gradually increasing, from 1.49 million m<sup>3</sup> in 1990 to 4.38 million m<sup>3</sup> in 2000 to 5.20 million m<sup>3</sup> in 2005 to 5.44 million m<sup>3</sup> in the next two years. In 2008, the Malaysian plywood production stood at 4.84 million m<sup>3</sup>.

Although plywood production volume in Peninsular Malaysia had been on a gradual decline since the 1990s, in Sabah and Sarawak, its production volume had been growing steadily. In the Peninsula, production declined from 1.04 million m<sup>3</sup> in the 1990 to 492,000 m<sup>3</sup> in 2005 and 467,000 m<sup>3</sup> in 2008. In Sabah however, production rose from 176,000 m<sup>3</sup> in 1990 to 1.00 million m<sup>3</sup> in the year 2000 to 1.58 million m<sup>3</sup> in 2005. In 2008, production decreased slightly to 1.25 million m<sup>3</sup>. For Sarawak, plywood production similarly had leaped from 281,000 m<sup>3</sup> in 1990 to 3.12 million m<sup>3</sup> in 2005 and 2008.

#### 2.4.2 Malaysian exports of primary timber products

The export of primary timber products from Malaysia in the last 20 years had also been following the same trends as its production patterns, as can be seen from Table 7.

Log exports plunged from over 20 million m<sup>3</sup> in 1990 to 7.86 million m<sup>3</sup> in just five years. In 2005, the figure had further dropped to 5.76 million m<sup>3</sup>. By 2008, log exports stood at only around 4.37 million m<sup>3</sup>.

Sawntimber exports also suffered a similar trend of decline – in 1990 export was over 5 million m<sup>3</sup>, ten years later export largely stayed below 3 million m<sup>3</sup>. In 2008, it stood at 2.44 million m<sup>3</sup>.

Veneer exports meanwhile followed similar fluctuations in its production volume during the same duration of time, starting at 332,000 m<sup>3</sup> in 1990, before jumping to 0.90 million m<sup>3</sup> ten years later, only to show a gradual decline in the last decade. By 2008, export was around 412,000 m<sup>3</sup>.

Plywood exports meanwhile showed a four-fold increase between 1990 and 2008, rising from slightly over one million m<sup>3</sup> to 4.63 million m<sup>3</sup> in 2008.

The three regions did not necessarily exhibit similar production and export patterns for each timber product in terms of production and export volume as well as for their major export destinations, although Sarawak and Sabah to some extent did share some similarities with each other in terms of production patterns and regional export directions.

As can be seen from Table 7, in 2008, Peninsular Malaysia barely exported log and veneer, its major export of primary

timber product being sawntimber – its export volume of 0.98 million m<sup>3</sup> was twice as large as Sabah's. Sarawak meanwhile continued to lead in the exports of all primary timber products, with its log and plywood exports standing at 3.66 million m<sup>3</sup> and 3.28 million m<sup>3</sup> respectively.

Data from Table 7 are further illustrated through Figures 9-12.

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continued

**Table 6: ITTO – Malaysia's timber production, import, export and domestic consumption volume, 2005-2008 ('000 m<sup>3</sup>)**

	ALL PRIMARY TIMBER PRODUCTS				PRIMARY TROPICAL TIMBER PRODUCTS			
LOGS	2005	2006	2007	2008	2005	2006	2007	2008
Production	24,483	22,475	20,072	18,012	24,219	22,242	19,808	17,777
Imports	52	90	81	66	11	6	3	0
Exports	5,780	4,772	4,648	4,368	5,652	4,660	4,531	4,188
Domestic Consumption	18,755	17,792	15,505	13,710	18,577	17,588	15,280	13,589
SAWN	2005	2006	2007	2008	2005	2006	2007	2008
Production	5,193	5,149	5,084	4,486	5,173	5,129	5,064	4,466
Imports	1,101	1,073	923	543	999	786	618	374
Exports	3,230	4,223	3,338	4,132	2,401	3,239	2,836	3,715
Domestic Consumption	3,065	1,999	2,669	897	3,771	2,676	2,847	1,125
VENEER	2005	2006	2007	2008	2005	2006	2007	2008
Production	680	622	742	1015	670	612	687	991
Imports	22	24	24	28	1	2	2	2
Exports	413	390	441	309	407	382	427	304
Domestic Consumption	289	256	325	734	264	233	262	689
PLYWOOD	2005	2006	2007	2008	2005	2006	2007	2008
Production	5,126	5,563	5,601	4,957	5,006	5,433	5,481	4,837
Imports	54	129	113	130	10	34	31	36
Exports	4,535	5,369	5,282	4,625	4,391	5,155	5,132	4,486
Domestic Consumption	645	323	432	462	625	312	380	387

Source: *Annual Review and Assessment of the World Timber Situation 2009*. ITTO (2009). Table 1-1-c, Production, Trade and Consumption of All Timber by ITTO Consumers, pp. 84-5; Table 1-1-d, Production, Trade and Consumption of Tropical Timber by ITTO Consumers, pp. 94-5. (Detailed statistical notations available in original report.) [<http://www.itto.int/>].

**Table 7: Malaysia's national data on production and export of logs, sawntimber, veneer and plywood, selected years 1990-2008 ('000 m<sup>3</sup>)**

	PRODUCTION				EXPORT			
	Sarawak	Sabah	Peninsula	TOTAL	Sarawak	Sabah	Peninsula	TOTAL
<b>LOGS</b>								
1990	18,838	8,443	12,818	<b>40,099</b>				<b>***20,354</b>
1995	16,292	6,520	9,030	<b>*31,842</b>	7,745	119		<b>7,864</b>
2000	14,274	3,728	5,072	<b>23,074</b>	6,106	698		<b>6,804</b>
2004	12,051	5,416	4,572	<b>22,039</b>	4,133	974	12	<b>5,119</b>
2005	12,000	5,958	4,405	<b>22,363</b>	4,343	1,402	14	<b>5,759</b>
2006	11,864	5,336	4,693	<b>21,893</b>	3,792	968	[12]	<b>4,772</b>
2007	11,890	5,941	4,220	<b>22,051</b>	3,601	1,035	[12]	<b>4,648</b>
2008	11,513	4,718	4,029	<b>20,260</b>	[3,659]	[672]	[37]	<b>4,368</b>
<b>SAWNTIMBER</b>								
1990	733	1,910	6,513	<b>9,156</b>				<b>***5,283</b>
1995	1,762	1,820	5,593	<b>9,175</b>	1,521	1,294	1,336	<b>****4,151</b>
2000	1,451	806	3,299	<b>5,556</b>	1,144	813	944	<b>2,901</b>
2004	1,011	644	3,199	<b>4,854</b>	1,066	566	1,130	<b>2,762</b>
2005	1,025	825	3,235	<b>5,085</b>	1,117	620	1,479	<b>****3,216</b>
2006	1,100	862	3,019	<b>*4,981</b>	1,027	531	[1,046] / 975	<b>****2,533</b>
2007	1,432	964	2,668	<b>5,064</b>	1,024	548	[915] / 753	<b>****2,325</b>
2008	1,223	856	2,387	<b>4,466</b>	1,010	484	[984] / 944	<b>****2,438</b>
<b>VENEER</b>								
1990	18	289	172	<b>479</b>				<b>***332</b>
1995	1,115	978	205	<b>2,298</b>	394	189	3	<b>***586</b>
2000	418	510	188	<b>1,116</b>	562	336	4	<b>902</b>
2004	169	199	117	<b>485</b>	268	120	7	<b>395</b>
2005	126	213	97	<b>436</b>	297	111	6	<b>414</b>
2006	301	210	101	<b>612</b>	245	83	5	<b>333</b>
2007	483	204	45	<b>732</b>	240	89	[5] / 4	<b>333</b>
2008	800	191	14	<b>1,005</b>	312	96	[5] / 4	<b>412</b>
<b>PLYWOOD</b>								
1990	281	176	1,035	<b>*1,492</b>				<b>***1,078</b>
1995	1,564	1,378	751	<b>*3,693</b>	1,613	1,438	410	<b>3,461</b>
2000	2,801	1,003	571	<b>**4,375</b>	2,137	996	222	<b>3,355</b>
2004	3,062	1,399	516	<b>4,977</b>	2,860	1,306	184	<b>4,350</b>
2005	3,122	1,580	492	<b>*5,194</b>	3,009	1,332	196	<b>4,537</b>
2006	3,411	1,570	459	<b>5,440</b>	3,428	1,283	[247] / 239	<b>****4,950</b>
2007	3,454	1,512	473	<b>5,439</b>	2,854	1,262	[256] / 232	<b>****4,348</b>
2008	3,124	1,246	467	<b>4,837</b>	3,277	1,042	[305] / 314	<b>****4,633</b>

Sources: All totals are based on regional inputs that consist of figures that have been rounded. As such, there may be slight discrepancies with the original figures tallied by the original source indicated.

Production: Statistics on Commodities 2009. Ministry of Plantation Industries and Commodities (2009). Original sources cited: Forestry Departments of Peninsular Malaysia, Sabah and Sarawak and Sarawak Timber Industry Development Corporation (STIDC). Tables 7.5-7.8, pp.139-143. [<http://www.kppk.gov.my/>].

\* SOC 2009 published conflicting figures between Table 7.5, which shows overall production trends, and Tables 7.6, 7.7 and 7.8 which show regional breakdown, of which we chose to select the latter tables to be consistent with regional inputs.

\*\* SOC 2009 appears to give an erroneous total of 4,434.

Export: Malaysian Timber Industry Board (MTIB) for all years [<http://www.mtib.gov.my/>] or also accessible at the MTC website [<http://www.mtc.com.my/>] and further crosschecked with Statistics on Commodities 2009, Ministry of Plantation Industries and Commodities (2009) except for \*\*\* which are all from the latter. Original sources cited: MTIB except for [], which are attributed to the Department of Statistics in another document, also accessible at the MTC website.

Whenever there are inconsistencies between MPIC and MTIB data, the latter prevails, unless the MPIC data appear to be supported by the overall trends as well as data in major importer countries.

\*\*\*\* Appears to be noticeably inconsistent with MPIC data.

## two Malaysia, Japan, South Korea and Australia

continued

Figure 9: Malaysia – Production and export of logs 1990-2008 ('000 m<sup>3</sup>)

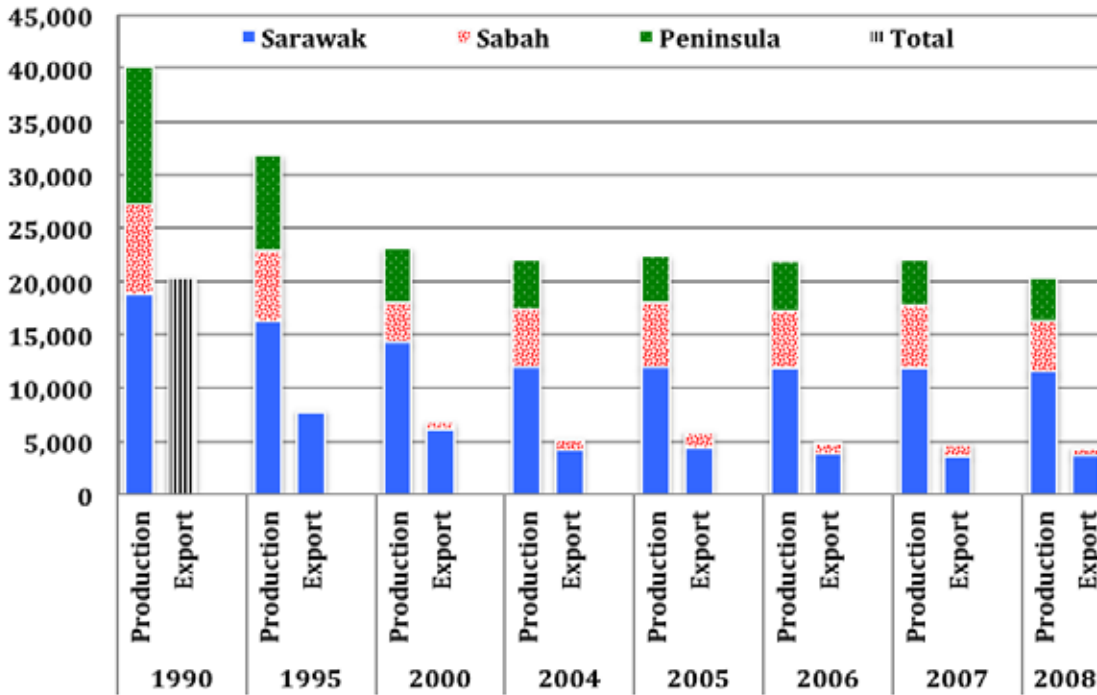


Figure 10: Malaysia – Production and export of sawntimber 1990-2008 ('000 m<sup>3</sup>)

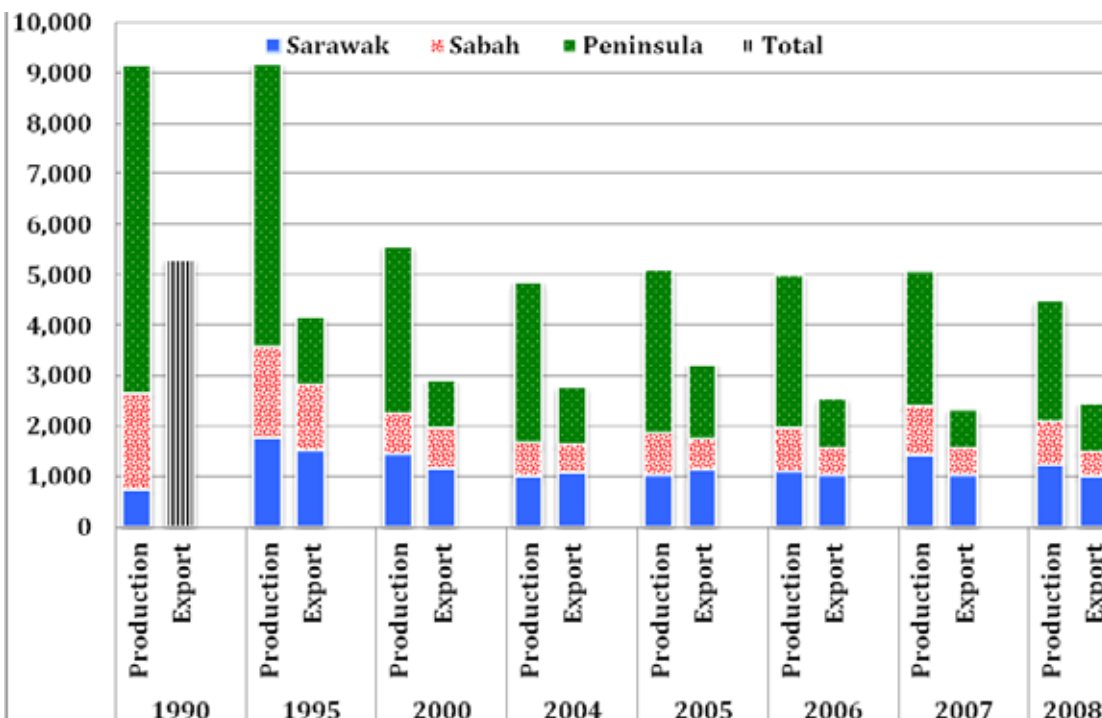


Figure 11: Malaysia – Production and export of veneer 1990-2008 ('000 m<sup>3</sup>)

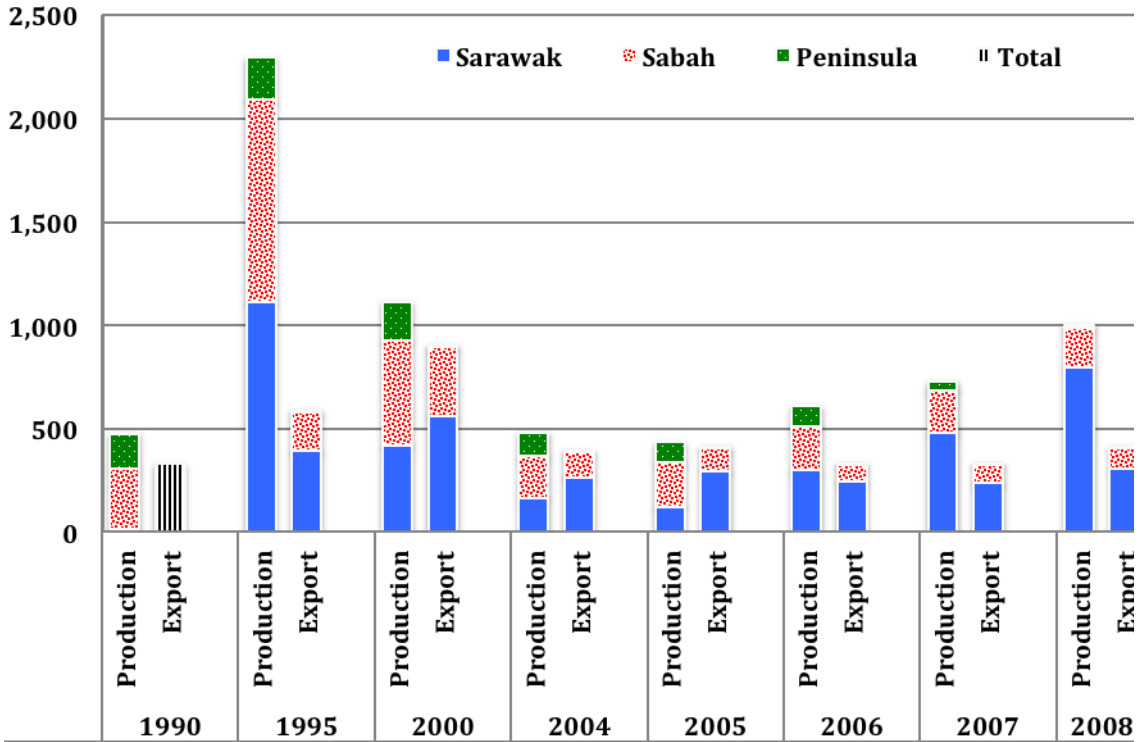
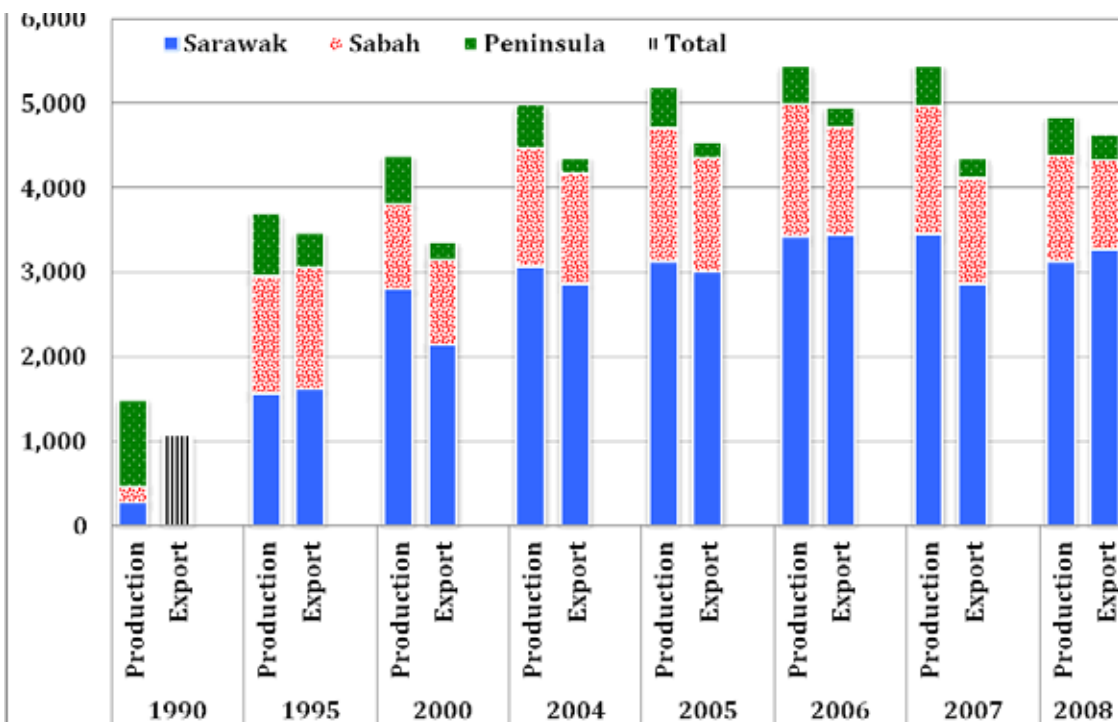


Figure 12: Malaysia – Production and export of plywood 1990-2008 ('000 m<sup>3</sup>)



## two Malaysia, Japan, South Korea and Australia

continued

### 2.4.3 Trends in major export destinations

Tables 8-11 show the major export destinations of Malaysia's primary timber products from 2004 to 2008 for the three regions with Figures 13-16 illustrating the major components of the trend.

Beginning from 2006 up until 2008, India was the largest Malaysian log importer, importing an annual volume of 1.40 million m<sup>3</sup>, 1.58 million m<sup>3</sup> and 1.55 million m<sup>3</sup> respectively, with Sarawak as its principal exporter, selling over one million m<sup>3</sup> every year. China was the second largest importer with the exception of the year 2004, when it was positioned in third place (1.14 million m<sup>3</sup>) with Japan being slightly ahead (1.19 million m<sup>3</sup>) and in 2005, when it topped the list, procuring a volume of 1.63 million m<sup>3</sup>. Japan was the third largest destination for Malaysian log exports with the exception of 2004, although its import volume had declined considerably, dropping from 1.19 million m<sup>3</sup> in 2004 to 0.60 million m<sup>3</sup> in 2008.

Both China and Japan also imported a significant volume from Sabah, although this did not seem to be the case for India. Other major market destinations during the years included Taiwan and Vietnam, with Taiwan importing over half a million m<sup>3</sup> each year, mostly from Sarawak.

For sawntimber, Thailand had been the largest importer during the five consecutive years for all the three regions, importing 0.78 million m<sup>3</sup>, 0.85 million m<sup>3</sup>, 0.64 million m<sup>3</sup>, 0.64 million m<sup>3</sup> and 0.65 million m<sup>3</sup> respectively – with Sarawak and Peninsula providing an almost similar range of volume for each year that of between 230,300 m<sup>3</sup> and 371,800 m<sup>3</sup>.

China was usually in second place with the exception of the year 2004, when it was placed third behind Taiwan and imported 203,200 m<sup>3</sup>. Taiwan was usually the third largest importer except for the year 2004, when it imported some 227,100 m<sup>3</sup> of Malaysian sawntimber and was placed second, ahead of China. In 2004 and 2005, China's major source of sawntimber was from Peninsula before Sarawak began to contribute slightly more volume than the former in the next three years. Taiwan's major source of sawntimber meanwhile had always been Sarawak, with the Peninsula providing increasingly marginal volume.

Apart from the Asian market, the Netherlands had also been a key importer of Malaysian sawntimber, importing between 111,700 m<sup>3</sup> and 199,800 m<sup>3</sup> annually during the period – with Peninsular Malaysia as its main source of imports. Other important markets for Malaysian sawntimber included the Philippines for Sarawak, alongside the Middle East, in particular the United Arab Emirates and Yemeni markets, as well as the South African and Belgian markets for Sabah.

Veneer exports however showed an even higher degree of fluctuations in terms of their destination countries, with

Sarawak and Sabah being the key players, Peninsular Malaysia only exporting a marginal volume of the product to a variety of countries, most notably Germany between 2004 and 2005.

For Sabah, the consistently largest importer of its veneer had been South Korea. Japan meanwhile took the second place between 2004 and 2005 before Taiwan, which was placed third during the first two years, began to overtake it in the following years. The South Korean import volume however had declined slightly over the five years from 66,200 m<sup>3</sup> in 2004 to 48,600 m<sup>3</sup> in 2008. The Philippines was Sabah's fourth largest importer with the exception of the year 2007.

For Sarawak, Taiwan was its topmost veneer importer in 2004, 2005 and 2008, importing between 76,900 m<sup>3</sup> and 118,100 m<sup>3</sup> annually. However in 2006 and 2007, Syria suddenly appeared on top of the Sarawak list, importing some 86,800 m<sup>3</sup> and 81,800 m<sup>3</sup> respectively, as Taiwan's position suddenly took a plunge. These two years were the only time Syria had made it as a major market destination for Sarawak veneer exports. South Korea meanwhile was its second largest importer in 2004, 2005, 2007 and 2008, importing 60,800 m<sup>3</sup> in 2004 and up to 84,200 m<sup>3</sup> in 2008. For 2006, it temporarily ceased to be a major export destination for Sarawak veneer. Other relatively consistent markets for Sarawak veneer during the period included the Philippines, Japan, China and Hong Kong.

Unlike veneer, the export markets for Malaysian plywood showed a more consistent trend albeit with strong regional variations – export volume had been on a steady increase since the 1990s.

For Peninsula, exports had increased two-fold during the period, its two most important destinations during the period were the United Kingdom and Singapore. British imports of Peninsular plywood had in fact doubled over the five years, increasing from 69,000 m<sup>3</sup> in 2004 to 182,700 m<sup>3</sup> in 2008. Singapore imported far much less, its lowest in 2006 was 14,700 m<sup>3</sup> while its highest was in 2008 at 33,800 m<sup>3</sup>. Thailand was placed third with the exception of 2008. Peninsular plywood also appeared to have found stable markets in the Middle East, most notably in the United Arab Emirates as well as in the European Union countries like Belgium, the Netherlands and Denmark.

For Sabah, Japan was its leading plywood importer during the five years, although the Japanese import volume had been steadily declining from 413,100 m<sup>3</sup> in 2004 to 295,300 m<sup>3</sup> in 2008. South Korea was its second largest importer in 2007, importing some 223,100 m<sup>3</sup> during the year. The USA meanwhile was the second largest importer during 2004, 2005 and 2006, importing 282,500 m<sup>3</sup>, 272,400 m<sup>3</sup> and 244,900 m<sup>3</sup> respectively – otherwise it would have stayed either in the third or fourth place. Taiwan, which was placed fourth



from 2004 to 2007, suddenly jumped to the second position in 2008 but its imports had never exceeded the 200,000 m<sup>3</sup> mark.

Sarawak had remained as the country's largest exporter of plywood, with Japan as its leading importer, procuring some 1.64 million m<sup>3</sup>, 1.72 million m<sup>3</sup>, 2.10 million m<sup>3</sup>, 1.55 million

m<sup>3</sup> and 1.74 million m<sup>3</sup> during the five years respectively. South Korea climbed to the second position beginning from 2005, with its imports more than doubled during the period – from 255,000 m<sup>3</sup> in 2005 to 464,400 m<sup>3</sup> in 2008. Taiwan, the USA, China and the United Kingdom were another four major export destinations for Sarawak plywood.

**Table 8: Major destinations for Malaysian log exports by region 2004-2008**

Sarawak								
	2004		2005		2006		2007	
1.	India	1,171,173	India	1,407,852	India	1,378,482	India	1,550,824
2.	Japan	987,605	China	946,172	Japan	820,734	China	577,256
3.	China	807,245	Japan	840,683	China	636,644	Taiwan	574,606
4.	Taiwan	724,824	Taiwan	718,036	Taiwan	595,072	Japan	539,659
5.	Vietnam	260,985	Vietnam	277,324	Vietnam	212,010	Vietnam	241,316
6.	South Korea	107,507	South Korea	99,368	South Korea	72,110	South Korea	56,357
7.	Hong Kong	31,963	Thailand	24,551	Hong Kong	40,780	Thailand	33,318
Sabah								
	2004		2005		2006		2007	
1.	China	327,541	China	672,282	China	*551,356	China	*606,044
2.	Japan	203,193	Japan	256,711	Japan	216,205	Japan	167,125
3.	Vietnam	176,340	Vietnam	156,187	Thailand	38,073	Indonesia	76,954
4.	Indonesia	135,282	Indonesia	98,683	South Korea	27,131	Thailand	34,761
5.	Thailand	62,218	Philippines	62,856	India	19,275	India	28,294
6.	South Korea	17,853	Thailand	51,236	Indonesia	16,366	Taiwan	12,799
7.	Hong Kong	14,926	India	39,495	Taiwan	0	South Korea	8,021
-	Taiwan	11,218	Taiwan	27,163	Vietnam	n.a.	Vietnam	n.a.
-	India	6,382	South Korea	18,074				
Peninsular Malaysia								
	2004		2005					
1.	China	10,250	China	12,317				
2.	Singapore	527	Singapore	674				
3.	Qatar	200	India	130				
4.	Japan	115	Hong Kong	123				
5.	Kuwait	107	Thailand	71				
6.	UAE	102	Japan	66				
7.	South Korea	91	UAE	41				
-	India	0	Taiwan	0				
-	Taiwan	0	Vietnam	0				
-	Vietnam	0	South Korea	0				

Sources: MTIB [<http://www.mtib.gov.my/>] or also accessible at the MTC website [<http://www.mtc.com.my/>] & *Statistics on Commodities 2006, 2007, 2008 & 2009*. Ministry of Plantation Industries and Commodities (2006), (2007), (2008) & (2009) [<http://www.kppk.gov.my/>].

\* Estimate only. For 2006, deduced by subtracting MTIB Sarawak export figures to China (636,644 m<sup>3</sup>) in 2006 from 1,188,000 m<sup>3</sup>, the volume which the Statistics on Commodities 2007 reported as Malaysia's total log exports to China during the year. For 2007, deduced by subtracting MTIB Sarawak export figures to China (577,256 m<sup>3</sup>) in 2007 from 1,183,300 m<sup>3</sup>, the volume which the Statistics on Commodities 2008 reported as Malaysia's total log exports to China during the year. MTIB did not list China as a major Sabah log importer during the two years.

## two Malaysia, Japan, South Korea and Australia

continued

Table 9: Major destinations for Malaysian sawntimber exports by region 2004-2008

Sarawak											
2004		2005		2006		2007		2008			
1.	Thailand	316,340	Thailand	371,844	Thailand	277,563	Thailand	290,385	Thailand	279,419	
2.	Taiwan	169,750	Taiwan	148,331	Taiwan	126,134	Taiwan	124,895	Taiwan	120,134	
3.	Yemen	98,561	Philippines	130,224	China	101,156	China	95,645	UAE	105,721	
4.	Philippines	93,572	China	97,923	Philippines	91,204	Singapore	84,216	Yemen	80,454	
5.	China	75,559	Yemen	67,818	Yemen	80,646	UAE	77,868	Philippines	77,729	
6.	UAE	62,044	Singapore	59,582	UAE	78,431	Yemen	71,679	China	76,946	
7.	South Korea	60,320	South Korea	50,159	Singapore	71,473	South Korea	69,118	Singapore	70,022	
-	Japan	19,412	Japan	24,745	South Korea	65,860	Japan	32,214	South Korea	36,850	
-	Netherlands	2,438	Netherlands	1,681	Japan	31,434	Netherlands	1,818	Japan	28,504	
-					Netherlands	1,724			Netherlands	3,343	
Sabah											
2004		2005		2006		2007		2008			
1.	Thailand	143,809	Thailand	158,886	Thailand	94,207	Thailand	118,983	Thailand	115,708	
2.	Japan	85,999	Japan	83,747	Japan	72,383	South Africa	89,466	South Africa	61,951	
3.	South Africa	62,251	South Africa	74,389	Taiwan	67,298	Japan	67,558	Japan	57,846	
4.	Netherlands	54,887	Taiwan	61,275	South Africa	55,512	Taiwan	49,797	Taiwan	51,315	
5.	Taiwan	37,671	Netherlands	48,772	Netherlands	45,394	Netherlands	33,708	China	35,974	
6.	Hong Kong	33,757	Hong Kong	35,645	Belgium	32,962	Hong Kong	31,206	Netherlands	34,538	
7.	Belgium	23,958	Belgium	26,081	Hong Kong	28,610	China	27,502	South Korea	10,359	
-	South Korea	19,214	China	14,925	China	15,953	South Korea	14,620			
-	China	11,503	South Korea	13,538	South Korea	12,673					
Peninsular Malaysia											
2004		2005		2006		2007		2008			
1.	Thailand	320,365	China	462,759	Thailand	264,384	Thailand	230,307	Thailand	256,514	
2.	Netherlands	142,444	Thailand	320,624	Netherlands	143,798	Singapore	109,863	Singapore	130,803	
3.	China	116,186	Netherlands	136,790	Singapore	115,430	Netherlands	76,153	Netherlands	98,370	
4.	Singapore	109,730	Singapore	92,517	China	93,870	China	51,475	UAE	70,234	
5.	Belgium	44,413	Japan	42,535	UAE	57,779	UAE	48,548	China	65,014	
6.	Japan	44,327	UAE	41,267	Belgium	32,486	Japan	29,549	Japan	44,745	
7.	Hong Kong	39,174	South Africa	35,429	Germany	26,353	Belgium	22,063	Taiwan	5,918	
-	Taiwan	19,655	Taiwan	20,489	Japan	26,082	Taiwan	6,108	South Korea	3,969	
-	South Korea	6,978	South Korea	5,349	Taiwan	8,421	South Korea	5,903			
-					South Korea	5,938					

Sources: MTIB [<http://www.mtib.gov.my/>] or also accessible at the MTC website [<http://www.mtc.com.my/>] & Statistics on Commodities 2006, 2007, 2008 & 2009. Ministry of Plantation Industries and Commodities (2006), (2007), (2008) & (2009) [<http://www.kppk.gov.my/>].

Table 10: Major destinations for Malaysian veneer exports by region 2004-2008

	Sarawak														
	2004			2005			2006			2007			2008		
1. Taiwan	76,851	Taiwan	75,354	Syria	86,756	Syria	81,765	Taiwan	118,119						
2. South Korea	60,793	South Korea	75,003	Singapore	45,517	South Korea	**63,198	South Korea	84,253						
3. Philippines	42,872	Philippines	44,300	Thailand	32,727	Canada	28,644	China	33,615						
4. Japan	27,520	China	38,418	New Zealand	26,489	Hong Kong	20,283	Philippines	28,630						
5. China	22,194	Indonesia	31,758	Canada	25,155	Japan	***20,187	Japan	15,273						
6. Indonesia	14,421	Japan	20,487	Hong Kong	20,289	New Zealand	17,469	Thailand	3,163						
7. Hong Kong	12,799	Hong Kong	6,559	Japan	*20,113	Thailand	13,639	Singapore	2,101						
-				Taiwan	4,739	China	7,103								
-				China	3,242	Taiwan	3,801								
-				Philippines	393	Philippines	3,678								
-				South Korea	0										
Sabah															
	2004			2005			2006			2007			2008		
1. South Korea	66,221	South Korea	58,625	South Korea	51,099	South Korea	51,254	South Korea	48,569						
2. Japan	20,250	Japan	17,799	Taiwan	13,022	Taiwan	19,000	Taiwan	15,588						
3. Taiwan	14,512	Taiwan	13,287	Japan	12,526	Japan	13,514	Japan	13,003						
4. Philippines	10,322	Philippines	10,963	Philippines	3,444	China	1,256	Philippines	8,089						
5. China	4,168	China	5,408	Hong Kong	723	Thailand	642	China	5,861						
6. Hong Kong	1,951	Thailand	1,669	China	540	Philippines	493	Thailand	173						
7. Australia	1,098	Australia	1,564	Thailand	253	Singapore	80	Hong Kong	76						
Peninsular Malaysia															
	2004			2005			2006			2007			2008		
1. Germany	2,448	Germany	1,325	Australia	493	Thailand	649	Australia	654						
2. Indonesia	1,821	Indonesia	817	Taiwan	439	Australia	499	USA	486						
3. Australia	1,285	Singapore	803	Japan	243	Japan	247	Thailand	444						
4. Taiwan	657	Australia	800	Singapore	160	Sri Lanka	176	Taiwan	340						
5. Singapore	641	Pakistan	660	USA	51	Taiwan	174	Sri Lanka	269						
6. Pakistan	420	Thailand	434	Sri Lanka	14	Singapore	107	Japan	144						
7. Japan	392	Taiwan	276	China	n.a.	USA	70	Singapore	107						
- China	305	Japan	147	South Korea	n.a.	China	n.a.								
- Philippines	2	China	125	Philippines	n.a.	South Korea	n.a.								
- South Korea	0	South Korea	33			Philippines	n.a.								
-		Philippines	17												

Sources: MTIB [<http://www.mtib.gov.my/>] or also accessible at the MTC website [<http://www.mtc.com.my/>] & Statistics on Commodities 2006, 2007, 2008 & 2009. Ministry of Plantation Industries and Commodities (2006), (2007), (2008) & (2009) [<http://www.kppk.gov.my/>].

\* Estimate only. Deduced by subtracting MTIB Sabah and Peninsular veneer export figures to Japan in 2006 (12,526 m<sup>3</sup> & 243 m<sup>3</sup> respectively) from 32,882 m<sup>3</sup>, the volume which the Statistics on Commodities 2008 reported as Malaysia's total veneer export to Japan during the year. MTIB did not report on any Sarawak veneer exports to Japan in 2006, which was unlikely, given the MPCIC, ITTO and JFA data. The Statistics on Commodities 2008 however reported that in 2006, Malaysia's total veneer export was indeed approximately 333,000 m<sup>3</sup> as reported in our Table 7, although it attributed its sources to MTIB and additionally, the Department of Statistics (Table 7-20, p. 154).

\*\* Estimate only. Deduced by subtracting MTIB Sabah export figures to South Korea for Sabah in 2007 (51,254 m<sup>3</sup>) from 114,452 m<sup>3</sup>, the volume which the Statistics on Commodities 2008 reported as Malaysia's total veneer export to South Korea during the year. MTIB reported that Sarawak exported only 506 m<sup>3</sup> of veneer to the South Korean market in 2007, which is unlikely, given the MPCIC, ITTO and the KFS data. South Korea was not listed as a major export destination for Peninsular Malaysia in 2007. The Statistics on Commodities 2008 however reported that in 2007, Malaysia's total veneer export was indeed approximately 333,000 m<sup>3</sup> as reported in our Table 7, although it attributed its sources to MTIB and additionally, the Department of Statistics (Table 7-20, p. 154).

\*\*\* Estimate only. MTIB reported that Japan imported 63,198 m<sup>3</sup> of Sarawak veneer in 2007. The Statistics on Commodities 2008 reported that Malaysia's total veneer exports to Japan in 2007 stood at 33,948 m<sup>3</sup>. It was more likely that the Sarawak veneer exports to Japan in 2007 was approximately: 33,948 - (13,514 + 247) = 20,187 m<sup>3</sup>, given the MPCIC, ITTO and JFA data and the general trend of Japanese imports of Sarawak veneer.

## two Malaysia, Japan, South Korea and Australia

continued

Table 11: Major destinations for Malaysian plywood exports by region 2004-2008

	Sarawak									
	2004		2005		2006		2007		2008	
1. Japan	1,637,198	Japan	1,723,595	Japan	2,097,236	Japan	1,551,024	Japan	1,742,177	
2. USA	242,235	South Korea	255,036	South Korea	245,310	South Korea	374,719	South Korea	464,454	
3. South Korea	206,520	USA	221,421	Taiwan	240,180	Taiwan	197,754	Taiwan	254,663	
4. Taiwan	184,530	Taiwan	217,799	USA	205,465	USA	97,408	UK	79,504	
5. China	113,257	China	109,226	China	95,243	UK	70,110	China	75,872	
6. UK	90,899	UK	64,575	Yemen	68,215	Yemen	60,705	USA	70,751	
7. Hong Kong	62,874	Jordan	56,387	Yemen	55,455	China	53,637	Yemen	67,205	
Sabah										
	2004		2005		2006		2007		2008	
1. Japan	413,130	Japan	382,102	Japan	426,722	Japan	384,189	Japan	295,327	
2. USA	282,474	USA	272,421	USA	244,884	South Korea	223,139	Taiwan	141,995	
3. South Korea	203,996	South Korea	211,719	South Korea	237,340	USA	189,315	South Korea	141,781	
4. Taiwan	135,529	Taiwan	170,791	Taiwan	139,345	Taiwan	154,126	USA	81,467	
5. Mexico	72,419	Egypt	74,262	Thailand	33,210	Thailand	40,846	Thailand	31,403	
6. Thailand	61,817	Mexico	41,025	Saudi Arabia	23,953	Saudi Arabia	23,283	Singapore	21,369	
7. UK	29,719	Hong Kong	27,856	Hong Kong	23,222	Hong Kong	22,290	Hong Kong	16,911	
- China	12,554	UK	14,913	UK	11,837	China	5,994	China	8,693	
-	1,110	China	806	China	547	UK	787	UK	1,223	
Peninsular Malaysia										
	2004		2005		2006		2007		2008	
1. UK	68,977	UK	69,332	UK	153,068	UK	123,330	UK	182,694	
2. Singapore	31,052	Singapore	18,964	Singapore	14,723	Singapore	21,509	Singapore	33,765	
3. Thailand	13,195	Thailand	18,872	Thailand	13,170	Thailand	13,863	Belgium	16,269	
4. Algeria	10,983	Saudi Arabia	14,105	Belgium	6,705	Netherlands	10,627	Netherlands	15,366	
5. UAE	9,082	UAE	10,879	UAE	6,105	UAE	7,904	Australia	8,623	
6. South Korea	6,063	Kuwait	10,608	Norway	5,449	Belgium	7,029	Thailand	7,541	
7. Denmark	5,690	Algeria	10,066	China	4,628	Denmark	3,873	Denmark	7,510	
- Taiwan	3,487	Taiwan	2,832	Japan	3,412	Japan	2,433	Japan	4,213	
- Japan	2,835	Japan	2,037	Taiwan	1,744	Taiwan	1,369	China	1,079	
- USA	1,280	South Korea	1,743	USA	1,153	USA	489	Taiwan	830	
- China	465	China	1,550	South Korea	n.a	China	473	USA	86	
-		USA	593			South Korea	n.a.	South Korea	n.a.	

Sources: MTIB [<http://www.mtib.gov.my/>] or also accessible at the MTC website [<http://www.mtc.com.my/>] & Statistics on Commodities 2006, 2007, 2008 & 2009. Ministry of Plantation Industries and Commodities (2006), (2007), (2008) & (2009) [<http://www.kppk.gov.my/>].

Figure 13: Major destinations for Malaysian log exports ('000 m<sup>3</sup>)

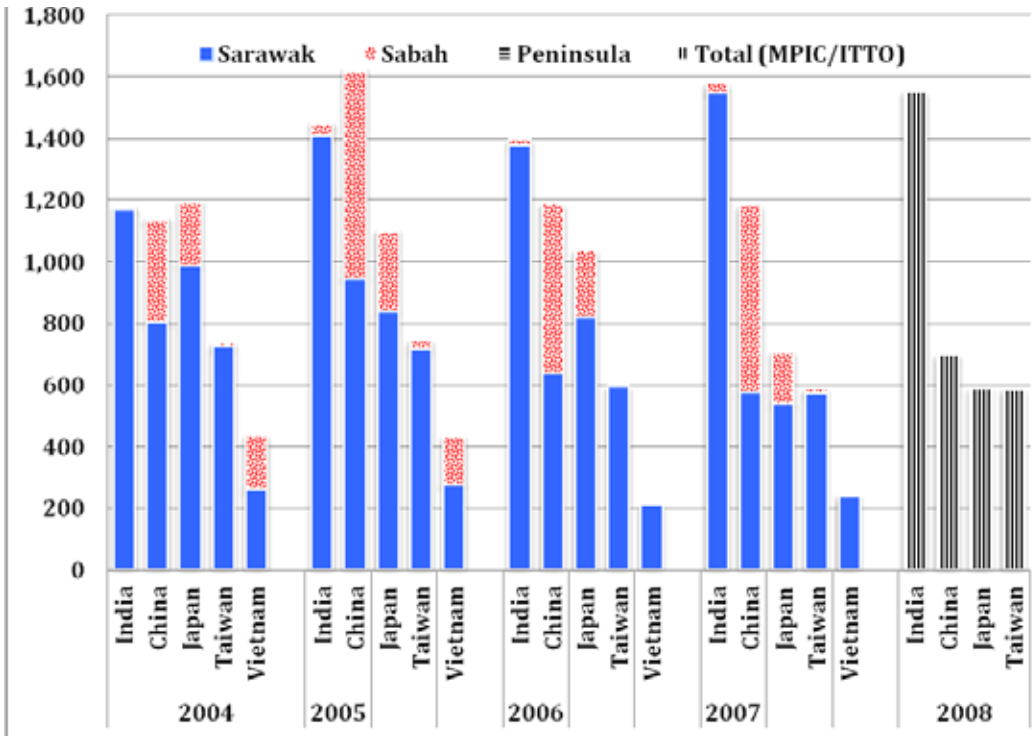
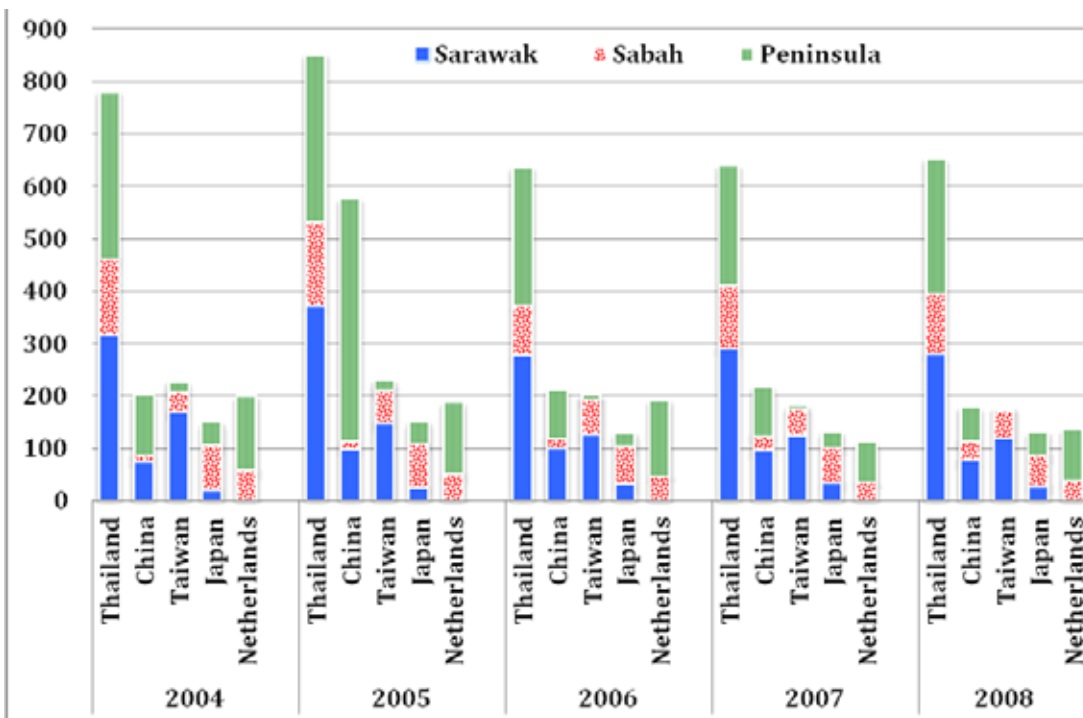


Figure 14: Major destinations for Malaysian sawntimber exports ('000 m<sup>3</sup>)



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continued

Figure 15: Major destinations for Malaysian veneer exports – Sarawak and Sabah only ('000 m<sup>3</sup>)

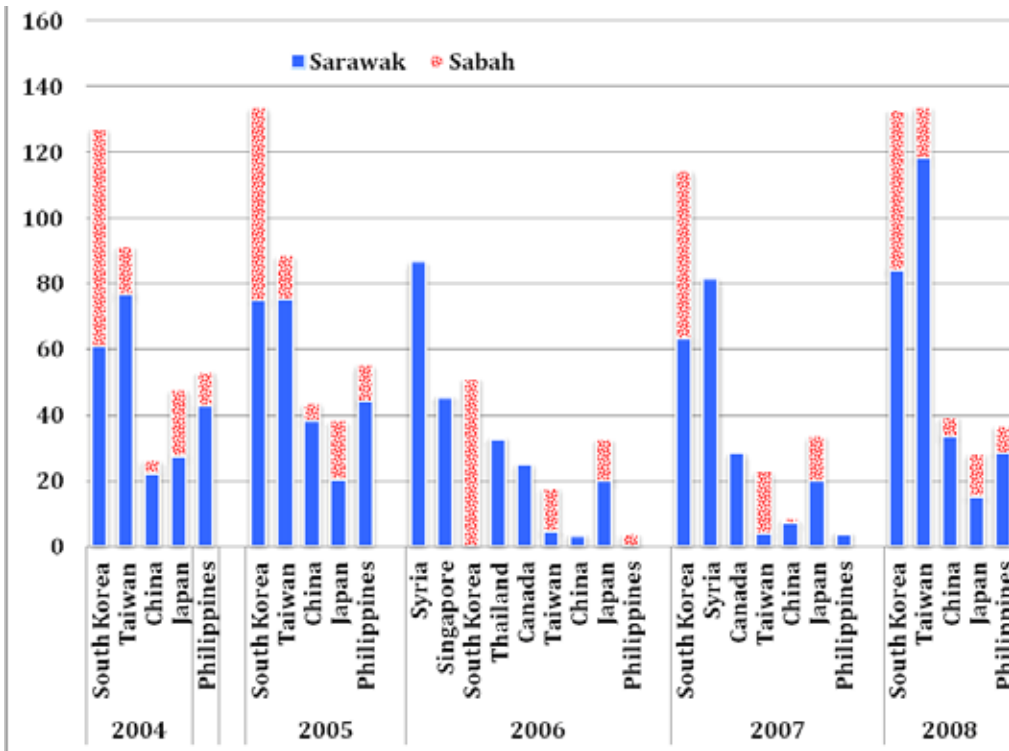
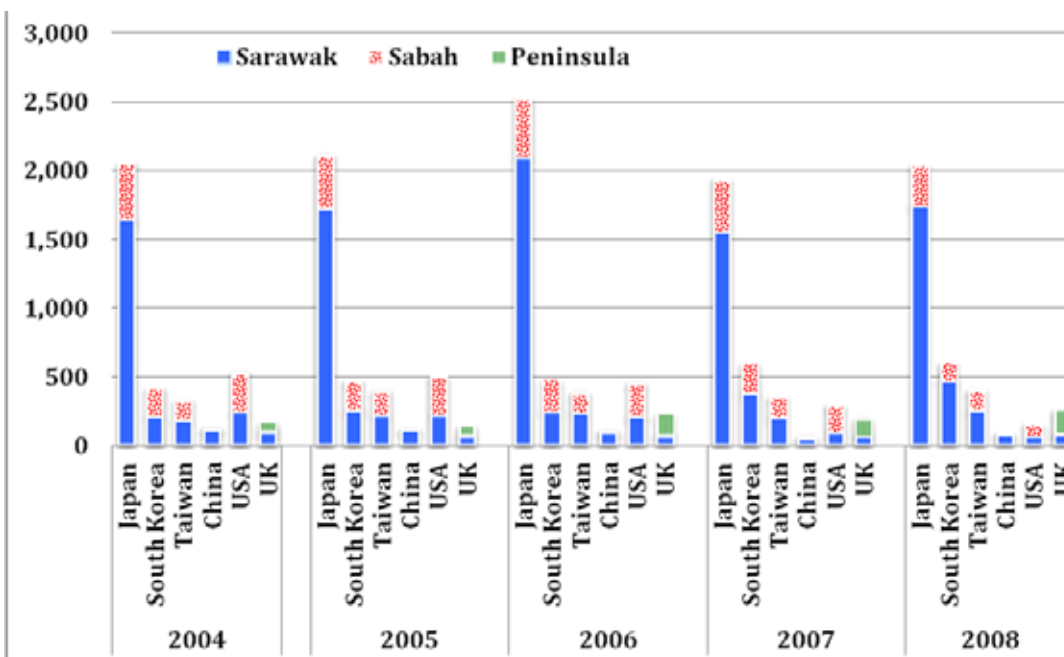


Figure 16: Major destinations for Malaysian plywood exports ('000 m<sup>3</sup>)



## 2.5 Japan's timber importation and consumption trends

### 2.5.1 Overall overview (ITTO and JFA)

Table 12, built by using statistical information provided by ITTO (2009), illustrates the trends in primary timber product production, import, export and domestic consumption volume in Japan from 2005 to 2008, with details on both the overall data and those involving only tropical timber. From here, it can be seen that both sets of data show small rates of decline from 2005 to 2008, although some products did register small increases in between the four years.

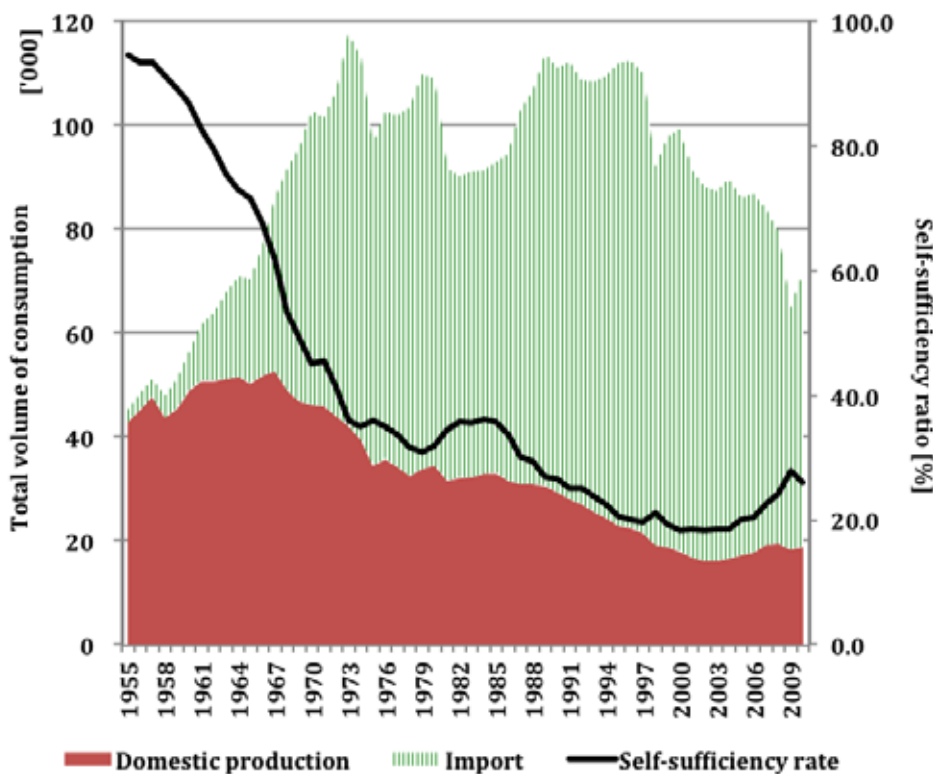
During this period, the country's overall log imports dropped from 10.65 million m<sup>3</sup> to 6.23 million m<sup>3</sup> while its sawnwood imports declined from 8.40 million m<sup>3</sup> to 6.52 million m<sup>3</sup>, its veneer imports declined from 109,000 m<sup>3</sup> to 66,000 m<sup>3</sup> and its plywood imports fell from 4.73 million m<sup>3</sup> to 3.58 million m<sup>3</sup>.

For primary tropical timber products meanwhile, imports declined by almost or more than half – tropical log imports fell from 1.42 million m<sup>3</sup> to 0.72 million m<sup>3</sup>, tropical sawn timber imports from 328,000 m<sup>3</sup> to 177,000 m<sup>3</sup>, tropical veneer imports from 34,000 m<sup>3</sup> to 27,000 m<sup>3</sup> and tropical plywood imports from 3.42 million m<sup>3</sup> to 2.37 million m<sup>3</sup>.

Tables 2-5 in the earlier section, culled from ITTO (2009) show that in 2008, Japan was the world's third largest importer of tropical logs, its eleventh largest importer of tropical sawnwood, its eighth largest importer of tropical veneer and the world's largest importer of tropical plywood.

Table 13 provides the comparison between the ITTO data on Japan's overall timber imports during the same period and those published by Japan's Forestry Agency (JFA). On the whole, there were minimal statistical discrepancies between these two sources of data. As can be seen, the ITTO and the

Figure 17: Japan's timber self-sufficiency rate (1955-2009)



Source: *Timber Supply Demand Statistics Report*. Japan's Forestry Agency (2010b).

## two Malaysia, Japan, South Korea and Australia

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JFA data on logs and sawntimber were particularly consistent with each other, with the data on veneer imports showing negligible discrepancies. For plywood, although the data did show the widest margin of differences, these variations were all in fact no higher than 800 m<sup>3</sup>.

Although the tropical timber consumption volume in Japan has been declining in recent years, today, Japan continues to be one of the world's most prominent consumers of Southeast Asian tropical timber. The country's current timber self-sufficiency rate has indeed improved slightly from where it was in the 1990s – however this is still unsatisfactorily low – only around 26.0 percent in 2010, as can be seen from Figure 17. This is a far cry from the rates in the 1950s and the early 1960s, which hovered well over 80 percent.

### 2.5.2 Overall top timber exporters for Japan (JFA)

Generally, the Japanese consumption of temperate timber products far surpasses its tropical timber use, although today it still remains as one of the world's largest importers of tropical timber products. Table 14, built from the data obtained from the JFA provides further details on the country's largest sources of primary timber product imports by their countries of origin from 2004 to 2008. Data from Table 14 were then used to construct Figures 18-21 to illustrate the major timber importation trends in Japan.

Figure 22 meanwhile shows the trends for the major exporters of the Japanese log imports for a longer duration of time, i.e. from 1997 to 2009, where Malaysia had remained as the top exporter by a large margin, even as imports had considerably declined from the 1990s. Figure 23 shows the corresponding trends for the Japanese overall plywood imports from 1990 to 2010.

Japan's overwhelmingly main source of logs from 2004 to 2007 had been from Russia, before the USA, which was its second largest log exporter during the period, took over the former in 2008. Overall Russian exports decreased from 5.88 million m<sup>3</sup> in 2004 to 4.03 million m<sup>3</sup>, before plunging to 1.87 million m<sup>3</sup> in 2008. This sharp decline was caused by Russia's enforcement of a higher export duty on logs beginning from July 2007, an increase from 6.5 percent to 20 percent. This reportedly would be gradually increased to 80 percent in the longer term. As a result of this policy change, the volume of Russian log imports into Japan then dropped drastically, as can be seen from Figure 18. The USA meanwhile was exporting between 2.69 million m<sup>3</sup> in 2004 and 1.97 million m<sup>3</sup> in 2008. Malaysia was Japan's

third largest log exporter from 2004 to 2006, exporting some 1.24 million m<sup>3</sup> in 2004 and 1.06 million m<sup>3</sup> in 2006. From 2007 and 2008 Malaysia fell to fifth place, but it nonetheless remained as Japan's largest tropical log source.

Canada was the largest exporter of sawntimber to Japan during the same period of time with the exception of 2007, when the EU, took over its place by a small margin. Canada exported 3.71 million m<sup>3</sup> in 2004 and this gradually fell to 2.64 million m<sup>3</sup> in 2008. Russia was another major exporter, exporting from 1.00 million m<sup>3</sup> in 2004 to 0.72 million m<sup>3</sup> in 2008. Malaysian tropical sawntimber export volume was ranked between sixth or seventh place, its highest export volume was in 2006 (177,000 m<sup>3</sup>) while its lowest export volume was of course in 2008 (126,000 m<sup>3</sup>).

China and Malaysia were the top two exporters for veneer for Japan between 2004 and 2008. China exported 59,000 m<sup>3</sup> in 2004 and 33,000 m<sup>3</sup> in 2008 while Malaysia exported 27,000 m<sup>3</sup> in 2004 and 17,000 m<sup>3</sup> in 2008. New Zealand was placed third.

For plywood, Malaysia took over Indonesia as Japan's biggest exporter in 2005, exporting some 2.04 million m<sup>3</sup> in 2005 and 1.90 million m<sup>3</sup> in 2008. Indonesian exports had indeed fallen significantly, from 2.25 million m<sup>3</sup> in 2004 to just 0.84 million m<sup>3</sup> in 2004.

For woodchips, Australia had been the country's largest exporter, with exports increasing from 4.92 million m<sup>3</sup> in 2004 to 5.55 million m<sup>3</sup> in 2008. South Africa was in second place with the exception of the year 2008, when Chile which was in third place from 2004 to 2007, overtook the former. South Africa's woodchip exports declined from 3.21 million m<sup>3</sup> in 2004 to 2.16 million m<sup>3</sup> in 2008 while Chilean exports rose from 1.53 million m<sup>3</sup> in 2004 to 2.38 million m<sup>3</sup> in 2008.



Table 12: ITTO – Japan's timber production, import, export and domestic consumption volume, 2005-2008 ('000 m<sup>3</sup>)

ALL PRIMARY TIMBER PRODUCTS					PRIMARY TROPICAL TIMBER PRODUCTS			
LOGS	2005	2006	2007	2008	2005	2006	2007	2008
Production	16,166	16,609	17,650	17,709	-	-	-	-
Imports	10,654	10,582	8,973	6,228	1,417	1,003	1,062	723
Exports	22	30	19	48	-	-	1	1
Domestic Consumption	26,798	27,161	26,604	23,889	1,417	1,003	1,061	722
SAWN	2005	2006	2007	2008	2005	2006	2007	2008
Production	12,825	12,554	11,632	10,884	167	126	93	87
Imports	8,395	8,505	7,354	6,522	328	278	238	177
Exports	20	17	29	43	1	1	1	1
Domestic Consumption	21,200	21,042	18,957	17,363	494	403	330	263
VENEER	2005	2006	2007	2008	2005	2006	2007	2008
Production	60	60	60	60	20	20	20	20
Imports	109	95	76	66	34	23	34	27
Exports	2	1	1	1	-	-	-	-
Domestic Consumption	167	154	135	125	54	43	54	47
PLYWOOD	2005	2006	2007	2008	2005	2006	2007	2008
Production	3,212	3,314	3,073	2,586	625	625	625	398
Imports	4,733	5,046	4,064	3,583	3,419	3,493	2,609	2,373
Exports	10	12	13	10	4	2	1	1
Domestic Consumption	7,935	8,348	7,124	6,159	4,040	4,116	3,233	2,770

Source: *Annual Review and Assessment of the World Timber Situation 2009*. ITTO (2009). Table 1-1-a, Production, Trade and Consumption of All Timber by ITTO Consumers, pp. 60-1; Table 1-1-b, Production, Trade and Consumption of Tropical Timber by ITTO Consumers, pp. 72-2. (Detailed statistical notations available in original report) [<http://www.itto.int/>].

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continued

**Table 13: Data comparison between ITTO and JFA – Overall timber imports in volume 2005-2008 ('000 m<sup>3</sup>)**

ALL TIMBER IMPORTS								
	2005		2006		2007		2008	
	ITTO	JFA	ITTO	JFA	ITTO	JFA	ITTO	JFA
<b>Logs</b>	10,654	10,654	10,582	10,582	8,973	8,973	6,228	6,228
<b>Sawntimber</b>	8,395	8,395	8,505	8,504	7,354	7,354	6,522	6,522
<b>Veneer</b>	109	111	95	98	76	81	66	70
<b>Plywood</b>	4,733	4,118	5,046	4,301	4,064	3,430	3,583	3,063

**Table 14: Top exporters for Japanese primary timber product imports 2004-2008 ('000 m<sup>3</sup>)**

LOGS										
	2004		2005		2006		2007		2008	
1.	Russia	5,884	Russia	4,689	Russia	4,966	Russia	4,039	USA	1,971
2.	USA	2,691	USA	2,442	USA	2,311	USA	2,154	Russia	1,867
3.	Malaysia	1,240	Malaysia	1,104	Malaysia	1,056	Canada	820	New Zealand	842
4.	New Zealand	1,124	Canada	1,011	Canada	985	New Zealand	813	Canada	774
5.	Canada	1,026	New Zealand	922	New Zealand	839	Malaysia	780	Malaysia	578
SAWNTIMBER										
	2004		2005		2006		2007		2008	
1.	Canada	3,714	Canada	3,131	Canada	3,261	EU	2,637	Canada	2,644
2.	EU	2,941	EU	2,878	EU	3,024	Canada	2,513	EU	2,010
3.	Russia	1,002	Russia	1,078	Russia	1,054	Russia	1,017	Russia	715
4.	Chile	452	Chile	420	Chile	370	Chile	404	Chile	404
5.	USA	250	New Zealand	174	New Zealand	179	USA	192	USA	260
6.	Indonesia	174	Malaysia	172	Malaysia	177	New Zealand	168	New Zealand	170
7.	Malaysia	174	USA	162	USA	145	Malaysia	162	Malaysia	126
VENEER										
	2004		2005		2006		2007		2008	
1.	China	59	China	53	China	47	China	37	China	33
2.	Malaysia	27	Malaysia	21	Malaysia	21	Malaysia	22	Malaysia	17
3.	New Zealand	21	New Zealand	19	New Zealand	15	New Zealand	8	New Zealand	5
4.	EU	7	EU	7	EU	5	EU	4	Chile	5
5.	Indonesia	4	Indonesia	4	Indonesia	4	Indonesia	3	Indonesia	4
PLYWOOD										
	2004		2005		2006		2007		2008	
1.	Indonesia	2,253	Malaysia	2,045	Malaysia	2,431	Malaysia	1,898	Malaysia	1,896
2.	Malaysia	1,869	Indonesia	1,729	Indonesia	1,422	Indonesia	1,120	Indonesia	836
3.	China	191	China	219	China	323	China	273	China	255
4.	Canada	49	New Zealand	36	New Zealand	32	New Zealand	42	New Zealand	27
5.	New Zealand	44	Canada	32	Canada	21	Canada	35	Canada	7
WOODCHIPS										
	2004		2005		2006		2007		2008	
1.	Australia	4,916	Australia	4,785	Australia	4,904	Australia	5,515	Australia	5,551
2.	South Africa	3,208	South Africa	3,187	South Africa	2,757	South Africa	2,458	Chile	2,380
3.	Chile	1,534	Chile	1,661	Chile	1,782	Chile	2,040	South Africa	2,161
4.	USA	881	USA	883	USA	904	Vietnam	903	Vietnam	1,071
5.	Brazil	729	Vietnam	644	Vietnam	720	USA	879	USA	846

Source: *Annual Timber Import 2004, 2005, 2006, 2007, 2008 & 2009*. JFA (2004), (2005), (2006), (2007), (2008) & (2009). [<http://www.rinya.maff.go.jp/>].

Figure 18: Japan – Major sources of log imports 2004-2008 ('000 m<sup>3</sup>)

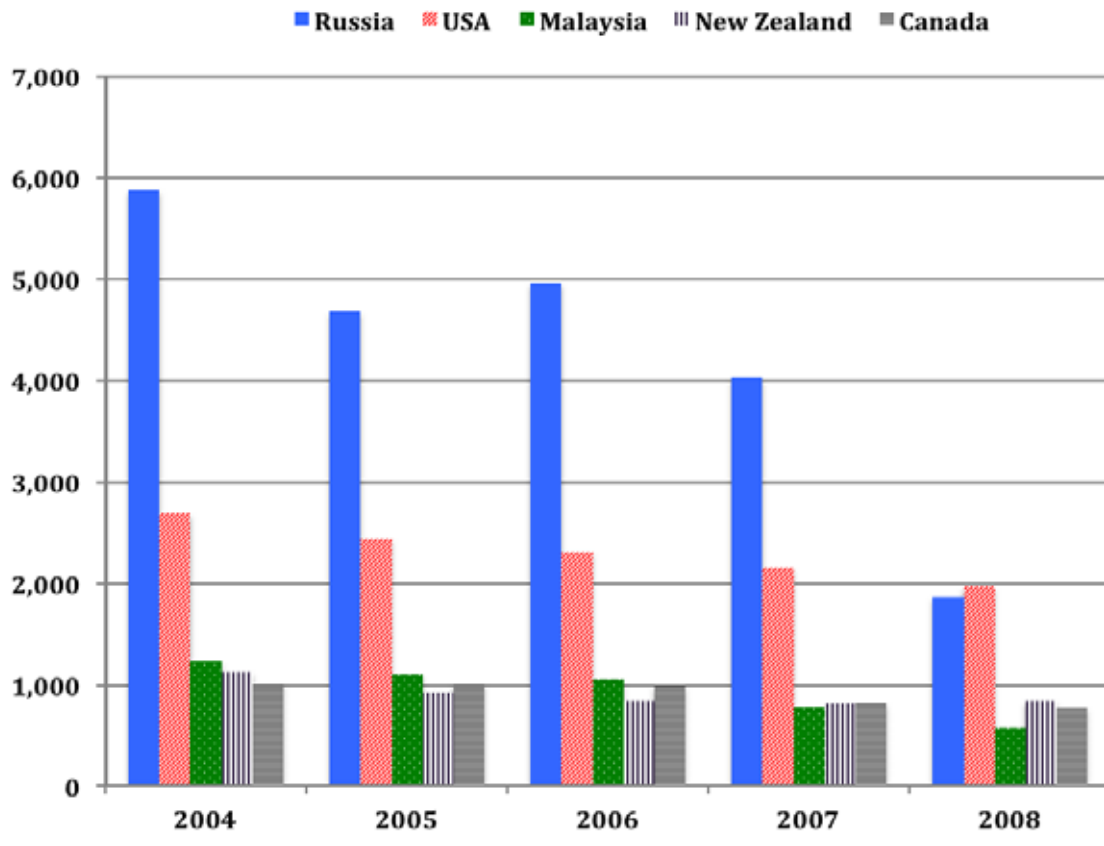
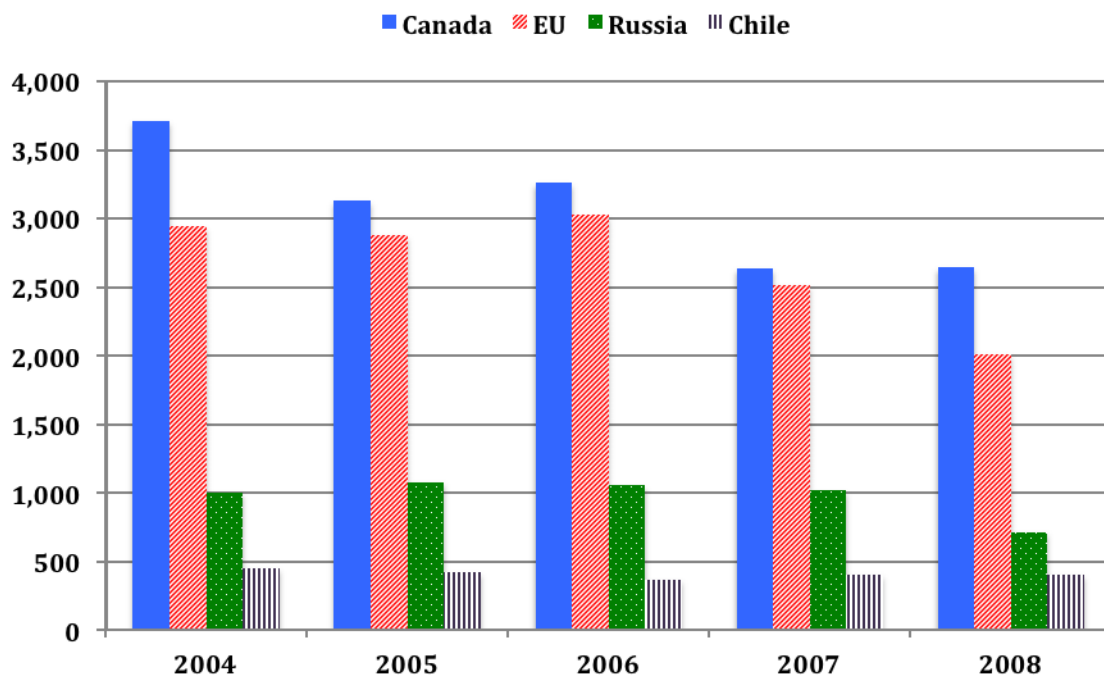


Figure 19: Japan – Major sources of sawntimber imports 2004-2008 ('000 m<sup>3</sup>)



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continued

Figure 20: Japan – Major sources of veneer imports 2004-2008 ('000 m<sup>3</sup>)

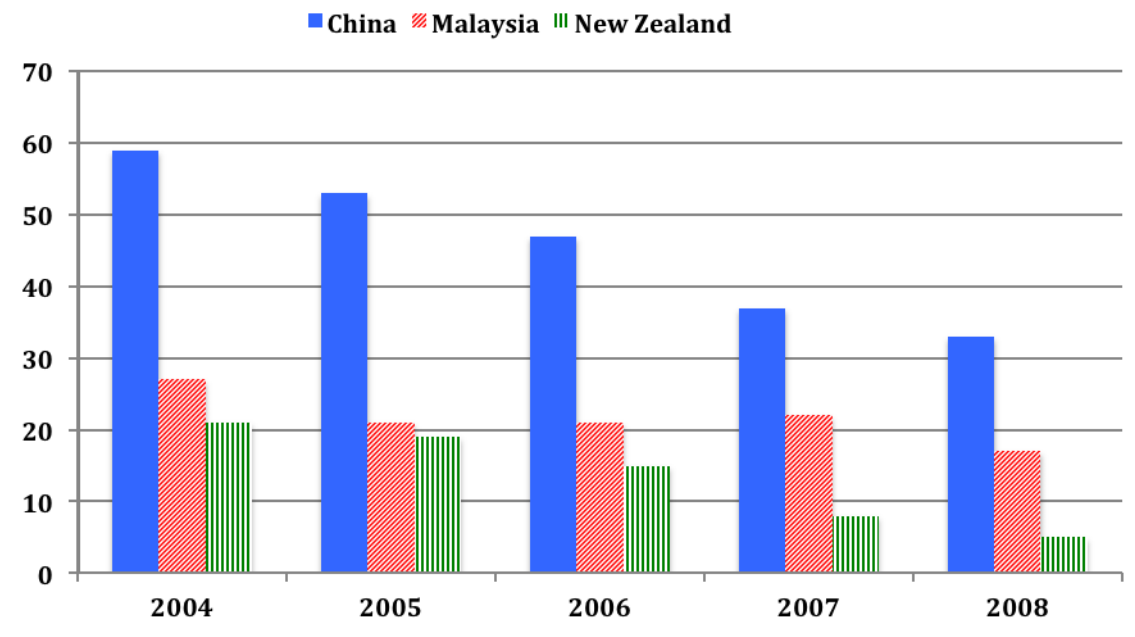


Figure 21: Japan – Major sources of plywood imports 2004-2008 ('000 m<sup>3</sup>)

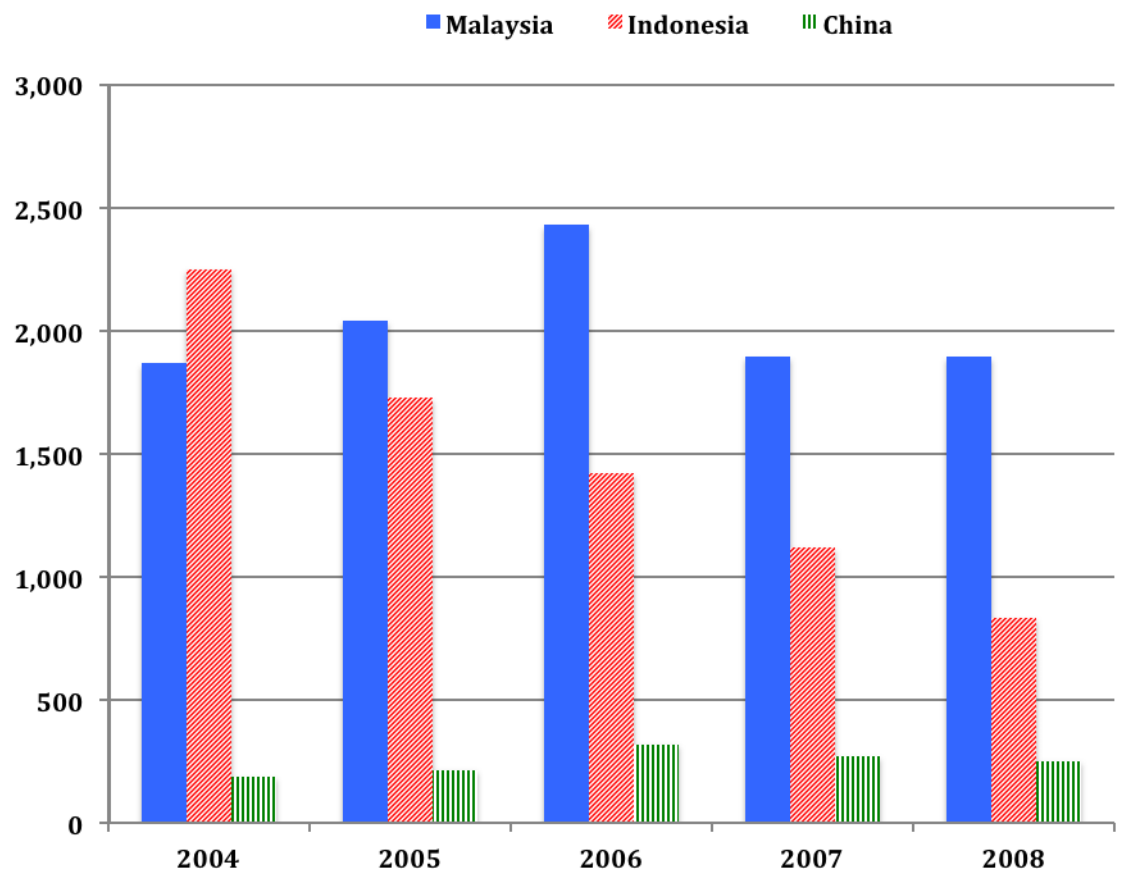
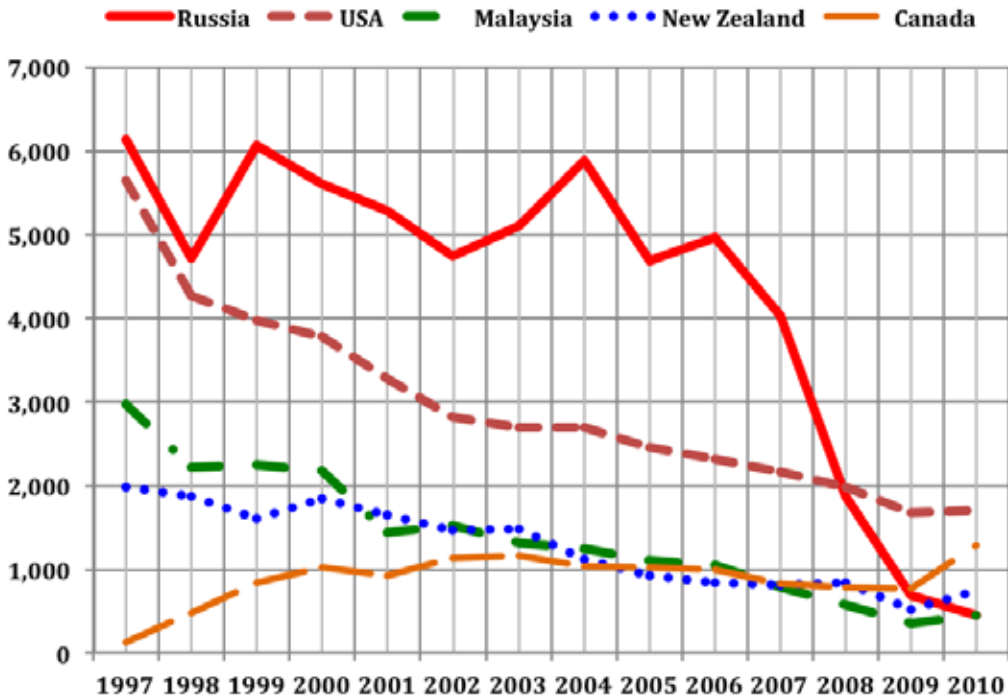
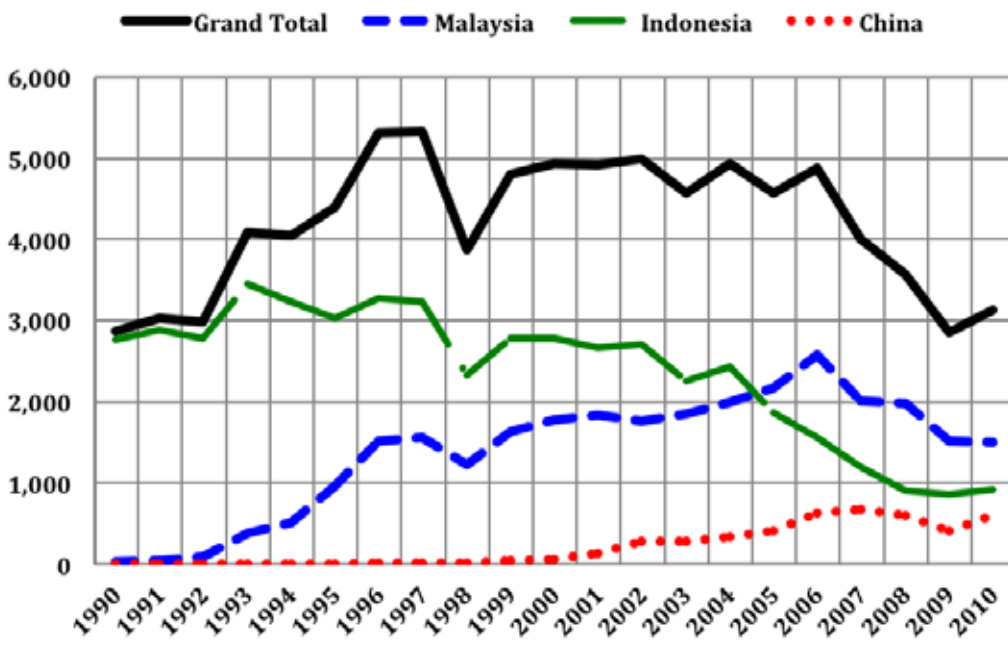


Figure 22: Japan – Major sources of log imports 1997-2010 ('000 m<sup>3</sup>)



Source: Annual Timber Import 1999-2010. JFA (2000-2011). [<http://www.rinya.maff.go.jp/>].

Figure 23: Japan – Major sources of plywood imports 1990-2010 ('000 m<sup>3</sup>)



Source: Trade Statistics, Ministry of Finance. (October 31, 2011).

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continued

### 2.5.3 Data comparison: JFA, MTIB/MPIC and ITTO

Today, Japan's main source of primary tropical timber products is certainly Malaysia, as it had been for over two decades. Based on ITTO statistics, during 2008, Japan had imported some 2.37 million m<sup>3</sup> of tropical plywood, 1.96 million m<sup>3</sup> of which was from Malaysia (Malaysian source: 2.04 million m<sup>3</sup>); 0.72 million m<sup>3</sup> of tropical logs, 0.57 million m<sup>3</sup> of which was from Malaysia (Malaysian source: 0.58 million m<sup>3</sup>); 27,300 m<sup>3</sup> of tropical veneer, 21,800 m<sup>3</sup> of which was from Malaysia (Malaysian source: 5,400 m<sup>3</sup>) and 176,900 m<sup>3</sup> of tropical sawnwood, 118,600 m<sup>3</sup> of which was from Malaysia (Malaysian source: 240,000 m<sup>3</sup>).

Table 15 compares data from the JFA, MTIB and the annual *Statistics on Commodities* published by the MPIC (which cited the MTIB as its main source of export statistics) and those obtained from ITTO between 2004 and 2009.

As can be seen here, the ITTO statistical data tended to be similar to those provided by the JFA, with relatively small discrepancies. Of greater interest here is of course the data comparison between JFA and the Malaysian national sources. For logs, the differences between the Japanese and Malaysian data were somewhat negligible. For sawntimber, the JFA statistics were generally higher than those recorded by Malaysia, with the exception of 2008, although these discrepancies too were still somewhat minimal. For veneer and logs however, Malaysian records in some instances did show a significantly higher volume of veneer exports to Japan than those recorded by the JFA, although for veneer, the two Malaysian sources themselves, namely MTIB and MPIC, also appeared to be inconsistent with each other in some instances.

Based on the JFA data, between 2005 and 2009, the country's imports of all Malaysian primary timber products with the exception of plywood, had suffered a plunge in trade volume. For logs, imports fell from 1.24 million m<sup>3</sup> to 355,000 m<sup>3</sup>. For sawntimber, imports declined from 174,000 m<sup>3</sup> to 87,000 m<sup>3</sup>. For veneer, imports too declined from around 27,000 m<sup>3</sup> to 12,000 m<sup>3</sup>. It was only plywood imports that had remained above the one million m<sup>3</sup> mark during this period of time.

**Table 15: Data comparison – Japanese primary timber product imports from Malaysia in volume 2004-2009 (000 m<sup>3</sup>)**

Source Year	JFA Imports	MTIB/MPIC Exports	ITTO: Japan Imports	ITTO: Malaysia Exports
<b>LOGS</b>				
2004	1,240	1,191	1,230	1,191
2005	1,104	1,097	1,098	939
2006	1,056	1,037	1,051	1,031
2007	780	707	775	703
2008	578	*589	573	584
2009	355	343		
<b>SAWNTIMBER</b>				
2004	174	150	167	140
2005	172	151	163	151
2006	177	130	166	762
2007	162	131	148	420
2008	126	131	118	240
2009	87	82		
<b>VENEER</b>				
2004	27	48	38	48
2005	21	38	27	38
2006	21	*33	25	33
2007	22	*34	29	7
2008	17	28	22	5
2009	12	18		
<b>PLYWOOD</b>				
2004	1,869	2,053	2,007	2,053
2005	2,045	2,108	2,169	2,108
2006	2,431	2,527	1,862	2,491
2007	1,898	1,938	1,969	1,890
2008	1,896	2,042	1,957	2,042
2009	1,442	1,485		

Sources:

Japan: *Annual Timber Import 2004, 2005, 2006, 2007, 2008 & 2009*. JFA (2004), (2005), (2006), (2007), (2008) & (2009). [<http://www.rinya.maff.go.jp/>].

Malaysia: All figures from MTIB [<http://www.mtib.gov.my/>] or also accessible at the MTC website [<http://www.mtc.com.my/>] except for \* from *Statistics on Commodities 2007, 2008 & 2009*. Ministry of Plantation Industries and Commodities (2007), (2008) & (2009) [<http://www.kppk.gov.my/>].

ITTO: *Annual Review and Assessment of the World Timber Situation 2005, 2006, 2007, 2008 & 2009*. ITTO (2005), (2006), (2007), (2008) & (2009) [<http://www.itto.int/>].

Figure 24: Japanese imports of Malaysian logs 2004-2009 ('000 m<sup>3</sup>)

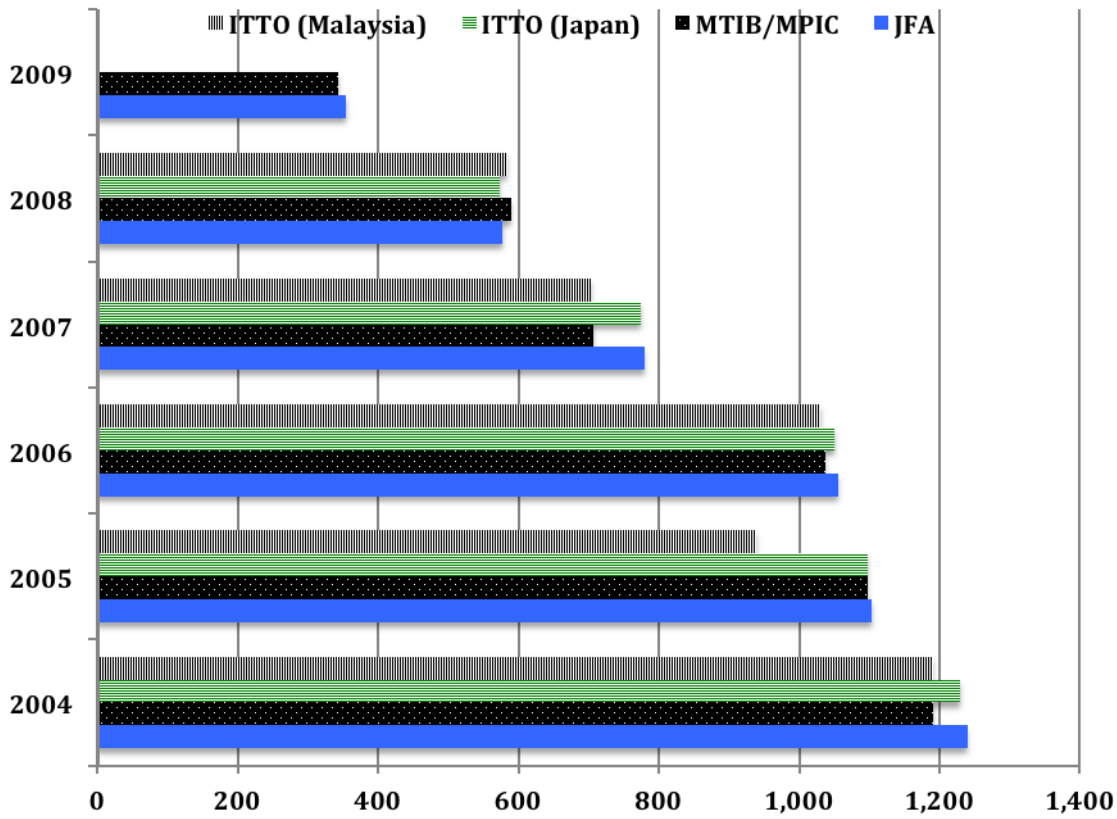
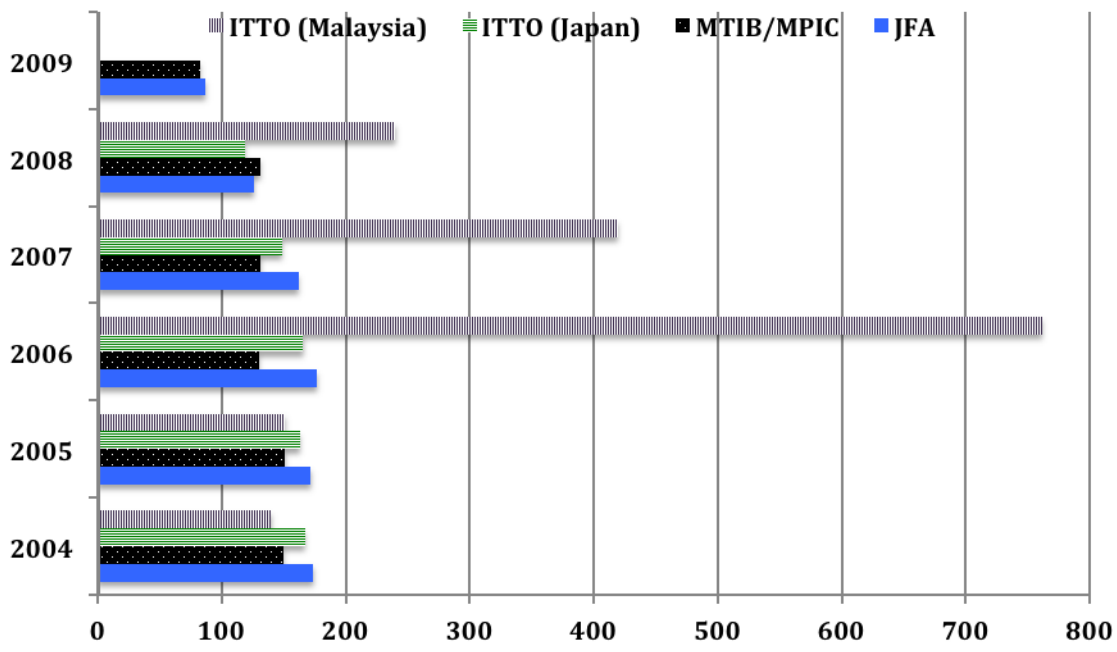


Figure 25: Japanese imports of Malaysian sawntimber 2004-2009 ('000 m<sup>3</sup>)



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continued

Figure 26: Japanese imports of Malaysian veneer 2004-2009 ('000 m<sup>3</sup>)

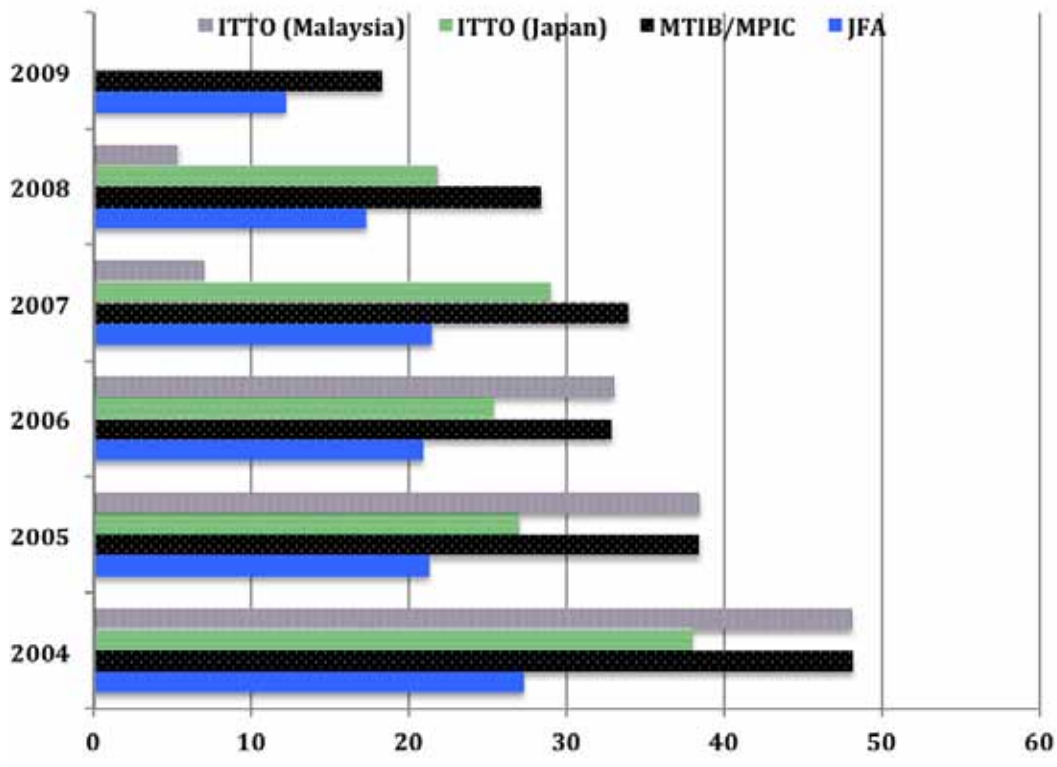
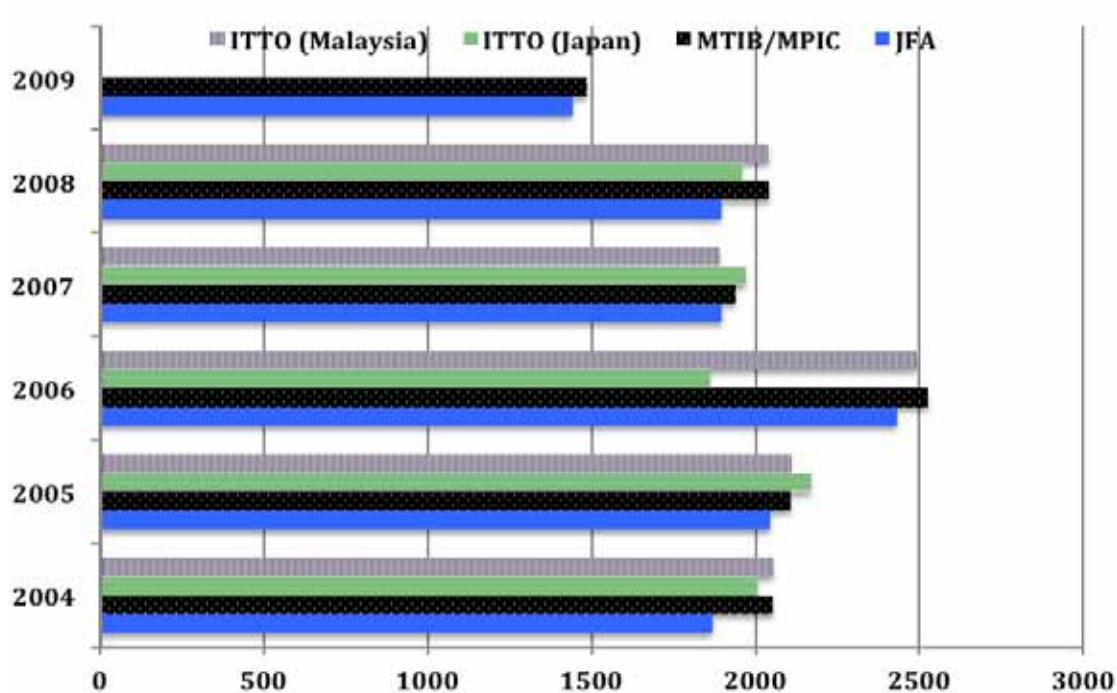


Figure 27: Japanese imports of Malaysian plywood 2004-2009 ('000 m<sup>3</sup>)





## 2.6 South Korea's timber importation and consumption trends

### 2.6.1 Overall overview (ITTO & KFS)

Around 95 percent of the timber consumed by South Korea is still currently being sourced out from imports.<sup>19</sup> South Korea has indeed a limited supply of domestic timber resources since most forests in the country are made up by young stands with smaller-diameter logs. Further, the high rates of wages in the country also present another challenge to the domestic timber industry. Following the Asian economic crisis in 1997, the South Korean government launched a national campaign of forest tending which included the promotion of thinning activities to increase both the employment opportunities in the national forestry sector and the country's domestic timber supply itself. Nevertheless, on the whole, the domestic forestry sector is still plagued by poor productivity and had been showing a consistent decline in GDP contribution rate.<sup>20</sup>

Table 16 constructed using statistical information provided by ITTO (2009), illustrates the trends in timber and primary timber product production, import, export and domestic consumption volume in South Korea from 2005 to 2008. From here, it can be seen that both sets of data for non-tropical and tropical primary timber products show small rates of decline from 2005 to 2008.

During these four years, the country's overall log imports plunged for more than two million m<sup>3</sup> – from 6.99 million m<sup>3</sup> to 4.85 m<sup>3</sup>, while its sawnwood imports declined from 0.78 million m<sup>3</sup> to 0.56 million m<sup>3</sup>, its veneer imports from 305,000 m<sup>3</sup> to 244,000 m<sup>3</sup> and its plywood imports fell from 1.24 million m<sup>3</sup> to 0.95 million m<sup>3</sup>.

For primary tropical timber products, imports had declined by almost or more than half – tropical log imports dropped from 342,000 m<sup>3</sup> to 148,000 m<sup>3</sup>, tropical sawnwood imports from 251,000 m<sup>3</sup> to 96,000 m<sup>3</sup>, tropical veneer imports from 249,000 m<sup>3</sup> to 164,000 m<sup>3</sup> and tropical plywood imports fell from 1.12 million m<sup>3</sup> to 0.70 million m<sup>3</sup>.

Tables 2-5 in the earlier section, culled from ITTO (2009), show that in 2008, South Korea was the world's largest importer of tropical veneer, its third largest importer of tropical plywood and its seventh largest importer of tropical logs.

Table 17 provides the comparison between ITTO data on South Korea's overall timber imports during the same period with those published by the Korea Forest Service (KFS).<sup>21</sup> As can be seen here, the ITTO and the KFS data on sawntimber and veneer imports from 2005 to 2006 appeared to be consistent with each other, as with information on plywood imports from 2005 to 2007. Beyond these however, one can find statistical discrepancies in nine instances (all coloured), some negligible like the volume on sawntimber imports in 2007 (ITTO: 966/KFS: 961) while others may involve a far higher volume like those of log imports in 2006 (ITTO: 7,327/KFS: 6,366).

Based on the KFS data, between 2005 and 2008, the decline in the country's overall log imports was slightly less than one million m<sup>3</sup>, from 6.22 million m<sup>3</sup> to 5.27 million m<sup>3</sup>. Its sawnwood imports meanwhile had registered a slight growth, from 0.78 million m<sup>3</sup> to 0.94 million m<sup>3</sup>. The country's veneer imports had also similarly registered a slight increase from 305,000 m<sup>3</sup> to 391,000 m<sup>3</sup>. The volume of its plywood imports on the other hand did show a decline, but only at a negligible volume of approximately 7,000 m<sup>3</sup>.

### 2.6.2 Overall top timber exporters for South Korea (KFS)

Table 18 constructed from the data obtained from the KFS, provides further details on the country's largest sources of timber imports by their countries of origin from 2004 to 2009. Data from Table 18 were then used to construct Figures 28-31 to illustrate the major timber importation trends in South Korea.

Unlike Japan, the South Korean imports of temperate timber products were mostly in the form of logs. On the whole, tropical timber constituted a significant bulk of the remaining primary timber imports. Malaysia in particular had been South Korea's topmost veneer and plywood exporter in the last five years.

The four major sources of South Korean log imports from 2004 to 2009 had been from New Zealand, Russia, the USA and Australia. New Zealand was South Korea's topmost log exporter, exporting some 3.21 million m<sup>3</sup> in 2004 and 2.64 million m<sup>3</sup> in 2009. Russia was its second largest log exporter from 2004 to 2007, before slipping over to third place in the next two years, possibly as a result of the imposition of the

<sup>19</sup> Korea Forest Service (2009, 146).  
<sup>20</sup> Korea Forest Service (2009, 18).

<sup>21</sup> The KFS usually presents the data on the sources of the country's timber imports based on their countries of origin and does not further explicitly identify them based on whether the timber species are to be considered tropical or temperate. As such, no direct comparison between the ITTO and Forest Service data can be done on tropical timber imports per se.

## two Malaysia, Japan, South Korea and Australia

continued

increased export duty mentioned above in the preceding Japanese section. Its highest export volume was in 2005 at 1.57 million m<sup>3</sup>, before sliding to 449,000 m<sup>3</sup> by 2009. In its replacement was the USA, whose log exports to the country steadily climbed from 430,000 m<sup>3</sup> in 2004 to 0.97 million m<sup>3</sup> in 2009. Australia meanwhile was its third largest log exporter in 2004 and 2005, before declining to fourth place in the remaining years. At its peak, Australia exported some 0.54 million m<sup>3</sup> of logs in 2007, when log imports were significantly higher than other years. At its lowest in 2009, Australia's log exports to South Korea was around 327,000 m<sup>3</sup>.

For sawntimber, Malaysia was the country's topmost exporter from 2004 to 2007. Malaysian sawntimber import was 161,000 m<sup>3</sup> in 2004 before reaching its peak at 179,000 m<sup>3</sup> in 2007. Thereafter, imports declined to 97,000 m<sup>3</sup> by 2009, when it was placed fifth. Canada was in second place in 2004, 2006 and in 2007 when it exported some 138,000 m<sup>3</sup>, 125,000 m<sup>3</sup> and 172,000 m<sup>3</sup> respectively. In 2009 however, the country was South Korea's largest sawntimber exporter, although its export volume had been slightly reduced to 175,000 m<sup>3</sup>. Russian exports were also significant – they were South Korea's second largest exporter in 2005 and 2008, exporting some 117,000 m<sup>3</sup> and 154,000 m<sup>3</sup> respectively. In 2006 and 2009, Russia was in third place, exporting 116,000 m<sup>3</sup> and 147,000 m<sup>3</sup> respectively. Chilean exports meanwhile had been climbing steadily, starting at sixth place with 79,000 m<sup>3</sup> in 2004, before peaking in 2008

with 199,000 m<sup>3</sup> and eventually placing second in 2009 at 162,000 m<sup>3</sup>.

For veneer, Malaysia had consistently been South Korea's largest exporter from 2004 to 2009, its highest export volume standing at 238,000 m<sup>3</sup> in 2005 and its lowest in 2009 at 156,000 m<sup>3</sup>. Like sawntimber, Chinese veneer had also been taking an increasingly larger slice of the South Korean market, exporting only around 16,000 m<sup>3</sup> in 2004 and placing third, before rising to second place in 2009 with 71,000 m<sup>3</sup>. Veneer exports from Papua New Guinea on the other hand had shown a steady decline during this period. In 2004, it was South Korea's second largest exporter at 51,000 m<sup>3</sup> before gradually sliding down in position and export volume in the succeeding years and disappearing from the list in 2009 altogether.

For plywood, Malaysia was again South Korea's largest exporter from 2004 to 2009, with its export volume appearing to be on a steady increase. In 2004, Malaysia exported some 0.51 million m<sup>3</sup> of plywood to the country, by 2009 this figure had climbed to an all-time high of 0.79 million m<sup>3</sup>. Indonesia was placed second in 2004 and 2005, before sliding down to third place in the remaining years – overtaken by China. Indonesia's highest export volume was in 2004 at 351,000 m<sup>3</sup>, its lowest was in 2009 at 143,000 m<sup>3</sup>. Chinese log exports meanwhile had climbed from 261,000 m<sup>3</sup> in 2004 to a peak-high of 351,000 m<sup>3</sup> in 2007, before declining to around 185,000 m<sup>3</sup> in 2009.

Table 16: ITTO – South Korea's timber production, import, export and domestic consumption volume 2005-2008 ('000 m<sup>3</sup>)

ALL PRIMARY TIMBER PRODUCTS					PRIMARY TROPICAL TIMBER PRODUCTS			
LOGS	2005	2006	2007	2008	2005	2006	2007	2008
Production	2,350	2,444	2,680	2,702	-	-	-	-
Imports	6,998	7,327	5,738	4,853	342	251	299	148
Exports	-	-	-	1	-	-	-	-
Domestic Consumption	9,348	9,771	8,418	7,555	342	251	299	147
SAWN	2005	2006	2007	2008	2005	2006	2007	2008
Production	4,366	4,366	3,798	3,798	74	80	70	70
Imports	775	804	966	564	251	122	225	96
Exports	12	18	15	8	1	1	2	1
Domestic Consumption	5,129	5,155	4,747	4,354	324	201	292	166
VENEER	2005	2006	2007	2008	2005	2006	2007	2008
Production	574	544	481	376	144	79	50	36
Imports	305	257	256	244	*249/186	210	161	164
Exports	1	1	-	-	-	-	-	-
Domestic Consumption	878	800	736	619	393	289	211	200
PLYWOOD	2005	2006	2007	2008	2005	2006	2007	2008
Production	680	741	764	667	276	228	217	180
Imports	1,242	1,297	1,359	953	1,124	1,139	1,075	701
Exports	15	12	5	2	1	0	2	1
Domestic Consumption	1,907	2,026	2,118	1,618	1,399	1,367	1,290	880

Source: *Annual Review and Assessment of the World Timber Situation 2009*. ITTO (2009). Table 1-1-a, Production, Trade and Consumption of All Timber by ITTO Consumers, pp. 60-1; Table 1-1-b, Production, Trade and Consumption of Tropical Timber by ITTO Consumers, pp. 72-3. (Detailed statistical notations available in original report) [<http://www.itto.int/>]. \* Note: ITTO (2009) reported the figure 249,000 m<sup>3</sup> while Table 2-3 Trade of Tropical Veneer, 2005 from ITTO (2006) reported that South Korea's total tropical veneer imports for 2005 was 186,286 m<sup>3</sup>.

Table 17: Data comparison – Overall timber imports in volume by ITTO and KFS 2005-2008 ('000 m<sup>3</sup>)

	ALL TIMBER IMPORTS							
	2005		2006		2007		2008	
	ITTO	KFS	ITTO	KFS	ITTO	KFS	ITTO	KFS
Logs	6,998	6,221	7,327	6,366	5,738	6,643	4,853	5,267
Sawntimber	775	775	804	804	966	961	564	939
Veneer	305	305	257	257	256	383	244	391
Plywood	1,242	1,242	1,297	1,297	1,359	1,359	953	1,235

Source: *Annual Review and Assessment of the World Timber Situation 2009* [<http://www.itto.int/>]. ITTO (2009) & KFS [<http://soft.forest.go.kr/>].

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continued

Table 18: Top exporters for South Korea's primary timber product imports 2004-2009 ('000 m<sup>3</sup>)

		LOGS													
		2004		2005		2006		2007		2008		2009		2009	
1.	New Zealand	3,215	New Zealand	2,963	New Zealand	3,250	New Zealand	3,236	New Zealand	2,591	New Zealand	2,591	New Zealand	2,641	
2.	Russia	1,497	Russia	1,570	Russia	1,476	Russia	1,100	USA	866	USA	866	USA	966	
3.	Australia	492	Australia	478	USA	468	USA	787	Russia	706	Russia	706	Russia	449	
4.	USA	430	USA	468	Australia	450	Australia	540	Australia	394	Australia	394	Australia	327	
5.	Sol. Islands	277	Canada	241	Canada	312	Canada	415	Canada	276	Canada	276	Canada	264	
6.	Canada	190	Sol. Islands	226	Sol. Islands	177	Germany	212	Germany	145	PNG	145	PNG	90	
7.	PNG	173	Malaysia	135	Malaysia	102	Sol. Islands	137	Sol. Islands	128	Germany	128	Germany	89	
<b>SAWNTIMBER</b>															
1.	Malaysia	161	Malaysia	132	Malaysia	157	Malaysia	179	Chile	199	Canada	199	Canada	175	
2.	Canada	138	Russia	117	Canada	125	Canada	172	Russia	154	Chile	154	Chile	162	
3.	Indonesia	138	Indonesia	113	Russia	116	Chile	146	Canada	146	Russia	146	Russia	147	
4.	Russia	107	Canada	95	Indonesia	91	Russia	136	Malaysia	111	New Zealand	111	New Zealand	110	
5.	New Zealand	83	Chile	88	Chile	85	Indonesia	79	New Zealand	88	Malaysia	88	Malaysia	97	
6.	Chile	79	New Zealand	76	New Zealand	75	New Zealand	69	China	54	China	54	China	54	
7.	China	48	China	55	China	57	China	61	USA	49	USA	49	USA	38	
<b>VENEER</b>															
1.	Malaysia	218	Malaysia	238	Malaysia	173	Malaysia	212	Malaysia	227	Malaysia	227	Malaysia	156	
2.	PNG	51	PNG	34	China	45	Brazil	96	Brazil	63	China	63	China	71	
3.	China	16	China	14	PNG	22	China	39	China	44	New Zealand	44	New Zealand	58	
4.	USA	6	USA	4	Myanmar	3	PNG	14	New Zealand	34	Chile	34	Chile	18	
5.	Myanmar	2	Indonesia	3	New Zealand	3	New Zealand	11	PNG	8	Brazil	8	Brazil	6	
6.	Germany	2	Myanmar	3	USA	3	Myanmar	2	Brunei	3	USA	3	USA	1	
7.	New Zealand	2	Germany	2	Germany	1	USA	2	Chile	3	Myanmar	3	Myanmar	1	
<b>PLYWOOD</b>															
1.	Malaysia	508	Malaysia	581	Malaysia	621	Malaysia	689	Malaysia	733	Malaysia	733	Malaysia	786	
2.	Indonesia	351	Indonesia	330	China	343	China	351	China	198	China	198	China	185	
3.	China	261	China	241	Indonesia	219	Indonesia	183	Indonesia	154	Indonesia	154	Indonesia	143	
4.	Myanmar	47	Myanmar	47	Myanmar	51	Finland	60	Finland	61	Vietnam	61	Vietnam	84	
5.	Finland	25	Finland	29	Finland	42	Myanmar	28	Vietnam	52	Finland	52	Finland	37	
6.	Latvia	3	Latvia	3	Latvia	6	Vietnam	23	Latvia	10	Myanmar	10	Myanmar	7	
7.	Portugal	2	Germany	2	Vietnam	5	Latvia	8	Myanmar	9	Russia	9	Russia	7	

Source: KFS [<http://soft.forest.go.kr/>].

Figure 28: South Korea – Major sources of log imports 2004-2009 ('000 m<sup>3</sup>)

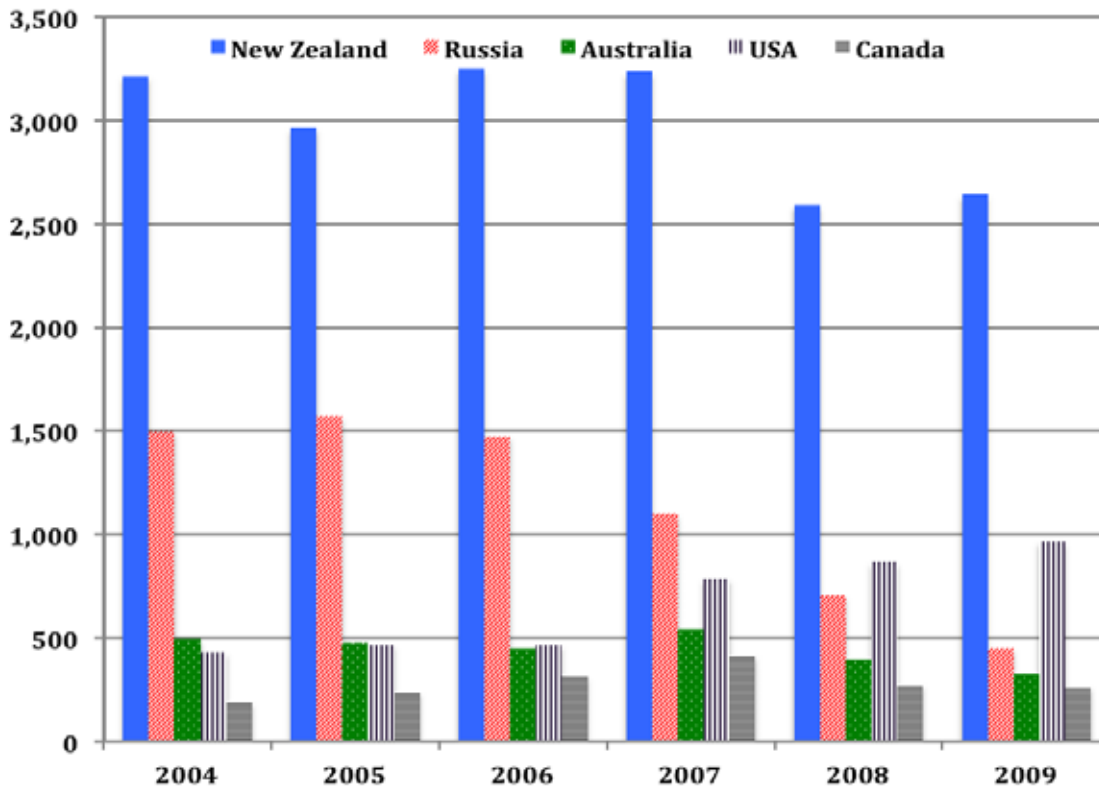
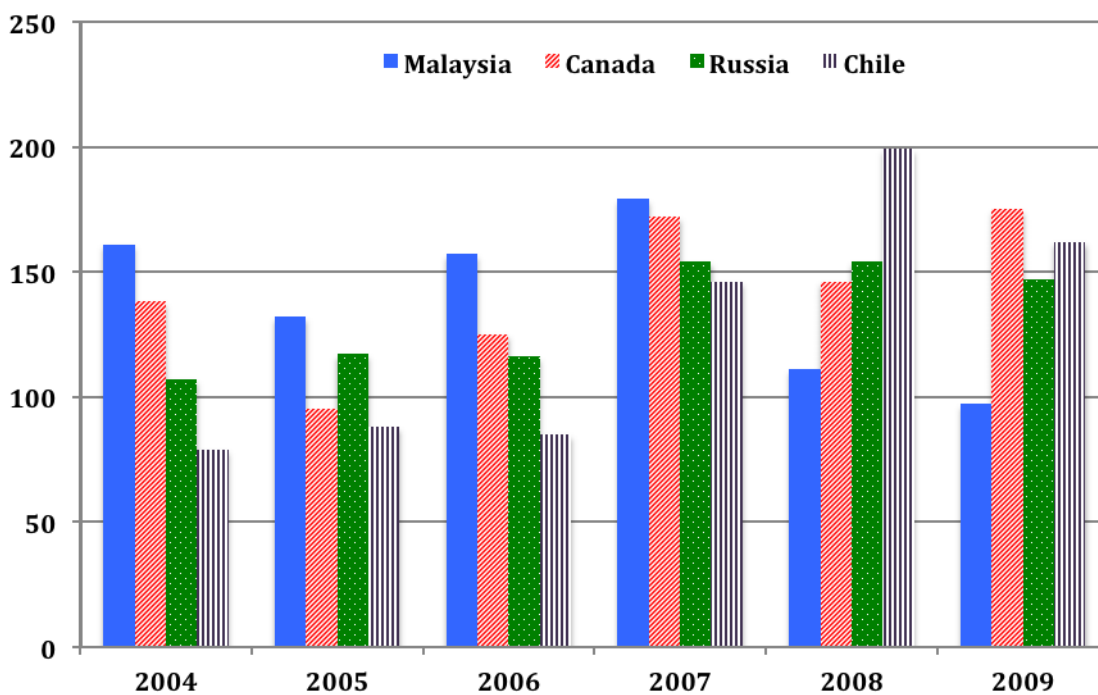


Figure 29: South Korea – Major sources of sawntimber imports 2004-2009 ('000 m<sup>3</sup>)



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continued

Figure 30: South Korea – Major sources of veneer imports 2004-2009 ('000 m<sup>3</sup>)

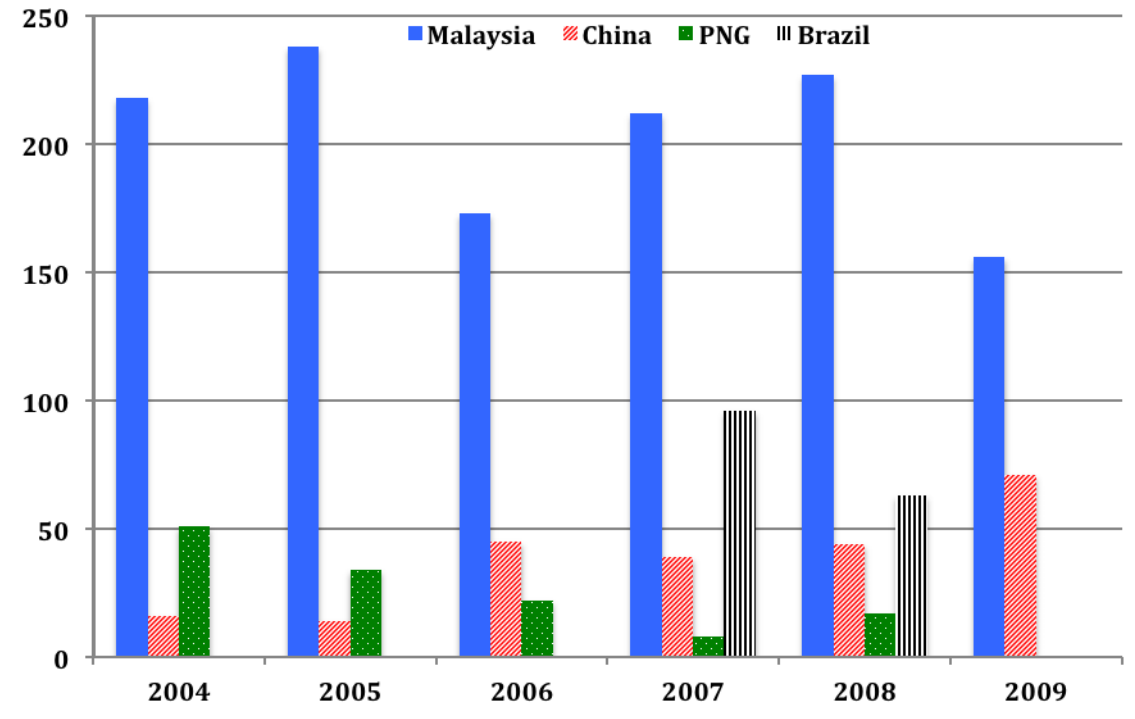
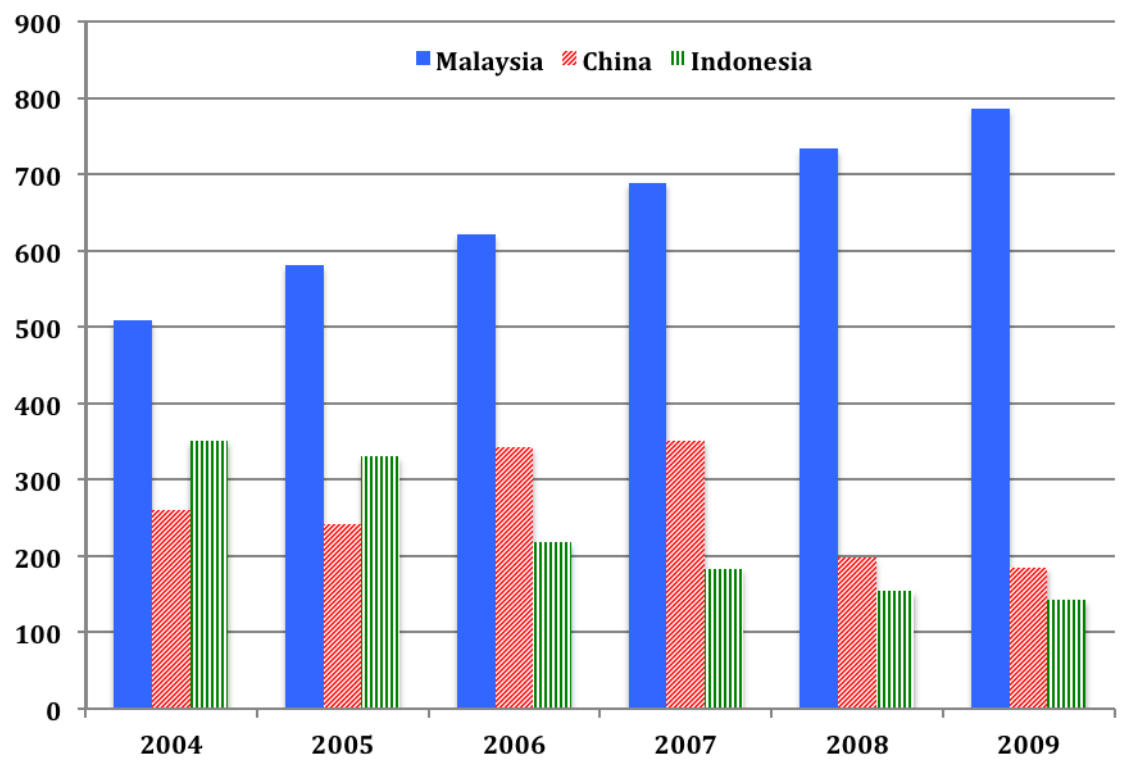


Figure 31: South Korea – Major sources of plywood imports 2004-2009 ('000 m<sup>3</sup>)



### 2.6.3 Data comparison on Malaysian timber imports: KFS, MTIB/MPIC and ITTO

Like Japan, Malaysia continued to be South Korea's largest exporter of primary tropical timber products. Table 19 presents the data on South Korea's timber imports from Malaysia from 2004 to 2009 from three different groups of sources namely the KFS, the MTIB or the MPIC and the ITTO.

According to the ITTO, as have been captured in Table 2 above, in 2008, South Korea was the seventh largest importer of tropical logs with its total volume of tropical log imports standing at approximately 147,600 m<sup>3</sup>, with Malaysian imports reported to be around the region of 36,700 m<sup>3</sup> (South Korean source) or 59,900 m<sup>3</sup> (Malaysian source). However at the national level, KFS reported that Malaysian log imports stood at around 65,200 m<sup>3</sup> while MTIB reported that log exports to South Korea to be around the region of 67,000 m<sup>3</sup>.

For sawntimber in 2008, data from the ITTO's *Annual Review 2009* as re-captured in Table 3, did not provide a breakdown of South Korea's sources of tropical sawntimber imports, as the country was not one of world's top importers of the product. The KFS however reported that 110,900 m<sup>3</sup> of Malaysian sawntimber was imported into the country in 2008 while MTIB reported that only 51,200 m<sup>3</sup> of its sawntimber had headed for South Korea during the same year.

For veneer in 2008, the ITTO statistics as re-captured in Table 4 above indicated that South Korea was the world's largest tropical veneer importer, with imports totalling 164,000 m<sup>3</sup>, a position that it had held since 2007, when it imported some 160,700 m<sup>3</sup> of tropical veneer. Based on South Korean sources, the ITTO reported that the bulk of this product was sourced out from Malaysia (150,900 m<sup>3</sup>) but inexplicably, Malaysia itself appeared to be reporting that only 14,800 m<sup>3</sup> of its veneer had been exported to South Korea during the same year. At the national level however, the KFS reported that the country had imported some 226,900 m<sup>3</sup> of Malaysian veneer, while the MTIB reported that only 132,800 m<sup>3</sup> of the country's veneer exports had headed for South Korea, while the MPIC actually reported an even lower figure of 119,900 m<sup>3</sup>, which is not shown in Table 19.<sup>22</sup>

Last but not least, in 2008, South Korea as reported by the ITTO was the world's third largest importer of tropical plywood, importing some 701,000 m<sup>3</sup> with either 333,800 m<sup>3</sup> (South Korean source) or 606,000 m<sup>3</sup> (Malaysian source) being sourced out from Malaysia. At the national level however, the KFS reported importing some 732,700 m<sup>3</sup> of Malaysian

plywood while at the same time, the MTIB reported that Malaysia had exported around 606,200 m<sup>3</sup> of plywood to South Korea, negligibly higher than the figure cited by the ITTO.

Such discrepancies as a matter of fact are present not just in 2008, but throughout the years from 2004 to 2008, the details of which can be further gleaned from Table 19 and further illustrated by Figures 32-35. An interesting but disturbing consistency about these discrepancies is that at the national level, the general rule appears to be that MTIB export figures tended to be by and large, lower than the corresponding imports reported by the KFS.

From 2004 to 2008, South Korean imports of Malaysian logs decreased from 139,100 m<sup>3</sup> to 65,200 m<sup>3</sup> according to the KFS, with a slight increase further shown in 2009 at 78,300 m<sup>3</sup>. Similarly, MTIB also reported a decrease, but from 125,400 m<sup>3</sup> to 67,000 m<sup>3</sup>, with the volume increasing slightly to 69,900 m<sup>3</sup> in 2009. Between 2004 and 2008, the ITTO also recorded a decrease in Malaysian log imports to South Korea from 132,000 m<sup>3</sup> to 36,700 m<sup>3</sup> (South Korean source) or from 125,400 m<sup>3</sup> to 59,900 m<sup>3</sup> (Malaysian source).

During the same period, for South Korea's sawntimber imports from Malaysia, the KFS data also showed a decline from 161,300 m<sup>3</sup> to 110,900 m<sup>3</sup>, in 2008, with the figure further plunging to 97,000 m<sup>3</sup> in 2009. MTIB meanwhile reported a decline from 86,500 m<sup>3</sup> in 2004 to 51,200 m<sup>3</sup> in 2008, with the volume slightly increasing to 59,200 m<sup>3</sup> in 2009.

For tropical veneer from 2004 to 2009, KFS documented an increase in Malaysian imports from 217,800 m<sup>3</sup> to 226,900 m<sup>3</sup>, although in 2009, this volume suddenly plunged to 155,900 m<sup>3</sup>. MTIB reported an increase from 127,000 m<sup>3</sup> to at least 132,800 m<sup>3</sup>, with the figure further declining to at least 112,300 m<sup>3</sup> in 2009. Between 2004 and 2008, the ITTO, although documenting an increase from 144,900 m<sup>3</sup> to 150,900 m<sup>3</sup> from South Korean sources, however recorded a confounding and sharp drop from Malaysian sources, from 127,000 m<sup>3</sup> to merely 14,800 m<sup>3</sup>.

Like its imports of Malaysian veneer, South Korea's plywood imports from the country also documented an increase between 2004 and 2009. KFS documented an increase from 507,600 m<sup>3</sup> to 786,200 m<sup>3</sup> while MTIB recorded an increase from 416,600 m<sup>3</sup> to at least 698,500 m<sup>3</sup>. However, between 2004 and 2008, ITTO data registered conflicting information from both countries, with South Korean sources reporting a decline from 505,000 m<sup>3</sup> to 333,800 m<sup>3</sup> while the figures cited from Malaysia were more closely aligned to those provided by MTIB.

<sup>22</sup> Please see MPIC's Statistics on Commodities 2009, p. 154, Table 7-20.

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continued

**Table 19: Data comparison – South Korean primary timber product imports from Malaysia in volume 2004-2009 ('000 m<sup>3</sup>)**

	KFS	MTIB/ MPIC	ITTO: South Korea	ITTO: Malaysia
	Imports	Exports	Imports	Exports
<b>LOGS</b>				
2004	139.13	125.45	132.00	125.40
2005	135.43	117.44	129.00	117.44
2006	102.3	99.24	88.00	0
2007	77.52	64.38	56.80	60.36
2008	65.16	*67.00	36.68	59.94
2009	78.31	69.94		
<b>SAWNTIMBER</b>				
2004	161.34	86.51		
2005	132.40	69.05	113.44	50.00
2006	157.36	84.47		
2007	178.98	89.64	153.18	536.85
2008	110.87	51.18		
2009	96.97	59.15		
<b>VENEER</b>				
2004	217.85	127.01	144.87	127.00
2005	237.58	133.66	157.99	134.00
2006	172.91	51.01	114.98	97.00
2007	212.48	*114.45	141.65	16.03
2008	226.88	132.82	150.88	14.82
2009	155.88	112.34		
<b>PLYWOOD</b>				
2004	507.55	416.58	505.00	417.00
2005	581.07	468.50	581.63	468.00
2006	620.82	482.65	613.78	475.26
2007	688.78	597.86	628.52	589.34
2008	732.69	606.24	333.84	606.00
2009	786.20	698.47		

Sources:

South Korea: KFS [<http://soft.forest.go.kr/foahome/user.tdf?a=user.index.IndexApp&c=1010>].

Malaysia: All figures from MTIB [<http://www.mtib.gov.my/>] or also accessible at the MTC website [<http://www.mtc.com.my/>] except for \* from *Statistics on Commodities 2008 & 2009*. Ministry of Plantation Industries and Commodities (2008) & (2009) [<http://www.kppk.gov.my/>].

ITTO: *Annual Review and Assessment of the World Timber Situation 2005, 2006, 2007, 2008 & 2009*. ITTO (2005), (2006), (2007), (2008) & (2009) [<http://www.itto.int/>].



Figure 32: South Korean imports of Malaysian logs 2004-2009 ('000 m<sup>3</sup>)

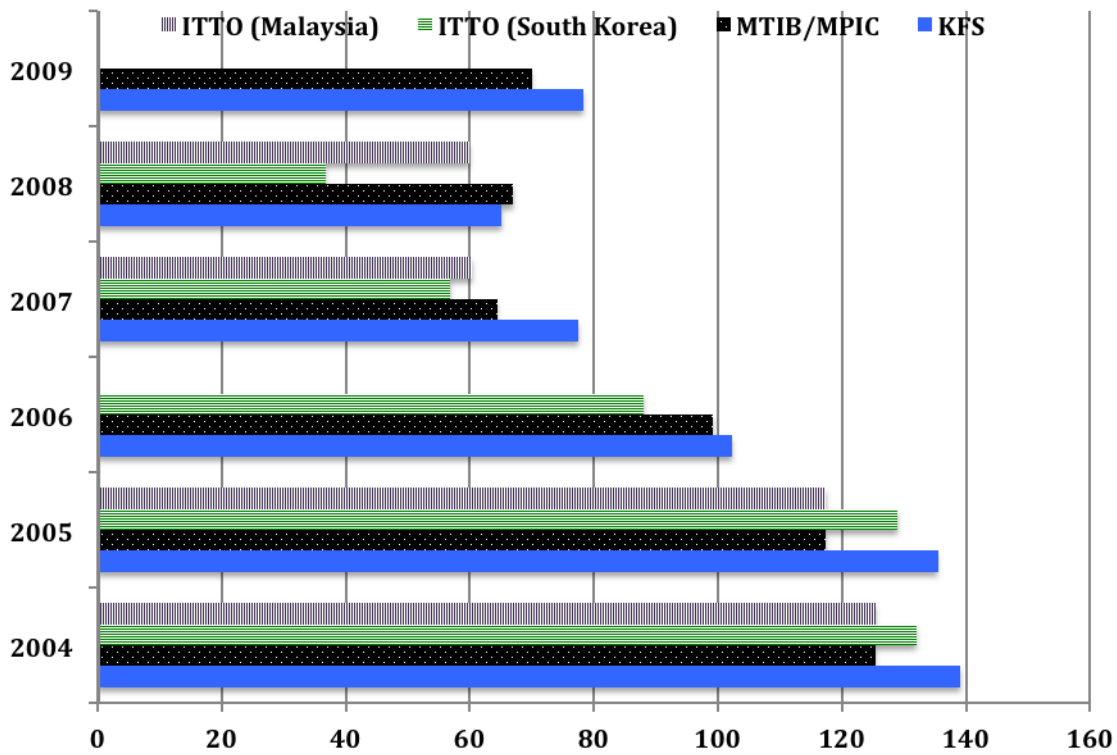
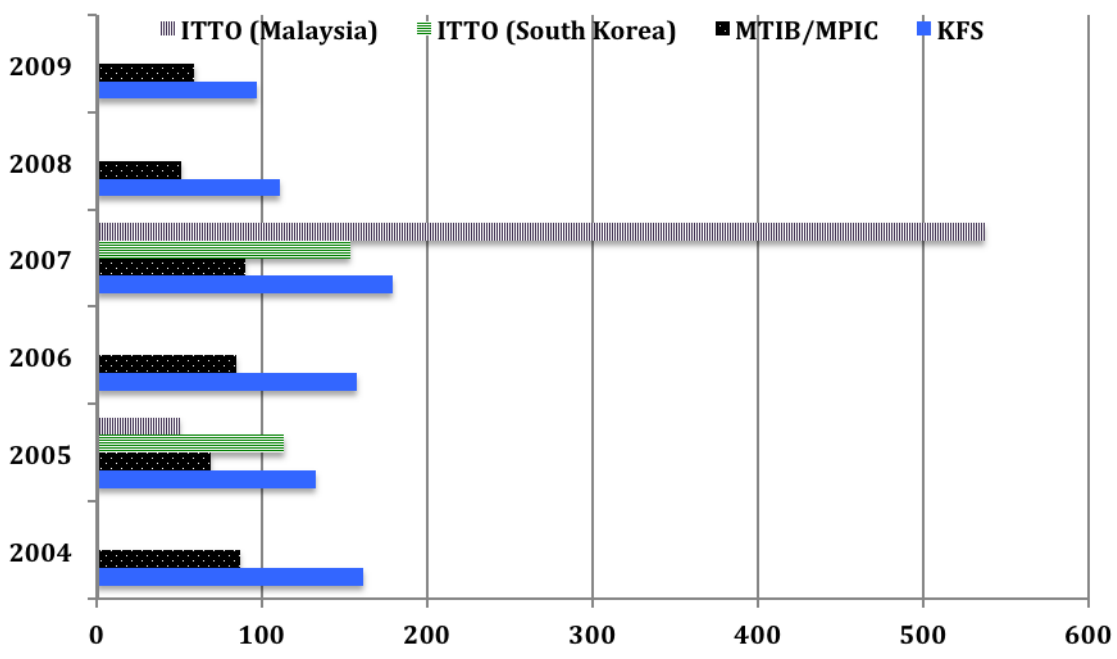


Figure 33: South Korean imports of Malaysian sawntimber 2004-2009 ('000 m<sup>3</sup>)



## two Malaysia, Japan, South Korea and Australia

continued

Figure 34: South Korean imports of Malaysian veneer 2004-2009 ('000 m<sup>3</sup>)

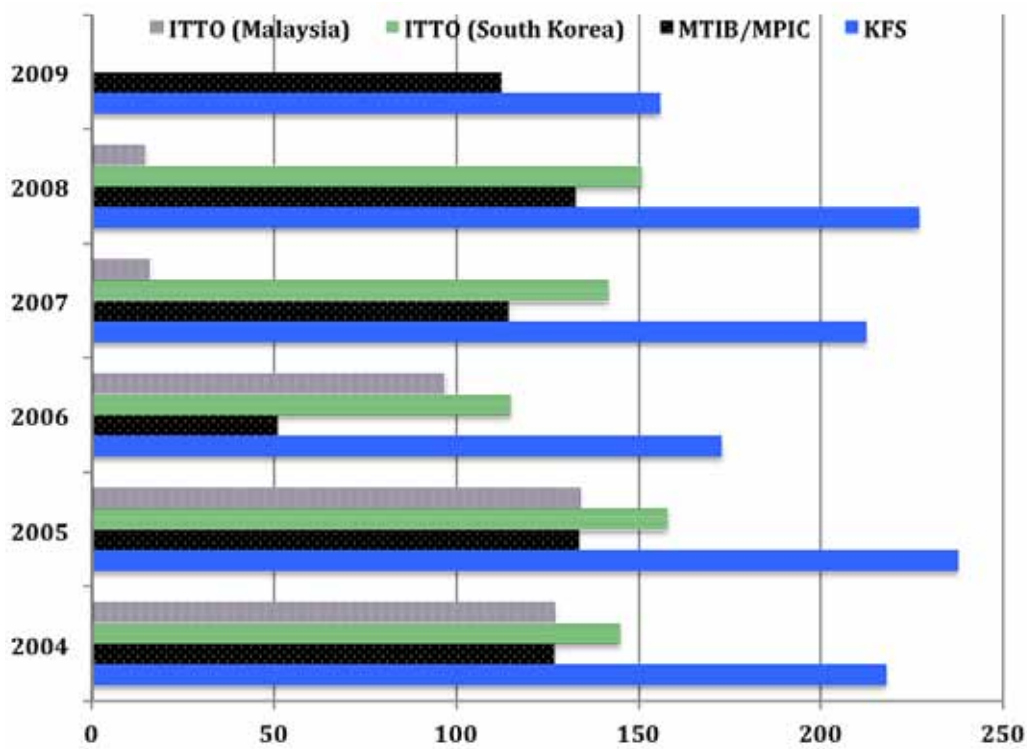
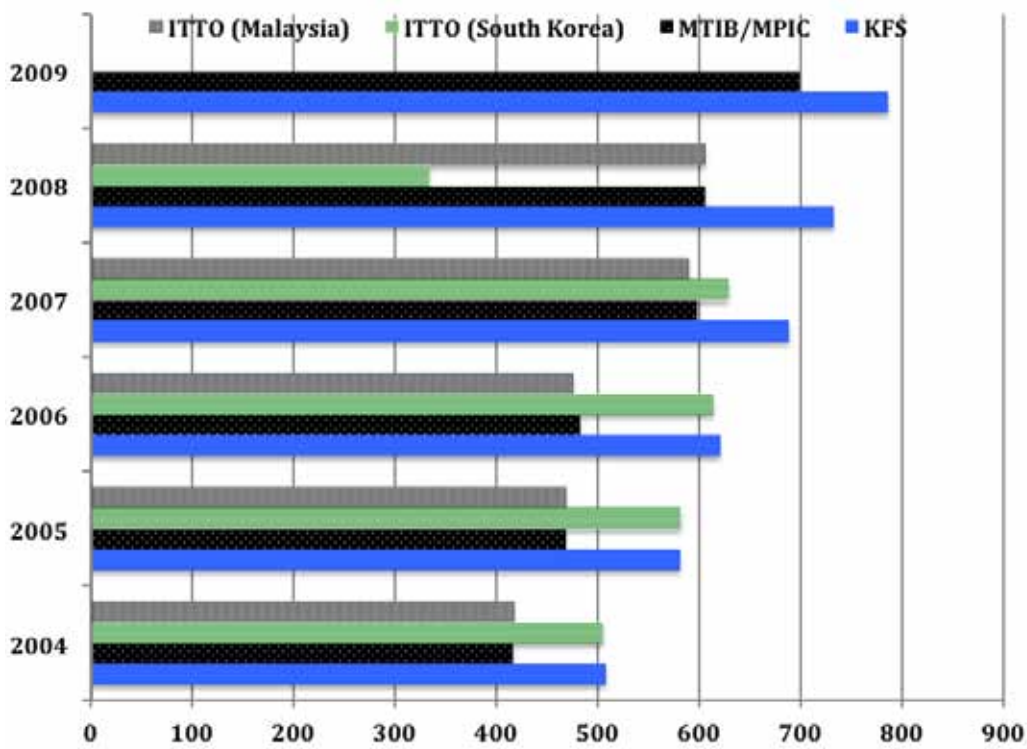


Figure 35: South Korean imports of Malaysian plywood 2004-2009 ('000 m<sup>3</sup>)



Apart from the above, another curiosity that has been observed is the existence of significant statistical inconsistencies between ITTO's data on the South Korean total tropical timber product imports and the KFS documentation on Malaysian timber product imports. While taking note that such discrepancies can indeed be caused by a variety of technical complexities, it is certainly perplexing that in some instances, the KFS data on a particular Malaysian timber product import can sometimes exceed even the volume of the total imports of the tropical timber product in concern as reported by the ITTO. Table 20 demonstrates five instances in which such an occurrence has been observed (all coloured).

**Table 20: Data comparison – ITTO's overall tropical timber imports of South Korea and KFS data on Malaysian timber imports ('000 m<sup>3</sup>)**

<b>LOGS</b>				
	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>
<b>ITTO:</b>	342	251	299	148
<b>South Korea's Total Imports</b>				
<b>KFS:</b>	135	102	78	65
<b>Malaysian Imports</b>				
<b>SAWNTIMBER</b>				
<b>ITTO:</b>	251	<b>122</b>	225	<b>96</b>
<b>South Korea's Total Imports</b>				
<b>KFS:</b>	132	<b>157</b>	179	<b>111</b>
<b>Malaysian Imports</b>				
<b>VENEER</b>				
<b>ITTO:</b>	249/186	210	<b>161</b>	<b>164</b>
<b>South Korea's Total Imports</b>				
<b>KFS:</b>	238	173	<b>212</b>	<b>227</b>
<b>Malaysian Imports</b>				
<b>PLYWOOD</b>				
<b>ITTO:</b>	1124	1139	1075	<b>701</b>
<b>South Korea's Total Imports</b>				
<b>KFS:</b>	581	621	689	<b>733</b>
<b>Malaysian Imports</b>				

## two Malaysia, Japan, South Korea and Australia

continued

### 2.6.4 Domestic timber consumption and utilisation patterns

Consumption of wood and wood products had been increasing rapidly since 1960s with the advent of industrialisation and urbanisation in South Korea, although the Asian economic crisis in 1997 did temporarily result in a sudden dip in timber consumption. Timber imports therefore contribute a large part of the country's timber consumption in South Korea, although some of these products are also further processed for export. Like domestically-harvested timber, the bulk of log imports goes to the lumber industry for further processing including for chip and pulp making, while some are used as bed logs or by the mining industry. Processed timber imports meanwhile may find ready buyers upon entering the South Korean domestic market.

The bulk of the wood products are naturally used in the construction and manufacturing sectors. In recent years, there has also been an increased demand for woods for the purpose of the re-modelling of residential environments and reconstructions of apartments and houses.<sup>23</sup>

Consumption of roundwoods stood at 10.4 million m<sup>3</sup> in 1978 but this declined to 7 million m<sup>3</sup> during the 1980s, before increasing again to between 9 and 10 million m<sup>3</sup> in the 1990s, although it did suffer a sharp drop around 1997, plunging to well below 7 million m<sup>3</sup> as a result of the Asian financial crisis. Consumption has since then stabilised between 8-9 million m<sup>3</sup> annually. Most of the roundwoods are consumed by the lumber and board industries.<sup>24</sup>

According to the KFS (2009, 112), plywood is mainly used in construction and furnishing industries up until the late 1980s. Consumption of plywood products climbed from one million m<sup>3</sup> in the mid-1980s to two million m<sup>3</sup> in the early 1990s. However today plywood use in the two aforementioned sectors has been largely substituted by particleboard and middle-density fibreboard (MDF), plywood consumption has stabilised around two million m<sup>3</sup>.

Particleboard in turn was widely used for kitchen furnishing materials and its consumption increased from around 100,000 m<sup>3</sup> in 1985 to 1.7 million m<sup>3</sup> in 2007. Similarly, MDF which began to be consumed more vigorously in the late 1980s, also started at around 100,000 m<sup>3</sup> in the late 1980s and reached 2.1 million m<sup>3</sup> in 2007. MDF was also mainly used in the production of furnishing materials initially but

today half of its production is consumed by the electronic and automobile industries.

Consumption of pulp meanwhile jumped from 250,000 tons in 1970 to 3 million tons in 2005, a twelve-fold increase, although the consumption annual increment rate had declined considerably from 11.2 percent in the 1970s to 3.8 percent by 2001. Paper consumption similarly also increased from around 264,000 tons in 1970 to 4.3 million tons in 2005 but the annual increment rate has also dropped from 11.2 percent in the 1980s to 4.1 percent by 2001.

### 2.7 Australia's timber production, importation and consumption trends

#### 2.7.1 Overall overview (ITTO and ABARES)

Table 21 constructed using statistical information provided by ITTO (2009), illustrates the trends in timber and primary timber product production, import, export and domestic consumption volume in Australia from 2005 to 2008.

Australia is not a major global importer of primary tropical timber products – it is in fact a large global producer of temperate timber products and does possess a small tropical timber production and export industry. During these four years, Australia's domestic log and sawntimber production far exceeded its imports.

Overall log production rose from 26.3 million m<sup>3</sup> in 2005 to 28.5 million m<sup>3</sup> in 2008. Log exports registered a slight decline from 0.9 million m<sup>3</sup> to 0.8 m<sup>3</sup> while domestic log consumption rose from 25.4 million m<sup>3</sup> to 27.6 million m<sup>3</sup>.

Sawntimber production meanwhile rose from 4.7 million m<sup>3</sup> in 2005 to 5.4 million m<sup>3</sup> in 2008. Sawntimber exports declined slightly from 346,000 m<sup>3</sup> to 265,000 m<sup>3</sup> while domestic consumption rose from 5.0 million m<sup>3</sup> to 5.8 million m<sup>3</sup>.

The veneer industry on the other hand is much smaller, production stood at 4,000 m<sup>3</sup> in 2005 and increased by 1,000 m<sup>3</sup> by 2008. Veneer exports increased from 3,000 m<sup>3</sup> in 2005 to 14,000 m<sup>3</sup> in 2008.

For plywood, production decreased from 156,000 m<sup>3</sup> in 2005 to 134,000 m<sup>3</sup> in 2008 while domestic consumption registered a very slight increase during the period from 341,000 m<sup>3</sup> to 343,000 m<sup>3</sup>.

For tropical log imports, Australia only imports an extremely small volume of the commodity annually. Tropical sawntimber imports meanwhile was around 84,000 m<sup>3</sup> in 2005 and

<sup>23</sup> Korea Forest Service (2009, 18).

<sup>24</sup> Korea Forest Service (2009, 112).

declined to 71,000 m<sup>3</sup> in 2008. Tropical veneer imports ranged from 4,000 m<sup>3</sup> in 2006 and 2008 to 9,000 m<sup>3</sup> in 2007. For tropical plywood, imports climbed from 63,000 m<sup>3</sup> in 2005 to 68,000 m<sup>3</sup> in 2008.

Table 22 meanwhile shows the national data from the Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES) on the country's timber production, import and export trends for the fiscal years beginning from 2004/2005 to 2008/2009. Although information from ABARES cannot be compared with that from the ITTO, as ABARES calculations are based on fiscal years, differences between the two can be said to be minimal.

### 2.7.2 Overall top timber exporters for Australia (ABARES)

Table 23 constructed from the data obtained from the ABARES provides further details on the country's largest sources of timber imports by their countries of origin from 2004 to 2009. Data from Table 23 were then used to construct Figures 36-38 to illustrate the major timber importation trends in Australia.

Australia imports only a very small volume of logs annually, being a major log producer itself. The major sources of log imports from 2003/2004 to 2008/2009 included China, Malaysia and Indonesia. For sawntimber, veneer and plywood, New Zealand was Australia's major top exporter during the six years.

For sawntimber, imports from New Zealand was at its peak in 2004 at 414,000 m<sup>3</sup> and at its lowest in 2009 at 236,000 m<sup>3</sup>. Canada was in second place from 2004 to 2008 and slipped to third place in 2009. Like New Zealand, its highest export volume was recorded in 2004 at 117,000 m<sup>3</sup> and its lowest was in 2009 at 60,000 m<sup>3</sup>. Malaysia and the Czech Republic meanwhile continuously alternated each other at the third and fourth place respectively with the exception of the years 2008 and 2009. Malaysian sawntimber export was highest in 2004 at 58,000 m<sup>3</sup> and lowest in 2009 at 39,000 m<sup>3</sup>. Czech Republic's export was highest in 2008 at 75,000 m<sup>3</sup> and lowest in 2006 at 54,000 m<sup>3</sup>.

For veneer, New Zealand's lowest export volume was in 2009 at 6,000 m<sup>3</sup> and its highest was in 2007 at 18,000 m<sup>3</sup>. The Philippines was the second largest veneer exporter in 2004, 2006 and 2007 and was placed in the third position in 2005 and 2009. Its export volume ranged from 2,000 to 4,000 m<sup>3</sup>. Malaysia meanwhile was the country's second largest source of veneer in 2005 and 2009 and fell to the third place in the

remaining years. Its export volume range was similar to that of The Philippines.

For plywood, New Zealand's export declined by half from 2004 to 2009, from 90,000 m<sup>3</sup> to 44,000 m<sup>3</sup>. Other major exporters included Indonesia, China and Malaysia. Malaysian plywood export was Australia's third largest in 2004 at 18,000 m<sup>3</sup> and by 2009, Malaysia was Australia's second largest plywood exporter at 38,000 m<sup>3</sup>.

### 2.7.3 Data comparison on Malaysian timber imports: ABARES and MTIB/MPIC

Table 24 shows the differences between the data from ABARES on Australia's imports of Malaysian sawntimber and plywood in volume and the parallel export volume of the two products in concern as recorded by Malaysian sources. For each timber product, the data from these sources tended to vary although due to the small volume involved, these discrepancies can be said to be minimal.

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Table 21: ITTO – Australia's timber production, import, export and domestic consumption volume, 2005-2008 ('000 m<sup>3</sup>)

ALL PRIMARY TIMBER PRODUCTS (000 m <sup>3</sup> )					PRIMARY TROPICAL TIMBER PRODUCTS			
LOGS	2005	2006	2007	2008	2005	2006	2007	2008
Production	26,333	26,735	27,182	28,461	27	41	45	45
Imports	9	2	6	4	0	0	0	0
Exports	922	1,062	1,145	847	3	0	2	0
Domestic Consumption	25,420	25,675	26,043	27,618	25	41	44	45
SAWN	2005	2006	2007	2008	2005	2006	2007	2008
Production	4,687	4,784	5,064	5,372	0	0	0	0
Imports	701	570	566	734	84	80	83	71
Exports	346	397	368	265	8	0	0	1
Domestic Consumption	5,042	4,957	5,262	5,841	76	80	83	70
VENEER	2005	2006	2007	2008	2005	2006	2007	2008
Production	4	4	5	5	0	0	0	0
Imports	21	29	35	20	6	4	9	4
Exports	3	5	9	14	0	0	0	0
Domestic Consumption	22	28	31	11	5	4	9	4
PLYWOOD	2005	2006	2007	2008	2005	2006	2007	2008
Production	156	145	130	134	0	0	0	0
Imports	194	226	209	223	63	66	59	68
Exports	9	20	17	14	5	4	7	4
Domestic Consumption	341	352	322	343	58	62	52	64

Source: *Annual Review and Assessment of the World Timber Situation 2009*. ITTO (2009). Table 1-1-a, Production, Trade and Consumption of All Timber by ITTO Consumers, pp. 60-1; Table 1-1-b, Production, Trade and Consumption of Tropical Timber by ITTO Consumers, pp. 72-2. (Detailed statistical notations available in original report.) [<http://www.itto.int>].

Table 22: Australia's national data on timber production, import and export 2004/2005 – 2008/2009 [fiscal year] ('000 m<sup>3</sup>)

ALL PRIMARY TIMBER PRODUCTS (000 m <sup>3</sup> )					
LOGS	2004/2005	2005/2006	2006/2007	2007/2008	2008/2009
Production	26,998	26,734	27,192	28,368	25,799
Imports	1	1	5	1	1
Exports	806	864	1,171	1,045	986
SAWN	2004/2005	2005/2006	2006/2007	2007/2008	2008/2009
Production	4,940	5,032	5,163	5,372	4,730
Imports	847	672	611	784	628
Exports	259	302	426	349	364
VENEER	2004/2005	2005/2006	2006/2007	2007/2008	2008/2009
Production	4	4	2	82	117
Imports	21	24	29	32	21
Exports	4	3	4	35	86
PLYWOOD	2004/2005	2005/2006	2006/2007	2007/2008	2008/2009
Production	156	145	130	134	118
Imports	200	205	244	237	199
Exports	5	4	13	15	53

Sources: *Australian forest and wood products statistics*. March and June quarters 2011. November 8. ABARES (2011).  
[http://adl.brs.gov.au/data/warehouse/afwpsd9able001/afwpsd9able201111/afwpsOverview201111\\_1.0.0.pdf](http://adl.brs.gov.au/data/warehouse/afwpsd9able001/afwpsd9able201111/afwpsOverview201111_1.0.0.pdf)  
[http://adl.brs.gov.au/data/warehouse/afwpsd9able001/afwpsd9able201111/afwpsImports201111\\_1.0.0.xls](http://adl.brs.gov.au/data/warehouse/afwpsd9able001/afwpsd9able201111/afwpsImports201111_1.0.0.xls).

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continued

Table 23: Top exporters for Australian primary timber product imports 2004-2009 ('000 m<sup>3</sup>)

		LOGS											
		2003/2004		2004/2005		2005/2006		2006/2007		2007/2008		2008/2009	
1.	Indonesia	0.55	China	0.31	China	0.09	China	0.14	China	0.10	China	0.15	
2.	Malaysia	0.29	Malaysia	0.22	Malaysia	0.07	Indonesia	0.08	Canada	0.07	USA	0.15	
3.	China	0.25	Indonesia	0.17	USA	0.06	Malaysia	0.02	Malaysia	0.06	Canada	0.11	
4.	Germany	0.13	USA	0.13	Indonesia	0.03	Canada	0.02	Indonesia	0.04	Malaysia	0.04	
5.	New Zealand	0.12	Canada	0.09	New Zealand	0.02			Germany	0.04	Indonesia	0.03	
6.	USA	0.09	Germany	0.01					USA	0.03	New Zealand	0.02	
<b>SAWNTIMBER</b>													
		2004		2005		2006		2007		2008		2009	
1.	New Zealand	414	New Zealand	346	New Zealand	285	New Zealand	279	New Zealand	280	New Zealand	236	
2.	Canada	117	Canada	112	Canada	75	Canada	76	Canada	95	Czech R.	62	
3.	Czech R.	66	Malaysia	56	Czech R.	54	Czech R.	62	Austria	82	Canada	60	
4.	Malaysia	58	Czech R.	54	Malaysia	49	Malaysia	45	Czech R.	75	Malaysia	39	
5.	Indonesia	48	Indonesia	44	Indonesia	44	Indonesia	41	Malaysia	47	Germany	36	
6.	Estonia	26	Estonia	26	Chile	18	Chile	26	Germany	47	Austria	28	
7.	Austria	25	Finland	20	Estonia	17	Germany	17	Chile	38	Chile	25	
<b>VENEER</b>													
		2004		2005		2006		2007		2008		2009	
1.	New Zealand	7	New Zealand	9	New Zealand	16	New Zealand	18	New Zealand	10	New Zealand	6	
2.	Philippines	3	Malaysia	4	Philippines	3	Philippines	4	Italy	4	Malaysia	3	
3.	Malaysia	3	Philippines	2	Malaysia	2	Malaysia	3	Malaysia	3	Philippines	2	
4.	Italy	1	USA	1	USA	1	USA	1	Philippines	3	Italy	1	
<b>PLYWOOD</b>													
		2004		2005		2006		2007		2008		2009	
1.	New Zealand	90	New Zealand	71	New Zealand	83	New Zealand	78	New Zealand	57	New Zealand	44	
2.	Indonesia	41	Indonesia	46	China	46	China	49	China	47	Malaysia	38	
3.	Malaysia	18	China	27	Indonesia	45	Indonesia	38	Indonesia	39	China	29	
4.	China	17	Malaysia	24	Malaysia	22	Malaysia	30	Malaysia	32	Indonesia	24	
5.	Chile	9	Chile	14	Chile	11	Chile	16	Chile	26	Chile	22	

Sources: Australian forest and wood products statistics. March and June quarters 2011. November 8. ABARES (2011).

[http://adl.brs.gov.au/data/warehouse/atwpsd9able001/atwpsd9able201111/atwpsOverview201111\\_1.0.0.pdf](http://adl.brs.gov.au/data/warehouse/atwpsd9able001/atwpsd9able201111/atwpsOverview201111_1.0.0.pdf)[http://adl.brs.gov.au/data/warehouse/atwpsd9able001/atwpsd9able201111/atwpsImports201111\\_1.0.0.xls](http://adl.brs.gov.au/data/warehouse/atwpsd9able001/atwpsd9able201111/atwpsImports201111_1.0.0.xls)



Figure 36: Australia – Major sources of sawntimber imports 2004-2009 ('000 m<sup>3</sup>)

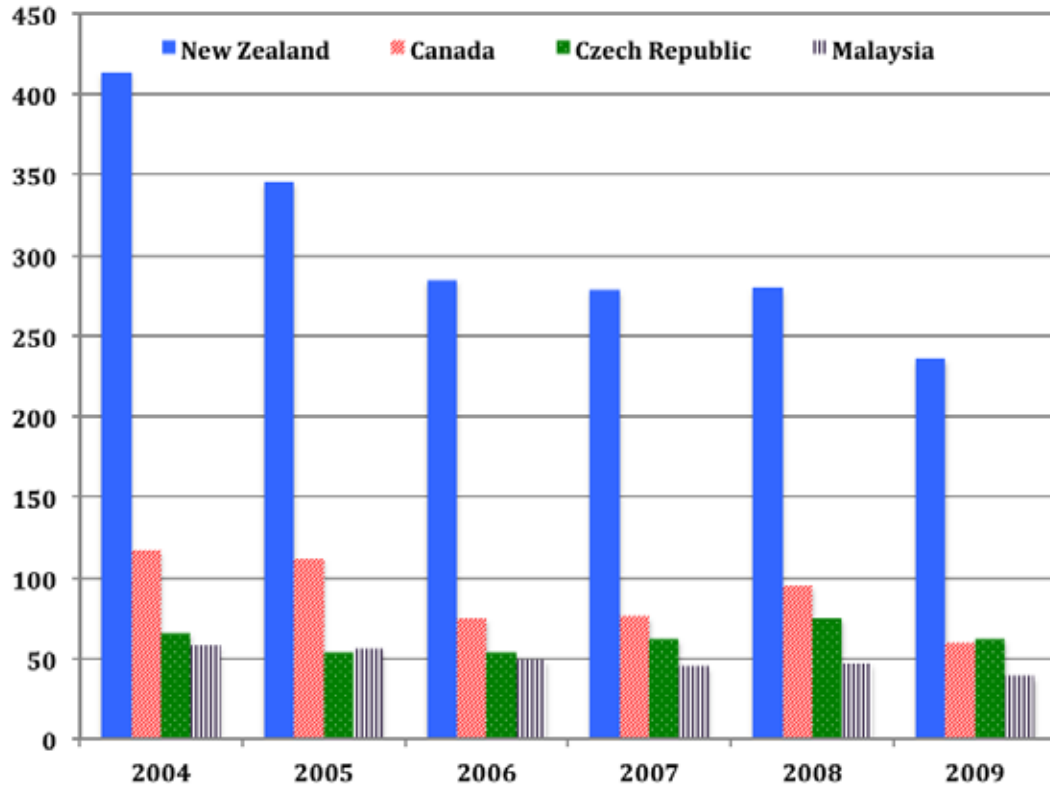
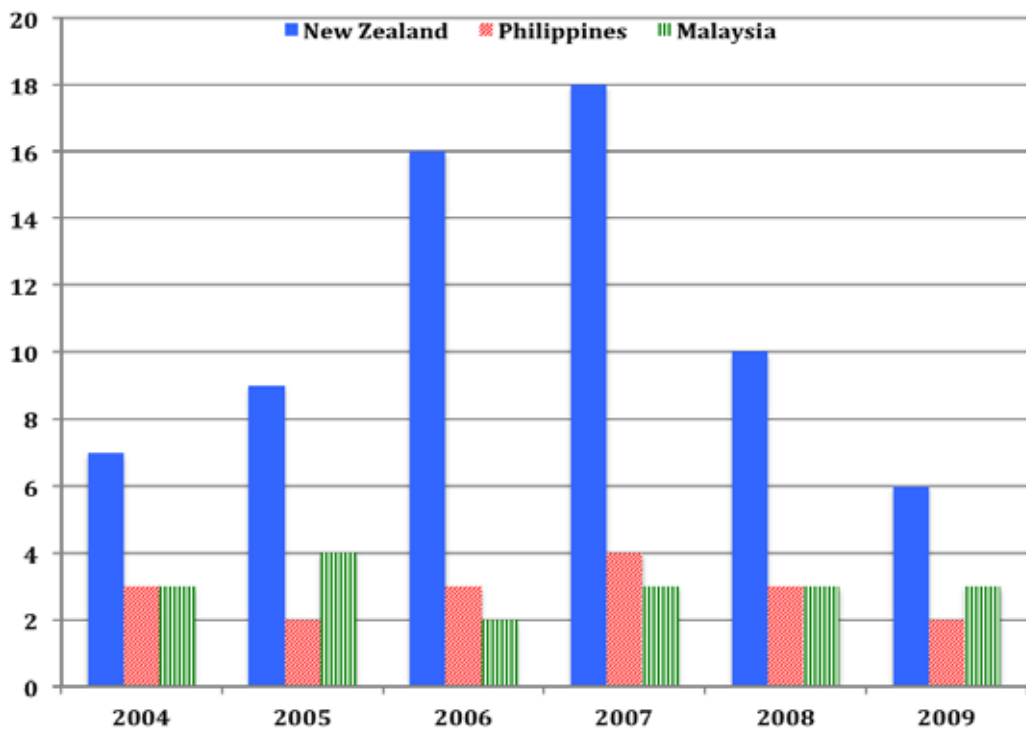


Figure 37: Australia – Major sources of veneer imports 2004-2009 ('000 m<sup>3</sup>)



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continued

Figure 38: Australia – Major sources of plywood imports 2004-2009 ('000 m<sup>3</sup>)

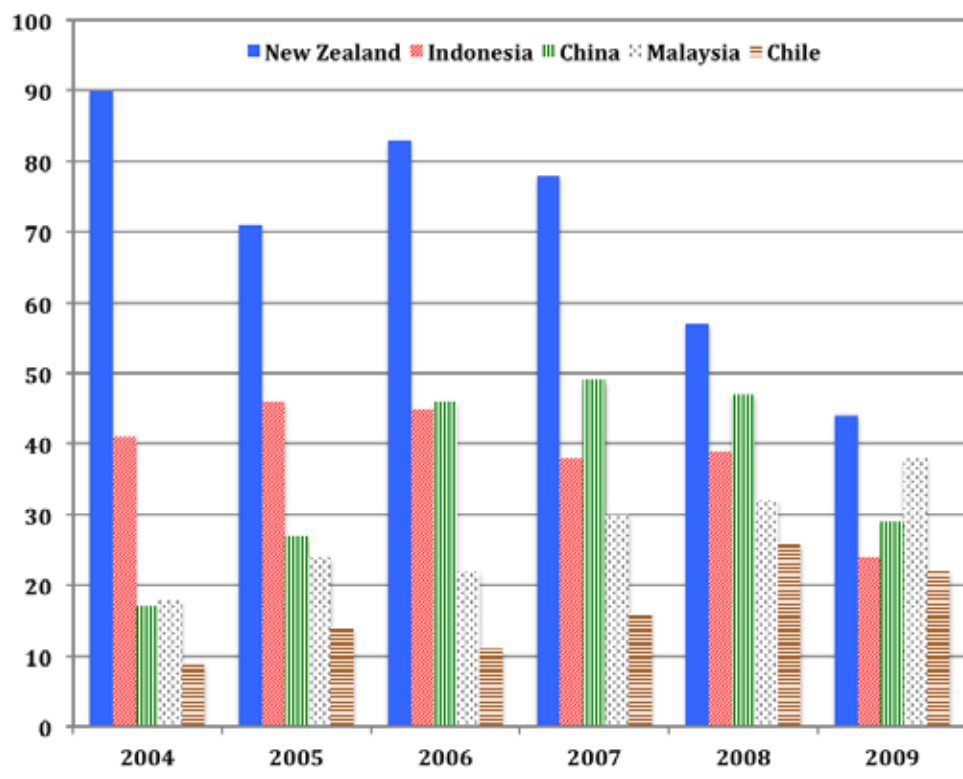


Table 24: Data comparison – Australian sawntimber and plywood imports from Malaysia in volume 2004-2009 ('000 m<sup>3</sup>)

	ABARES	MTIB	ABARES	MTIB
	Imports	Exports	Imports	Exports
	SAWNTIMBER		PLYWOOD	
2004	57.9	43.8	18.2	15.8
2005	56.1	45.6	23.6	20.1
2006	49.1	36.0	22.1	18.9
2007	44.6	18.0	29.6	22.5
2008	47.0	29.3	32.2	36.6
2009	38.9	24.1	37.8	32.4

Sources:

Australia: *Australian forest and wood products statistics*. March and June quarters 2011. November 8. ABARES (2011). [http://adl.brs.gov.au/data/warehouse/afwpsd9able001/afwpsd9able201111/afwpsOverview201111\\_1.0.0.pdf](http://adl.brs.gov.au/data/warehouse/afwpsd9able001/afwpsd9able201111/afwpsOverview201111_1.0.0.pdf). [http://adl.brs.gov.au/data/warehouse/afwpsd9able001/afwpsd9able201111/afwpsImports201111\\_1.0.0.xls](http://adl.brs.gov.au/data/warehouse/afwpsd9able001/afwpsd9able201111/afwpsImports201111_1.0.0.xls).

Malaysia: All figures from MTIB [<http://www.mtib.gov.my/>] or also accessible at the MTC website [<http://www.mtc.com.my/>].

## three Malaysia: forestry governance and the state of indigenous peoples' rights

# Malaysia: forestry governance and the state of indigenous peoples' rights

### 3.1 General introduction

Since the international tropical timber trade began to come under heavy global scrutiny some three decades ago for the intensity of ecological destruction and land rights conflicts that logging activities were causing on the ground, Malaysia, one of the world's leading producers of tropical timber, has embarked on an impressive international campaign to promote itself as a sustainable producer of the commodity.

While the existence of a well-structured forestry governance system and the national certification scheme, the Malaysian Timber Certification Scheme (MTCS), is often used to support the legal and sustainable acceptability of Malaysian timber products, these frequent demonstrations of the technical, by design, do not address the political – the existence of structural flaws within the country's forestry governance system and the lack of security of the customary land rights of its indigenous peoples, which must also then be contextualised against a backdrop of a state of democracy that has become increasingly distressed over the years.

A most glaring weakness of this political system is the non-transparent way in which logging licences are awarded in Malaysia. Such flaws inevitably entail that mandatory consultations and consent obtaining process at the earliest stage possible with potentially affected communities are not built into the system. Meanwhile, as a subject on its own, Malaysia's general record in protecting the rights and welfare of its indigenous communities is far from satisfactory, despite having ratified the *United Nations' Declaration on the Rights of Indigenous Peoples* (UNDRIP) in 2007.

This chapter will be focusing on some of the characteristic *foundations* of poor forestry governance in Malaysia rather than the adverse *impacts* of its timber production system, since the latter have been widely discussed by countless works over the last three decades. The discussions however will be limited to only two focus areas – firstly on the sustainability of the Malaysian timber industry's production levels, in relation to forest conservation and the nature of the international tropical timber trade, and secondly on the state of the indigenous customary land rights in the country.

However, we should remain mindful that these are only *some* of the structural troubles plaguing Malaysia's timber production industry.

### 3.2 Forestry and land governance framework in Malaysia

Malaysia is a nation of thirteen federated states and three federal territories of approximately 33 million hectares with 28 million citizens, with more than 20 million alone concentrated in the Peninsula. Sarawak, with a landmass of around 12.4 million hectares, almost the size of the entire Peninsula, has a population of only around 2.5 million while Sabah, with 7.2 million hectares, has slightly more than 3 million.

Each state today has its own executive arm and legislature that exercise distinct areas of jurisdiction from those held by the Federal Government, as determined by the *Federal Constitution*. In this constitutional arrangement, land and forestry governance is under the jurisdiction of individual states [Article 74(2)]. Correspondingly, timber royalties are collected by the states, while the Federal Government is entitled to the timber export duties from the Peninsular states and income taxes from the timber businesses.

In this legal structure, the Federal Government's authority in the decision-making process on forestry and land matters is highly limited. Thus in order to provide greater consistency in governance, administrative and management coordination in forestry and land matters at the national level, the *Federal Constitution* provides for the establishment of the *National Land Council*, which subsequently established the *National Forestry Council* in 1971. In 1978, the latter unveiled the country's *National Forestry Policy*, leading towards the enactment of the *National Forestry Act 1984*, which sought to streamline existing forestry policies and legislation of the various Peninsular states.

Sarawak and Sabah however are not bound by these two federal processes. The two states are conferred with an array of governance privileges including those on land, employment, immigration,<sup>25</sup> language, protection during emergency and the states' sizeable indigenous communities, who enjoy a special position similar to that of the Malays, the largest ethnic community in Malaysia. The *Federal Constitution* also provides the Bornean states with a set of fiscal privileges including eight sources of revenue not granted to the Peninsular states, one of which is the export duty on timber and forest produce. Following a decision of the Court of Appeal in 1997, the two states have also been legally sanctioned to legislate their own environmental laws even as

<sup>25</sup> From time to time, this privilege is used by the Sarawak State Government to bar several prominent members of civil society groups and opposition politician parties from entering the state, a task which is made easier by geography, as Borneo is separated from the Peninsula by the South China Sea.

## three Malaysia

### Continued

the Peninsular states continue to enforce the *Environmental Quality Act 1974*, which was passed through the federal legislature.<sup>26</sup>

Sarawak and Sabah forestry, land, conservation and environmental protection laws are passed by the two states' legislatures and their regulatory functions are run autonomously by the respective state agencies. The Peninsular states on the other hand are bound by parallel laws enacted by the country's Parliament and enforced by federalised state agencies.<sup>27</sup> However, the highest lawmaking and regulatory authorities for land and forestry matters in the Peninsular states are still the respective state legislatures and executive arms, not unlike in Sarawak and Sabah.

### 3.3 Regional forestry governance structures

At the federal level, forests are clustered into the following legal categories:

1. Permanent Reserve/Reserved Forest (sometimes Permanent Forest Estate)
  - (i) **Productive/Production Forest:** gazetted to supply forest resources, including timber, in perpetuity, based on cyclical forestry management plans.
  - (ii) **Protected/Protection Forest:** gazetted for conservation-related functions (protection, regulated recreation, research, sample forests etc.) where logging and other industrial activities are prohibited. Internationally they are also sometimes termed as **Conservation Forests** or **Totally Protected Forests/Areas**.
2. Stateland Forest
 

Forests that have not been gazetted into production or protection categories. They can be both legally logged (usually with less stringent management plans and conditions, in comparison to gazetted production forests) or converted into other land use functions.

At the regional level however, the actual terms for these production and protection forests may be phrased and

<sup>26</sup> *Director-General, Department of Environment & Anor v. Kajing Tubek & Ors* [1997] 3 MLJ 23.

<sup>27</sup> The enforcement of such federal laws by the Peninsular states however must first be preceded by their legal adoption at the respective state legislatures. As such, although all Peninsular states are technically applying the same federal land and forestry laws, legally speaking, it operates at the state level as an individual state legislative document (Enactment, etc). The state legislature is legally free to amend and repeal such laws – although the influence and interventions of the Federal Government can still be asserted through the National Land/Forestry Council.

systematised differently. For instance, production forests in the Permanent Reserve/Reserved Forest category in Peninsular Malaysia (*Timber Production Forest under Sustained Yield*) are a sub-category under the larger *Permanent Reserved Forest* (PRF), in Sabah (*Class II – Commercial Forest, Class III – Domestic Forest and Class V – Mangrove Forest*) all fall under the sub-categories of the *Forest Reserve* (FR), while in Sarawak, all three sub-classes of production forests (*Forest Reserve, Protected Forest and Communal Forest*) belong to the *Permanent Forest Estate* (PFE) umbrella.

One cautionary note on this matter is the fact that in Peninsular Malaysia and Sabah, the larger PRF/FR umbrella also includes other sub-categories of forests, which although much smaller in size are, in principle, conservation forests – designated to serve functions such as environmental protection, recreation, ecological representation, research, education and the provision of amenity and domestic services (although their specific terms may vary from one another).<sup>28</sup> This complexity must be noted since Peninsular Malaysia and Sabah also possess distinct conservation laws and governance agencies.

Such forests are overseen by the regional forestry departments that are responsible for the issuance of logging licences and the collection of royalties and taxes from the harvested timber. The Sarawak Department of Forests has however in a controversial move corporatised its functions, including its enforcement duties, to the state-owned Sarawak Forestry Corporation.<sup>29</sup> Meanwhile, regulatory and industrial enhancement duties for downstream timber processing, export and trade activities are under the authority of the Malaysian Timber Industry Board (MTIB). In Sarawak, a parallel state-level body, the Sarawak Timber Industry Development Corporation (STIDC) was set-up to carry out similar functions.<sup>30</sup>

<sup>28</sup> The Peninsular PRF sub-categories do contain overlaps with one another, as the same area is allowed to be designated to serve more than one purpose [Section 10(1), National Forestry Act 1984]. The Sabah authorities meanwhile have apparently avoided area overlaps although its legislation also allows for an area to be designated with more than one function. Please see Sabah Department of Forestry's statistics on Sabah Forest Reserve sub-categories, available at <http://www.forest.sabah.gov.my/> and its sister webpage, Conservation Areas Information and Monitoring System, available at <http://www.forest.sabah.gov.my/caims>.

<sup>29</sup> This initiative could be traced back from 1995 with the enactment of the Sarawak Forestry Corporation Ordinance 1995. The Sarawak Forestry Corporation itself was registered in 1997. The official launch of the corporation however only took place in June 2003.

<sup>30</sup> Although both Sarawak and Sabah are permitted to collect timber export duties and manage their own downstream timber production activities, it is Sarawak that has instituted highly specialised structures to manage such matters. Sabah meanwhile has set up two statutory agencies, first, the Sabah Foundation, which has an investment arm and holding management company, Innoprise Sdn. Bhd., (both participating in logging and timber plantation activities) and second, the Sabah Forestry Development Authority (SAFODA) which appears to be more focused on timber plantation

For conservation governance, the three regions each has two conservation-specific regional laws, one on general ecological conservation while the other is focused on wildlife protection.

In Peninsular Malaysia, these two regional laws were passed by the federal legislature, the country's Parliament, and enforced by the Department of Wildlife and National Parks (PERHILITAN), with federalised state offices. Sabah conservation laws meanwhile are respectively being enforced by the Sabah State Parks Trustees and the Sabah Department of Wildlife. In Sarawak, the two parallel laws are still under the jurisdiction of its Forests Department under a special setup, the National Parks and Wild Life Division.

Beyond the two federal conservation laws however, some Peninsular Malaysia states have actually established conservation areas under additional state-distinct legal initiatives through the following measures:

- (i) During colonial administration, individual states in the Peninsula were free to enact specific forestry, land and conservation legislation. While some of these laws have been repealed by the corresponding centralised federal legislation, a few are still in force until today. Beginning in the late 1980s, some states have begun to re-use this legal approach to avoid using the federal conservation legislation in establishing their own conservation areas. Such conservation areas will be established by state-distinct statutes and regulated by distinct regulatory state conservation agencies (statutory corporation, trustee);
- (ii) A few states have also resorted to the federal land legislation, the *National Land Code 1965*, to reserve areas for conservation purposes; and
- (iii) From 2001 onwards, some states have amended the main forestry legislation (which operates as a state legislative document at the state level), to provide for the creation of *State Parks* under the PRF, which will remain under the jurisdiction of the federalised state forestry departments.

Depending on the legal contexts of such initiatives, states may enter into some form of partnership with either the federal forestry or conservation authorities in order to benefit from various capacity and resource-related assistance, or not at all.

Table 25 attempts to capture the complexity of Malaysia's forestry governance. Table 26 shows a summary of the regional Environmental Impact Assessment (EIA) process for the forestry sector. Figures 39 to 41 meanwhile illustrate the governance structures that deal with forestry management and the timber industry.

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Continued

**Table 25: Forestry governance structure in Malaysia**

<b>MAINLY PRODUCTION FORESTS PENINSULAR MALAYSIA (Main Forestry Legislation)</b>	<b>TOTALLY PROTECTED AREAS PENINSULAR MALAYSIA (Conservation Legislation)</b>
<p style="text-align: center;">Department of Forestry Peninsular Malaysia (With federalised state branches)</p> <p style="text-align: center;"><b>Ministry of Natural Resources and Environment</b></p>	<p style="text-align: center;">Department of Wildlife and National Parks, Peninsular Malaysia (PERHILITAN) (With federalised state branches)</p> <p style="text-align: center;"><b>Ministry of Natural Resources and Environment</b></p>
<p><b>National Forestry Act 1984</b> <u>Permanent Reserved Forest:</u></p> <div style="background-color: red; color: white; padding: 2px; text-align: center; margin-bottom: 5px;"><b>Production</b></div> <p>(a) Timber production forest under sustained yield</p> <div style="background-color: green; color: white; padding: 2px; text-align: center; margin-bottom: 5px;"><b>ALL Protection</b></div> <p>(b) Soil protection forest (c) Soil reclamation forest (d) Flood control forest (e) Water catchment forest (f) Forest sanctuary for wildlife (g) Virgin jungle reserved forest (h) Amenity forest (i) Education forest (j) Research forest (k) Forest for federal purposes</p>	<p><b>Wildlife Conservation Act 2010</b> <u>Wildlife Sanctuary</u> <u>Wildlife Reserve</u></p> <p><b>National Park Act 1980</b> <u>National Park</u></p>

**PENINSULAR MALAYSIA**

(State-distinct conservation legislative initiatives)

**ALL Protection**

**National Forestry Act 1984**

Under Section 10(1) that sub-classifies the Permanent Reserved Forest above, various states have amended this section at the state level by adding the sub-category (I) State Park. Such areas are then managed under a special setup/committee operating under the concerned state Forestry Department.

**River Rights Enactment (Perak) 1915**

Overseen by PERHILITAN.

**National Park (Kelantan) Enactment 1938**

**National Park (Pahang) Enactment 1939**

**National Park (Terengganu) Enactment 1939**

All three laws established three individual State Parks, merged into a single *Taman Negara National Park*. Although each State Park has its own Board of Trustees, the Park is also under the joint-care of PERHILITAN.

**Turtles Enactment (Terengganu) 1951**

Overseen by PERHILITAN.

**River Terrapin Enactment (Kedah) 1972**

Overseen by PERHILITAN.

**National Parks (Terengganu) Enactment 1987**

Reportedly has never actually been used.

**National Parks (Johor) Corporation Enactment 1989**

Establishes the Johor National Parks Corporation.

**Perak State Parks Corporation Enactment 2001**

Establishes the Perak State Parks Corporation.

**Selangor State Parks Corporation Enactment 2005**

Reportedly has never actually been used.

**Sarawak Forests Department**

**Sarawak Ministry of Resource Planning and Environment**

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Continued

<p><b>Sarawak Forests Ordinance 1954</b></p> <p><u>Permanent Forest Estate</u></p> <p><b>ALL Production</b></p> <p>(a) Forest Reserve</p> <p>(b) Protected Forest</p> <p>(c) Communal Forest (negligible size)</p>	<p><b>Wild Life Sanctuary Ordinance 1998</b></p> <p><u>Wild Life Sanctuary</u></p> <p><b>National Parks and Nature Reserves Ordinance 1998</b></p> <p><u>National Park</u></p> <p><u>Nature Reserve</u></p>	
<p><b>Sabah Forestry Department</b></p> <p><b>Sabah Chief Minister's Department</b></p>	<p><b>Sabah Department of Wildlife</b></p> <p><b>Sabah Ministry of Tourism, Culture and Environment</b></p>	<p><b>The Sabah Park Trustees</b></p> <p><b>Sabah Ministry of Tourism, Culture and Environment</b></p>
<p><b>Sabah Forest Enactment 1968</b></p> <p><u>Forest Reserve</u></p> <p><b>Protection</b></p> <p>(a) Class I – Protection Forest</p> <p><b>Production</b></p> <p>(b) Class II – Commercial Forest</p> <p><b>Production</b></p> <p>(c) Class III – Domestic Forest</p> <p><b>Protection</b></p> <p>(d) Class IV – Amenity Forest</p> <p><b>Production</b></p> <p>(e) Class V – Mangrove Forest</p> <p><b>Protection</b></p> <p>(f) Class VI – Virgin Jungle Reserve</p> <p><b>Protection</b></p> <p>(g) Class VII – Wildlife Reserve</p>	<p><b>Wildlife Conservation Enactment 1997</b></p> <p><u>Wildlife Sanctuary</u></p> <p><u>Conservation Area</u></p> <p><u>Wildlife Hunting Areas</u></p>	<p><b>Parks Enactment 1984</b></p> <p><u>State Parks</u></p>



Table 26: EIA governance for the forestry sector in Malaysia

PENINSULAR MALAYSIA	
Relevant Laws	Authority
Environmental Quality Act 1974 [Section 34A] <u>Subsidiary legislation &amp; regulations</u> Environmental Quality Act (Prescribed Activities) Environmental Impact Assessment Order 1987 A Handbook Of EIA Guidelines EIA Guidelines For Forestry	Department of Environment (DOE) (With federalised state offices)
<p><b>Preliminary EIA</b></p> <p>Approved at the state DOE level. Does not require public display and participation.</p> <p><b>Detailed EIA</b></p> <p>Approved at the federal DOE level. Requires public display and participation.</p> <p>Forestry activities requiring an EIA:</p> <ul style="list-style-type: none"> <li>(i) Conversion of hill forest to other land use for an area of 50 hectares or more.</li> <li>(ii) Logging or conversion of forest to other land use within the catchment area of reservoirs used for water supply, irrigation or hydro-power generation or in areas adjacent to conservation areas.</li> <li>(iii) Logging covering area of 500 hectares or more.</li> <li>(iv) Conversion of mangrove swamps for industrial, housing or agricultural use for an area of 50 hectares or more.</li> <li>(v) Clearing of mangrove swamps on islands adjacent to national marine parks.</li> </ul> <p>Detailed EIA is needed for logging activities covering an area exceeding 500 hectares or more.</p>	
SARAWAK	
Relevant laws	Authority
Natural Resources and Environment Ordinance 1993 [Section 11A] <u>Subsidiary legislation &amp; regulations</u> Natural Resources and Environment Ordinance (Prescribed Activities) Order 1994 Handbook on EIA Guidelines Natural Resources and Environment (Compounding of Offences) Rules 1997	Natural Resources & Environment Board, Sarawak  <b>Note:</b> <i>The DOE, with its federal EQA 1974 and EIA legislation, still has authority in Sarawak for a limited number of environmental governance matters not covered under the Sarawak legislation.</i>

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Continued

### EIA is required for a list of forestry-related activities:

- (i) clearing of forest areas for the establishment of agricultural estates.
- (ii) carrying out of logging operations in forest areas **which have previously been logged or in coupes which have previously been declared to have been closed.**
- (iii) activities which may cause pollution of inland waters or endanger marine or aquatic life, organism or plants in inland waters, or pollution of the air or erosion of the bank of any rivers, watercourses or the foreshores and fisheries.
- (iv) any other activities which may injure, damage or have any adverse impact on the quality of the environment or the natural resources.

### EIA is required for logging activities:

- (i) Extraction or felling of timber from any area exceeding 500 hectares which have previously been logged or in respect of which coupes have previously been declared to have been closed.
- (ii) Extraction or felling of any timber within any area declared to be a water catchment area under the Water Ordinance 1994.

**Public participation is not mandatory, conducted only on the discretion of project proponents.**

SABAH	
Relevant laws	Authority
Environment Protection Enactment 2002 [Section 12] <u>Subsidiary legislation &amp; regulations</u> Environment Protection (Prescribed Activities) Order 2005 Environment Protection (Prescribed Activities) (Environmental Impact Assessment) Order 2005 Handbook on EIA in Sabah EIA Guidelines for Forest Clearance and Logging Activities Environment Protection (Registration Of Environmental Consultants) Rules 2005 Environment Protection (Environmental Fees) Rules 2005 Environment Protection (Compounding Of Offences) Rules 2005	Environment Protection Department, Sabah  <i>Note:</i> <i>The DOE, with its federal EQA 1974 and EIA legislation, still has authority in Sabah for a limited number of environmental governance matters not covered under the Sabah legislation.</i>

### **Special EIA**

A Special Review Panel is set up to review the EIA. Public hearing is required. Conducted for projects having special environmental impact magnitude and sensitivity, which may extend beyond the geographical boundaries of the project site and/or can adversely affect the welfare of local communities. A comprehensive and detailed assessment of the primary and key environmental issues and impacts are required to evaluate the significance of the environmental impacts, and to formulate appropriate mitigation measures and monitoring programme.

### **Normal EIA**

Conducted for projects where the environmental impacts are localised, and the local sensitivities are not significantly affected. No public hearing is required.

#### **Criteria used to determine the type of EIA:**

- (i) Extent of focus of primary issues of concern;
- (ii) Environmental sensitivity of location;
- (iii) Magnitude of potential impacts;
- (iv) Geographical extent of potential impacts;
- (v) Significance to government policies and guidelines; and
- (vi) Local sensitivities such as aesthetic or cultural concern.

#### **Forestry activities requiring Proposal for Mitigation Measures:**

- (i) Felling or extraction of timber covering an area of 100 hectares or more; or
- (ii) Development of forest plantation or reforestation covering an area of 100 hectares or more.

#### **Forestry activities requiring an EIA:**

- (i) Felling or extraction of timber covering an area of 500 hectares or more; or
- (ii) Development of forest plantation or reforestation covering an area of 500 hectares or more.

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Continued

Figure 39: Structure of forestry governance in Peninsular Malaysia

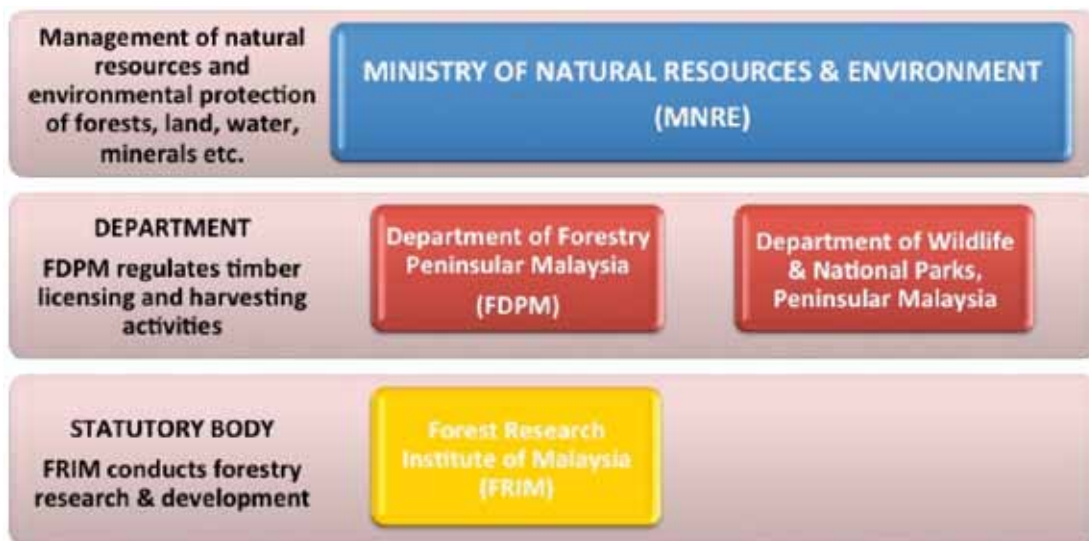


Figure 40: Structure of timber industry governance at the federal level, Malaysia

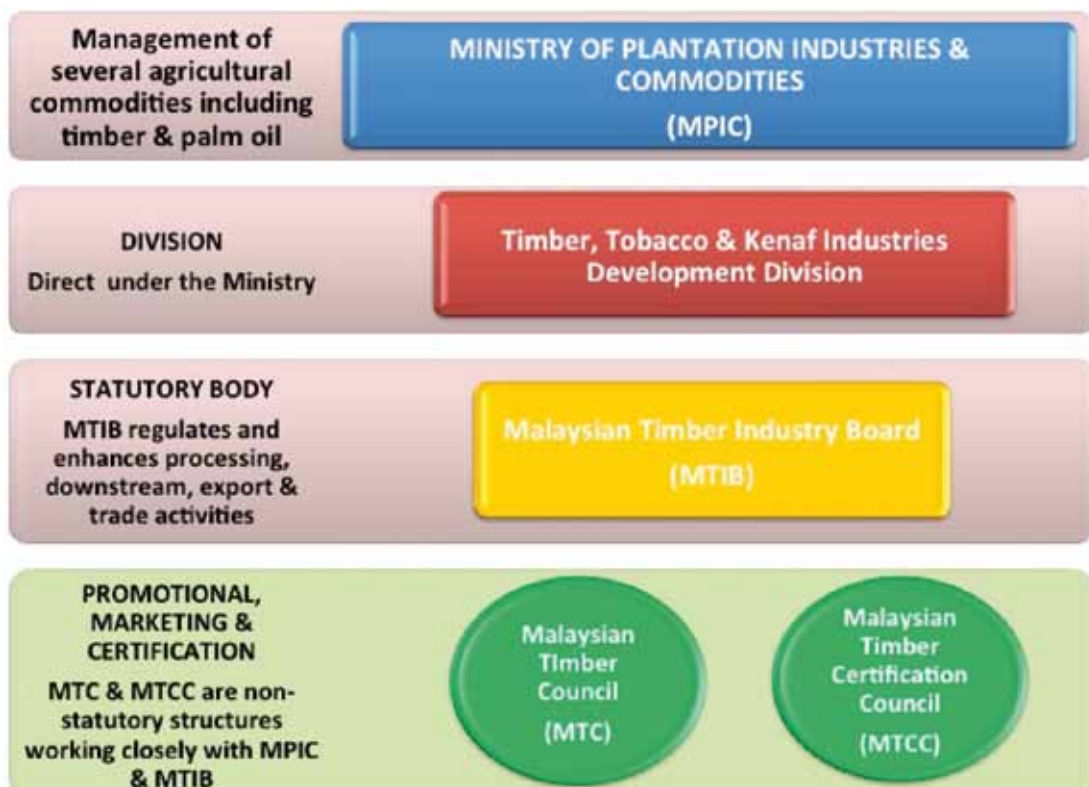
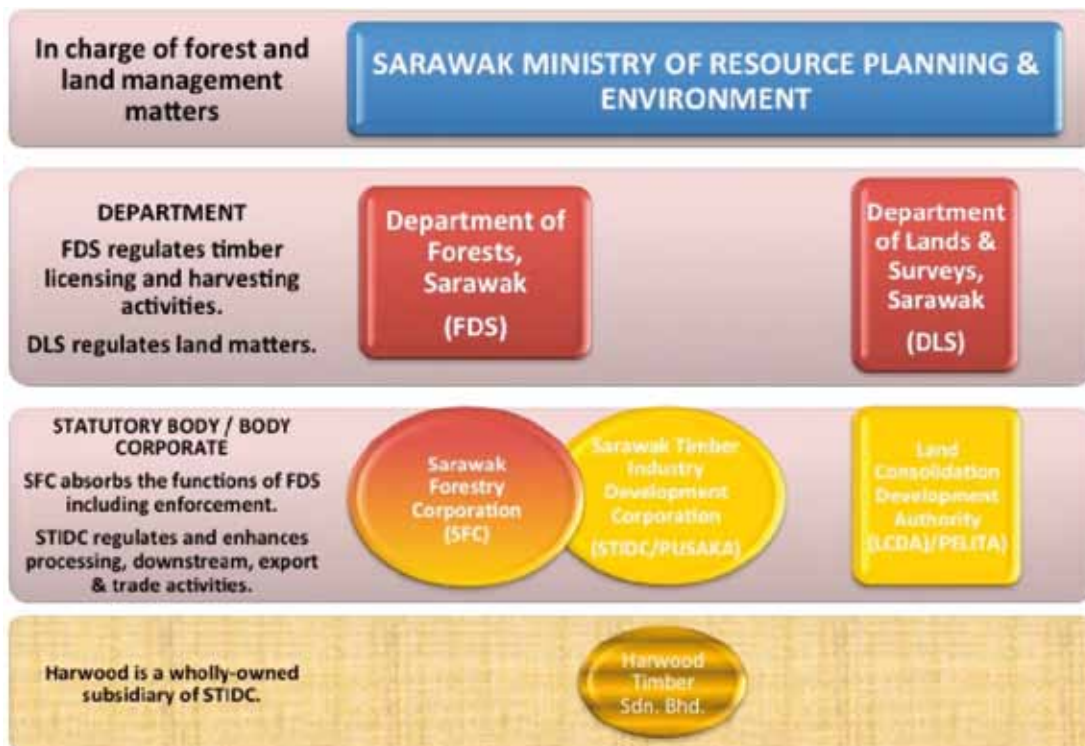


Figure 41: Structure of forestry and land governance and the timber industry governance in Sarawak (Note: Department of Lands & Surveys & LCDA are not directly involved in the timber industry.)



### 3.4 Between the publicity and reality of sustainable timber

As indicated above, the persuasiveness of timber sustainability claims made by the Malaysian timber lobby remains questionable on several grounds. In this section, we wish to limit our queries on the matter to only three important questions, although undoubtedly there are many more that could be put under scrutiny.

#### 3.4.1 Sustainability lacking in transparency

A most glaring weakness of the Malaysia's forestry governance system is the non-transparent way in which logging licences are awarded.

For instance, information access on logging concessions, in particular for its most active timber-producer region, Sarawak, can be extremely limited. In Sarawak, Friends of the Earth Malaysia's attempts to obtain detailed maps and information on all logging concessions have always failed. As a matter of fact, we have not even been able to

receive any favourable response in our request for detailed maps and the specifications of the state's production forests over the years.

Unfortunately the maintenance of this climate of secrecy appears to receive no overt opposition from the Federal Government itself. During the consultation sessions of the Forest Law Enforcement Governance and Trade-Voluntary Partnership Agreement (FLEGT-VPA) process between Malaysia and the European Union, the request from civil society coalitions for the process to make publicly accessible all information on forestry and logging matters for the three regions, including timber licence documents and timber concession details, was twice rejected by the Malaysian Government.

In the beginning, this request was rejected on the grounds that all such technical information is already widely available in the public domain (which ironically should have instead resulted in the acceptance of the request at hand). On our second attempt, the rejection was justified on the basis of

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### Continued

the secrecy of official government records, which supposedly cannot be given or issued out freely to the public.<sup>31</sup>

This stance speaks volume on the position of the Malaysian Government pertaining to the centrality of transparency in good governance. What is there after all to be hidden from public view about the beneficiaries of logging activities in the country?

The trouble with the lack of governance transparency is that such a climate may render the system susceptible to corruption and rent-seeking activities that would in turn remain permanently embedded in it, naturally within a closely guarded network of particular political patronage lines. This structure then may result in highly unsustainable consequences ecologically, socially and economically.

Ultimately, such a governance condition may result in the concentration of political power and wealth in the hands of a small group of elites as well as poor rent capture by the state, all at the expense of the public and affected communities. In

the meantime, the system may also promote overharvesting, environmentally destructive operations, limited investments on long-term ecological protection and forest regeneration as well as poor labour conditions among others, since the concessionaires' continued prospects in the industry would be more dependent on the longevity of their relationship with the political patron and the latter's political career itself, rather than the actual quality of their performance. Last but not least, such a climate may also foster other illegal and unlawful behaviours, both on the ground and on paper, since patrons and beneficiaries will be forced to mutually forge a collective political alliance to evade public scrutiny and criminal prosecution.

It is of course no secret that allegations on logging licences in Malaysia being abused as a tool to garner political support and dispense political favours have been rife for a good three decades, in addition to those that suggest incidents of the licences being used by the country's political elites for direct self-enrichment. For more than thirty years, numerous academic endeavors, civil society reports and media accounts have described these allegations in great detail. There is little need for this report to repeat such documentations – some of them have even been made

<sup>31</sup> For further information, please see Ministry of Plantation Industries and Commodities, Malaysia (2008a & 2008b). Third Stakeholder Consultation of the Malaysia-European Commission on FLEGT and VPA – Responses to Comments/Submissions from Stakeholders (February 15, Item 2-I(k), p. 6) & Issues Raised by JOANGOHutan and JOAS (November 17, Appendix A, Item IV-(b)-2, p. 20).

**Table 27: Malaysia – Total forested area and area under tree crops as compared to total land area 1990-2009 (million hectares)**

Year	Total Land Area	Forested Area	%	Other Tree Crops*	%	Non-Forested Areas**	%
1990	33.0	19.40	58.8	4.6	13.9	9.0	27.3
1995	33.0	19.20	58.2	4.8	14.5	9.0	27.3
2000	33.0	20.20	61.2	4.8	14.6	8.0	24.2
2001	33.0	20.20	61.2	4.8	14.6	8.0	24.2
2002	33.0	19.92	60.4	4.8	14.6	8.3	25.1
2003	33.0	19.92	60.4	4.8	14.6	8.3	25.2
2004	33.0	19.49	59.1	4.8	14.5	8.7	26.4
2005	33.0	19.49	59.1	4.8	14.5	8.7	26.4
2006	33.0	19.49	59.1	4.8	14.5	8.7	26.4
2007	33.0	19.47	59.0	4.8	14.5	8.7	26.4
2008	33.0	18.08	55.0	0.8	2.5	14.0	42.7
2009e	33.0	18.08	54.8	0.9	2.7	14.0	42.4

Reproduced from: *Statistics on Commodities 2009*. Ministry of Plantation Industries and Commodities (2009), Table 7-4, p. 138. Original sources cited: Department of Statistics, Forestry Departments of Peninsular Malaysia, Sabah & Sarawak. \*Oil palm, rubber, cocoa and coconut area only. \*\* Agriculture, housing, construction and industrial area. [e: estimate]

freely available on the Internet today by various websites and organisations.

One thing for us is clear though – there can never be validity in sustainability claims if a governance system fails to be transparent on matters of great public concern.

### 3.4.2 Fifty-five percent forest cover or eleven percent conservation areas?

Malaysian authorities have always been quick to publicly repeat statistical data on the size of the country's *forest cover* or *forested area* in order to demonstrate how it has indeed attained success in neatly balancing between the rigours of its timber production industry and that of forest conservation. However, we wish to point out the fact that *forested area* may not necessarily represent extensive ecological and biodiversity protection.

Table 27, reproduced from the *Statistics on Commodities 2009*, an annual publication from the Ministry of Plantation Industries and Commodities, illustrates that for almost two decades Malaysia had been able to maintain a respectable percentage of *forested area*, i.e. between 54.8 percent and 61.2 percent, in relation to its total land size, although in the last ten years the percentage seemed to have been heading for a steady decline. In 2008, the size of the forested area reportedly stood at 18.08 million hectares or 55 percent of the country's total land area.

However mere *forested area* in actual fact neither automatically implies that the forests concerned are bestowed with full legal protection to ensure their permanency nor protected from timber harvesting activities.

To look at the actual size of forested areas that have been conferred with some form of legal protection, one has to turn to forests that have been gazetted into either production or protection forests at the state level, typically referred to and

grouped under the collective *Permanent Reserve Forest* at the federal level. As can be seen from Table 28, in 2008, the size of such forests stood at only 14.41 million hectares, or around 43.7 percent of the country's total land area.

However, another quick look at this figure will reveal another reality. Out of the 14.41 million hectares of the PRF, 10.80 million hectares were in actual fact production forests, with Peninsular Malaysia, Sabah and Sarawak harbouring 2.81 million hectares, 2.99 million hectares and 5.00 million hectares respectively.

Thus this implies that while one can suggest that the country is still covered in 18.08 million hectares of forested area – 10.80 million hectares or 59.7 percent of these have actually been reserved for timber production to take place in perpetuity, although of course not simultaneously. (As a matter of fact this figure should be even higher, since non-gazetted Stateland forests can also still be legally logged, but without the more stringent management plans required in production forests.) In short, at least 32.7 percent of Malaysia's total land area has been reserved for timber harvesting activities.

One can also observe that the size of production forests has declined by 1.77 million hectares in just one year, between 2007 and 2008, from 12.57 to 10.80 million hectares. This can only indicate that parts of such forests have been de-gazetted – not necessarily to re-gazette them into the protection forest category, for the increase in the size of the latter category only amounted to 0.84 million hectares during this period, climbing from 2.77 to 3.61 million hectares. Such a de-gazetting process most likely implies that the forests may soon be converted into other land uses.

Thus it turns out that in 2008, out of the approximately 18 million hectares of forests that can be used to demonstrate a sustainability claim, around 20 percent of these have no

**Table 28: Permanent Reserve Forest in Malaysia 2007-2008 (million hectares)**

Region	Protected		Productive		Total	
	2007	2008	2007	2008	2007	2008
Peninsular Malaysia	1.18	2.00	3.56	2.81	4.74	4.81
Sabah	0.59	0.61	3.01	2.99	3.60	3.60
Sarawak	1.00	1.00	6.00	5.00	7.00	6.00
<b>Total</b>	<b>2.77</b>	<b>3.61</b>	<b>12.57</b>	<b>10.80</b>	<b>15.34</b>	<b>14.41</b>

Reproduced from: *Statistics on Commodities 2009*, Ministry of Plantation Industries and Commodities (2009), Table 7-2, p. 136. Original sources cited: Forestry Departments of Peninsular Malaysia, Sabah and Sarawak.

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### Continued

legal protection whatsoever and can still be either legally logged or converted into other land use functions, while out of the remaining 80 percent of legally protected forests, in totality, 75 percent of these have been dedicated for timber production while only 25 percent are being reserved for conservation.

In the larger picture then, we can see that although 55 percent of Malaysia is said to be under 'forested areas', 20 percent of Malaysia's 'forested areas' remain unprotected and can still be legally logged or converted into other land use functions, 60 percent is dedicated for timber production while only a mere 20 percent is reserved for conservation purposes.

Therefore in contrast to the simplistic but publicity-friendly term *55 percent forested area*, in reality, in 2008, totally protected areas in Malaysia that have been gazetted exclusively for conservation purposes, **stood at only 3.61 million hectares or a mere 11 percent of the country's total land area.**

The significant size difference between forests where logging is allowed and those that have been strictly reserved for conservation purposes certainly begs us to question if the country's policymakers have indeed made a truly balanced and sustainable choice in our forestry management.

#### 3.4.3 The rise and fall of timber production in Malaysia

In Chapter 2, where the trends in the Malaysian timber production and export in the last thirty years are mapped, we can see how Malaysia's timber production and export first underwent a rapid growth between the 1970s and the 1980s, with log production peaking at 40.1 million m<sup>3</sup> in 1990 before undergoing a steady decline thereafter. By 2008, the country's log production volume hovered slightly over 20 million m<sup>3</sup>. Similarly, log exports plunged from over 20 million m<sup>3</sup> in 1990 to just 4.37 million m<sup>3</sup> in 2008. With the exception of plywood, all other primary timber products have followed similar production and export trajectories.

Although the decline in production and exports has sometimes been used as evidence of the country's progressive commitment towards sustainability concerns, we would like to draw attention to several issues that may suggest that the impacts of over-harvesting are more likely to be blamed for such a trend.

Firstly, it is a curious fact that Malaysia's claims on the sustainability of its timber production had been made way

back since the 1980s, when production was still extremely high and climbing. Indeed, if such claims had really held water, Malaysia could have well maintained harvesting between 30.0 and 40.0 million m<sup>3</sup> of logs in perpetuity, with no adverse impacts on our timber resource base, since according to such claims, our various selective felling cycles have indeed been designed to operate 'sustainably'. Nevertheless this clearly has not been the case. Then as the figures fell steadily, these sustainability claims continue to be sustained until today.

Secondly, this intense peaking and sharp decline in production in a timber producer region, which in the case of Malaysia took place in a span of around three decades, appears to not be an exception to the case but rather the general rule across other producer countries in Southeast Asia, especially when heavy involvement from foreign investments is present. In Southeast Asia, logging began by first depleting the timber resources in the Philippines and Thailand, before moving on to Malaysia and Indonesia and finally today to Papua New Guinea.

Even domestically, the same disturbing trend can be seen. Concentrated industrial timber production first began in Peninsular Malaysia in the 1960s, followed by Sabah in the early 1970s, before building up in Sarawak in the 1980s. Thus similarly, decline in timber production commenced much earlier in the Peninsula at the end of the 1970s. This decline was then being compensated for by the sharp production boom in Sabah in the late 1970s and in Sarawak in the 1980s. Nevertheless by the early 1990s, Sabah's production volume too began to fall before Sarawak began to follow suit by the end of the same decade.

Thus it is fair for us to conclude that such a pattern of logging operations appear to be the norm in Southeast Asia, fuelled by policies in consumer countries like Japan that promote over-consumption and often their private business-to-business investments.<sup>32</sup> The international tropical timber trade essentially is far from sustainable.

Thirdly, the serious degradation in our timber resource base had indeed been anticipated by many prominent studies way back since the 1980s. As a matter of fact, as early as 1977, even Malaysia's Deputy Prime Minister had warned about the

<sup>32</sup> Several important publications have touched on problems surrounding transnational logging of tropical forests in Southeast Asia in the last two decades. For an introduction to the topic, please see Hong (1987); Nectoux & Kuroda (1989); World Rainforest Movement & Forests Monitor Ltd (1998) [<http://www.forestsmonitor.org/fr/reports/550066>]; and Nigel & Plouvier (2000) [[http://pdf.wri.org/transnational\\_logging.pdf](http://pdf.wri.org/transnational_logging.pdf)].



reality that there may not be much forest left in the Peninsular Malaysia by the 1990s.<sup>33</sup>

For instance, citing Baharuddin and Tong (1987), Caldecott (1988) warned that although between 1986 and 1990 Malaysia was producing around 32 million m<sup>3</sup> of logs annually, this output from natural forests was expected to decline sharply by the 1990s and Malaysia as a whole would experience a nominal deficit in log supply of nearly 8 million m<sup>3</sup> each year, relative to projected consumption at current prices.

Nectoux & Kuroda (1989) in *Timber from the South Seas*, a report published for WWF International, which focused on the role that was played by Japan in the timber industry of Southeast Asia, had also given an equally bleak analysis. In 1987, Sabah and Sarawak were in fact the leading providers of tropical timber for Japan, supplying a total of 7 million m<sup>3</sup> and 5.5 million m<sup>3</sup> of tropical hardwood logs to the country, constituting 50 percent and 39 percent of the Japanese tropical log imports respectively.

The report warned that the forests of Sabah and Sarawak had been vastly overexploited, citing a study for ITTO by Burgess (1988), which estimated that the 3.0 million hectares and 3.24 million hectares of permanent production forests in Sabah and Sarawak should be logged for no more than between 4.5 and 6.5 million m<sup>3</sup> annually if sustainability was to be maintained at a time when current log production rates were around 11.7 and 11.5 million m<sup>3</sup> respectively. (For Sarawak, the figure continued to climb to more than 18.0 million m<sup>3</sup> by 1990.)

Meanwhile for Sarawak, the report published as an outcome from the ITTO fact-finding mission in the state, *The Promotion of Sustainable Forest Management: A Case Study in Sarawak, Malaysia* (1990), had outlined some important concerns pertaining to the logging activities in the state which among others included the over-exploitation of the hill dipterocarp forests, inadequate water catchment management and insufficient control of felling operations. One of the primary recommendations of the report had advised the state to impose an annual harvesting limit of between 6.3 and 9.2 million m<sup>3</sup>, depending on the choice of the silvicultural treatments used. 18 years later in 2008, Sarawak was still harvesting around 11.5 million m<sup>3</sup> of logs of which around 3.6 million m<sup>3</sup> were exported.

In 2002, news articles began to report on the claim of the Sabah Timber Association that many of Sabah logging and timber processing companies may soon be forced to shut down during the particular year as most of the state's 2.7 million hectares of Commercial Forest had been depleted, as a result of overlogging.<sup>34</sup>

Last but not least, another indication of unsustainable forestry taking place in Sarawak and Sabah is the advent of large monocultures of mostly pulp and paper and oil palm in the two states today. In Sarawak alone, it has been estimated that more than 3 million hectares of forested areas have been leased for this purpose since the mid-1990s.<sup>35</sup>

Most of such licences today have been established on former logged-over forests – the massive total forest-clearing operations happening today could well explain the prolonged supply of timber.<sup>36</sup> If our production forests are all managed sustainably under a rigorous selective felling cycle, with the minimum span being 25 years, why the urgency to convert them into monoculture plantations today?

As a matter of fact, depletion in timber resources has even been used to justify Sarawak's need for timber plantations by several EIA reports of the plantation projects themselves, under the *Licence for Planted Forests* (LPF) concession system overseen by the Sarawak Forests Department.<sup>37</sup> Perhaps, it is not surprising that many of these concessionaires actually belong to the timber business groups themselves.<sup>38</sup> Likewise in Sabah, the Special Environmental Impact Assessment (SEIA) report for a 109,600 hectare plantation project has also made a similar assertion that the plan to develop the project was proposed "due to imminent shortage of timber to support the wood processing industry."<sup>39</sup>

Considering all of the above, how can the country then claim that it has been practising sustainable forestry?

<sup>34</sup> *The Star*. No timber left in Sabah forests. January 4, 2002.

<sup>35</sup> Please see *Plantation Development in Sarawak, Deforestation and Native Customary Rights (NCR)*. Issued by Sahabat Alam Malaysia. August 7, 2008.

<sup>36</sup> This process necessitates the felling of all the remaining tree stands, including timber trees of lower quality or those with smaller girths that would have been disallowed under normal forest regulations on harvesting in the production forests.

<sup>37</sup> Please see *Plantation Development in Sarawak, Deforestation and Native Customary Rights (NCR)*. Issued by Sahabat Alam Malaysia. August 7, 2008.

<sup>38</sup> For more information, please see Friends of the Earth International & Member Groups (2008, 16).

<sup>39</sup> Please see Chemsain Konsultant Sdn. Bhd (2005, C1-1). <http://www.sabah.gov.my/jpas/Assessment/eia/sp-eias/Benta/bentaia.html>.

<sup>33</sup> *New Straits Times*. September 1, 1977, cited in Cooke (1999, 77).

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### 3.5 Indigenous customary land rights violations

#### 3.5.1 Statutory descriptions of indigenous peoples' rights

Indigenous communities in Malaysia are legally referred to as *Aborigines* or *Orang Asli* (Original Peoples) in the Peninsular Malaysia or *Natives* or *Anak Negeri* (Child of the Land) in Sabah and Sarawak. The term *Bumiputra* (Sons of the Soil) is also often employed in policy language, especially in Sabah and Sarawak, although such a term in actual fact does not have any constitutional or statutory origins. The people themselves however tend to advocate the collective term *Orang Asal*.

In Sarawak, indigenous communities from more than 25 cultural and linguistic groups make up more than half of Sarawak's population, of which around 30 percent are the Iban who form the state's majority ethnic group. Sarawak is also home to the Penan community, who were still living by hunting and gathering until as recent as the 1960s, with a few hundred tribe members still living fully dependent on the forests until today. In Sabah, its indigenous communities of more than 30 cultural groups speaking at least 80 dialects, form close to 60 percent of the population, with the Kadazan-Dusun and Bajau being the majority ethnic groups. In the Peninsula meanwhile, its indigenous communities are made up by a very small minority of around 150,000, although they too comprise a diverse community of at least 20 cultural groups, of which the Semai, Temiar, Jakun and Temuan form some of the largest groups. In all, indigenous population makes up around 12 percent of the country's population, over more than 3 million strong.

In Malaysia, the protection of indigenous peoples' land rights, as with all citizens, is affirmed by the *Federal Constitution* through Articles 5 [*Right to life*] and 13 [*Right to property*]. In addition, the peoples' rights are also further guarded through Article 8(5) [*Protection, well-being or advancement of the Orang Asli through the reservation of land or suitable positions in the public service*], Article 160 [*Customs and usage having the force of law*] and 161A [*States to protect the rights and interests of the Sarawak and Sabah natives and the fiduciary duty of the states*]. Equally significant, Article 153 of the *Federal Constitution* bestows a special position on the natives of Sabah and Sarawak, along with the Malays, the majority ethnic group nationally. An important note on Article 153 however is the fact that the Peninsular *Orang Asli* are left out from this articulation on the said special position.<sup>40</sup>

<sup>40</sup> In relation to the *Orang Asli*, the *Federal Constitution* only makes four direct mentions on the community, namely, their rights to protection, well-being or advancement,

The Sarawak and Sabah *State Constitutions* meanwhile guarantee state protection on native rights through their respective Articles 39 and 41.

In Peninsular Malaysia, the *Aboriginal Peoples Act 1954* (APA 1954) empowers the Department of Indigenous Peoples' Development (*Jabatan Kemajuan Orang Asli* – JAKOA)<sup>41</sup> as the 'administrator' on the affairs of the communities. However, the colonial origin of the legislation entails that parts of the law can in fact be paternalistic in nature, encroaching into the personal affairs of the communities and can be seen as a violation of a citizen's constitutional rights.<sup>42</sup>

The APA 1954 is a specific law that addresses the many aspects of the lives of Peninsula's indigenous communities – it is not primarily a statute on forestry and land governance. A judicial decision from the Court of Appeal in 2005 however has ruled that this law should primarily be seen as a human right statute, that it acquires "a quasi constitutional status giving it pre-eminence over ordinary legislation."<sup>43</sup>

Nevertheless the APA 1954 does not specify how indigenous customary rights can be created or the characteristics of an indigenous customary land in a manner similar to that of the Sabah and Sarawak land laws. The APA 1954 only recognises three types of indigenous territories, each with its distinct legal stature, namely *Aboriginal Reserves*, *Aboriginal Areas* and *Aboriginal Inhabited Place*.

Rights of occupancy are spelt out under its Section 8, which allows for state governments to confer such rights to the people, on any non-alienated land or land which is under lease for any purpose but within *Aboriginal Areas* or *Aboriginal Reserves* only. Its Section 10 allows for the communities to continue residing in gazetted production or conservation forests although this permission is subject to further rules set by the state.

representation in the Federal Parliament's Senate, identity and the care of their welfare being under the authority of the Federal Government.

<sup>41</sup> Formerly, until 2011, the Department of Orang Asli Affairs – *Jabatan Hal Ehwal Orang Asli*.

<sup>42</sup> The Minister responsible for Orang Asli welfare, his representative or any police officer may prohibit any person or class of persons from entering any Aboriginal Area or Reserve, even if this person is invited by the Orang Asli themselves [Sections 14 and 15]. The Minister may prohibit entry into Orang Asli communities of any written, printed or photographic matter he deems harmful [Section 19(1)(1)]. He or she must confirm a group's choice of headman and can dismiss any headman from office [Section 16]. He or she may regulate what crops the Orang Asli grow, what land they clear, what animals they hunt and what jobs they take [Section 19]. He or she can also exclude alcoholic beverages from Orang Asli communities [Section 19 (1)(m)]. No Orang Asli may make any land transaction without the consent of the Commissioner [Section 9] and the Commissioner must also approve any adoption of an Orang Asli child by non-Orang Asli [Section 18].

<sup>43</sup> The Selangor State Government & Ors v. Sagong Tasi & Ors, Court of Appeal, 2005. Upheld by the Federal Court, 2010.

Section 11 provides for the payment of compensation for the peoples' "fruit or rubber trees" if the people's territories are to be taken away by the state for particular purposes – mentioning nothing on the peoples' rights *in the land itself* and deeming that the amount of payable compensation shall be that which appears "just" to the state authority.

In Peninsular Malaysia, land acquisition process and its compensation valuation procedures for affected persons are spelt out in the *National Land Acquisition Act 1960*. Nevertheless state authorities have often contended that the land acquisition and compensation process for Orang Asli territories should fall under the APA 1954 provisions and that since such rights are not titled, they are limited to only the resources found on the land *but not in the land itself*. Nevertheless, this executive policy position was declared as erroneous in the Sagong Tasi case by the High Court in 2002, which was subsequently upheld by the Court of Appeal in 2005 and finally by the Federal Court in 2010.<sup>44</sup>

Sarawak and Sabah meanwhile do not have a parallel law to the APA 1954 but the identities of the *Native* and the range of their rights and privileges are specified in many state land, forestry and natural resource laws. The primary land legislation in Sarawak, the *Sarawak Land Code 1958*, describes the acquisition and characteristics of the *Native Customary Rights* (NCR), while the parallel legislation in Sabah, the *Sabah Land Ordinance 1930* does the same – both statutes being regulated by the respective states' Department of Lands and Surveys. Unfortunately however, such laws as well as other forestry and conservation-related legislation also provide for the termination or minimisation of these rights for a whole range of purposes, including for the establishment of production and conservation forests.<sup>45</sup>

On the other hand in the Peninsula, the *National Land Code 1965*, the major federal land legislation, applicable only in the Peninsula and regulated by the Department of Lands and Minerals (federalised, with state offices) does not

describe the acquisition and characteristics of the Orang Asli customary rights. Likewise, the *National Forestry Act 1984* only contains minimal references to address their usage of forest resources, but not their land rights in whole. As a matter of fact, the legal provisions that address the creation of the 11 types of PRF do not even have direct references to address claims of indigenous customary land rights and all the associated notification process to affected communities. Similarly for conservation laws, only the *Wildlife Conservation Act 2010* makes the mention for an Orang Asli to be allowed to hunt certain wildlife for "his sustenance or the sustenance of his family members" but the protected wildlife hunted "shall not be sold or exchanged for food, monetary gains or any other thing."

### 3.5.2 Judicial rulings on the characteristics of indigenous customary land rights

In Sarawak alone today, there are more than 100 outstanding civil actions filed by indigenous communities affected by logging operations as well as plantation and other industrial projects. Following such legal actions, in the last twenty years, the Malaysian judiciary has been able to produce a series of rulings that provide the much needed legal clarity on the many important aspects of the nature, principles and scope of indigenous customary land rights to their land.

Unfortunately however, the executive and legislative arms at both the state and federal levels have failed to integrate the legal principles expounded by these judicial decisions into concrete policy and statutory reform measures. As a matter of fact, as far as indigenous customary land rights are concerned, the country's executive machinery today continues to operate in the same manner as it had before – issuing logging and plantation licences without prior consultations, disregarding the authority of the pre-existing traditional laws and customs of the people, from which inherited claims of rights on customary land are rooted in.

Some of these decisions, as can be seen below, have very wide-ranging legal implications on existing policies and statutes – the failure to implement them ultimately is a failure in good governance and a failure to live up to the doctrine of the separation of powers in democratic governance.

#### 3.5.2.1 Features of the indigenous land title<sup>46</sup>

- (i) It is a right acquired in law and not based on any document of title;

<sup>44</sup> The judiciary has declared that such rights indeed possess a proprietary nature and as such the *National Land Acquisition Act 1960* must fully apply as the APA 1954 compensation requirement is ruled to be inadequate within the meaning of the Article 13(2) of the *Federal Constitution* [No law shall provide for the compulsory acquisition or use of property without adequate compensation]. For more information, please see *Sagong Tasi & Ors v Selangor State Government & Ors* [2002] 2 CLJ 543.

<sup>45</sup> Unlike in the Peninsular Malaysia, Sarawak and Sabah however do possess their own Native Courts which deal primarily with personal and family law as well as smaller-scale land disputes and claims, with statutory bodies set up to deal with native customs and affairs. In Sabah, there is the Sabah Native Affairs Council (*Majlis Hal Ehwal Anak Negeri*) that comes under the purview of its Ministry of Local Government and Housing. In Sarawak, the Council for Native Customs and Traditions (*Majlis Adat Istiadat*) was established in 1974 and is placed under the Chief Minister's Department. In Sabah, the Native Court is governed by the Sabah Native Courts Enactment 1992 while in Sarawak, it is governed by the Sarawak Native Courts Ordinance 1992.

<sup>46</sup> This was first defined in *Sagong Tasi & Ors v. The Selangor State Government* at the High Court in 2002 and was later upheld by the Court of Appeal in 2005 and finally

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- (ii) It does not require any conduct by any person to complete it, nor does it depend upon any legislative, executive or judicial declarations;
- (iii) Native title is a right enforceable by the courts;
- (iv) Native title and interest in Aboriginal land is not lost by colonisation, instead the radical title held by the sovereign becomes encumbered with Native rights in respect of the Aboriginal land;
- (v) Native title can be extinguished by clear and plain legislation or by an executive act authorised by such legislation, but compensation should be paid; and
- (vi) The Aboriginal people do not become trespassers in their own lands by the establishment of a colony or sovereignty.

#### 3.5.2.2 Other fundamental principles of indigenous customary land rights

- (i) Indigenous peoples continue to have rights to forest produce, including timber, over their customary land **even if the land has yet to be gazetted** as such. Thus, one of the defendants, a logging company, had no rights to carry out their operations within the plaintiffs' territorial boundaries.<sup>47</sup>
- (ii) The common law recognises a form of native title which, except where it has been extinguished, reflects the entitlement of the indigenous inhabitants in accordance with their laws or customs to their traditional land which is preserved as native title. Native title has its origins in and is given its content by the traditional laws acknowledged by, and the traditional customs observed by, the indigenous inhabitants of the territory. **The nature of native title must be ascertained by reference to the traditional laws and customs of the indigenous inhabitants of the land.** Native title does not have the customary incidents of common law title to land, but it is recognised by the common law. It may not be alienated under the common law. If a group of aboriginal people substantially maintains its traditional connection with the land by acknowledging the laws and observing the customs of the group, the traditional native title of the group to the land continues to exist.<sup>48</sup>

**The common law respects the pre-existing nature of indigenous customary land rights.** Indigenous customary land rights therefore do not owe their existence to modern statutes and legislation, but instead to traditional laws and customs. **Such rights may only be taken away by clear and unambiguous words in a legislation.** Legislation is only relevant to determine how much of those rights have been extinguished.<sup>49</sup>

- (iii) It is "abundantly clear" that the purpose of the APA 1954 Act was to protect and uplift the First Peoples of this country. It is therefore **fundamentally a human rights statute.** It acquires a **quasi-constitutional status** giving it pre-eminence over ordinary legislation. It must therefore receive a broad and liberal interpretation.<sup>50</sup>
- (iv) Indigenous customary communal title attaches itself to the state's radical title but **states are under a fiduciary duty** to protect the welfare of the aborigines including their land rights.<sup>51</sup>
- (v) The Sarawak Land Code 1958 **does not abrogate** whatever native customary rights that exist before the passing of that legislation.<sup>52</sup>
- (vi) Although a native may not hold any title to the land, they may still be termed as **licencees**, and **such a licence cannot be terminable at will.** Such rights can only be extinguished in accordance with the laws and compensation.<sup>53</sup>
- (vii) By the common law, the Crown may acquire a radical or ultimate title to the land but however, it did not acquire absolute beneficial ownership of the land. **The Crown's right or interest is subject to any native rights over such land.**

**[The common law is a substantive law.** It is not a mere precedence for the purpose of making a judicial decision. It is a substantive law which has the same force and effect as written law. It comes within the term of 'existing law' under Article 162 of the Federal Constitution.<sup>54</sup>]

affirmed by the Federal Court in 2010. These features were also similarly affirmed in the Superintendent of Lands and Surveys, Bintulu v. Nor Anak Nyawai & Ors at the Court of Appeal in 2005.

47 Koperasi Kijang Mas & Ors v. Perak State Government, High Court, 1991

48 Adong Kuwau & Ors v. The Johor State Government & Ors, High Court, 1996, upheld by the Court of Appeal, 1998 (Appeal to the Federal Court was dismissed without reasoned judgement).

49 Superintendent of Lands and Surveys, Bintulu v. Nor Nyawai & Ors, Court of Appeal, 2005; Superintendent of Lands & Surveys, Miri & Anor v. Madeli Salleh, Federal Court, 2007. It must also be emphasised that the Sarawak State Government's attempt to request for a judicial review of Madeli Salleh was rejected by the Federal Court in May 2009.

50 The Selangor State Government & Ors v. Sagong Tasi & Ors, Court of Appeal, 2005, upheld by the Federal Court, 2010.

51 Ibid.

52 Superintendent of Lands and Surveys, Bintulu v. Nor Nyawai & Ors, Court of Appeal, 2005.

53 Ibid.

54 Superintendent of Lands & Surveys, Miri & Anor v. Madeli Salleh, Federal Court, 2007.

- (vii) Indigenous communities have **usufructuary** rights to continue to live on their lands, as their forefathers did. The deprivation of such rights must be compensated for.<sup>55</sup>
- (viii) Indigenous land rights are more than usufructuary rights, **they are proprietary interests in the land itself**. As such for the Orang Asli, the *National Land Acquisition Act 1960* must fully apply in the case of the loss or deprivation of such rights as the APA 1954 compensation requirement is ruled to be inadequate within the meaning of the Article 13(2) of the Federal Constitution.<sup>56</sup>
- (vi) Indigenous land rights **extend to the higher forests**. They exist on both the family-owned cultivated land as well as on the communally shared village communal forest that is used for hunting and gathering activities.<sup>57</sup>

### 3.5.3 No national policy on indigenous peoples' rights

Threats to the rights, livelihoods and well-being of Malaysia's indigenous communities are real. Their high poverty rates that have been widely documented over the years are highly visible, once one leaves any modern Malaysian city and enters into their traditional territories in the interior.

The benefits of logging in the country appear to have overwhelmingly profited the timber conglomerates and their political linkages at the expense of such affected communities. It is fairly easy to find some of the poorest communities of the country living in the same vicinity where logging operations, worth in their millions of ringgit, are taking place. Publicity efforts on the country's sustainable forestry practices are not quite inclined to describe how challenging the lives of such affected peoples can be and how little they stand to gain from these operations. Just walk into any Penan settlement in Sarawak or an Orang Asli village in Pahang or Perak, the likelihood of seeing poverty and its associated social adversities is almost very certain.

Almost 50 years after the country is formed, many of such villages in the interior all over the country are still without running water, electricity, modern sanitation and have limited

access to quality healthcare, education, public transportation and other social services. Many of the village children may also face painful challenges in their pursuit of education, some may never even finish a secondary school education. In Sarawak in particular, many students may even have to board at hostels since the tender age of seven.

The impacts of logging operations meanwhile are well known. The quantity, quality and diversity of the people's food sources would register a significant decline, medicinal plants and other multi-purpose trees commonly utilised for housing construction, boat building and the production of other household items and crafts would disappear, clean rivers would suddenly turn muddy and polluted and income derived from forest produce and rivers would begin to become unstable. Sometimes productive rice fields, farms and orchards would also be flattened in order to construct logging roads. Even employment opportunities for local communities are often limited to temporary, low-skilled and therefore low-paying physical work, often in harsh and dangerous conditions.

Such problems are systemic in nature – the country in fact does not even possess a national policy on indigenous peoples' rights.

Therefore, if Malaysia would like to stake a claim on good forestry and land governance, a set of comprehensive policy and statutory reforms must be undertaken urgently. As a first step, the executive arms of both the Federal and State Governments should take full cognisance of all the judicial decisions above and integrate them into existing policies while the Parliament and state legislatures similarly must also ensure that the concerned judicial decisions are clearly reflected in all existing and future statutory documents.

### 3.5.4 Systemic threats to indigenous customary land rights and territories

The following are descriptions on several policy conditions that have continued to pose threats to indigenous customary land rights in Malaysia in the last thirty years. We believe these governance and policy conditions are systemic threats because they set the foundational framework for the violations of these rights by logging operations, large plantation developments, dam-building projects and other industrial activities to continuously occur. They thus put into question the legality as well as sustainability of activities that are rooted in such a poor governance framework, at least as far as indigenous customary land rights are concerned.

<sup>55</sup> The Johor State Government & Anor v. Adong Kuwau & Ors, Court of Appeal, 1998 (Appeal to the Federal Court was dismissed without reasoned judgement).

<sup>56</sup> Sagong Tasi & Ors v. The Selangor State Government & Ors, High Court, 2002 (upheld by the Court of Appeal in 2005 and the Federal Court in 2010).

<sup>57</sup> Nor Nyawai & Ors v. Borneo Pulp Plantation & Ors, High Court, 2001. Although the people eventually lost at the Court of Appeal in 2005, this decision was ruled based on the grounds of insufficient evidence pertaining to the existence of their land rights on the disputed area per se. The Court of Appeal did not reject the principles and descriptions that indigenous customary land rights in Sarawak do extend to the higher forests as ruled by the High Court in 2001.

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(i) **Lack of respect of the executive branch towards judicial rulings**

It is unfortunate for us to note that the abovementioned judicial rulings have yet to trigger a meaningful response from the country's executive and legislative arms in terms of instituting wide-ranging policy and statutory reforms on indigenous peoples' rights. To this day, regional executive policies and statutes have continued to silently ignore these judicially-derived legal principles.

(ii) **Contradicting the courts – the executive legal fictions**

Not only have reforms not been undertaken to integrate these decisions into various policy and statutory frameworks, the Government of Malaysia itself in 2008 has in fact been documented, within the FLEGT-VPA process, to resort to several erroneous, flawed and misleading interpretations of these judicial decisions, in particular those concerning the common law position on indigenous customary land rights, the pre-existing nature of such rights that do not owe their existence to modern legislation and statutes, the extent of such rights to the higher forests and the precedent-setting power of judicial decisions itself.<sup>58</sup>

For instance, executive policy, in particular that from Sarawak, has openly continued to insist that communities do not have rights to the communally shared higher forests. Sarawak's position, as adopted by the Federal Government, openly claims that *hunting, fishing and collection of jungle produce... do not create rights over land*. This in itself is highly contrary to the ruling from the judiciary on the matter.

To further support their case, executive authorities would resort to the assertion that 'codified' laws on indigenous customs take precedence over native 'customs'.<sup>59</sup> Therefore it is claimed that while the 'uncodified' customs and traditions can be practised by the communities, they do not form part of the

indigenous customary 'law'. As such, if these state-'codified' laws happen to fail in mentioning what in effect has been practised by the communities since time immemorial, such as the practice of including the communally shared higher forests above their family farms (which are often located by riverbanks for ease of access) into their village territories, then these rights would remain legally unrecognised.

This position is in direct conflict with at least two judicial rulings.

Firstly, the Federal Court in *Madeli Salleh* in 2007 as well as in *Sagong Tasi* in 2010 has clearly ruled that the principles of the common law respect the pre-existence of such rights under indigenous laws and customs. This indicates that the traditional territorial boundaries of indigenous communities owe their existence to pre-existing indigenous customary laws and not to any modern statute or legislation or versions of customs as codified or authorised by the state. Modern legislation is only relevant to determine if such rights have indeed been terminated.

Secondly, a series of findings from the High Court in *Nor Nyawai* on the same issue in 2001, which were never challenged by the Court of Appeal in its decision in 2005, have also ruled that native customary rights "are also equated as native customary laws" and that even in cases where such rights have not been expressly mentioned by any written law, "it does not mean that they could not exist as native customary law."

Last but not least, such a position is also in direct contradiction with the *Federal Constitution* itself, which is the supreme law of the land. Article 160 specifies that the law also includes common law and customs and usage which possess the force of law. Hence, how can we limit laws governing the peoples' traditional land rights only to customary rights that have been codified by the state?

(iii) **No satisfactorily systematic and highly participatory process to delineate and recognise indigenous territories**

States have yet to institute a satisfactorily systematic and highly participatory and consultative delineation process for indigenous territorial boundaries and claims, for the purpose of granting full recognition on the traditional rights and privileges of the communities.

<sup>58</sup> For further information, please see *Third Stakeholder Consultation of the Malaysia-European Commission on FLEGT and VPA – Responses to Comments/Submissions from Stakeholders*. Issued by the Ministry of Plantation Industries and Commodities, Malaysia (2008a). Document distributed during the Fourth Stakeholder Consultation Meeting in Kuala Lumpur on March 17 & 18. February 15.

<sup>59</sup> In Sarawak, the state has been actively enacting a series of codified laws and customs of individual communities pertaining to matters such as personal, community and family law and some descriptions of the community's customary land rights. These laws come under the purview of the Council for Native Customs and Traditions (*Majlis Adat Istiadat*) and the Sarawak Native Court. While such an effort is not damaging to the people per se, the state has been observed to assert the primacy of such statutes over the living customs and traditions of the people.

Hence, the lack of harmonisation between the peoples' claims and those asserted by the state – rendering the peoples' territories highly vulnerable to encroachments by other parties.

In Sarawak for instance, the state tends to rely primarily on aerial photographs taken during the colonial period to distinguish 'forests' from 'cultivated areas' in their mapping of indigenous territories, wherein rights tend to be conceded only on cultivated areas but curtailed on the communal higher forests. This is certainly a simplistic and inadequate technique that puts the people at a disadvantage. Aerial photographs alone are clearly insufficient to determine the extent of the territories without the appropriate joint ground surveys, consultations of historical, administrative and anthropological records and participatory consultations with affected villages. They are also unlikely to be able to show the subtle differences between virgin forests and partially disturbed forests that have regenerated extensively over hundreds of years, as the people are able to tell with much ease.

Further, these aerial photographs are not accessible to the public and communities generally. The general practice appears to be that communities are permitted to remain where they are, unless plans like dam construction, which entails forced relocation, take place. The state does not appear to have a policy which promotes the voluntary dissemination of information on its version of the peoples' territorial boundaries outside of a rights termination process, perhaps out of fear of inviting disputes. In the process, encroachments and violations of community land rights continue to take place.

At present, the Sarawak Lands and Surveys Department estimation puts the size of indigenous territories in Sarawak at 1.6 million hectares or around 13 percent of Sarawak's total land area.<sup>60</sup> We however believe that the size of such territories as defined by the peoples' customs that include the entire higher forests should be much higher than this.

(iv) **Statutory provisions to gazette indigenous territories not actively used**

There are in fact available statutory provisions in Sarawak, Sabah and Peninsular Malaysia that can be

used to affirm and protect indigenous communities' customary land rights and traditional territories. There are generally two ways in which statutory recognition to the peoples' land rights can be enforced currently. The first is through the gazetting of the land into specific categories of reserves or areas, terms for such areas vary regionally. This is usually done for an entire community and is certainly the best way to preserve an entire community's territorial integrity and prevent internal community conflicts.

This can be done by gazetting *Aboriginal Reserves* or *Aboriginal Areas* under the APA 1954 in Peninsular Malaysia, *Communal Forest Reserves* under the *Sarawak Forests Ordinance 1954*, *Native Communal Reserves* under the *Sarawak Land Code 1958*, *Native Reserves* under the *Sabah Land Ordinance 1930* or *Domestic Forests* under the *Sabah Forest Enactment 1968*.

The second is through the issuance of indigenous land titles, through the registration of titles or special permits and the like, whether on the basis of a communal or an individual title. Registration of *Native Title* can be undertaken in Sarawak through the *Sarawak Land Code 1958* which is without land rental charges or *Native/Communal Title* under the *Sabah Land Ordinance 1930*, which is with some minimum land rental charges.

Despite the existence of such provisions, states however have been largely reluctant to actively utilise them. In Sarawak, the size of the gazetted *Communal Forests* is simply negligible – its percentage in relation to the size of the state 'forested area' is believed to be less than one percent currently. Throughout the decades, numerous communities have applied for such legal recognition to no avail.

(v) **Termination or loss of rights without FPIC**

Indigenous customary land rights can be legally lost or at least severely minimised through various methods. The establishment of conservation or production forests in all the three regions' forestry statutes are often a leading cause of it – the latter on which the forest management units of the Malaysian certification scheme operates. Land acquisition for purposes that the state deems as fit, including for large dam building projects, is also another cause for the loss of such rights.

<sup>60</sup> [http://www.landsurvey.sarawak.gov.my/Branches/Land/LandBranch\\_adj\\_ncl\\_dev.htm](http://www.landsurvey.sarawak.gov.my/Branches/Land/LandBranch_adj_ncl_dev.htm).

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The manner in which these rights are terminated or compromised in all such processes above is largely lacking in Free, Prior and Informed Consent (FPIC) and a highly transparent information-disclosure process. Further, the process can be very prejudicial to communities who live away from administrative centres and are not fluent in the national language or English and lack fair complaints and objection mechanisms.

For instance in Sarawak, the minimum notification process to affected communities on the impending termination of their rights for the purpose of the establishment of a production forest or a land acquisition process only requires for the notice to be published in the government's official *Sarawak Government Gazette*, in one newspaper and for it to be displayed at the local District Office. Affected communities are required to submit their claims of rights to the authorities within 60 days of the notification. How could communities living in the interior be aware of such an announcement if state authorities are not compelled to inform them in a more personalised fashion?

Sabah forestry and conservation statutes meanwhile fare a little better – extinguishment notices are to be displayed “in convenient places or in the vicinity of such land and at such other places deemed expedient”, in the English and Malay languages and “in such desirable languages” while the period of objection and claims is generally fixed at no less than three months. There is an enquiry process set up to investigate into the objections and applications received as well as to look into the propriety of conceding rights/privileges which to the knowledge of the state do exist but to which no claims have been made. However according to Lasimbang and Nicholas (2007), the process followed in the enquiries and settlement of claims have reportedly rarely been done in accordance with the requirements.

At the end of the day, loss of rights is loss of rights. The termination of rights and the advent of logging, plantation and other development activities should never take place without a comprehensive FPIC process.

#### (vi) **Progressive circumscription of indigenous peoples' rights through statutory amendments**

To begin with, the *Sarawak Land Code 1958* is very clear that no new customary land rights can be created without a state permit after 1958. In 1994, this law was then provided with a broader base for rights extinguishment, which served well to assist land acquisition for the proposed 2,400 MW Bakun Hydroelectric Project in Belaga. In 1997, amendments were added to the same law to facilitate two state agencies to declare *Development Area* in which a lease of not more than 60 years can be issued, which certainly have negative consequences for affected communities.

Then in 2000, a series of amendments to the Land Code – 16 pages long and bearing a list of 31 items altogether was proposed. Section 5(2)(f) which specified that native customary land rights may also have been created through “any other lawful method” was deleted.<sup>61</sup> This subsection had previously provided the statutory clarity that such rights may also be acquired through any other methods recognised by the customs of the community, including establishing rights on the higher forests through activities such as hunting and the harvesting of forest produce that generally do not involve forest-clearing and cultivation.

As for the *Sarawak Forests Ordinance 1954*, in 1987, this law made blockading a timber road as a criminal offence, at the onset of widespread protests by native communities. In 2001, new amendments stipulate that communities within gazetted *Communal Forests* shall be presumed to be taking forest produce for sale, exchange or direct profit *unless they can prove otherwise either to an executive authority or the court*, effectively rendering the Communal Forest, which is hardly gazetted in any case, meaningless.

Further in 2001, the *Sarawak Land Surveyors Ordinance 2001* was introduced, criminalising community mapping and stipulating that even the courts are not allowed to admit maps as evidence without the approval from the Department of Lands and Surveys – even if the map concerned is made by a surveyor certified by the department. This law was enacted following the aftermath of the High Court

<sup>61</sup> Other parts of the same subsection [5(2)(a)-(e)] describe actions for customary land rights acquisition which are primarily rooted in agricultural, forest clearing, settlement building and direct occupation undertakings.



decision in the abovementioned Nor Nyawai case where the people had tendered in community-made maps as evidence.

In the Peninsular Malaysia meanwhile, the proposed Orang Asli Land Policy, an initiative made under the National Land Council, was unveiled in December 2009. The policy has been claimed to be a positive process for the communities but in effect it may create several grave consequences for the people. A large community protest then took place in Putrajaya, Malaysia's administrative capital in March 2010.

The policy apparently proposes the granting of between 0.8 and 2.4 hectares of land and about another 5,000 square feet for housing to each Orang Asli household head. Arguing that there are some 19,990 heads of families, the policy will then involve some 50,000 hectares of land in the Peninsula.<sup>62</sup>

Orang Asli organisations however have protested that among others, the proposed policy may actually result in at least 64 percent of existing Orang Asli territories to be denied their due recognition, since the proposal appears to be focused only on *Orang Asli Reserves* and *Areas* that have been approved for gazetting, which is estimated to stand at only around 15 percent of the people's entire territories currently.

Further, it is said that the policy may also prohibit the people from making claims on compensation or damages, including through any legal action, for their *tanah rayau/saka* ('roaming' ancestral land for hunting and gathering of forest produce), terms that are in fact offensive to the people. The granting of land is also said to be subject to availability.<sup>63</sup>

### 3.6 Technical solutions to systemic conditions are inadequate

It must be realised that a timber certification scheme is not quite the correct tool to address politically systemic governance flaws. Certification schemes are largely focused on adhering to existing policies, laws, regulations and procedures. They may attempt, but are unlikely able to provide meaningful and profound solutions to systemic

challenges that have their roots in a deeply flawed, poor governance system. In short, technical solutions to systemic conditions will inevitably be inadequate.

Certification schemes are not designed to provide redress for issues that exist as a result of statutory and policy injustice, the lack of respect for the judiciary by the country's executive branch and a non-transparent forestry and land governance system. Ironically however, the certificate itself is supposed to represent the guarantee that particular sustainability, legal and ethical standards have been achieved in the production system.

The pertinent question that must be asked is therefore: how then do these standards significantly differ from the ones practised outside of the certification scheme, if both are actually operating within and are built by the same flawed system? If a certification scheme of any commodity is incapable of introducing meaningful changes to the prevailing production system, it is then fair for us to conclude that such a scheme primarily functions as a promotional and marketing tool rather than as an instrument to meaningfully improve ecological, social and ethical accountabilities of the production system concerned.

If this be the case for a timber certification scheme, it may then inevitably bestow positive acknowledgements to forests and forestry practices that do not necessarily deserve such merits.

The most recent version of the MTCS certification standards dated January 13, 2012, the *Malaysian Criteria and Indicators for Forest Management Certification (Natural Forest)* [MC & I (Natural Forest)] has maintained elements pertaining to indigenous customary land rights as contained in the preceding certification standard, the *Malaysian Criteria and Indicators for Forest Management Certification 2002* [MC & I 2002].

Principle 2 and 3 respectively address *Tenure and Use Rights and Responsibilities* (Long-term tenure and use rights to the land and forest resources shall be clearly defined, documented and legally established) and *Indigenous Peoples' Rights* (The legal and customary rights of indigenous peoples to own, use and manage their lands, territories, and resources shall be recognised and respected).

Its Principle 1.3 states that the provisions of all binding international agreements applicable to forest management shall be respected while Principle 2.2 stipulates that local

<sup>62</sup> *The Star*. Orang Asli to get land to boost quality of life. December 4, 2009.

<sup>63</sup> For more information, please see the two memoranda by the Persatuan Orang Asli Semenanjung Malaysia (POASM) (The Association of Indigenous Peoples of Peninsular Malaysia) & the Gabungan NGO-NGO Orang Asli Semenanjung Malaysia (The Coalition of Indigenous Peoples NGOs of Peninsular Malaysia) & Gabungan NGO-NGO Orang Asli Semenanjung Malaysia (The Coalition of Indigenous Peoples NGOs of Peninsular Malaysia). Published in March 2010.

## three Malaysia

### Continued

communities with legal or customary tenure or use rights shall maintain control, to the extent necessary to protect their rights or resources, over forest operations *unless they delegate control with free, prior and informed consent to other parties.*

Current verifiers of some of the principles have also included elements such as all *adat* (customs) recognised and enforceable by the Native Courts, relevant decisions of the civil courts pertaining to legal or customary tenure or use rights and even the UNDRIP as well as contractual agreements entered into with free, prior and informed consent, with local communities with legal or customary tenure or use rights for use of land.

However some fundamental questions remain.

Amongst the reasons for the withdrawal of the *Jaringan Orang Asal dan NGO tentang Isu-Isu Hutan* (The Network for Indigenous Peoples and Non-Governmental Organisations on Forestry Issues – JOANGOHutan), of which SAM is a member, from the MTCS consultation process in 2001 was due to the reality that in gazetted production forests from which the scheme's *Forest Management Units* operate, much of indigenous customary land rights would have been terminated or severely minimised prior to the reservation process of the production forests themselves.

Thus, how does one in fact 'recognise' rights that have already been lost or severely curtailed? In its guideline document *Interpretation of the Term 'Free and Informed Consent'* under the MC & I (2002), Section 2 which deals with the background of the interpretation reads as follows (emphasis added):

- 2.1 The term 'free and informed consent' is specified in Criteria 2.2, 3.1 and 3.4, as well as Indicator 3.1.2, in the MC & I (2002), in relation to the requirement to obtain the free and informed consent of the indigenous peoples regarding any forest management activities that affect the forests owned by the indigenous peoples (Criteria 2.2 and 3.1, and Indicator 3.1.2), and any compensation for the application of their traditional knowledge regarding the use of forest species or management systems in forest operations (Criterion 3.4).
- 2.2 Since the MTCS only covers the certification of permanent forests, where the ownership claims by the indigenous peoples have been legally defined, the issue of 'free and informed consent' as specified in Criteria 2.2, 3.1 and Indicator 3.1.2

does not arise. 'Free and informed consent' is however applicable for Criterion 3.4.

What exactly does a document interpreting free and informed consent imply when it indicates that the consent issue itself 'does not arise' in its operational context? How meaningful is the exercise of stating all the concerned principles and verifiers that are linked to the consent process for indigenous communities, when the issue at hand appears to have been predetermined as one that *does not arise*?

If we would like to seriously put sustainable forestry and timber production above narrow business interests, we have to be very mindful of the occurrences of such technical incoherence in certification schemes.

We must therefore take the full view of timber certification and all such schemes within the overall realities of the lives of the people, vis-à-vis the prevailing governance conditions.

Today, the country still lacks a national policy on indigenous peoples' rights and a more participatory governance system, as far as indigenous customary land rights are concerned. Policy and statutory reforms have yet to be undertaken by the states' executive arms and legislatures in order to align them more consistently with judicial decisions. What difference could a timber certification scheme possibly make in such a governance condition then?

Further, indigenous communities today are also likely to be living a substandard quality of life in poverty and are further stressed by the exhaustion of the natural resources that they rely on for their food, medicines, income and other domestic needs as well as for their cultural practices and spiritual traditions. Generally, they are forced to lead such politically and socially disempowering lives and at times are even subjected to paternalistic treatment by the state authorities. Can FPIC really operate meaningfully within such a system?

Clearly, to correct such a predicament, the solution lies in introducing reforms to various existing governance and political conditions and not through a certification scheme. Perhaps then, in such a reformed system, certification schemes may no longer even be necessary since the system itself would have been sufficiently functional to ensure good governance.

### 3.7 What is legal and sustainable timber?

In March 2008 in Kuala Lumpur, JOANGOHutan and the *Jaringan Orang Asal Se-Malaysia* (Network of Indigenous Peoples of Malaysia – JOAS) chose to withdraw from the FLEGT-VPA consultation process based on such abovementioned structural governance reasons, among various other equally important grievances.

A most central concern is the fact that the government-proposed *Definition of Legal Timber* is highly inadequate:

Timber harvested by licensed person from approved areas and timber and timber products exported in accordance with the laws, regulations and procedures pertaining to forestry, timber industry and trade of Malaysia.<sup>64</sup>

This is simply not good enough – such a definition does not explicitly prevent 'legal timber' from being harvested from land within indigenous territories.

Therefore, in order to ensure that legal timber is free from violating such lawful rights, at a minimum, JOANGOHutan and JOAS have demanded that the definition must be incorporated with the guarantee that:

...such timber and its products shall be free from indigenous customary claims and free from indigenous territorial boundaries...

This provision is highly critical since a significant bulk of the Malaysian logging operations tend to take place within indigenous peoples' territories without their FPIC. These territories are held by judicially recognised rights.

Box 1 in the Executive Summary provides for a more elaborate document on the constitution of legal and sustainable timber, which should serve as a comprehensive reference for timber procurement systems around the world.

### 3.8 Concluding remarks

Poor forestry and land governance in Malaysia is at the heart of its unsustainable timber production and the continuous land rights violations of the country's indigenous communities. All these have been documented by numerous works in diverse media over the last three decades by academic researchers, civil society groups, journalists, filmmakers and the like.

Many of the issues raised by such works still remain unresolved, despite Malaysia having established a national timber certification system. Such a certification system is only a limited technical solution in the face of severe systemic politically rooted flaws – it is not able to amply deliver meaningful outcome beyond the provisions, structures, limitations and nature of the existing system. It is still constrained by the inadequacies of a non-transparent governance system, be this at the highest level of the timber licence issuance process or the failure of the executive branch of the government to accord due respect towards the customary land rights of indigenous communities as well as judicial rulings that describe them.

Until such issues are resolved meaningfully, it is only reasonable that claims on sustainable timber production in Malaysia should be viewed with great caution.

<sup>64</sup> Please see the *Malaysia-EU FLEGT VPA – Timber Legality Assurance System*. (Draft) February 14, 2011.

## four Japan: forestry and timber importation policies and governance

### Japan: forestry and timber importation policies and governance

#### 4.1 General introduction

Japan has been a major world consumer of timber products, including tropical timber, for over more than three decades – its ferocious appetite for tropical timber in fact has always been linked to deforestation in Southeast Asia. On the whole, in 2010, Japan imported nearly 74 percent of its wood and wood products, including pulp and paper.

As a result of continuous civil society campaigns in the past three decades, it is thus not surprising to find that by the turn of this century, Japan had already established the governance policy for the procurement of legal and sustainable timber products, in particular for its public sector. In addition, many timber-consuming Japanese corporations have also developed their own internal timber procurement policies, prompted by the amendment of the country's *Green Purchasing Act*, which serves to promote the use of goods that are produced in ecologically responsible conditions.

Nevertheless, these initiatives in principle are all fundamentally flawed – they are merely modest technical solutions in the face of inherently irrational economic and political structures. In essence, such measures are not fully equipped to distinguish truly sustainable production systems from those that have been continuously challenged by documentations of systemic poor governance and unsustainable practices, especially those where production output is excessively high before the inevitable decline sets in. Essentially then, the Japanese attempts at timber legality and sustainability verification systems do largely require that faith is put on existing production systems, despite the fact that many of them may have been consistently shown to suffer from a structured lack of transparency and accountability in governance, which render such systems susceptible to corruption, human rights violations and other unlawful behaviours, on the ground and on paper.

We also have to bear in mind that all things considered, forest overharvesting and deforestation are indeed rooted in demand. Japanese national policy therefore must be able to adequately address the country's overconsumption of imported timber products. Equally important, Japan must also be serious in focusing on re-developing its domestic forest resources as an alternative to imported timber products. However, it was only in December 2009 that the country's Cabinet finally introduced the policy goal of achieving a 50

percent timber self-sufficiency rate for the country by 2020. The current rate of timber self-sufficiency stands at only around 26 percent in 2010.<sup>65</sup>

Indeed, Japan has a long way to go in achieving an appropriately sustainable level of timber consumption and in particular its consumption of imported timber products, as well as in promoting policy mechanisms which can serve to support its own domestic timber industry.

Achieving a high timber self-sufficiency rate however is only part of the story – what is also urgently needed is a clear national policy on the acceptable range of sustainable timber consumption volume for the country, the implementation of effective measures in order to achieve the aim and the timeframe in which such an aim can be achieved successfully.

In comparison to materials such as cement, plastics and suchlike, timber is certainly environmentally friendlier – but in order to ensure sustainable consumption, Japan must have improved policies in order to ensure that its timber consumption volume and its timber self-sufficiency rates as well as the sources of its timber imports are able to meet acceptable standards of sustainability.

#### 4.2. Tropical timber trade in Japan and its civil society response

##### 4.2.1 Trade activities between Japan and Malaysia

Since the former Malaysian Prime Minister Mahathir Mohamad established his *Look East Policy* in 1981, Japan and Malaysia had developed significant economic relations.

In 2008, major Japanese imports from Malaysia included liquefied natural gas, electrical and electronic equipment as well as timber and timber products, estimated to worth some US \$23 billion, while major Japanese exports to Malaysia included electrical and electronic equipment, machinery, motorised vehicles, along with iron and steel, estimated at a value of US \$17 billion.<sup>66</sup>

In 2009, major export destinations for Malaysian commodities and products were Singapore, China, the USA, and in the fourth position, was Japan. Malaysia's major sources of imports on the other hand also included the same countries with the exception of Singapore. During the same year, Japan was also one of the largest investors in the Malaysian

<sup>65</sup> Please see Chapter 2 for more detailed information.

<sup>66</sup> <http://www.mofa.go.jp/mofaj/area/malaysia/data.html>.

manufacturing sector, alongside Hong Kong, the USA, Singapore and Taiwan. In 2008, Japan had also topped the list of donor countries for Malaysia through its official development assistance, valued at US \$117 million, while Germany and Britain contributed US \$10 million and US \$8 million respectively.<sup>67</sup>

For Japan meanwhile, Malaysia ranked as its twelfth largest export market and its ninth largest source of imports, based on 2008 statistics.<sup>68</sup>

These numbers make it clear to us that Japan has been and is likely to continue to be a significant trading partner for Malaysia.

#### 4.2.2 Timber trade-related cooperation between Japan and Malaysia

In December 2005, Japan and Malaysia signed the *Economic Partnership Agreement*, which aims to increase the cross-border flows of goods, persons, investments and services and to strengthen the economic partnerships between the two countries. Along with the agreement signing, a *Joint Statement at the Signing of the Agreement between the Government of Malaysia and the Government of Japan for an Economic Partnership*, a document which incorporated important references on forestry issues (Paragraph 4, Attachment 1) was released.<sup>69</sup>

Para 4: The Agreement will increase the cross-border flows of goods, persons, investment, and services and strengthen the economic partnership between the two countries. (snip) Statements on sustainable forest management and co-operation are attached to this Joint Statement.

Attachment 1: Sustainable forest management and trade in legally obtained timber

- (a) measures in promoting sustainable forest management in both countries;
- (b) enhancing trade in timber and timber products from sustainable resources.

Two years later, in August 2007, both Japan and Malaysia signed onto another document, the *Joint Statement in Conjunction with the 50<sup>th</sup> Anniversary of Japan–Malaysia Diplomatic Relations 'Everlasting Friendship and Far-reaching Partnership: Towards a Common Future'* which also made notable mentions on sustainable forestry issues.<sup>70</sup>

(4) Cooperation in the Area of Environment and Energy Sectors, para. 4:

The two leaders shared the view that it is important from the aspect of mitigating greenhouse gas emissions and conserving biodiversity to promote sustainable forest management in Malaysia, where world-class tropical forest and biodiversity are preserved, and confirmed their intention to work together in those areas through multilateral cooperation such as the International Tropical Timber Organization (ITTO).

However it remains unclear as to whether such agreements have actually brought about meaningful impacts in creating a more sustainable tropical timber trade between the two countries. The Malaysian forestry sector and its forestry governance system at least, have hardly made any significant improvements to strengthen the rights of its forest-dependent indigenous communities despite the fact that the country's judiciary has produced several landmark decisions to strengthen the protection of these rights in the last twenty years.

#### 4.2.3 Civil society campaigns on sustainable timber consumption

For Japanese civil society groups, efforts to organise campaigns against the country's highly unsustainable tropical timber consumption volume had begun way back since the 1980s. A focal point of these campaigns was the violations of indigenous peoples' customary land rights in Southeast Asia, in particular in Sarawak, Malaysia, where the bulk of its timber products were and are still being imported from.

Subsequently, as a result of the growing expectations for the Earth Summit in Brazil in 1992, Japanese NGOs began to actively put the pressure on local governments and private companies to not use tropical plywood, in a campaign that

<sup>67</sup> <http://www.mofa.go.jp/mofaj/area/malaysia/data.html>.

<sup>68</sup> <http://www.mofa.go.jp/mofaj/area/malaysia/kankei.html>.

<sup>69</sup> <http://www.mofa.go.jp/region/asia-paci/malaysia/epa/joint0512.html>.

<sup>70</sup> <http://www.mofa.go.jp/region/asia-paci/pmv0708/joint-4.html>.

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was popularly known as the *Local Governments Campaign*. This movement did achieve some measure of result – local governments' awareness on tropical forest destruction as a result of logging had drastically improved since then and many of their individual environment-related plans today are incorporated with targets to reduce timber consumption.

Unfortunately however, the campaign eventually began to cause many timber importer companies to develop a certain resistance against NGOs' campaigns – many in fact reacted negatively to the campaign, by simply shutting the door to further dialogues with civil society groups.

At the turn of this century, as the world's forests faced further deforestation and more serious degradation, several national NGOs in Japan began to collectively take new actions again. This time around however, their campaign efforts were largely targeted at paper companies. In order to quell the corporate resistance against campaigns mounted by the country's civil society groups, the latter then began to attempt holding constructive dialogues with the corporate sector.

In October 2004, five environmental NGOs – Greenpeace Japan, Friends of the Earth Japan, World Wide Fund for Nature (WWF) Japan, the Global Environmental Forum and the Japan Tropical Forest Action Network (JATAN) issued a *Joint NGO Recommendation [sic] on Ecologically Ethical Paper Procurement* (Box 2), which advocated the use of paper products from ecologically sound sources by both the Japanese public and corporate sectors.

Subsequently in the following year, the five NGOs convened several dialogue sessions to discuss ecologically ethical paper procurement with paper consumer companies to promote jointly agreed recommendations and to put the request for the latter to change the manner in which they procure their paper supplies. It was deemed as highly necessary then to ensure that the campaign to change the operations of the Japanese paper companies would receive both open and internal support from the latter. This strategy in the end proved to be successful in contributing towards a series of concurrent actions that have been taken by Japanese office equipment manufacturers, which will be discussed further below.

In 2006, Japanese NGOs once again issued another important statement, the *Joint NGO Recommendation [sic] on Ecologically Ethical Wood Products Procurement*, recommending that private companies and government agencies to procure wooden products from supplies

originating from ecologically sound sources. This action eventually contributed to the amendment of Japan's *Green Purchasing Act*, which was passed in April 2006 by the country's legislature, which will also be further elaborated below.

Apart from the above, it is also important to note another significant effort by civil society groups in Japan in promoting sustainable timber consumption, which was the *FairWood Campaign* – a market-oriented initiative launched in 2003 by Friends of the Earth Japan and the Global Environmental Forum. This campaign ultimately aimed to contribute towards world forest conservation and the combat against illegal logging through the elimination of the importation of timber that has been produced illegally or through destructive logging, while at the same time promoting local timber use from the Japanese domestic forestry industry itself.

During its initial stage, the campaign advocated the importance of sound timber procurement policies for the public and private sectors by distributing relevant information to the public via the Internet and public seminars. This led to the first significant success of the campaign, which was the amendment to the *Green Purchasing Act* and the subsequent launching of the *Guideline [sic] for Verification on Legality and Sustainability of Wood and Wood Products* in 2006, which while it chiefly affects the country's public sector, it also carries with it some implications on sections of the private sector that conduct wood-related businesses with government agencies.

Subsequently, the campaign concentrated on promoting sound timber procurement policies for timber consuming industries such as the housing and furniture manufacturers, as other NGOs worked with the pulp and paper industry to encourage forest certification. The campaign continued to advocate the adoption of some form of timber procurement policies by companies and to build relationships with the corporate sector in order to pave way for more constructive communications – organising quite a few seminars and symposia for timber-consuming companies along the way. This second portion of the campaign managed to successfully influence the large housing company, Sekisui House, to establish its own timber procurement policy. This move by Sekisui House was praised broadly in the sector and soon, many other companies began to follow the example the former had set.

## Box 2: Joint NGO Recommendation [sic] on Ecologically Ethical Paper Procurement, Japan

This statement was issued in October 2004 by Greenpeace Japan, Friends of the Earth Japan, WWF Japan, Global Environmental Forum, and Japan Tropical Forest Action Network (JATAN), addressed to industry and corporations.

1. We call upon you to identify types, quantity and uses of all procured paper products, and to make clear the information of the source of all the paper products such as the quality of forest management from which they are sourced. Do not use paper products made from virgin pulp where such information is not clear.
2. As a minimum requirement, it must be verified that the source of the virgin pulp in the procured paper products must be from a source that involves legal logging operations.
3. Virgin pulp in the procured paper products must not come from a source where it destroys the ecosystem of high conservation value forests.
4. Virgin pulp in the procured paper products must not originate from areas which exploit the livelihood or human rights of local residents or workers, or cause opposition or conflicts with stakeholders.
5. Management of forests (including plantations) from which virgin pulp of procured paper products originates, must not be such that it conducts large-scale clear-cutting of natural forests which causes opposition or conflicts with stakeholders in terms of having a serious impact on the original ecosystem, uses herbicides and fertilisers that harm the surrounding environment, or uses genetically engineered species.
6. Virgin pulp in the procured paper products, whether originating from natural or planted forest, must be traceable from production to consumption, subject to inspection by a third party and certified as well-managed forests by a reliable certifying body. In case such certification is not available, priority should be given to raw materials originating from forests which conduct continuous improvement toward certification.

Based on these successes, the campaign today has set out to focus on the more practical goal of creating a real market for *FairWood* products. To promote collaborative actions with private companies beyond the establishment of timber procurement policies, the campaign then changed its name in 2009 to *FairWood Partners*.

### 4.3. Governance framework on legal and sustainable timber procurement

#### 4.3.1 National forestry governance and timber procurement policy

Forestry management in Japan is under the authority of its Forestry Agency (JFA), which is part of Japan's Ministry of Agriculture, Forestry and Fisheries. Amongst the many responsibilities of the JFA is to monitor timber production, importation, consumption and exportation as well as to regulate forestry management and the forestry sector on the whole.

In 2000, in an effort to promote the public procurement of products considered to be eco-friendly, the Japanese Diet

passed the *Act Concerning the Promotion of Procurement of Eco-Friendly Goods and Services by the State and Other Entities (Act No. 100 of 2000)*, which came to be commonly referred to as the *Green Purchasing Act*. This law is to be overseen by Japan's Ministry of Environment.<sup>71</sup>

The Green Purchasing Act essentially encourages ministries and public agencies to procure more goods and products that have been produced in ecologically responsible conditions, of which wood products have always constituted as a good of concern. Its goal is certainly to establish a society that can enjoy sustainable development with a lower environmental impact. Details on the implementation of this law are further elaborated in the document *Basic Policy on Promoting Green Purchasing*, which prescribes the list of targeted products, the criteria for decision-making and other factors to be taken into consideration for the purchase of targeted goods. The targeted wood products are listed below.

<sup>71</sup> *The Green Purchasing Act* serves as a basis for implementing the *Basic Environmental Act (Act No. 91 of 1993)*, Article 24.

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- Paper (e.g. copy paper, any other paper used by business)
- Stationery (e.g. envelopes, notebooks etc.)
- Office furniture (e.g. chairs, desks, shelves etc.)
- Office automation equipment (e.g. recording media)
- Interior and bed room furniture (e.g. bed frames)
- Public construction supplies (e.g. sawntimber/lumber, engineered wood, plywood, veneer, laminated veneer lumber, flooring, particle board, fiber board etc.)

In 2005, during the G8 Gleneagles Summit held in Britain, the Government of Japan unveiled *Japan's Climate Initiative* in which it was announced that the country would be taking actions to halt the use of illegally harvested timber and timber products by legislating a scheme which aims to ensure the procurement of timber and timber products that are legal and sustainable. This plan in turn required that amendments to be made to the *Green Purchasing Act*, which all finally came into force in April 2006. This marked the beginning of government involvement in establishing a clear timber procurement policy in Japan.

Specifically, the legal changes concerned introduced the principle of 'legality' as a criterion for decision-making in timber procurement while 'sustainability' was added as a factor to be considered when selecting timber and timber products for purchases. In principle, the law requires that the two principles to be factored in on different terms – legality shall be complied with, whereas sustainability is to be considered. Therefore, the Japanese public sector is required by law to procure and utilise only legal timber, but it is only *encouraged* to purchase timber products that can be verified as having been sustainably produced. Targeted by this policy are government ministries, field agencies and the parliament – for which compliance is compulsory. In this way, wood and wood product suppliers for the three public sub-sectors are also indirectly affected by the guidelines.

To implement the procurement policy, the *Guideline [sic] for Verification on Legality and Sustainability of Wood and Wood Products* was established in 2006, the process of which is overseen by the JFA.<sup>72</sup>

To further fulfill the requirements spelt out by the guidelines, the JFA then directed the Japan Federation of Wood Industry Associations (JFWIA), a timber industry association umbrella and a quasi-governmental organisation, to establish the *Council for Tackling Illegal Logging and Promotion of Goho-wood [sic]* as a body tasked to assess and review the implementation of the guidelines within a multi-stakeholder consultation process. While JFWIA functions as the Council's secretariat, the Council members comprise a host of different stakeholders, from the network of forest owner associations, corporate members of the forestry, wood and paper sectors to academics to consumer associations and environmental NGOs. Friends of the Earth Japan is also a member of the Council. The JFA meanwhile participates as an observer in the Council. Since 2006, the Council has received reports on several weaknesses and flaws of the guidelines although thus far, no review has been undertaken to address them.

In May 2010, Japan also further enacted the *Act for the Promotion of the Use of Wood in Public Buildings* (Act No. 36 of 2010) and subsequently launched the implementation of a basic policy which directs the government sector to utilise timber and timber products in government buildings as much as possible and to urge local governments and private sectors to prioritise the use of timber and timber products over other materials classified as less sustainable such as cement, plastics, metals and suchlike. It is the aim of the Ministry of Agriculture, Forestry and Fisheries that the law will also serve to promote the use of domestic timber products, the revitalisation of the domestic forestry sector and the creation of new employment opportunities in the Japanese domestic forestry sector. Indeed, for over two decades at least, the Ministry has been trying to revitalise the domestic forestry sector, with great difficulty. The progress of such a policy has thus far been sluggish to say the least and the country continues to struggle in strengthening the international competitiveness of its domestic timber products.

The strength of the legal coverage of all such regulatory efforts however varies across different sectors and amongst different wood products. For instance, its mandatory enforcement is imposed only on the public sector. As such, the scope of the timber procurement guidelines would

<sup>72</sup> [http://www.rinya.maff.go.jp/j/boutai/houbatu/pdf/gaido1\\_e.pdf](http://www.rinya.maff.go.jp/j/boutai/houbatu/pdf/gaido1_e.pdf) (In English).



greatly depend on the nature of the market of particular wood products – private wood product sectors that have minimum business transaction with the government can be fairly unaffected by them. Further, jurisdiction issues can also have the impact of limiting the power of the JFA in this matter. Japan's Ministry of Economy, Trade and Industry for example also holds the jurisdiction to regulate the furniture industry. Its Ministry of Land, Infrastructure, Transport and Tourism meanwhile holds the jurisdiction to regulate public buildings. The effective implementation of sustainable timber procurement by the public sector in the country therefore is very much dependent on efficient coordination between different Ministries.

#### 4.3.2 Verifying the legality and sustainability of timber and timber products

The guidelines first and foremost put forward the following definitions of 'legality' and 'sustainability' in respect of timber and timber products:

<b>Legality:</b>	The timber to be procured should be harvested in a legal manner consistent with procedures in the forest laws of timber-producing countries and areas.
<b>Sustainability:</b>	The timber to be procured should be harvested from forests under sustainable management.

Based on the definitions above, the document then further elaborates on the three modalities for verifying the legality and sustainability of timber and timber products, the details of which are further discussed below.

- (i) *Forest certification and chain-of-custody systems*  
This method verifies legality and sustainability through the forest certification system, which requires certification on forest management as well as the subsequent process of chain-of-custody (CoC) monitoring, in order to guarantee the traceability of the timber products to their sources of origin.  
Currently the guidelines have provided recognition to the following certification schemes – Forest

Stewardship Council (FSC), Program for the Endorsement of Forest Certification Scheme (PEFC), Sustainable Forestry Initiative (SFI), Canadian Standards Association (CSA), Malaysian Timber Certification Scheme (MTCS) and Lembaga Ekolabel Indonesia (LEI). In addition, Japan's own system i.e. the Sustainable Green Ecosystem Council (SGEC) scheme is also recognised by the process.

- (ii) *Verification method by company under 'authorisation of association'*

This is a unique method that operates to correspond with the structures within Japan's own forest and timber industry sectors. In Japan, each industrial wood sector (e.g. forestry, wood processing, distributor, wholesaler, dealer, wooden product manufacturer etc.) forms its own association at both the prefecture and national levels, with its membership made up by individual private companies. It is voluntary for the companies to participate, but most do so in order to maintain good relationship with other companies. This verification method works in favour of this industrial structure.

Firstly, the associations would voluntarily prepare its own code of conduct to address the tackling of illegal logging, along with an accreditation scheme for its members. Then, members of the associations are all required to uphold the organisation's code of conduct. Subsequently, if the members are in agreement with the code of conduct, in accordance with the scheme, they would then be accredited members and be provided with an individual authorised number. This means that members are accredited for its ability to comply with the guidelines in concern.

The companies accredited by the associations are then allowed to use the given authorised numbers as verification that their timber consignments have been legally and sustainably obtained. Each association then takes the responsibility for the accreditation of its members but not on the legality of the members' timber products. These associations essentially are not mandated to approve each of its member's timber consignment as 'legal' and 'sustainable'.

This process entails that the associations concerned are required to monitor the trail of documents for all the relevant business transactions that can serve to provide evidence that the timber products procured

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have indeed been legally and sustainably produced. For instance, for the verification of the evidence of legality, invoices that are received from suppliers and those sent to customers must contain the descriptive affirmation that 'the product is *go-ho* wood' (*go ho* = legally compliant), along with the authorised number of the company from which the claim originated.

Companies are instructed to always clearly display their unique authorised numbers and the written description 'the product is *go-ho* wood' on invoices accompanying their products that are being delivered to customers. This method is to ensure the traceability of timber and timber products through invoices that display the authorised numbers and their legal and sustainable description.

Therefore for companies positioned in the middle or downstream of the timber supply chain, which only purchase finished products like plywood from trading companies or merchants (such as a secondary processing manufacturer), the task of verifying the legality of their products is procedurally simple – the process may only involve the verification of their invoices. However in the case of trading companies that import timber and timber products directly from abroad, they are of course required to furnish more documentary details and clearer evidence on legality and sustainability, such as the BRIK endorsement from Indonesia<sup>73</sup> or the stamp from Malaysian authorities on the Customs Declaration Form 2 (CDF2) stamp for Sarawak.<sup>74</sup>

The basis for this method of verification is certainly the associations' own voluntary code of conduct which promotes the members' obligation to supply wood and wood products that have been verified for their legality and sustainability. Although each association has its own individual code of conduct, typically the codes would in principle make a mention on their support for 'the Forestry Agency's efforts in tackling illegal logging

*and the abstention from using illegally harvested timber and timber products'.*

Members of each association are then required to commit to this code of conduct, after which they can be allowed to display their unique authorised numbers on their invoices as evidence of legality and sustainability. Thus, outwardly at least, it does appear that the companies have a collective responsibility to prove the legality and sustainability of their products, although no physical product labeling actually takes place.

#### (iii) *Verification method by the original measure of each company*

This method is adopted by companies that do not adhere to either method (i) or (ii) above, and tends to be used more widely by the pulp and paper industry. For this method, all processes related to harvesting, processing, manufacturing and delivery will be managed by a company or within a group of companies. Thus, this method verifies the legality and sustainability of timber and timber products by using self-established procedures of individual companies.

#### 4.3.3 Current efforts to promote *go-ho* wood

Since 2006, JFA and JFWIA have made efforts to promote the concerned guidelines and to create the demand for *go-ho* wood in the domestic market. According to the JFA (2010a), the progress achieved in the past four years included the following:

- (i) the number of associations registered as verification organisations for timber legality and sustainability has increased from 108 to 140 – an increase of more than 30 percent;
- (ii) participating member companies have also increased from 4,906 to 7,661 – an increase of more than 56 percent; and
- (iii) the supply of domestic logs with the evidence of legality has also increased from 40 to 63 percent in the domestic timber market.

However, the Japan Lumber Importers' Association's (JLIA) documentation on the volume of imported *go-ho* wood, as shown in Table 29, indicates that with the exception of plywood, the share of *go-ho* wood in imported timber and timber products is still relatively low.<sup>75</sup>

<sup>73</sup> BRIK is *Badan Revitalisasi Industri Kehutanan* or the Forest Industry Revitalisation Body which was set up jointly by the Indonesian Ministry of Trade & Industries and its Ministry of Forestry in December 2002. BRIK aims to ensure that all Indonesian timber products, especially those destined for export, must be produced legally. BRIK is responsible to endorse legal documentation trails and stock management of its member companies. This measure was legislated by the Indonesian Ministry of Forestry. For more information on BRIK, please see <http://dte.gn.apc.org/60FOR.HTM> and <http://www.goho-wood.jp/event/event5/a5.pdf>.

<sup>74</sup> The stamp of the logos of the Malaysian Timber Industry Board (MTIB) and Sarawak Timber Industry Development Corporation (STIDC) for woods originating from the states of Sabah and Sarawak respectively, stamped on the back of the Customs Declaration Form 2 (CDF2) are to be considered as evidence of legality.

<sup>75</sup> JLIA is an association of major general trading companies, major building material trading companies and major wholesale dealers. With only 41 members in total, the association currently controls about 60 percent of the market share in Japan. Therefore,

#### 4.4 Corporate policy efforts in sustainable timber procurement

Since the late 1990s, the issue of illegal logging has been receiving widespread international attention. In Europe, several countries have launched their own timber procurement policies in order to combat the problem. In North America, as a result of civil society pressure, private companies like Home Depot have also launched their own timber procurement policy.<sup>76</sup> Meanwhile in Japan, private companies that have been involved in the national and international timber trade have also been influenced by the global environmental discourse and felt the same pressure from Japanese civil society groups. Some of the corporate response to the pressure in fact began even earlier than the introduction of the government's timber procurement policy in 2006.

##### 4.4.1 Office equipment manufacturers

The earliest, most specific and inclusive corporate policy on sustainable timber procurement policy in Japan, which incorporated legal, environmental and social concerns, was introduced by the office equipment manufacturer Ricoh, in June 2003.<sup>77</sup> Ricoh sells largely to businesses and markets not only office equipment such as copiers, but also consumable supplies such as copy paper. Ricoh originally had been purchasing their paper materials from Asia Pulp and Paper (APP), one of the largest paper companies in

Asia. Soon after the introduction of this policy, Ricoh then called for improvements in APP's forestry operations. APP however is said to have failed in addressing Ricoh's demands adequately, resulting in Ricoh finally halting its purchases of APP products.<sup>78</sup>

Competitors including Canon and Fuji Xerox soon followed suit in introducing their own timber procurement policies in October and November 2004 respectively.<sup>79</sup> Similarly like Ricoh, Fuji Xerox also used to purchase paper from APP before ceasing to do so.<sup>80</sup> Another APP customer, a company named Askul, a mail-order service company, also launched a similar policy, in June 2005.<sup>81</sup> Askul reportedly however is still purchasing from APP.

##### 4.4.2 Pulp and paper industry

The initiative first attempted by the office equipment manufacturers in introducing procurement policies for their timber products as described above soon brought forward other impacts outside of its own sector, one of which was the creation of the demand for environmentally friendly paper in the larger business sector. As a result, the paper industry in Japan also began to take the initiative to factor in environmental considerations in their operations, resulting in several paper companies establishing their own procurement policies. Oji Paper, Mitsubishi Paper Mills and Nippon Paper

<sup>78</sup> <http://www.worldwildlife.org/who/media/press/2006/WWFPresitem888.html> and <http://www.wwf.or.jp/activities/2006/10/695720.html>.

<sup>79</sup> <http://cweb.canon.jp/supply/standard/>.

<sup>80</sup> [http://www.fujixerox.co.jp/company/news/release/2004/1130\\_supply\\_regulation.html](http://www.fujixerox.co.jp/company/news/release/2004/1130_supply_regulation.html) and <http://www.wwf.or.jp/activities/2006/10/695720.html>.

<sup>81</sup> <http://www.askul.co.jp/csr/special/paper.pdf>.

their decisions can create huge impacts in the market.  
<sup>76</sup> [http://corporate.homedepot.com/wps/portal/Wood\\_Purchasing](http://corporate.homedepot.com/wps/portal/Wood_Purchasing).  
<sup>77</sup> <http://www.ricoh.co.jp/ecology/biodiversity/pop01.html>.

**Table 29: Import of timber and timber products with evidence of legality in Japan, April 2009-March 2010 ('000 m<sup>3</sup>)**

Items	Import (A)	* Evidence of legality received (B)	(B)/(A) (%)
Logs	2,396	786	32.8
Lumber	2,827	60	2.1
Plywood	2,052	1,846	90.0
Other panel wood	233	15	6.5
<b>Total</b>	<b>7,508</b>	<b>2,707</b>	<b>36.1</b>

\* Denotes that the importer has received timber and timber products with evidence of their legality.

Source: *Goho-Wood: Supplying the Legality and Sustainability Verified Wood*. JLIA (2010).  
[[http://www.goho-wood.jp/topics/doc/sympo2010\\_report\\_10.pdf](http://www.goho-wood.jp/topics/doc/sympo2010_report_10.pdf)].

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all established their individual policies in April, June and October 2005 respectively.<sup>82</sup>

According to the Japan Paper Association (JPA), at present, 17 of its members have developed their own timber procurement policies and legality verification systems as shown in Table 30.

#### 4.4.3 Overseas and domestic pulp and paper timber plantation investments

Like South Korea, Japanese paper companies have also been promoting and expanding overseas afforestation and reforestation projects, although we take the position that the development of large plantations, which essentially are cultivated monocultures that function as tree farms, can neither in principle be classified as rehabilitative afforestation nor reforestation activities.

<sup>82</sup> <http://www.ojipaper.co.jp/env/kihon/partnership.html>; <http://www.mpm.co.jp/env/timber.html> and <http://www.np-g.com/news/news05102802.html>.

The Japanese aim in this endeavour is also similar to that of South Korea's – to secure stable timber resources, since demand for pulp and paper in developing countries is expanding due to their rapid economic growth and the availability of natural forest resources around the world is ever decreasing.

In the 1950s, the Japanese government policy did promote the expansion of domestic forest plantations. As a result, many forest and land owners began to plant trees such as cedar, cypress and pine on their private land. In the absence of land conflicts, which tend to occur considerably in developing countries, the public generally then tended to perceive afforestation or tree planting activities in a positive light. This perception then seems to have continued until today wherein such activities are viewed as being part of the corporate social responsibilities of private companies.

However due to the increased demand for timber and the rising cost of living in the country in the succeeding decades, Japan then began to introduce the policy of timber trade liberalisation in order to encourage the importation of cheaper

**Table 30: Japanese paper manufacturers with timber procurement policies and legality verification systems**

Name of company	URL
Oji Itagami Co., Ltd.	<a href="http://www.ojipaperboard.co.jp/">http://www.ojipaperboard.co.jp/</a>
Oji Paper Co., Ltd.	<a href="http://www.ojipaper.co.jp/">http://www.ojipaper.co.jp/</a>
Oji Specialty Paper Co., Ltd.	<a href="http://www.ojisppecialtypaper.co.jp/">http://www.ojisppecialtypaper.co.jp/</a>
Kishu Paper Co., Ltd.	<a href="http://www.kishu.co.jp/">http://www.kishu.co.jp/</a>
Daio Paper Corporation	<a href="http://www.daio-paper.co.jp/">http://www.daio-paper.co.jp/</a>
Chuetsu Pulp & Paper Co., Ltd.	<a href="http://www.chuetsu-pulp.co.jp/">http://www.chuetsu-pulp.co.jp/</a>
Tokushu Tokai Paper Co., Ltd.	<a href="http://www.tt-paper.co.jp/index.html">http://www.tt-paper.co.jp/index.html</a>
Nippon Paper Industries Co., Ltd.	<a href="http://www.np-g.com/">http://www.np-g.com/</a>
Nippon Paper Papyrus Co., Ltd.	<a href="http://www.papyrus.com/">http://www.papyrus.com/</a>
Nippon Daishowa Paperboard Co., Ltd.	<a href="http://www.nichidaiita.co.jp/">http://www.nichidaiita.co.jp/</a>
Hyogo Pulp Co., Ltd.	<a href="http://hyogopulp.co.jp/">http://hyogopulp.co.jp/</a>
Hokuetsu Kishu Paper Co., Ltd.	<a href="http://www.hokuetsu-kishu.jp/">http://www.hokuetsu-kishu.jp/</a>
Marusan Paper Mfg. Co., Ltd.	<a href="http://www.marusan-paper.co.jp/">http://www.marusan-paper.co.jp/</a>
Marusumi Paper Co., Ltd.	<a href="http://www.marusumi.co.jp/">http://www.marusumi.co.jp/</a>
Mitsubishi Paper Mills Ltd.	<a href="http://www.mpm.co.jp/">http://www.mpm.co.jp/</a>
Lintec Corporation	<a href="http://www.lintec.co.jp/">http://www.lintec.co.jp/</a>
Rengo Co., Ltd.	<a href="http://www.rengo.co.jp/">http://www.rengo.co.jp/</a>

Source: *Status of Paper Manufacturing Industry Initiatives of Countermeasures against Illegal Logging*. Japan Paper Association (2009). pp. 8-9. [<http://www.jpa.gr.jp/env/proc/illegal-logging/images/h21.pdf>]

timbers from abroad. Subsequently today the depletion in the timber resources from natural forests abroad has pushed Japanese companies to establish overseas plantation projects in order to ensure the continuous stable supply of cheap forest resources.

Japan's own 'forested areas' currently are estimated to be around 67 percent. 40 percent of these nevertheless are in fact plantations, but today they are mostly made up by fully mature trees. Therefore from an ecological point of view, such trees can well be harvested and used to fulfil the demand of the domestic market. However due to the geographical constraints of precipitous mountainous areas, the lack of human resource as well as the high costs of timber harvesting and processing in the country among others, the Japanese domestic forestry has continued to mire in a slump until today.

Unfortunately, the solution that the country seems to have chosen today is to encourage investments for the establishment of plantation projects abroad.

Nippon Paper for instance has established tree plantation farms in South Africa, Brazil, Australia, Chile and also back at home in Japan. According to a Nippon Paper report, the land for the company's tree plantations abroad are located

on grassland, farmland, sites of grazing land and logged over tree plantations.<sup>83</sup> Oji Paper meanwhile has established tree plantations in China, Lao, Canada, Indonesia, New Zealand, Australia, Brazil and Vietnam.<sup>84</sup>

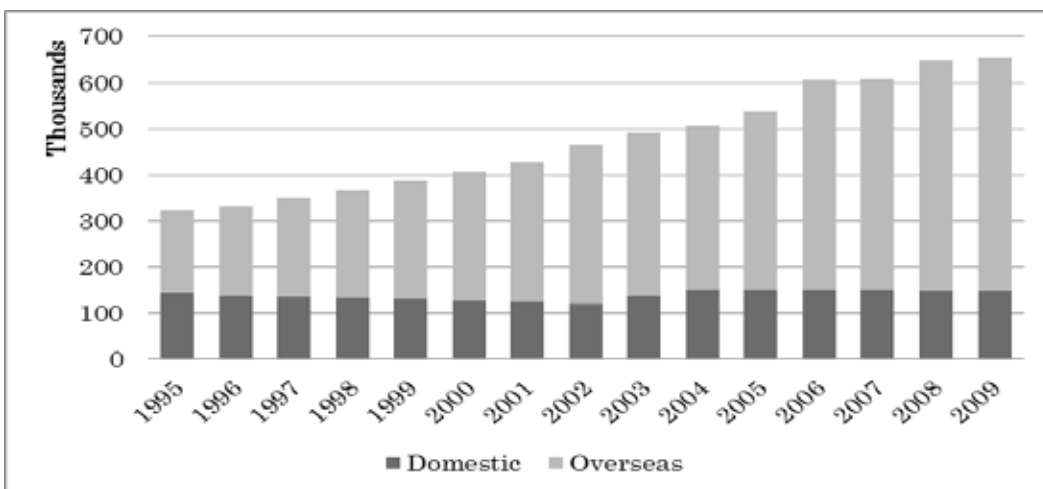
Such projects tend to promote the utilisation of some form of forest certification, while incorporating measures from their internal corporate timber procurement policies. Figure 42 shows the trends in the expansion of these planted areas, while Figure 43 shows the trends in certified paper plantations overseas.

However, conflicts with local communities in such plantation projects abroad are not unknown. For example, the authority in the area where such a project is located may issue an afforestation development permit to a logging company without the consent of the local communities. Then, a local government may issue a plantation permit for a forest already declared as a conservation area or evaluate poorly managed projects as being well-managed.

#### 4.4.4 Housing developers

In comparison to the paper industry, similar efforts to promote the use of legally compliant wood within the housing sector have thus far been relatively slower to take off.

**Figure 42: Size of domestic and foreign paper plantations supported by the Japanese corporate sector**



Source: *Status of Paper Manufacturing Industry Initiatives of Countermeasures against Illegal Logging*. Japan Paper Association (2009). p. 12. [<http://www.jpa.gr.jp/env/proc/illegal-logging/images/h21.pdf>].

<sup>83</sup> <http://www.np-g.com/contents/200002406.pdf> (in Japanese) and <http://www.np-g.com/contents/200122732.pdf> (in English).

<sup>84</sup> [http://www.ojipaper.co.jp/envi/report/env100930/2010\\_12\\_25.pdf](http://www.ojipaper.co.jp/envi/report/env100930/2010_12_25.pdf) (in Japanese).

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A possible reason for this is that the industry's end-customers tend to have little opportunity to influence the housing companies' purchasing choices on the innumerable structural materials and parts utilised in the housing and building construction process. Homes or buildings are expensive, highly consequential, life-altering albeit necessary investments for most people or businesses – the dynamics of the decision-making process and choices surrounding their sales and purchases therefore are radically different from other more mundane goods. Further, a significant volume of the wooden materials used by the industry is also utilised only during the construction process, rather than as permanent fixtures of a building's structure.

Nevertheless despite these challenges, some efforts did take place and these have had significant impacts on the industry as a whole.

One of the biggest housing manufacturers, Sekisui House, was the first housing company to introduce its own timber procurement policy and guidelines, in April 2007.<sup>85</sup> Sekisui House had in fact publicly announced its declaration on timber sustainability concerns two years earlier in April 2005. Box 3 lists the 10 items of their guidelines.

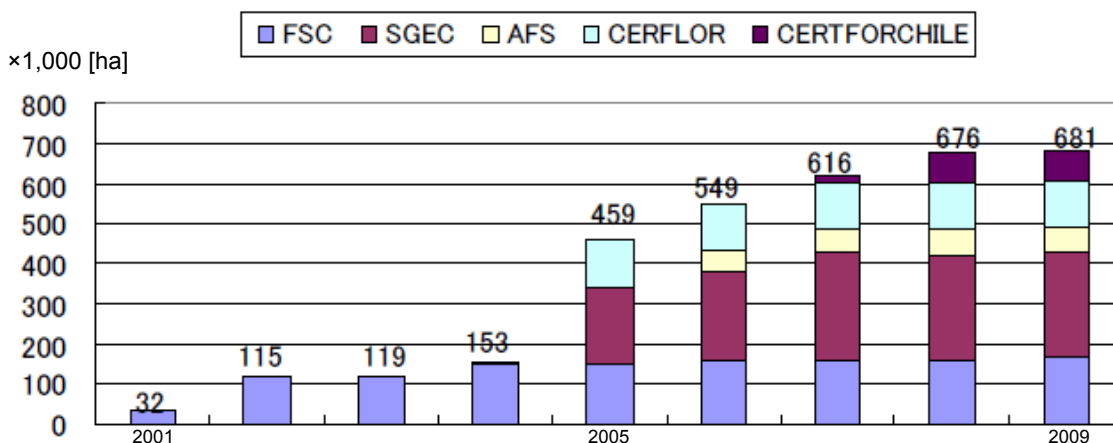
Sekisui House's initiative was soon followed by another housing company, Sumitomo Forestry, which introduced its timber procurement policy in June 2007.<sup>86</sup> It is notable that Sumitomo Forestry's business is not only focused on housing construction – the company is also a forest owner and a timber and timber products wholesaler as well, which links it more directly to forest conservation issues. Since then, apart from the two companies, three other housing companies, namely Tokyu Homes, Chikyu No Me and Misawa Home, have also introduced their procurement policies, in 2008, 2009 and 2010, respectively.<sup>87</sup>

The actions of housing companies have since had significant impacts on other industries, specifically flooring manufacturers, as will be discussed further below.

#### 4.4.4.1 Ripple effects of the housing industry's efforts

Due to the nature of the housing industry operations, any actions undertaken by housing companies tend to create ripple effects on other related industries. A typical house built in Japan today usually consists of more than 60,000 parts, with many of the materials including timber, supplied by around 3,000 companies. For example, timber is used in building foundation, exterior construction, wood framing, house wiring and in interior construction like flooring, walls,

Figure 43: Size of certified foreign paper plantations supported by the Japanese corporate sector



Note: Some areas of CERFLOR and CERTFORCHILE are also certified under FSC.

Source: *Status of Paper Manufacturing Industry Initiatives of Countermeasures against Illegal Logging*. Japan Paper Association (2009). p. 14. [<http://www.jpa.gr.jp/env/proc/illegal-logging/images/h21.pdf>].

<sup>85</sup> <http://www.sekisuihouse.co.jp/company/newsobj825.html>.

<sup>86</sup> <http://sfc.jp/information/news/2007/2007-06-27.html>.

<sup>87</sup> <http://www.tokyu-homes.co.jp/aboutus/environment/>; <http://www.chikyunome.co.jp/project/housing/fairwood.html> and <http://www.misawa.co.jp/kodate/seinou/mokusitu/chikyuchotatsu.html>.

**Box 3: Sekisui House's timber procurement guidelines on qualifiers of sustainable wood products**

1. Wood products that are sourced from areas where there are low risks of illegal logging.
2. Wood products that are sourced from areas that do not include any precious ecosystems.
3. Wood products that are sourced from areas other than those where the ecosystems have been severely damaged or areas where large scale logging of natural forests has occurred.
4. Wood products that are not sourced from endangered species.
5. Wood products that are sourced from an area close to where it will be consumed.
6. Wood products that are sourced from an area other than those where there are conflicts or hostilities regarding timber production.
7. Wood products that are sourced from areas of planned harvesting that does not exceed the recovery rate of the forest.
8. Wood products that are sourced from domestic forests in Japan.
9. Wood products that are sourced from plantations that are managed according to methods that encourage the preservation and generation of a natural ecosystem.
10. Wood products that are made from reclaimed/recycled wood.

ceilings, roofing and so forth. House builders then stand at the top of a pyramid of suppliers. They are a major leader in the domestic economy and their decisions and actions can certainly create significant impacts across a host of interrelated industries.

In developing their guidelines, the housing industry players were first forced to conduct an internal examination on their use of different types of timber and timber products, even studying aspects such as the different species of wood available in the timber market and volume analysis. This was then followed up by surveys that targeted wood suppliers to allow the former to trace timber and timber products back to their sources. In the beginning, the housing companies reportedly faced a low response rate and erroneous responses, but due to their persistence, eventually the suppliers did provide clearer and more accurate responses.<sup>88</sup> This process gradually raised their awareness on the related environmental issues surrounding timber production.

Additionally, the housing companies also sought to gather information from various civil society groups on a host of related issues. These included the environmental and social impacts associated with timber production, the different application of forestry practices such as selective cutting, clear cutting and plantation development as well as information on tree species and their countries of origin.

Friends of the Earth Japan was one of the NGOs involved in assisting several of these housing companies in this process, which included Sekisui House and Tokyu Homes.

The companies' subsequent step was then to set the minimum standards for purchasing, made up by a set of criteria, such as the requirement to decrease the risks of procuring products from species that have been registered as endangered under CITES or from countries where large quantities of timber are known to have been illegally or destructively harvested and suchlike. If products are found to have not met the minimum standards, the suppliers would then be requested to change to a different species or to a different source of timber, and if the request is rejected, business would be ceased with the particular supplier.

The first major targeted product was tropical plywood, used as an underlay for flooring. Indeed, flooring manufacturers were placed under heavy pressure to comply with the guidelines established by the housing sector. Eventually, four major flooring manufacturers namely Eidai Co. Ltd. (later merged into its parent company, the Panasonic Corporation in January 2012) also developed their own timber procurement policies that are either publicly publicised or developed only for their own internal use.<sup>89</sup>

<sup>88</sup> Personal communication. Sekisui House. January 27, 2011.

<sup>89</sup> <http://www.woodtec.co.jp/company/quality.html>; <http://www.eidai.com/profile/environment/envpolicy.html>; and <http://panasonic.co.jp/eco/communication/biodiversity/>.

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Subsequently like the housing companies, flooring manufacturers then also began to request that their suppliers – including major general trading companies, building material trading companies and timber wholesalers – to ensure the legality and sustainability of their timber products.

Today the Japanese private companies often use the words 'compliance', 'credibility' and 'reputation' as keywords when describing their corporate values. In terms of legality, the credibility of evidence is important. However despite the efforts of the flooring manufacturers, the industry still finds it challenging to prove the legality of products that are based solely on the evidence provided by suppliers who in turn have simply followed the government's aforementioned guidelines, which were primarily designed to address the documentation of legal and sustainable evidence surrounding physical forestry operations and do not require the meaningful evaluation of the credibility of the production systems themselves.

Eventually, the flooring manufacturers began to adopt forest certification schemes which incorporate independent third party monitoring. Further, as a result of their pressure, trading companies and wholesale dealers also gradually acquired chain of custody certifications for both FSC and PEFC certified products.

Currently, 23 members, or 56 percent of JLIA membership, work with both FSC and PEFC CoC certification. Their share of both FSC and PEFC certified products are estimated to stand currently at around 91 percent and 80 percent, respectively.<sup>90</sup>

#### 4.4.5 Furniture manufacturers

Furniture manufacturers currently have also begun to take some initiatives aimed at procuring sustainable and legal timber, following the step taken by the several housing companies.

The Japan Office Institutional Furniture Association (JOIFA) for instance has taken the initiative to consider *go-ho wood* and eventually became a verification organisation on legality and sustainability. Okamura Corporation on the other hand was the first company from this industry to introduce its own timber procurement policy, in October 2009.<sup>91</sup>

Nevertheless, on the whole, the furniture industry has been slow in establishing policies in favour of sustainable and legal timber, in comparison to other timber-consuming industries.

The furniture companies in Japan can be roughly classified into three groups. First, there are the office furniture manufacturers that sell mainly to businesses or government agencies. Second, we have the general furniture manufacturers of high-end quality wooden furniture, mainly targeted at individual customers. Third are the large independent furniture distributors like IKEA, Nitori and Shimachu, with a business model of high volume sales of cheap products with a large market share in Japan.

One possible reason for the slow response of the industry is the fact that while the *Green Purchasing Act* and its guidelines may affect companies in the first and second categories, the companies falling into the third category tend to be completely unaffected by the law as they do not conduct any direct business transactions with the public sector. Complicating the matter further is the fact that the supervisory authority for the furniture industry is the Ministry of Economy, Trade and Industry, and not the JFA. Further, unlike other timber-consuming industries, the volume of timber being used by the furniture-making sector is relatively small, giving them less influence in negotiations with say, timber wholesalers. Last but not least, the industry is also largely run by smaller family-based companies, with their average number of staff ranging from only five to ten individuals.

#### 4.5 Weaknesses in the existing timber procurement system

The Government of Japan has certainly recognised that illegal logging is indeed a significant problem and a widespread occurrence in many timber-producer countries. Nevertheless in terms of policy, Japan has shown a preference for anti-illegal logging governance measures that are not fully legally binding, unlike in the USA or the European Union. Therefore the aforementioned guidelines has been somewhat loosely designed – the definition of legality for imported timber for instance is essentially dependent on the exporting country's forestry laws and their enforcement. In essence then, like South Korea, the Japanese authorities also view that the duty to ensure that the country's timber imports have indeed satisfied all legal requirements pertaining to their harvesting, processing, tax-collection and export is rested largely on the shoulders of the exporter countries themselves.

It is then apt to describe that the Japanese timber importing system essentially requires that timber legality is to be accepted on faith. This faith is based upon the trust given to certification schemes or existing forestry governance systems operating in exporter countries, even if such certification

<sup>90</sup> Japan Lumber Importers' Association (2010). [http://www.goho-wood.jp/topics/doc/sympo2010\\_report\\_10.pdf](http://www.goho-wood.jp/topics/doc/sympo2010_report_10.pdf).

<sup>91</sup> <http://www.okamura.co.jp/company/topics/other/2009/kankyomokuzai.php>.



schemes and governance systems have consistently been criticised as inadequate, especially in relation to ensuring that timber and timber products are free from indigenous customary land rights claims.

For example, for Malaysian timber, confirmation of the logos of the MTIB and STIDC for woods originating from the states of Sabah and Sarawak respectively, stamped on the back of the CDF2 is to be considered as evidence of legality. This is because the CDF2 is the export permit approved by the State Governments of Sabah or Sarawak – its very issuance therefore is considered to be the verification of the legal compliance of the timber consignment concerned. Hence, regardless of the true conditions surrounding the harvesting and production of the timber — whether it has been smuggled, or it was harvested in destructive conditions that may cause irreversible deforestation or from an area where there exist land rights conflicts between the logging company and local communities – if the State Governments of Sabah and Sarawak have recognised it as legal, the Japanese authorities too will consider it as so.

In relation to the above, for Indonesian timber, a verification system developed within the FLEGT-VPA framework between Indonesia and the EU i.e. its *Timber Legality Assurance System* (TLAS) is currently being utilised to indicate the legality of Indonesian timber products. The Indonesian FLEGT-VPA TLAS here functions as a kind of a certification scheme by mandate. It is said to contain some improvements in comparison to the older BRIK endorsement system. Here, one can see that although the legality of Malaysian and Indonesian timber is verified through different processes, with Indonesia utilising a system that is essentially external to the country's existing regulatory framework, the Japanese timber procurement system will have to evaluate them as legal just the same.

#### 4.5.1 Voluntary v. mandatory approach of the existing verification system

Although the *Green Purchasing Act* and its timber procurement guidelines do provide a basic regulatory framework to encourage the procurement of legal and sustainable timber products in the country, unfortunately for the larger part of it, the process is based on voluntary participation rather than mandatory compliance to a set of legal requirements. In addition, many wood product businesses tend to also fall outside of the target of the said regulatory framework as they do not conduct business with the public sector. Therefore, beyond the concept of promoting corporate social responsibility, there are actually very limited

incentives for companies to take actions and improve their timber procurement process.

However, the JFA maintains that its approach in tackling illegal logging is a 'bottom-up' approach and has its advantages. Firstly, the agency argues that such an approach is set to encourage more participation from inside and outside of the country. Secondly, it is also said that such an approach is useful to prevent the rise in timber prices, permitting the timber industry to continuously compete with alternative materials such as metals and plastics. Thirdly, it is also thought that the current approach will also discourage further discrimination between imported and domestic woods. On the whole, the approach is intended to support the expansion of the timber market with verified legal wood while improving the credibility of the system.<sup>92</sup>

This approach is the complete opposite to the concept of the EU's FLEGT-VPA and the USA's Lacey Act, both of which aim to tighten the regulatory framework on combating illegally harvested timber and timber products.

#### 4.5.2 Incomprehensive definitions of legality and sustainability and the absence of standards

It is important to note that at present, the definitions of timber legality and sustainability as spelt out by the guidelines are extremely weak and limited in their capacity. The very briefly worded definitions seriously lack technical clarity and depth and imply a limited scope of their application.

For one, the definition of legality focuses only on harvesting operations. (This may be partly influenced by Japan's own regulatory framework on forestry practices where regulations on forestry operations only require operators to submit a post-harvest report to the local government and to conduct replanting of the area.) Illegality and unlawful behaviours surrounding timber production are notoriously multi-layered – they may involve harvesting licences that have been obtained through rent-seeking activities, incidences of under-accounting, transfer-pricing as well as other forms of falsification of the numerous paperworks accompanying harvesting, processing, taxing and exporting operations and so forth. Thus focusing legality strictly on the harvesting process is certainly inadequate.

The definition of sustainability meanwhile does not technically define sustainability at all, considering the fact that 'sustainable forestry management' is a highly technical endeavour, which must be informed by competent science in forest ecology and through long-term field research

<sup>92</sup> Japan Lumber Importers' Association (2010). [http://www.goho-wood.jp/topics/doc/sympo2010\\_report\\_10.pdf](http://www.goho-wood.jp/topics/doc/sympo2010_report_10.pdf).

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activities on tree biology and growth, while incorporating solid investigations on the acceptable rates for felling cycles, logging damage and harvesting intensity. Further, the concept of sustainability must also include the integration of a variety of social and human rights concerns.

In essence, both definitions fail to directly address the environmental and social impacts of logging activities. Without explicit recognition given to the two concerns, they are not equipped to deal with the two most prevalent predicaments that often surround timber production in many producer countries, which carry with them serious legal and human rights implications – the violations of indigenous customary land rights as well as workers' rights by logging companies.

The definitions also make no mention of the application of international treaties and conventions such as CITES and 'conflict timber' as defined by the United Nations.

Of great importance here is the fact that Japan is indeed a signatory to the *United Nations' Declaration on the Rights of Indigenous Peoples' Rights* (UNDRIP), which was adopted by the United Nations' General Assembly in September 2007. Therefore the country must make good on this international commitment to respect the rights of indigenous peoples everywhere around the globe.

Further, beyond the definitions, the guidelines also do not provide clear and detailed standards, criteria or indicators to further elaborate on legality and sustainability. Thus at the end of the day, those who would like to purchase timber and timber products must still judge for themselves whether the timber is legal or illegal.

It is also notable that since the guidelines were launched, the Government of Japan has yet to discuss the issues surrounding 'sustainability' further. There has also been a lack of efforts undertaken to evaluate the qualitative differences between forest certification schemes recognised by the guidelines.

#### 4.5.3 Loopholes and exceptions in the various verification processes

The current policy has also made some questionable exceptions in the legality verification process, for instance:

For paper products – verification is not applicable to virgin pulp, manufactured from forest thinning, to re-used/recycled materials such as residual material from plymills/sawmills, from forest residues and small-diameter logs.

For sawn timber – verification is not applicable to sawntimbers manufactured from forest thinning, forest residues and small-diameter logs.

For recycled wood boards or fibreboard – verification is not applicable to products manufactured from residual materials from plymills/sawmills, demolition material, recycled packaging material, unused low-grade paper chips, forest residues/small-diameter logs (including forest thinning).

Such exceptions for instance could possibly open the system into freely allowing small-diameter logs, which in theory may originate from the last leg of logging activities in Sarawak, in preparation for the conversion of naturally forested areas into monoculture plantation projects (in permanent gazetted production forests or in non-gazetted forests) or into other land uses (in non-gazetted forests only). In Malaysia generally, logging activities on forests that have not been gazetted as permanent production forests are subjected to a less stringent management plan and are not imposed with a minimum diameter cutting limit, since such forests can be legally converted into other land uses. Selective felling and the minimum diameter cutting limit requirements are only imposed on logging activities in gazetted permanent production forests – but these may be unnecessary when clear cutting is required for the establishment of 'forest plantations' of fast-growing trees (or even oil palm for a single cycle, as with the case in Sarawak).

For the various legal and sustainable timber verification systems developed by the corporate sector, from a larger perspective, such processes appear to be highly focused on 'the demonstration of concern' on sustainability and legality of timber products. Most however do not possess elaborate verification mechanisms to further describe sustainability and legality standards.

#### 4.5.4 Lack of penalty

Currently, the guidelines do not specify any penalties for non-compliance. As a result, new categories such as 'unverified legal' or 'not yet verified' timber are commonly and informally created in addition to 'legal' and 'illegal' timber in the Japanese domestic market. According to the Japanese authorities, the current strategic measures used to tackle illegal logging are focused on promoting verified 'legal' timber while reducing the amount of 'unverified legal' timber.

#### 4.5.5 The false solution of overseas corporate afforestation/reforestation projects

As stressed elsewhere in this report, efforts in promoting sustainable timber production must pay serious attention to the need of reducing excessive and wasteful consumption levels and pressures on the world's natural forest resources. Therefore foreign-funded and market-driven timber tree plantations in producer countries are certainly not a solution in the right direction for timber over-consumption and global deforestation.

As will be argued in the South Korean section, at best, such approaches can be misleading, at their worst they can in reality, give rise to all the local and national risks that intensive export-oriented cash crop cultivation tends to create for producing countries – from increasing the pressure on natural resources like land, distorting national agricultural output, introducing food security threats to generating severe environmental and social impacts. Often reforestation projects in the tropical south may also take place on logged over forests where rehabilitation has become difficult, time-consuming and therefore financially unattractive for the timber industry at least, as a result of timber over-harvesting itself, which in turn is almost always encouraged by poor forestry governance.

#### 4.6 Concluding remarks

Strictly speaking, Japan's governance measures still harbour serious weaknesses. The government's definitions on legality and sustainability are gravely inadequate while mechanisms for legality verification are limited to ensuring that declaratory import and export documentation papers are in place, in addition to certification schemes whenever applicable. In this sense, it can be said that Japan has not actually done enough in tackling illegal logging or in developing a more meaningful policy approach to address all the associated environmental and social impacts of timber harvesting.

## five South Korea: forestry and timber importation policies and governance

### South Korea: forestry and timber importation policies and governance

#### 5.1. General introduction

Although the rate of timber self-sufficiency in South Korea has risen in the last 10 years, increasing from 5.7 percent in 2000 to 13.5 percent in 2010, this is still relatively low, leaving the country with the anxiety that its supply of timber imports is highly susceptible to market fluctuations.

The Korea Forest Service, the South Korean executive agency in charge of overseeing the country's forestry and timber importation governance, indicated in its plan in 2011 the intention to increase the South Korean timber self-sufficiency rate to 30 percent by the year 2050. Nevertheless, despite efforts such as this, the chronically high reliance on imports has continued to force the timber importation policy of South Korea to still be very much focused on ensuring that the supply of foreign timber into the country is in stable conditions at all times.

South Korean authorities are well aware of the fact that efforts to maintain current import volumes at current prices may indeed be very challenging in the future if the country's timber procurement policy remains unchanged – given the global emphasis on sustainable forestry management today, especially within the context of the climate change discourse. Nevertheless despite this urgency, South Korea has yet to formulate a clear policy on the sustainable timber consumption *level* for the country, one which directly incorporates concerns on the need to reduce its timber import *volume*, considering the fact that the country's high consumption levels for timber products are largely fuelled by imports instead of domestically-harvested timber products.

Thus, without a policy position that can provide clear articulations on the quantitative aspects of the country's sustainable timber consumption levels, some of South Korea's attempts to address this high reliance on imports have been somewhat flawed to say the least. Such efforts tend to be highly focused on more of the same – ensuring that the foreign timber supply for the country is continuously stable in volume and prices. One such measure is the state-supported promotion of South Korean investments in afforestation or reforestation projects abroad, which will be further discussed below.

Apart from this lack of focus on the need to reduce its timber consumption, the country's regulatory framework on its timber importation process is also fairly narrow, structured around common legal procedures involving the compliance to the domestic laws on customs, tax clearance, plant quarantine

and suchlike. The responsibility to ensure the legality of its timber imports is regarded to be more of the duty of exporter countries.

In the same breath, there is also no clear policy guidance in place to promote a more discerning procurement process for the country's timber imports, in which the commitment to ensure that timber and timber products have all been obtained from sustainable and socially responsible sources is an explicit concern.

#### 5.2 Governance framework on legal and sustainable timber procurement

##### 5.2.1 National forestry governance and timber procurement policy

Altogether, the South Korean executive arm under its Prime Minister's Office consists of several organisational structures, which include three distinct commissions, two special ministerial offices and another fifteen ministries, of which under the latter sit a total of 18 services or administrations.<sup>93</sup>

Governance on forestry and timber importation policy in South Korea is under the authority of the Korea Forest Service (KFS) which functions under the Ministry of Food, Agriculture, Forestry and Fisheries. Environmental governance meanwhile, is under the direct authority of the Ministry of Environment but other ministries such as the aforementioned Ministry of Food, Agriculture, Forestry and Fisheries as with the Ministry of Public Administration and Security and the Ministry of Land, Transport and Maritime Affairs also share some responsibilities in this governance area by way of direct regulatory activities or the delegation of the work to subordinate agencies or local authorities.

Forestry-related governance nevertheless remains the principal regulatory task of the KFS.<sup>94</sup> The KFS' range of responsibilities covers every aspect of forestry management in South Korea. They include the development of the *National Forest Plan* for the country's management of forestry resources and forest product development, forest protection and conservation, forestry-related research and also the procurement policy for timber imports. The KFS also regularly sends its officials to international conferences on forestry around the world.

<sup>93</sup> For more information please see <http://english.president.go.kr/government/branch/branch.php/>.

<sup>94</sup> For more information, please see [http://english.forest.go.kr/kfswweb/html/EngHtmlPage.do?pg=english/about/about\\_050\\_010.html&mn=ENG\\_08\\_05](http://english.forest.go.kr/kfswweb/html/EngHtmlPage.do?pg=english/about/about_050_010.html&mn=ENG_08_05).

From 1961 to 2001, the KFS's main forestry legislation had been the *Forest Law*, which was enacted to regulate forest protection and forestry development and enhance forests for productive and other public functions and services. In 1994, an amendment to the *Forest Law* for the first time introduced the concept of 'Environmentally Sound and Sustainable Development' in South Korean forestry management in which Article 16 of the said legislation was equipped with the provisions to define the duties of the KFS to establish and manage domestic forest resources sustainably.

In 2001, the *Forest Law* was finally repealed and replaced by the *Framework Act on Forest*. An important feature of this new forestry legislation is its larger incorporation of sustainable forestry management concerns, including those on timber production and consumption. Its Article 22 delegates the duty of establishing and managing a proper policy on the production, consumption and export of forest products for the purpose of ensuring stability for the country's timber imports and their prices to both the central and local governments. The same Article also states that the South Korean central government has the further responsibility of establishing and managing a policy on developing overseas plantations to ensure the stable supply of timber for the country.

Subsequently in 2006, *The Act on the Promotion and Management of Forest Resources* was enforced to provide for forestry management operations that are based on a set of criteria and indicators on sustainable forestry management (SFM). Thus, a comprehensive legal framework was set to implement SFM at all levels of forestry policy. However it is important to note that this legislative focus on SFM is by and large domestically oriented.<sup>95</sup>

Currently there are altogether 14 separate statutes governing forestry matters in force in South Korea, all regulated by the KFS. Their coverage is extensive, from the management, utilisation and protection of forests to processes involved in timber importation and exportation.

In order to provide a more detailed strategy in the management of its domestic forests, the KFS also began to implement a series of national forestry master plans, known as the *National Forest Plan* (Plan) as early as in 1973, which put forward the national long-term management strategy for the country's forests. In the aforementioned main forestry legislation above, the instruction for the Minister to establish

the Plans is provided for by its Article 11. The First Plan was enforced from 1973 to 1978, the second from 1979 to 1987, the third from 1988 to 1997 and the Fourth Plan was executed from 1998 to 2007. Currently, the country is under its Fifth Plan, which commenced in 2008 and will run until 2017.

During the *Fourth National Forest Plan* (1998-2007), the concept of SFM began to be emphasised more explicitly for the first time. After having considered challenges confronting contemporary forestry in the current century, new strategies were subsequently incorporated into the Fourth Plan mid-way. The reviewed Plan came into force in 2003, adopting an explicit new slogan to realise the harmonisation between human society and forests. The revision also introduced a set of standards to define SFM, comprising 7 criteria and 28 indicators.<sup>96</sup>

Sustainability objectives and strategies were then further developed in greater detail in the *Fifth National Forest Plan* (2008-2017). A process known as the *Forest Management Certification* (FMC) was set up as a measure to certify forests based on SFM principles. As an initial step, the FMC process only focuses on the certification of the country's production forests. As of 2008, around 121,000 hectares of domestic forests had been certified by the Forest Stewardship Council (FSC), with plans to extend coverage of such certified areas up to 300,000 hectares by 2017. There are also further plans to also develop a national certification system that can be internationally accredited as well.<sup>97</sup>

The Fifth Plan is also supported by five broad strategies and 25 action plans to achieve its objectives.<sup>98</sup> Of notable interest here is the fifth strategy, namely, the 'Reinforcement of international cooperation for resources [sic] development and global forest conservation', which contains four action plans that are focused on strengthening the following:

- (i) Cooperation initiatives for resource development and broadening of overseas plantation;
- (ii) Engagement in international collaborative networks such as the United Nations' Convention to Combat Desertification (UNCCD);
- (iii) Multi-national cooperation; and

<sup>96</sup> For more information, please see [http://english.forest.go.kr/kfswb/html/EngHtmlPage.do?pg=/english/sfm/sfm\\_030\\_010.html&mn=ENG\\_04\\_03](http://english.forest.go.kr/kfswb/html/EngHtmlPage.do?pg=/english/sfm/sfm_030_010.html&mn=ENG_04_03).

<sup>97</sup> [http://english.forest.go.kr/kfswb/html/EngHtmlPage.do?pg=/english/sfm/sfm\\_050\\_010.html&mn=ENG\\_04\\_05](http://english.forest.go.kr/kfswb/html/EngHtmlPage.do?pg=/english/sfm/sfm_050_010.html&mn=ENG_04_05).

<sup>98</sup> Please see Korea Forest Service (2009, 32).

<sup>95</sup> For more information, please see Korea Forest Service (2009).

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- (iv) Inter-Korea cooperation by stages, such as forest rehabilitation in North Korea.

#### 5.2.2 Existing regulatory framework for timber importation

While South Korea may have taken wide-ranging policy actions in ensuring the sustainability of its domestic forestry management, the same cannot be said for the country's existing policy framework on timber importation.

In many ways, the implementation of sustainable forestry concerns in South Korea is still largely bound to the production interests of the timber-related and timber-consuming industries and tightly focused on the sustainable management of its own domestic forests, despite the fact that the bulk of the country's wood products is sourced out from abroad. In this sense, there is an unfortunate policy gap between sustainable forestry and sustainable timber consumption.

Thus the country's regulatory framework on timber importation governance is still fairly narrow, limited within the confines of generic administrative procedures that are applicable on the importation of other agricultural and non-domesticated biological commodities or products. Along with the laws on customs control, the regulatory purpose of inspections carried out on timber imports is only focused on ensuring compliance with the country's laws on plant quarantine, wildlife conservation, food sanitation, waste management and the movement of waste between countries.

For instance, under the plant quarantine law, plants originating from or through a banned area must be rejected while the wildlife conservation law, which is grounded in the International Trade in Endangered Species and Wild Flora and Fauna (CITES), ensures that protected plants and animals are to be prevented from entering the country. Existing inspection mechanisms on timber imports therefore are primarily designed to ensure legal compliance in relation to the content of the import and export bill.

As such, once the imported timber product has successfully passed through these processes and the declaratory paperwork from originating and transitory countries accompanying it is found to be in agreement with the actual physical condition of the said timber in quantity and quality, the importation process would have fulfilled all existing legal requirements expected of it.

On the issue of legality alone, the KFS appears to be of the view that the duty of ensuring that the country's timber imports have indeed satisfied all legal requirements pertaining to their harvesting, processing and tax-collection, rests solely on the shoulders of the exporter countries themselves.

#### 5.2.3 International efforts on sustainable forestry

Although the country's regulatory framework on timber importation is fairly limited, South Korea's current *Fifth National Forest Plan* as described above does extend its concern on sustainable forestry internationally – aiming to achieve the goal of procuring timber imports without neglecting global forest conservation needs. Nevertheless on the whole, the *Fifth Plan*, like all of its predecessors, is still largely centred on domestic forestry management. As such at present for instance, there are no detailed executive or legislative guidelines in force that can specifically provide for the definition of legality and sustainability for the country's timber imports.

As described above through the fifth strategy of the *Fifth National Forest Plan*, South Korean government's focus on sustainable forestry does have an international component. This focus can generally be divided into three broad types of activities.

The first covers the country's support for various forestry-related projects abroad, one of which is the promotion of investment projects in afforestation or reforestation schemes conducted overseas. The projects can themselves be categorised into three classes – first, plantations for purely commercial interests; second, plantations established for the purpose of earning carbon credits; and third, bio-energy plantations dedicated for the production of agrodiesels.

Under these afforestation projects for instance, corporations, individuals and even governmental entities themselves are encouraged to participate in afforestation-related investment activities abroad. For corporations, the government may further facilitate these investments through other forms of indirect support, including by providing financial loans with low interest rates. If the investors are able to secure the rights to harvest the timber trees in the future, they will then be regarded as having contributed to the national timber supply in the long term.

The promotion of these overseas afforestation investments in turn may take place under the direction of the second focus area, namely, the establishment of bilateral cooperations

on specific forestry projects with timber producer countries. These range from the afforestation projects discussed above to the provision of technical assistance for a host of activities including the rehabilitation of forested areas in devastated regions, anti-desertification measures and forest fire prevention.

Thus far, the country has entered into 12 of such bilateral partnerships, the first being signed in 1987 with Indonesia. The list of these government-to-government partnerships is shown in Table 31.

Nevertheless, we however have to take cognisance of the fact that the functions of such international cooperations are certainly limited within the scope of their agreements and may have little impact on policy, although they may provide positive direction in the country's future policymaking on forestry and timber procurement generally speaking. These agreements are by and large limited towards developing and managing particular bilateral inter-governmental interests and may not necessarily be of consequence on say, improving the respect towards indigenous peoples' customary land rights in producer countries within the context of timber harvesting.

The third key area is of course the country's consistent participation in a host of inter-governmental forestry and conservation-related processes. As a matter of fact, the KFS views that the country's membership in the ITTO as a timber consumer country should also be seen as part of the policy effort to contribute towards a more sustainable tropical timber trade, undertaken for the larger purpose of procuring more sustainable sources of tropical timber. South Korea has been a signatory to the International Timber Trade Agreements since 1983.

South Korea is also party to all other important inter-governmental processes on forestry and environment-related matters including the United Nations' Convention to Combat Desertification (UNCCD), the United Nations' Forum on Climate Change (UNFCCC), the Convention on Biological Diversity (CBD), the Convention on International Trade in Endangered Species and Wild Flora and Fauna (CITES).

Equally important, South Korea also voted for the adoption of the *United Nations' Declaration on the Rights of Indigenous Peoples* (UNDRIP) by the United Nations' General Assembly in September 2007. As a matter of fact, the South Korean government even joined other nations in speaking to explain on their position to vote in favour of the UNDRIP. In its statement, South Korea positively viewed the UNDRIP as a

document that would become an important milestone for the promotion, protection, and further enhancement of indigenous peoples' rights. Its adoption "constituted a solemn pledge and sent a clear message for the survival and well-being of indigenous peoples, especially in support of their dwindling culture, language and their rights to pursue their vision of economic, social and cultural development." The country also further stated that it was its hope that the adoption of the UNDRIP would "contribute to further strengthening the international human rights system as a whole, by achieving equality and non-discrimination for all."<sup>99</sup>

The General Assembly's adoption of UNDRIP was also enthusiastically welcomed by the UN Secretary-General, a South Korean citizen himself. In his released statement, Secretary General Ban Ki-Moon described the Declaration's adoption as "a historic moment when UN Member States and indigenous peoples have reconciled with their painful histories and are resolved to move forward together on the path of human rights, justice and development for all." The Secretary-General went on to call on governments and civil society to ensure that the Declaration's vision becomes a reality by working to integrate indigenous rights into their policies and programmes.<sup>100</sup>

Given the above, it is only appropriate that the South Korean Government should take all the necessary steps to make good on its support of the UNDRIP. With such a strong statement from its government, South Korea is certainly morally obligated to establish due processes and procedures to ensure that its timber imports have been produced in conditions that are respectful of the rights of indigenous peoples' to their lands.

### 5.3 Weaknesses in the existing system

#### 5.3.1 The false solution of overseas corporate afforestation/reforestation projects

Despite South Korea's efforts in taking some responsibility in promoting sustainable forestry internationally, some components of these various approaches may well still be an inadvertent part of the problem they attempt to resolve. This is because as long as high-consuming timber importer

<sup>99</sup> Please see *General Assembly Adopts Declaration on Rights of Indigenous Peoples. 'Major Step Forward' Towards Human Rights for All, says President*. Issued by the Department of Public Information – News and Media Division, United Nations' Sixty-First General Assembly, September 13, 2007. <http://www.un.org/News/Press/docs/2007/ga10612.doc.htm>.

<sup>100</sup> Please see *United Nations Adopts Declaration on Rights of Indigenous Peoples*. Issued by the UN News Centre. September 13, 2007. <http://www.un.org/apps/news/story.asp?NewsID=23794>.

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countries fail to effectively address their over-consumption of global timber resources, sustainable and socially responsible forestry management in timber producer countries may be difficult to be achieved. As have been stressed earlier, within the context of the international timber trade, sustainability should primarily be focused on strategic actions to reduce excessive and wasteful consumption levels.

A point in case is the policy on promoting afforestation projects as described above. Investments in foreign afforestation projects may well be promoted as desirable not only for the prevention of deforestation globally, but economically advantageous for both the country and the concerned timber producer partner countries as well.

However for the large part of it, it is undeniable that the primary objective of such overseas investment efforts is in actual fact heavily tied to the goal of ensuring a stable source of timber imports for the country in the future and in participating in the controversial international carbon emission trade. Seen in this light, such foreign-funded and market-driven afforestation projects in timber producer countries are certainly not a solution in the right direction to timber over-consumption and global deforestation.

Although South Korean citizens or corporations participating in such overseas forestry development projects that involve timber harvesting and plantation development activities are imposed with the 'light' duty of informing the KFS, this requirement is only in place mainly for the purpose of reporting instead of obtaining approval. Naturally, this process does not bind investors to any form of code of conduct that compels them to respect the rights of affected local communities. Further, there is little opportunity for us to study if all the reported facts surrounding such ventures remain accurate, as there is no existing mechanism to allow direct and continuous monitoring of the registered projects. As such, there is limited possibility for us to learn if such projects have undergone particular changes during the course of their implementation.

As such, at best such approaches can be misleading, at their worst they can in reality, give rise to all the local and national risks that intensive export-oriented cash crop cultivation tends to create for producer countries. These may include the increased competition for land, water and other natural resources, the reduction in the diversity of agricultural output, threats on food security and food sovereignty, the overall increased vulnerability of a less-diverse agro-economy,

severe environmental and social impacts, to list only a few – all burdens that are primarily shouldered by producer countries.

Compounding the matter is the fact that afforestation and reforestation projects in the south, at times may just be another euphemism for the development of large fast-growing timber tree monocultures. Large 'reforestation' projects in the state of Sarawak, Malaysia for instance have been justified on the grounds that they are necessary due to the depletion in timber resources in the state. However this justification in itself is a strong indication of systematic over-harvesting in the past, which in all probability came about as a result of unsustainable forestry management and poor forestry governance, which were nevertheless rewarded by timber over-consumption in consumer countries, although such rewards may not have necessarily been shared equitably among all stakeholders in such producer countries.<sup>101</sup>

Equally important, deforestation in Southeast Asian countries such as Malaysia, Indonesia and Papua New Guinea in the last three decades, within the context of the international tropical timber trade, cannot be divorced from issues related to the violations of the land rights of indigenous and other local communities. These violations are strongly embedded in poor forestry governance, along with other systemic issues that are often alleged to be plaguing timber production in the countries concerned, from allegations on rent-seeking activities during the timber licensing stage, tax evasion through under-declarations and other forms of unlawful activities as well as the multitude of complications that would eventually result in poor rent capture by the state.

Seen in this light, foreign-funded and market driven afforestation projects in countries with poor forestry governance, may in the end fail to create any meaningful impacts in terms of promoting sustainable forestry. Such projects are primarily supply-oriented monoculture farming projects, which in reality may have little to contribute towards ensuring sustainable forestry at a regional or global scale, or effective environmental and biodiversity conservation. In a climate of poor forestry governance in producer countries, such projects may end up prioritising the interests of the investors and their local partners, without necessarily benefitting local communities and other stakeholders in the lower rung of the hierarchy of power – in fact, they may even

<sup>101</sup> For more information, please see Friends of the Earth International and Member Countries (2008).



**Table 31: List of bilateral partnerships on forestry that have been signed by South Korea**

	Partnership Agreement	Date	Focus Area
1	Korea-Indonesia Cooperation in Forestry	June 20, 1987	Investment in forestry (2009, 19 <sup>th</sup> Round)
2	Korea-New Zealand Cooperation in Forestry	April 29, 1997	Forestry investment promotion (2009, 5 <sup>th</sup> Round)
3	Korea-Australia Cooperation in Forestry	July 18, 1997	Forest fire prevention (2009, 5 <sup>th</sup> Round)
4	Korea-China Cooperation in Forestry	May 15, 1998	Anti-desertification (2009, 7 <sup>th</sup> Round)
5	Korea-Mongolia Cooperation in Forestry	Oct 28, 1998	Greenbelt designation (2010, 6 <sup>th</sup> Round)
6	Korea-Vietnam Cooperation in Forestry	July 20, 1999	Cooperation in the restoration of a devastated region (2010, 6 <sup>th</sup> Round)
7	Korea-Myanmar Cooperation in Forestry	July 22, 1999	Investment in forest restoration of a devastated region (2010, 6 <sup>th</sup> Round)
8	Korea-Russia Cooperation in Forestry	Oct 17, 2006	Forest fire prevention; pest and disease control (2009, 2 <sup>nd</sup> Round)
9	Korea-Cambodia Cooperation in Forestry	June 3, 2008	Investment in forestry (2010, 1 <sup>st</sup> Round)
10	Korea-Uruguay Cooperation in Forestry	Sept 2, 2008	Climate change (2009, 1 <sup>st</sup> Round)
11	Korea-Paraguay Cooperation in Forestry	July 31, 2009	Investment in forestry (2010, 1 <sup>st</sup> Round)
12	Korea-Tunisia Cooperation in Forestry	Mar 24, 2010	Forest protection and restoration of a devastated region.

Source: KFS

be harmful to the livelihoods and the quality of life of local people.

### 5.3.2 Sustainability and legality concerns surrounding South Korean timber imports

Despite having several international policy approaches that aim to contribute towards sustainable forestry, South Korea has still a long way to go in this regard. Currently, South Korea cannot be said to have fully addressed the two urgent issues surrounding the responsibilities of timber consumer countries as far as sustainable consumption is concerned.

Firstly, the country has yet to have proper policy definitions and standards on 'sustainability' as well as 'legality' for its timber imports, which can allow active interventions to be made for the purpose of evaluating the imports based on detailed sustainable and legal concerns.

As stated earlier, South Korea appears to take the position that it is the exporter countries that hold the principal responsibility to ensure the legality of all of their timber product exports to the country. South Korea in effect does not have any explicit policy position on timber that has been harvested within production systems that have been troubled by the violations of indigenous customary land rights to their traditional territories – conditions that are systemic in many parts of Southeast Asia, where the bulk of its tropical timber is sourced from.

Therefore, within its existing timber importation system, South Korea cannot effectively differentiate between timber imports that have been produced by sustainable and responsible production systems and those that have been produced in conflict and even legally questionable conditions. Hence, the country in principle, is not systematically prevented by any policy guidelines or directives, from importing timber that has

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been produced in conditions where human rights violations, corruption, tax-evasion, under-declaration and other forms of unlawful behaviours in accounting are said to be widespread and it certainly has not established mechanisms to investigate if its timber imports have been challenged by legal disputes, especially those originating from rights claimed under indigenous customary territorial boundaries.

Some timber imports to South Korea in the form of logs and sawnwood are certified under the FSC certification scheme. Although the government hopes to extend the coverage of this process, in terms of the technicality of procedures, the current importation monitoring system is still based on the paperwork and records prepared by exporters and shippers.

In this sense, South Korea has not taken much meaningful self-imposed initiative to ensure that its timber import sources have been produced in strict legal and sustainable conditions – for the verification of timber legality in particular for instance, it appears to be more inclined to be dependent on external processes. The Korea Forest Research Institute meanwhile does run a certification scheme but this process currently covers only the evaluation on the quality of domestically produced timber.

Timber certification processes are merely technical solutions that are unlikely able to resolve long-standing issues that are grounded on systemic poor governance and timber over-consumption. As a timber importer, South Korea should conduct comprehensive studies evaluating the various forestry governance systems around the world from which it sources out its timber products and strive for an appropriate level of consumption volume, prioritising domestic sources of timber instead of being overly dependent on imports.

Secondly, there is also no adequate strategic national plan that addresses the urgent need to reduce the country's consumption of timber imports, although the KFS does promote the efficient use of timber products and aims to increase the country's timber self-sufficiency rate to 30 percent by 2050 – this target may well be too little for too long a wait.

In all, it does appear that South Korea's concern for foreign forests from which its timber imports originate is fairly limited within the context of any international agreements or bilateral accords that it is party to.

### 5.3.3 'Sustainable' forestry practices within the context of biodiversity conservation

South Korea's timber importation policy is still heavily tilted in favour of ensuring the stability of its timber import supply and less equipped for addressing issues on timber over-consumption as well as the sustainability and legality of its timber imports. Despite the policy understanding on the diverse ecological and socio-cultural functions played by forests, ultimately it is still prioritised on highly economic and industrial production terms.

The promotion of afforestation investment projects abroad, which aim to ensure the stability of timber supply for the country, will almost certainly entail the cultivation of favoured species for the market i.e. the establishment of large monocultures. Such projects are certainly incapable of addressing the issues of biodiversity loss stemming from deforestation.

Large monocultures are not forests – they are industrial farms, and if they have been established to satisfy foreign markets, they are then foreign-controlled industrial farms. They do not resolve timber over-consumption issues and the assurances they create in delivering a stable source of future timber supplies, will in fact work to maintain the illusion that something 'sustainable' has been done, only if it is future supply and not natural forests that remains unspoiled and well-maintained.

### 5.4 Concluding Remarks

Considering all of the above, the role of the South Korean civil society in addressing the country's over-consumption of timber imports and logging-related human rights violations abroad is extremely important. The civil society in South Korea played a very critical role in addressing the violations of human rights and environmental destruction during its dictatorship in the past. With the advent of capitalism in South Korea, the consumers' movement in the country however is still relatively young and unfortunately, the sustainability of the country's timber imports has not been a major concern of the movement. Generally speaking, even within the environmental movement dealing with forest conservation, little has been done to address the country's over-consumption of timber imports as opposed to say, the prevention of desertification through tree re-planting projects abroad.

In principle, South Korea does not have any specific governance framework that is able to provide adequate guidelines for its timber importation process to distinguish timber imports that have been produced within a framework of good forestry governance from imports that have been produced within a framework of poor forestry governance. The country lacks a strong enabling governance framework which can serve to set apart with reasonable effectiveness, the gradation in the quality of timber production systems around the world, which can serve as a guide to a more responsible national procurement policy.

This is a governance area that the South Korean government needs to seriously look into. As a powerful economy in East Asia and one of the regions' most well-regarded democracies and as a large consumer of Southeast Asian tropical timber, it no longer can close its eyes on the fact that the possibility exists that it has for decades procured timber from unsustainable production systems where unlawful activities – both on the ground and on paper – as well as the violations of indigenous customary land rights are most likely systemic and prevalent. Likewise, the country's attempts to ensure sustainability in its timber procurement efforts are also deeply flawed – primarily designed to ensure supply rather than the sustainability and legality of its imports. They also do not fully address the full facts pertaining to the linkages between over-logging, deforestation, biodiversity loss and over-consumption.

Without changing its consumption patterns, South Korean afforestation and reforestation efforts abroad would not bring about meaningful changes ecologically speaking. The close linkages between unsustainable production and consumption patterns under our current globalised trade system should always be acknowledged by any policy concerned with the conservation of the world's forests and biodiversity and the protection of the rights of indigenous communities.

## six Australia: forestry & timber importation policies and governance

# Australia: forestry & timber importation policies and governance

### 6.1 General introduction

Illegal logging or the unregulated removal of forest products has many facets, and the lines defining illegal and legal are often sometimes hard to see. Within this context, the Australian Government's assessment and investment to improve social, environmental, economic and governance capabilities within producer nations recognises the need to work in partnership and compliant to nation state sovereignty, and must incorporate mechanisms to ensure customary ownership of lands and natural resources by indigenous peoples is recognised.

Be it distant, there is general consensus between Australian environmental NGOs and the Australian Government, regarding legislative controls in producer countries, that is, there are often sufficient laws in place to halt, and in some cases reverse, the current trends in illegal logging, yet there is insufficient will or capacity to enforce the laws. Friends of the Earth, Greenpeace, and World Wildlife Fund for Nature have been highly active in the Asia Pacific region and have worked for toughened laws and compliance. Constraints in this respect include governance limitations to systemic corruption of officials and direct industry fraudulent and criminal activities.

As the study undertaken by the Institute of Criminology to assess the criminal and enforcement implications within the illegal trade of timber in Asia Pacific region noted:<sup>102</sup>

There is, at present, no single universal international instrument designed specifically to prevent and suppress the illicit trade in timber and timber products. There is no offence of illegal logging in international law, and the trafficking and sale of illegally sourced timber are not criminalised in any treaty.

Australia's current focus to curb illegal logging is through the development and enactment of the *Illegal Logging Prohibition Act 2012*. Driving development of the legislation is based on two key facets, firstly, to slow the flow of cheap timber products into Australia that undermine local forest and timber manufacturing industries, and secondly to protect Southeast Asian forests to ensure climate change mitigation strategies, such as the international carbon trading scheme, are provided with viable and well-managed forest carbon sinks.

Supporting both strategies, Australia's position acknowledges variation between what constitutes legal and illegal logging, particularly within the context of neighbouring Asia Pacific nations, that are acknowledged to be susceptible to substantial amounts of institutional corruption and the inability of authorities to regulate and enforce existing policies.

Forming part of the review process of 2010, extensive economic analysis and stakeholder consultation were conducted, providing civil society (industry, academic institutions, environmental NGOs, social welfare organisations and international trading partners) the opportunity to closely engage with the analysis for comments.

At the end of November 2012, the Australian Department of Agriculture, Fisheries and Forestry finally advised of the commencement of the *Illegal Logging Prohibition Act 2012*, following its passage through the Australian Parliament in mid-November. A number of key provisions of the law, most notably the immediate prohibition for importing illegally logged timber and processing illegally sourced domestic raw logs are now in force.

However, the Australian Government's commitment to curb both international and domestic trafficking and use of illegal logged timber products is yet to be finalised. Development of the *Illegal Logging Prohibition Regulations* has yet to begin, with the initial stages of stakeholder consultation due in 2013, before their anticipated progression to Parliament in 2014, perhaps 2015 following debate and delays.

### 6.2 Governance framework on legal and sustainable timber procurement

#### 6.2.1 Greening of Government policy framework

Unlike the green policy landscape emerging in Japan, the USA and countries within the European Union, the Australian Government had limited legislation or policy in place to drive government purchasing of environmentally friendly and sustainable products – this includes those that limit the purchasing or use of products sourced from illegally logged timber.

The Australian Government is indeed the largest purchaser of goods in Australia. In 2009 it was responsible for AU \$24 billion in acquisition activities,<sup>103</sup> and together with the state and territory governments of Australia, these accounted

<sup>102</sup> Schloenhardt (2008, 47). <http://www.aic.gov.au/>.

<sup>103</sup> Please see the *Australian Government Procurement Statement*. Issued by the Minister of Finance. July 2009. [http://www2.financeminister.gov.au/media/2009/docs/Australian\\_Government\\_Procurement\\_Statement.pdf](http://www2.financeminister.gov.au/media/2009/docs/Australian_Government_Procurement_Statement.pdf).

for approximately AU \$100 billion per year.<sup>104</sup> Oversight of purchasing is decentralised and managed by department Ministers and Chief Executives. They are guided by a suite of legislative instruments and policies, notably the *Commonwealth Procurement Guidelines*, overseen by the Department of Finance and Deregulation, which forms part of the Policy Framework and overarching requirements of *Financial Management and Accountability Act 1997*.

The current framework and guidelines however provide little guidance to officials or businesses in terms of adherence to a set of environmental sustainability principles for the procurement of goods and resources. To be clearer, the Australian Government procurement policy is primarily focused on fiscal management and does not evaluate a product's procurement against the impact of its source materials and manufacture on the natural environment or ecological sustainability.

In recognition of the statement above, and to clarify, as outlined in the Policy Framework, Australian Government agencies are required to provide annual operational reports. The report must stipulate actions accorded to the principles of *Ecological Sustainable Development*, as outlined in *Environment Protection and Biodiversity Conservation Act 1999* and any action that contributes to the principles. The Act provides clear reference that persons of Australian authority operating within or outside of Australia are bound by the legislation, and thus, to the principles of *Ecological Sustainable Development*.

Yet the *Commonwealth Procurement Guidelines* provides no clear advice on the environment or sustainability, or how reporting and Procurement Officers are to access or measure operational procurement activities against the impacts to the environment and biodiversity. The scope of the guidelines clearly omit reference to the environment whilst providing clear instruction that agencies and their Chief Executives are eligible to contravene the guidelines for the purposes of:

...maintenance or restoration of international peace and security; to protect human health; for the protection of essential security interests; or to protect national treasures of artistic, historic or archaeological value.

However apart from the guidelines, there exist a few sustainability-associated purchasing and operational policies that are related to environmental concerns, including:

1. *Energy Efficiency in Government Operations* – to reduce energy consumption and improve building energy efficiency.
2. *National Waste Policy* – to minimise waste generation and improve treatment, disposal, recovery and re-use (working in parallel to the *National Packaging Covenant*).
3. *Information and Communication Technology Sustainability Plan* – to ensure adherence to environmental standards for computer acquisitions.

However, all the framework and guidelines above provide no clear reference to obligations for internationally sourced materials, with notable exception to Australian agreements related to compliance-based economic trade sanctions. Conversely, the framework and guidelines make very clear statements to ensure that competitiveness and value for money are maximised, including those supporting open tendering opportunities to ensure Australia's obligations under free trade agreements are not in breach.

In relation to the purchasing of illegally logged timber products, the *Commonwealth Procurement Guidelines* however do provide some recourse to ensure accountability is maintained throughout the procurement process. Two key points are worth noting:

- (i) Section 6.22: Agencies must not seek to benefit from supplier practices that may be dishonest, unethical or unsafe.
- (ii) Section 7.4: Accountability means that officials are responsible for the actions and decisions that they take in relation to procurement and for the resulting outcomes. Officials are answerable for such activity through established lines of accountability including the agency's Chief Executive and senior management, the Government and the Parliament.

Coherent application of Section 6.22 and Section 7.4 of the *Commonwealth Procurement Guidelines* would render the use of products sourced from illegal timber to be dishonest and unethical, and of benefit to the purchasing agency, and thus render the staff and agency executive accountable to the Australian Parliament.

<sup>104</sup> Please see the *Australian and New Zealand Government Framework for Sustainable Procurement*. Published by Australian Procurement & Construction Council. September 2007. <http://www.apcc.gov.au/LinkClick.aspx?fileticket=/lacFgL8eQ=&tabid=151&mid=497>.

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Combined with the finalised *Illegal Logging Prohibition* legislation to combat the importation of illegally logged timber, it can be assumed, and hoped, responsible officials charged with procurement will need to ensure the legality of procured timber products is easily accessible at the time of purchase and to a standard suitable for reporting and auditing requirements. Further, government employees and those officials found to be in breach of the guidelines, and the *Illegal Logging Prohibition Act 2012*, will be eligible for criminal prosecution, with the ultimate liability passing to relevant departmental or agency Chief Executive.

Within the legislative and policy void however, there exists the *Australian and New Zealand Government Framework for Sustainable Procurement*. Launched in 2007 by ministers from Australian Government departments participating in *Australian Procurement and Construction Council*, the framework offers leadership to agencies willing to adopt its informal guidelines.

The framework concerned sets national principles on implementing sustainable public procurement to minimise environmental impacts, benefit society and reduce costs and encourages collaboration between governments to initiate consistent programmes to promote the principles of sustainable procurement.<sup>105</sup>

Relevant to this document are three key guides, available for voluntary use by departments and purchasing officers. *The Sustainable Procurement Produce Guide series* is intended to assist officers understand the environmental and social impacts during procurement planning, tender process and contract management of the procurement cycle. The guides are:

- (i) *Office Furniture Product Guide* (as of December 2009);
- (ii) *Paper Product Guide* (as of April 2011); and
- (iii) *Assessing a Supplier's Sustainability Credentials (Supplier Questions)*.

The *Office Furniture Product Guide* for instance instructs the following regarding timber sourcing:

**ISSUE:** Timber sourced from unsustainable or illegal forests may create adverse environmental and social impacts such as loss of biodiversity, soil erosion and degradation.

**RESPONSE:** Procure legally sourced timber for all wood and wood-based materials.

Best practice specification:

- (i) Offerors are required to demonstrate that all timber and composite timber products used in the manufacture of office furniture products must be sourced from sustainably managed forests.
- (ii) The percentage of the final product made of wood, wood fibres or wood particles stemming from forests must be verified as being sustainably managed.
- (iii) Certificates of chain of custody for the wood fibres certified from any one, or a combination of the following must be provided:
  - (i) Post-consumer re-used timber i.e. not virgin
  - (ii) FSC-certified timber
  - (iii) Australian Forest Certification Scheme (AFCS) certified timber
  - (iv) Chain of custody certification under an equivalent standard, such as those recognised by the PEFC Council.

Within the coming years it is anticipated that the Australian Government will enact a stronger and proactive approach to environmental sustainability within its timber procurement process through the adoption of this document.

### 6.2.2 International efforts on legal and sustainable forestry

Prior to its anti-illegal logging legislative efforts, Australia's legislative framework to curb the importation of illegal timber products is generally limited to those timber and plant-based products listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) management. As noted in formal government reports, "under such arrangement timber (legal or illegal) is able to be imported into the country without verification of legality", as the verification is only restricted to those species registered as endangered.<sup>106</sup>

Apart from CITES, Australia is also signatory to various other international conventions that hold some relevance

<sup>105</sup> Ibid.

<sup>106</sup> Please see *Illegal Logging Prohibition Bill 2011. Explanatory Memorandum. Consultative Draft*. March 23, 2011. p.5.

to the protection of forests and timber trade including the United Nations Forum on Forests (UNFF), the International Tropical Timber Agreements (ITTA), the Asia Pacific Forestry Commission of the Food and Agriculture Organisation, the Convention on Biological Diversity (CBD) 1992, the Convention concerning the Protection of the World Cultural and Natural Heritage 1972 and the United Nations Convention to Combat Desertification (UNCCD). However no in-depth assessment has been made on the effectiveness of these processes due to their limited scope in stopping illegal logging activities, as they provide no opportunity for regulatory compliance, sanctions or other enforcement measures. As for the United Nations' Declaration on the Rights of Indigenous Peoples (UNDRIP), although Australia had initially voted against its adoption, it did finally endorse the document in March 2009.<sup>107</sup>

Responding to consumer demand for sustainable and ethical timber products, various industry-led voluntary codes of conduct, certification schemes and chain-of-custody regimes have attempted to 'fill the gap' in government in-action. Some do possess merit (including retailer-driven responses) but many are what best could be described as greenwash, that is, promotional tools designed to respond to consumer demand yet deliver no real positive environmental outcome because they are not evidence-based and include no reporting or verification process.

Within this policy context of voluntary self-regulation, no industry-wide regime to control legality of timber products imported or sold in Australia existed.<sup>108</sup>

To address this shortfall, the Australian Government has supported non-regulatory measures such as financial and technical capacity building and direct bilateral and multilateral engagement with neighbouring countries in the Asia Pacific.

Reporting in 2010, Phase I of the Australian Government's *Asia-Pacific Forestry Skills and Capacity Building Program* provided financial support to forestry industry stakeholders (including governments, industry and communities) to improve sustainable forest management.<sup>109</sup> The programme's overarching goal is to develop local skills, knowledge and

practices in on-ground forest management, law enforcement and compliance, and alignment to existing forest product certification schemes, such as the Forest Stewardship Certification (FSC) scheme.

As outlined in a recent Australian Government Senate paper explaining the new legislation, the following provides a brief summary of these initiatives.<sup>110</sup>

The Asia Pacific Forestry Skills and Capacity Building Program provides institutional and technical support for developing countries to combat illegal logging and to promote better management of their forests. Areas of support include improving and strengthening forest law enforcement and governance, forest industry practices, logging codes of practice compliance, legality verification and certification, and forest industry training.

Australia has signed bilateral agreements with China, Indonesia and PNG which include cooperation arrangements for combating illegal logging and promoting sustainable forest management. The government is seeking to strengthen the current level of cooperation with Indonesia on combating illegal logging, has arrangements in place to work with Malaysia in this policy area and is engaged in discussions to formalise cooperation with Vietnam and New Zealand on similar issues.

Effective measures for combating illegal logging also have strong implications for efforts to address climate change. The government is a strong advocate of reducing emissions from deforestation and forest degradation in developing countries (REDD).

In relation to climate mitigation, the desired policy outcome will see improved forest management practices increase

<sup>107</sup> Please see *Experts hail Australia's backing of UN declaration of indigenous peoples' rights*. Issued by the UN News Centre. April 3, 2009. <http://www.un.org/apps/news/story.asp?NewsID=30382>.

<sup>108</sup> Included within this scope industry types include: timber importers, plywood and veneer importers, timber merchants/retailers, furniture importers, furniture manufactures, construction material importers, paper manufacturers and paper importers/merchants, to name the primary sectors.

<sup>109</sup> Please see Department of Agriculture, Fisheries and Forestry, Australia (2010). <http://www.daff.gov.au/forestry/international/asia-pacific-forestry-program/forest-management-climate-change>.

<sup>110</sup> Please see *Illegal Logging Prohibition Bill 2011 Explanatory Memorandum. Consultative Draft*. March 23, 2011. p.11.

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investment ranking of sequestration services provided by these countries. This in turn will bolster Australian investment in Southeast Asian forest carbon sinks, and thus lowering the nation's economic risks from the emerging carbon constrained economy.

While acknowledging that these programmes do offer scope to protect forests from deforestation, they however do not embody a truly altruistic position but rather, they are in place to firstly support Australian economic interests. The actual relationship of such programmes to Australia's position on climate change mitigation and general environmental protection is somewhat distant. Combined, these actions aim to support growth in Australia's plantation sector and to secure long term investment in the domestic forestry and plantation sector.

But most importantly, these support programmes seek to develop and secure stable markets for offshore forest carbon sequestration schemes. The Australian Government is committed to protecting Asia-Pacific forests to ensure the nation's emissions output and high carbon economy remains competitive through the use of protected and well-managed carbon sinks.

### 6.3 Legislative developments to combat illegal logging

After many years of review and public discourse, the Australian Government has finally moved to implement legislation banning the importation of illegally logged timber products. The introduction of the *Illegal Logging Prohibition Act 2012* paves the way for this, mandating a potential set of binding requirements for industry to follow, ensuring that only legally harvested timber and timber products are permitted to enter Australia.

The legal instrument forms part of the nation's trade reforms to combat climate change, protect Australian forests<sup>111</sup> through forest product price fairness,<sup>112</sup> protect Australia's trade balance and markets against unfair competition as well as to ensure the maintenance of stable national employment trends and improvement of access to trading partner markets through the bolstering of partner governance performance.

The legislation will impose mandatory due-diligence assessments and may require proof of legitimacy for timber products upon their entry to the country and will support

complementary programmes to strengthen trading partners' ability to combat illegal trade.

This legal instrument supports Australia's contribution to various international agreements such as that of APEC<sup>113</sup> and follows the well documented processes of the USA and EU Commission in seeking to penalise and/or influence those institutions/individuals responsible for the production, transportation and importation of illegal timber.<sup>114</sup> Introduction of the legislation marks a transition and extension, from industry-led mechanisms such as the priced-based eco-labelling and product differentiation schemes like those of the FSC certification scheme and other voluntary reforms, to a stronger enforcement compliance regime.

The Australian Government has worked to produce the position formally since 2007 with the release of the policy paper *Bringing Down the Axe on Illegal Logging* through its Department of Agriculture, Forestry and Fisheries. This policy position then formed as part of the government's strategy to eliminate trade in illegally sourced forest products. The initial development of this policy however can be traced back to 2004, with the release of *A Sustainable Future for Tasmania* by the Liberal Party of Australia, which outlined a position protecting Australian forestry industries by ensuring international timber products are derived from sustainable forest practices.<sup>115</sup>

The current policy position is also linked to Australia's *International Forest Carbon Initiative* (previously the *Global Initiative on Forests and Climate*) and seeks to reduce deforestation, encouraging reforestation and promote sustainable forest management practices,<sup>116</sup> and is promoted as a cornerstone policy to support Australia's contribution to the *United Nations Collaborative Programme on REDD*.<sup>117</sup>

The key policy positions of *Bringing Down the Axe on Illegal Logging* provided what loosely could be seen as a self-regulation policy response. It articulated 8 key points:

<sup>113</sup> Please see *APEC Leaders Declaration: The Yokohama Vision - Bogor and Beyond*. Issued by The White House and Office of the Press Secretary, USA. November 13, 2010. <http://www.whitehouse.gov/the-press-office/2010/11/13/apec-leaders-declaration-yokohama-vision-bogor-and-beyond>.

<sup>114</sup> Please see Jaramillo, Lock and Ahmet Kilinc (2008).

<sup>115</sup> Liberal Party of Australia (2004, 7). <http://www.nafi.com.au/files/library/CoalitionForestPolicy.pdf>.

<sup>116</sup> AusAID (2007).

<sup>117</sup> Please see the website of the Department of Climate Change, Australia. *International Forest Carbon Initiative*. <http://www.climatechange.gov.au/en/government/initiatives/international-forest-carbon-initiative/>.

<sup>111</sup> Rudd, K. (Member of Parliament) (2007, 1).

<sup>112</sup> Kah Low et al (2010, 17).



Measure 1 – Work with industry to develop a voluntary measure to establish the legality of imported forest products.

Measure 2 – Raise market and consumer awareness about illegal logging and the Government's policy.

Measure 3 – Develop guidelines for the public and private sectors to facilitate the purchase of forest products from legal and sustainable sources.

Measure 4 – Promote certification and product chain-of-custody schemes for Australian forest products.

Measure 5 – Foster and develop the Australian forest industry, particularly in areas such as high-value timbers and value-added products.

Measure 6 – Work bilaterally and multilaterally with other countries, international organisations and the private sector to improve forest management practices and to increase the supply of legally sourced and certified forest products.

Measure 7 – Increase collaboration with countries to help combat illegal logging in the Asia-Pacific region.

Measure 8 – Promote policies and strategies at international forums to encourage greater implementation of legal and sustainable forest management practices, forest certification and product chain-of-custody schemes.

Building upon this policy position, and guided by the newly elected Australian Government and its 2007 election promise,<sup>118</sup> ensured a renewed stance and improvements to the policy to provide greater assurance to consumers through import restrictions and declarations of legitimacy at purchase.

Although the position on the whole provided little detail in actions, the streamlined priorities to combat the illegal trade were to:

- (i) build capacity within regional governments to prevent illegal harvesting;
- (ii) develop and support certification schemes for timber and timber products sold in Australia;
- (iii) require disclosure at point of sale of species, country of origin and any certification;

- (iv) identify illegally logged timber and restrict its import into Australia; and
- (v) argue for incentives within the emerging global carbon markets for avoided deforestation and better management of tropical rainforests.

Supporting the policy's development and implementation, an alliance of forest product industry bodies (processors, manufacturers, worker unions), NGOs and retailers, formed to support the government with economic, social and environmental analysis and technical support. The alliance provided confidence and assurance to the broader industry that profitability and market stability through the interim transition, and longer term outlook, would be maintained. Global entities, and foundation actors in the alliance, such as Greenpeace, WWF and IKEA provided experience through engagement in the Lacey Act and the FLEGT development process.

#### 6.4 Response of stakeholder groups

Advocating for the development of the new Australian legislation to halt the illegal timber import trade, in 2009, an alliance of timber merchants, retailers and civil society groups formed to reinforce the policy announcement and provide government with market and consumer confidence to the approach. The alliance developed a set of core requirements for the government to build upon the proposed policy position.

Though changes to the membership took place, the alliance has included the following organisations: A3P, Adshell Town & Park, Australian Conservation Foundation, Australian Forestry Standards, Australian Sustainable Timbers, Building Designers Association of Australia, Bunnings, DANKS, Fantastic Furniture, Forest Stewardship Council Australia, Greenpeace Australia Pacific, IKEA, Kimberley-Clark, Lifestyle Furniture, Oxfam Australia, PATIO, Simmonds Lumber, Timber Queensland, The Wilderness Society, The Woodage, Uniting Church of Australia (Synods of Victoria and Tasmania), World Wildlife Fund.<sup>119</sup>

Guiding the alliance, its actions and public campaign, was the *Common Platform* which called for:

- (i) Importers to disclose information at the point of importation;

<sup>118</sup> Rudd, K. (Member of Parliament) (2007, 3).

<sup>119</sup> Please see *A joint forest industry, wood product sector and conservation group statement*. Jointly issued by Australian Conservation Foundation, Greenpeace Asia Pacific et al (2009). <http://www.goodwoodguide.org.au/assets/docs/JointStatement.pdf>.

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- (ii) The Federal Government to enforce, monitor and apply appropriate penalties;
- (iii) Assistance to industry to help with compliance;
- (iv) Harmonisation with other international laws against illegal timber imports; and
- (v) Citizens and NGOs to be entitled to take legal action against illegal importers.

More specifically, the alliance, articulated policy requirements of the legislation that acknowledged existing legislation and policy, economic and review mechanisms, to ensure quality control and improved ecological outcomes.<sup>120</sup>

The common position articulated 11 points by which law reform would be measured against:

- (i) Objective of the Legislation – Eliminating illegal logging is a critical first step towards achieving sustainable forestry globally. The Act includes, within its object clauses, an objective to help promote ecologically sustainable and socially just timber and wood products and to eliminate other forms of timber and wood products.
- (ii) Definition of Illegal Timber & Wood Products – The term 'illegal timber and wood products' be defined broadly to capture all situations where timber has been harvested and traded in contravention of the laws of the country of origin or treaties in force in the country of origin or Australia.
- (iii) Declaration of Timber & Wood Products – The laws contain a requirement for importers to disclose specified information at the point of importation. This information could be supplied electronically or included within existing customs forms. Such information would include the species, country of origin, quantity or value and any supporting documentation of legal verification or certification where available.
- (iv) Enforcement & Monitoring – The Federal Government enforces the prohibition and due diligence requirements and not leave this responsibility to industry. Enforcement and monitoring should be substantially resourced.
- (v) Penalties – Appropriate penalties be applied to provide an effective deterrent against those who knowingly or negligently break the law or fail to show due diligence.
- (vi) Risk Assessment – The Federal Government provides support to industry by commissioning an independent risk assessment programme that considers risk levels of timber and wood products from export countries or regions. The risk assessment must remain independent of government and be updated as required.
- (vii) Public Standing – The Act includes a provision allowing any interested party to take action against a breach under the Act.
- (viii) Review/Sustainability – A review of the efficacy of the laws within 5 years from the commencement of the Act. The review should examine and make recommendations on how to move the required standard towards sustainability.
- (ix) Industry Assistance – The Federal Government provides resources to industry to assist with compliance.
- (x) Harmonisation – To the extent possible, the laws should be harmonised with the US Lacey Act and EU Timber Regulations.
- (xi) Government Procurement Policy – The parties also urge the Federal Government and other arms of government to take a leadership role in moving towards sustainable timber by adopting and implementing procurement policies that go beyond one requiring legal verification. Such procurement policies should be built on criteria that are consistent with and supportive of forest management and chain-of-custody certification and social justice.

In doing the above, the alliance undertook a public campaign to educate consumers, pressure decision makers, steer market investment and purchasing towards the goals outlined above.

In response, minor public relations bodies, including World Growth and the Institute of Public Affairs Australia, did carry out advocacy against the legislation, pointing out to possible negative scenarios that could result from the emerging legislation. For instance, attention was drawn to potential cost increases from enforced auditing and verification requirements on timber producers.<sup>121</sup> Acknowledging that

<sup>120</sup> Please see *Common Platform. A joint forest industry, wood product sector and civil society position*. Jointly issued by Australian Conservation Foundation, Greenpeace Asia Pacific et al (2011). <http://www.goodwoodguide.org.au/assets/docs/CommonPlatform.pdf>.

<sup>121</sup> Please see *Comment: Illegal Logging Prohibition Bill 2011*. Published in *Forestry & Development* by ITS Global. December 4, 2011. <http://forestryanddevelopment.com/site/2011/04/12/australian-illegal-logging-prohibition-bill/>.

the policy was designed to support Australian forest industry workers, such groups have actively voiced out their concerns, noting that the proposed legislation works contrary to WTO rules<sup>122</sup> and that “the real cost of green protectionism will be passed on to consumers through higher retail prices.”

Yet without the backing from Australian businesses, such arguments have held little weight in public opinion.

### 6.5 The Illegal Logging Prohibition Act 2012

In the lead up to the final Act, and through the development phase of the *Illegal Logging Prohibition Bill 2011*, Australia's approach was largely based on the EU's FLEGT Action Plan and the USA's Lacey Act. It could be said that the legislation's original ambition was an attempt to bridge voluntary co-regulation approach of the EU, with the evidence-based position of the USA.

It is clear that Australia's legislative effort follows those of the EU and the USA to ensure the instruments approach is thoroughly tested and benefits from existing market reforms. Implementation of the FLEGT-VPA and compliance of producer nations to its Timber Legality Assurance System (TLAS) paves the way for Australia to adopt a chain of custody based approach. Similarly, as producer nations work to implement requirements under the Lacey Act, such as standards in BMP (Best Management Practice) and due diligence management systems, Australia's legislation development schedule will provide a low cost and multi-benefited solution.

Although constrained to largely economic considerations, the general consensus by engaged organisations involved in the legislation development do support the potential co-regulation and the mandated due diligence approach offered by the government. The co-regulation approach, focuses on timber importers, legal auditing and minimal border inspections to ensure that illegally logged timber products do not enter the country. This approach may be offered within the Regulations and was selected to ensure minimal impact to industry, cost effectiveness and alignment with concurrent international efforts.

That said, the environmental sector preferred option would see a stronger compliance regime in place, including

mandatory border inspections, proof of chain of custody currency and consumer choice based labelling.

#### 6.5.1 Purpose and general supporting mechanisms of the legislation

The original 2007 intent of the law sought to provide both industry and consumers ready access to information outlining the legality of their product choice through the disclosure at point of sale of the species, and country of origin. Yet through protracted engagement between various ministers and industry, the resulting legislation provides consumers with little to no safeguards and consumer choice mechanisms. As articulated by the Australian Government Minister for Agriculture, Fisheries and Forestry, Senator the Hon. Joe Ludwig in the 2011 launch of the legislation:<sup>123</sup>

The purpose of the legislation is to combat illegal logging, and to reduce the harmful environmental, social and economic impacts of illegal logging by prohibiting the importation and sale of illegally logged timber products in Australia.

Providing the ability to halt the importation of timber products containing illegally logged timber;

1. require importers of regulated products and domestic processors of raw logs to meet legal logging requirements and be approved by a timber industry certifier or the Minister to place timber products on the market;
2. introduce a requirement for the accurate description of legally logged timber products placed onto the Australian market; and
3. establish adequate monitoring and enforcement powers to ensure compliance with the Bill, including the appointment of officers to undertake necessary duties.

The development phase of the new *Illegal Logging Prohibition* legislation looked promising, with the proposed legislation and supporting programmes aimed to tackle the importation of timber products being, or containing, illegally logged timber through a working partnership with industry and government.

However, following years of negotiations with industry and nation states, such as Indonesia and Malaysia, the resulting Australian Government *Illegal Logging Prohibition Act 2012* is poorly constructed and in the short-term provides limited

<sup>122</sup> Please see *A Poison, Not a Cure – The Campaign to Ban Trade in Illegally Logged Timber*. Published by World Growth (2011, 11). [http://www.worldgrowth.org/assets/files/WG\\_Illegal\\_Logging\\_Report\\_5\\_11.pdf](http://www.worldgrowth.org/assets/files/WG_Illegal_Logging_Report_5_11.pdf).

<sup>123</sup> Please see *Illegal Logging Prohibition Bill 2011. Explanatory Memorandum. Consultative Draft*. March 23, 2011. p. 2.

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prescribed requirements to enable identification of, or halt the importation of illegally logged timber and timber products into Australia.

Unlike the current Act, previous versions of the legislation and documentation and supporting programmes aimed at tackling the problem through a combined approach of on-ground capacity building and verifiable chain of custody trade requirements, including:

- (i) Investing in and working with on-ground logging companies and forest logging communities to establish a sound base for the industry-led components of the legislation. Providing training and other capacity building targeting improved forest management practices, forest certification accreditation (including FSC), improvements in governance, forest monitoring and law enforcement.<sup>124</sup>
- (ii) Supporting the use of authorised chain of custody schemes in the hope of tracking the legality of products. Organisations handling timber products in the supply chain are certified under recognised standards of a chain of custody scheme.
  - The chain of custody requirements seek to validate the products legal harvest credentials and movements from the forest, transport, handling and modification through manufacture and distribution to the point of sale.
  - Each timber handling transaction is required to comply to a set of documented standards and controls. Each transaction requires parties to review and approve of handling documentation during the transaction, thus ensuring inheritance of legal supply.
- (iii) Supporting the use of third party verifiers to monitor product supplier compliance to the chain of custody scheme.
- (iv) Backing the use of industry-led codes of conduct where each importing body is required to be certified and in agreement with the industry code and government regulations.
- (v) Mandating annual due diligence auditing of the importation company/body's declaration records against import trade declarations, statistics and border control records.

- (vi) Border checks at the point of import to certify the importing company/body is certified to import. It is important to note this does not include product checks.

#### 6.5.2 Definition: 'Illegally logged'

Informing the development of Australia's 2012 illegal logging legislation, three primary sets of definitions have been identified within the discourse. Firstly, those set out in the proposed legislation, secondly, those set out in the *Illegal Logging Prohibition Bill 2011 Explanatory Memorandum* describing the legislative bill<sup>125</sup> and finally, those set out in the originating policy statement *Bringing Down the Axe on Illegal Logging* to establish the legislation.<sup>126</sup>

Within the draft *Illegal Logging Prohibition Act 2012* the key definitions are read as:<sup>127</sup>

<b>Illegally logged:</b>	in relation to timber, means harvested in contravention of laws in force in the place (whether or not in Australia) where the timber was harvested.
<b>Timber product:</b>	a thing that is, is made from, or includes, timber.

Attention however must be drawn to the definition of 'illegal logging' because all compliance-related activities are bound to the scope of the definition, and therefore those interpreted to be outside the scope, such as legally approved logging licenses gained through corrupt practices or poorly defined legal definitions in exporting countries could fall outside or beyond the reach and remit of the new Act.

#### 6.6 Weaknesses in the legislation

Without doubt, the Australian Government's *Illegal Logging Prohibition Act 2012* is weak and open to high levels of manipulation. The *Illegal Logging Prohibition Act 2012* will not reduce or deter the harvest, trafficking and processing of illegal timber unless bold and well-defined parameters are set within the proposed 2014 *Illegal Logging Prohibition Regulations*.

In summary the *Illegal Logging Prohibition Act 2012* targets two key industry sectors:

<sup>125</sup> p.5.

<sup>126</sup> p.3.

<sup>127</sup> Please see Sec. 7.

<sup>124</sup> Department of Agriculture, Fisheries and Forestry, Australia (2010, 11).

- (i) importers of timber goods, be it importers of easily identifiable timber products or importers that deal with the importation of highly refined goods containing wood resource any kind; and
- (ii) processors of timber and logs located in Australia sourcing timber logs derived from Australian forests.

The key vulnerability of the *Illegal Logging Prohibition Act 2012* is the sole reliance on “regulated” timber product/s that are yet to be defined within the *Illegal Logging Prohibition Regulations*. Additionally the Act includes ‘may include’ [Section 14 3(1)] provisions that allow for the incoming regulations to define the exact requirements of compliance under the due diligence process. As stated previously, these regulations are not due to be completed until 2014. With vulnerability also comes opportunity and the coming years of negotiations with the government will define the success and usefulness of the Australian Government’s response to curb illegal logging.

A proactive and positive response from the Australian Government will see the *Illegal Logging Prohibition Regulations* list all species of trees and their originating ecosystems as a regulated timber product for the purpose of the Act. In doing so thus ensuring all importers of timber products will need to comply to the legislation and undertake due diligence requirements and Customs Act compliance requirements.

To further support economic and social prosperity within both Australia and producer nations, the regulations should list existing plantation-derived timber as exempt from the legislation, and ensure newly developed forest plantation that are developed on lands recently forested and logged as regulated timber products.

Within its current form and analysis based on both worst case and best case scenarios, the following should be noted:

- (i) The importation of timber and timber based products is illegal if the timber harvest is against timber and forest harvesting laws of the source country. However, as outlined below, a report from the Australian Institute of Criminology highlights the ambiguities in laws that may not exist;
- (ii) If the timber-derived product is not a regulated timber product, no due diligence or other compliance reporting is required of the importer. Likewise if the-timber derived product is not a regulated timber product, no Customs Declaration is required;
- (iii) If the timber-derived product is a regulated timber product, the regulations could (see the ‘may include’ provision noted above) require importers to undertake due diligence requirements that could include provision of evidence outlining the origin, species and details about the harvested timber, details of the supplier of the timber and timber products and evidence outlining compliance to source country laws. Such mechanisms could include engagement in and compliance to existing poorly managed industry led processes or established more reputable certification schemes, such as the FSC scheme (Forest Stewardship Certification); and
- (iv) Finally, if a timber processor receives and processes international sourced raw logs that are illegally or legally harvested, this is not an offence under the Act.

In summary, at the point of importation into Australia, importers are not required to provide statements or evidence, such as an importation declaration or other evidence if the timber, raw log or timber-derived product is believed to be not regulated. This then could possibly create the following situations:

- Without a compliance and evidence-based chain of custody scheme regulating all timber importation – timber product importers, wholesalers and Australian Government Customs officers and inspectors will be unable to access the true status of consignments of timber products deemed to be unregulated.
- A consumer, retailer, importer or processor then, may end up purchasing and selling timber products that are illegal or timber-derived products that contain illegally logged timber without their knowledge, and without any means of verifying, whether they are or are not sourced from international legally logged timber.

#### 6.6.1 Definition: ‘Legality’ without sustainability?

In the review of illegal activities related to crimes against Australian law, the definition outlined in the 2008 Australian Institute of Criminology assessment in *The Illegal Trade in Timber and Timber Products in the Asia Pacific region* stated the following:<sup>128</sup>

<sup>128</sup> Schloenhardt (2008, 47). Citing Brack (2003, 195); Brack, Gray & Hayman (2002, 53); JP Consulting (2005, 1) & Watson (2006, 17–18). <http://www.aic.gov.au/>.

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The term 'illegal logging' is used broadly to describe a range of activities associated with the felling of trees. While the term has widespread use it is largely devoid of any technical meaning and does not have a foundation in international law or in any of the domestic laws of the countries in the region. Illegal logging usually refers to one or more of the following activities:

1. logging of protected or endangered species
2. logging in protected areas
3. excessive logging
4. logging without permit or with fake permit
5. illegal obtaining of logging permits
6. damaging trees.

The referred definition above seeks to encompass and identify sustainability and procedural challengers, along with those of simple legal authorisation. In comparison, the definition provided for by the *Illegal Logging Prohibition Act 2012* provides no reference to environmental sustainability. The legislation therefore lacks reference or provision to assess the sustainability of timber products, such as ecological sustainability within the timber production and harvesting systems.

Along with legal authorisation such as harvesting or trade authorised through corrupt practices, environmental sustainability in the production and harvest of the timber is seen by the environment sector to be of utmost importance, and this is clearly lacking in the legislation.

Unsustainable harvest is manifested in many ways, through use of specific harvest method, such as clear-cutting (or clearfelling) and excessive yield quota, logging of protected plant species or in areas supporting protected animals and ecosystems, within areas of high conservation value such as those supporting migratory species or cultural values of indigenous peoples, and/or logging within river catchments or areas vital to downstream river system health.

In comparison, the Australian Government has attempted to cast a vague scope to its definition. By articulating a limited proscriptive definition, the legislation assumes flexibility in the compliance regime to meet market and political opportunities and pressures, such as the positive ability to include all manufactured wood products assembled in third party countries, and likewise the less desirable ability to

narrow the scope to ensure international trade rule pressures and other political and market flexibility are enabled, or not contravened.

The definition's primary weakness allows for variance in the interpretation of what constitute legal and illegal practices and products. With the instruments overarching structural reliance on industry self-regulation through due diligence and the potential use of industry based codes of practice, elasticity in interpretation may devolve to the lowest, and the least cost inhibiting practice, resulting in the overall enforceability of the instrument weakened and providing strong footing for industry factual manipulation and counter legal challengers.

#### 6.6.2 Other gaps in the legislation

Apart from the problems regarding the inclusion and exclusion of timber that is deemed regulated or unregulated and with the current definition of illegally logged, environmental NGOs and social welfare organisations have also identified several gaps and oversight in the social analysis and implications of the legislation.

Firstly, the *Illegal Logging Prohibition Act 2012* fails to provide a legislated or regulatory context which provides consumers choice, either for environmentally responsible or ethically produced product, at the point of purchase. Consumers will not be able to access information outlining the legality of the products in concern, and no product disclosure will be available outlining the timber species, country of origin, or mechanism by which its legal authenticity was managed.

Secondly, it is the view of Friends of the Earth Australia that the Australian Government's prohibition process must also ensure that due diligence requirements, including forestry activities, and certification and validation of harvest practices, provide for meaningful indigenous communities' inclusion and that their participation in the decision-making process is empowering, voluntary, and in-line with the local cultural decision making structures of the affected communities and utilises the principles of Free, Prior and Informed Consent.

A high proportion of timber products entering Australia is harvested from neighbouring Southeast Asian countries, such as Malaysia, Indonesia and Papua New Guinea. In response, substantial investments have been made in developing strategies that engage indigenous communities through various regional and international initiatives such as the *Asia-Pacific Forestry Skills and Capacity Building Program*

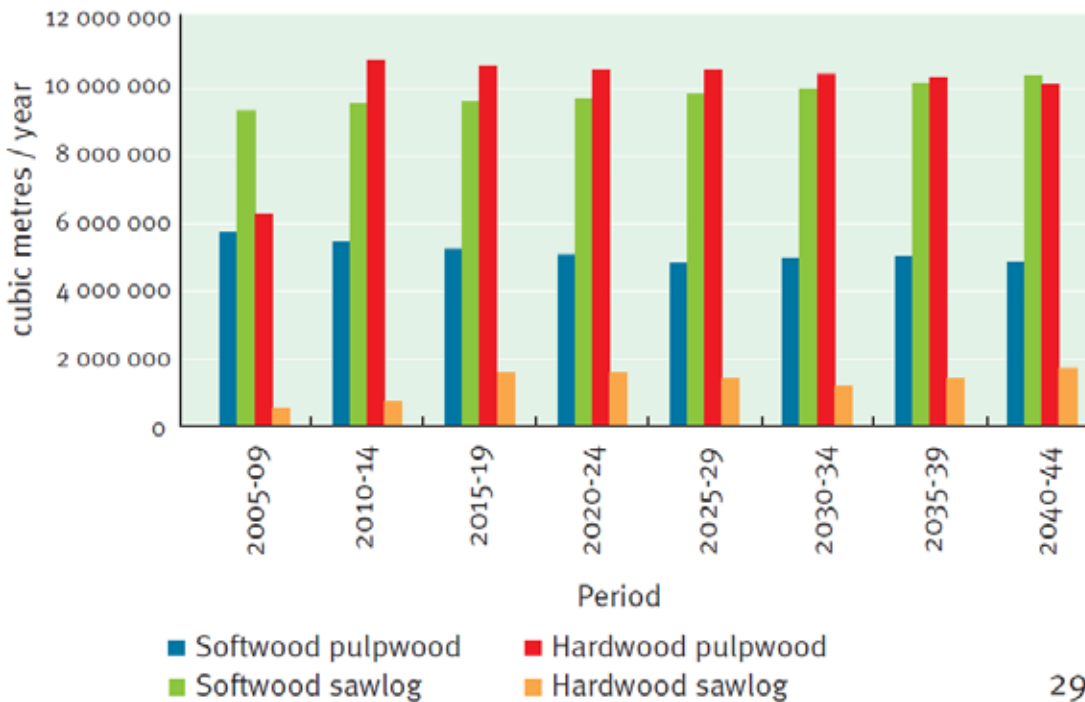
and various other forums.<sup>129</sup> Yet the current legislation to protect the natural environment from illegal logging fails to provide any protection to communities who are customary owners of forests that may be unfairly impacted by legally sourced logging permits granted under corrupt or less than honourable means, or to communities that are negatively impacted by legal logging through loss or damage to water quality, food accessibility or other natural resources.

Another fundamental problem which exists within the current approach is that the compliance penalties are too low to act as a deterrent.<sup>130</sup> Friends of the Earth Australia is of the opinion that the penalties prescribed under the proposed legalisation leans to costed abuse of the regulation as part of normal day to day company activities and trading.

For instance, under the legislation, prescribed penalties for offences against the regulations are 5 years imprisonment or 500 penalty units or both. In practice, this means a 'maximum' of AU \$55,000 fine can be set against the regulation, with a maximum of 5 years jail applied to individuals responsible for serious or repeat offences of importation breaches.<sup>131</sup> It is likely the prescribed penalty delivered through court proceedings will be far less than noted above. Fines issued are not applicable to the primary entity responsible for the illegal harvesting, as they only impact on institutions that have failed to meet the desired regulatory importation disclosure requirements.

The final concern on the system is its inability to identify actors responsible for importing highly processed timber products into Australia from high output manufacturing

Figure 44: Future wood availability from Australian plantations



Reproduced from: *Australia's Forests at a Glance 2007*. Bureau of Rural Sciences (2007).

<sup>129</sup> These include the Montreal Process, ITTO, APEC, ASEAN, AFP and Asia-Pacific Forestry Network for Sustainable Forest Management and Rehabilitation.

<sup>130</sup> Sec. 8.

<sup>131</sup> Sec. 8 and 9.

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countries such as China. It is unlikely highly processed timber products will be assessed under the legislation. It is unclear how illegal timber products exported from Southeast Asia via multi-stop ocean and/or overland transit handling, through various countries, manipulated by value-added product processing, before reaching its final product manufacturing destination will be assessed under the regime.

#### 6.7 National forest market opportunity

As noted previously, leading up to the development of the *Illegal Logging Prohibition Act 2012* legislation, as outlined through various government policies and political promises, a key function of the new legislation and supporting capacity building investment, is to support producers to develop verification and compliance systems to meet the Australian regulations. Compliance to such a regime is designed to limit market access opportunities for illegally harvested timber that, over time, will support rogue companies to shift practices in-line with market demands.

It can be expected that restrictions to the market of illegal product will create an opportunity for nationally produced timber products to meet the supply shortfalls, and thus require increased yield outputs of Australian softwood and hardwood. Outlined in *Australia's Forests at a Glance*, as seen in Figure 44, the estate of hardwood plantations has expanded in the last decades, though little product is for sawlog. It is unclear whether Australian plantation outputs will be able to meet local demand or whether these novel approaches and market stimulus will exacerbate the destruction and depletion of Australian natural forests to logging.

A potential resource shortfall and mitigation strategy could see Australian native forest hardwood be diverted from pulp and wood-chip export to meet national demand, or worse, increased native forest harvest to meet both market needs. However this would require substantial investment into the Australian timber manufacturing sector. Currently, Australia imports around AU \$4.2 billion worth of timber products per year. This is offset by roughly AU \$2.4 billion worth of exports, with woodchip representing 36 percent of the total (AU \$884 million) or 5,064 kilo tonne of product.

Limiting market access to Australian woodchip and sawlog could create a perverse outcome and see increased legal and illegally harvested exports from Southeast Asian countries to their major markets that are predominantly located in Asia itself. With China now consuming more than 400 million m<sup>3</sup>

of timber annually for its growing export markets, supply requirements are a growing threat to both Australian and Southeast Asian forests.

#### 6.8 Concluding remarks

The majority of problems faced by forests of the Asia Pacific region are directly attributed to the allure of low cost consumer products, demands of industry and greater company shareholder yields, and the systematic exploitation or avoidance of environmental safeguards and corruption. Australian consumers and industry, primarily timber, mining, and agricultural, continue to be responsible for a substantial component of deforestation and exploitation of Asian forested lands.

This report acknowledges that the Australian Government initiative to limit the importation of illegally sourced timber is highly measured in its response and yet to clearly articulate the true scope and power of the *Illegal Logging Prohibition Act 2012*. If managed to consider concurrent initiatives, specifically those efforts by the EU and the USA, Australia does have the opportunity to leverage from their considerable investment to ensure logging within the Asia Pacific is slowed.

The 2013 to 2014 development of *Illegal Logging Prohibition Regulations* will be an extremely important process and will define Australia's ability and commitment to maintain its international name as a responsible global citizen.

There exists the opportunity for the Australian Government to commit all South East Asian forests and all known naturally growing tree species, including those within vulnerable and endangered ecosystems to the regulated timber products list contained within the forthcoming *Illegal Logging Prohibition Regulations*.

In doing so the Australian Government will actively be supporting the protection and sustainable use of the worlds natural forests, and lay the foundation to the expansion of the nations and international forest plantation reserves.

The primary key challenge for the Australian Government will be to resist industry led delay and involvement in compiling the regulated timber product listing, including resisting adoption of industry produced worst-case economic analysis of the cost burden to implement a strong, independent evidence-based and verifiable chain of custody compliance scheme.



A key challenge for the Australian Government will be to successfully deploy on-ground capacity building activities in producer countries. Capacity building activities should work in partnership with the EU and the USA efforts and be targeted towards building market robustness, integrity in sustainable forest management practices, local and provincial authority decision making and enforcement, logging company and supply-chain company certificate compliance and most importantly, verification and auditing of the standards used.

An overarching directive by the Australian Government will see community engagement and participatory practices by local authorities and logging companies towards communities markedly improve. Local communities must be involved in decision making. Of particular note will be the Australian Government's position to ensure international human rights are upheld and rights of communities, particularly forest-dependent communities and those with customary land rights are respected and managed to ensure informed consent to any proposed development.

Within Australia, consumer awareness and desire to protect the natural environment is growing, demand for certified timber and wood products is on the rise. Australians are discerning and conscientious consumers when it comes to brand awareness. Although it must be stated Australians per-say, like most consumer countries, are not known for their environmentalism,<sup>132</sup> however attitudes towards buying recognised ethical and environmentally responsible brands will continue to drive compliance in producer nations.

As it stands, the *Illegal Logging Prohibition* legislation provides consumers with little to no safeguards and consumer choice mechanisms. The law fails to provide a regulatory context for end consumers to identify either environmentally responsible or ethically produced product. Consumers will not be able to access information outlining the legality of product, and no product disclosure will be available outlining the timber species, country of origin, or mechanism by which its legal authenticity was managed.

Through regulating the inclusion of due diligence reporting that requires importers to provide chain of custody and evidence-based auditing, the Australian Government would provide market certainty and meet the Australian public's desire to choose sustainably harvested forest products and

forest products that protect the forests supporting ecosystem, including wildlife habitats.

Last but not least, the Australian Government has yet to provide formal guidance to procurement agencies and officers with regard to sustainable environmental purchasing, either nationally or internationally. Within the coming years it is anticipated the Australian Government will enact a stronger and proactive approach to environmental sustainability within its procurement through adoption of the 2007 *Australian and New Zealand Government Framework for Sustainable Procurement*.

Adoption must include a strong compliance regime that includes employment specific accountability, including criminal code compliance of government employees, and agency level measurement standards that support reporting and auditing by external auditing firms. Only within this context will the Australian Government's massive purchasing power be leveraged to ensure government-wide adherence to its own policies, and the resulting follow-on effects to industry to ensure compliance to Australian legislation.

<sup>132</sup> Please see Organisation for Economic Co-operation and Development (2011). <http://dx.doi.org/10.1787/9789264096875-en>.

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