

Stakeholder Forum Report

MTCS

-

Dutch Timber Procurement Assessment
Committee (TPAC)

March 3, 2010

INDEX

Introduction..... 3

Part I - Remarks received at stakeholder forum

SFM Principle 2 - Interests of Stakeholders 5
SFM Principle 4 – Biodiversity..... 7
SFM Principle 4 – Biodiversity..... 7
SFM Criterion 4.7 - GMOs 9
CoC – Reliability of MTCS CoC10
CoC – Minimum percentage14
DAM Principle 1 – Stakeholder involvement in standard setting16
General – Role of Malaysian Government.....18

Part II - Cases

Preview Cases.....21
Case 1 – Illegal logging in Selangor FMU22
Case 2 – Indigenous people mistreated in Pehang FMU23
Case 3 – Stakeholders ignored in Johor FMU23
Case 4 – Endangered species in Terengganu FMU24
Case 5 – Plantations in Kelantan FMU.....25
Case 6 – Forest Degradation in Kedah FMU.....25

Part III - Additional information

Minutes meeting MTCC and TPAC27
Minutes meeting Greenpeace and TPAC.....32
Statement of indigenous peoples’ network of Malaysia to TPAC35

ANNEX (provided separately)

- Annex 1: Cases, complete texts**
- Annex 2: Reply MTCC on cases**

Introduction

The underlying document presents the stakeholders' remarks on MTCS that have been posted on the *TPAC stakeholder forum* which took place from 29th of April until the 4th of June 2009.

The document is structured as follows. Part I contains the remarks of the forum respondents. Each post is followed by a reaction of MTCC. In most cases TPAC has provided a summary of both. Thereafter TPAC has given its response including how the final judgement score relates to the provided information.

Part II contains a summary of the cases that were provided by Greenpeace Netherlands, including a reaction of MTCC and a response of the Committee on how the information of the cases was taken into account. Part III contains additional information such as the minutes of a meeting between TPAC and MTCC and the statement of the indigenous peoples' network of Malaysia JOAS.

Annex 1 and 2 are provided separately and give the complete Greenpeace' cases and the reaction of MTCC respectively.

Scope of the assessment

Only the MTCS documents and standards that are endorsed by PEFC International were subject to this assessment, particularly MC&I(2002). Other documents such as MC&I(2001), the MTCS plantation standard, or the MTCS CoC requirements laid down in the MTCC RCOG were not considered. This implies that the TPAC Final Judgement only pertains to MTCS timber eligible to carry the PEFC logo.

Part I

-

Remarks received at
TPAC Stakeholder forum

SFM Principle 2 - Interests of Stakeholders

Anonymous

Several partners pulled out of the MTCC process, including JOAS, the Indigenous Peoples Network of Malaysia. There are around 200 legal cases in the court process that centre on the conflict between native communities and private sector logging/plantations. The certified FMU of Samling concessions in the state of Sarawak does not comprise with its Criteria and Indicators. In MTCC's annual report of 2007 states that a major CAR is closed after a verification of actions that found progress made to resolve the dispute between the concessionary and the locals. Please note that the verification was based on the progress and not on actual solution. As a matter of fact the dispute to date is still far from resolved. The community filed a suit case against the concession in 1988 is yet to be heard. The so called 'progress' is due to a promise by Samling for not logging the area claimed by the local indigenous people for the time being, so that the tension of road blockade is some how eased temporary. The highest court of Malaysia has recently reaffirmed an earlier ruling that indigenous *adat* law is enforceable in the Malaysian court and customary right to indigenous land and territory must be duly respected (ref: Madeli Salleh's case). In a ruling of May 5, 2009, the Federal Court of Malaysia has upheld the concept of native customary rights to land as including not only class of such land called *temuda* (cultivated land), but also *pulau* (communal forest) and *pemakai menua* (territorial domain) in a case initiated by local Malay Madehi Salleh. This ruling may have consequences for all other pending similar legal cases. MTCC does not provide details of the audit report. It is not a transparent process for public scrutiny.

Summary (by TPAC)

- i. Standard setting process has failed to include NGOs representing indigenous peoples.
- ii. Indigenous rights are not respected by MTCS judging by the 200 legal court cases between communities and MTCS companies/FMUs.
- iii. In spite of an ongoing dispute between the certified FMU Samling and indigenous communities, certification of the FMU has not been withdrawn.
- iv. MTCC does not provide details of audit reports.

MTCC Response

MTCC would like to clarify that the process referred to as the MTCC process is in fact the National Steering Committee (NSC) process to develop the standard for forest management certification which is referred to as the MC&I(2002). MTCC served as the secretariat for the multi-stakeholder NSC. With regard to the withdrawal of some of the social NGOs from the process, the fact remains that these NGOs refused to engage with the other stakeholder groups represented in the NSC at its onset, despite MTCC's clarification that the NSC process was not intended to endorse the existing standard but to develop a new standard based on the Principles and Criteria of the Forest Stewardship Council (FSC), and that the issues raised pertaining to the native customary rights (NCR) land and related concerns can be addressed through deliberations of the NSC. MTCC wishes to clarify that there were other social NGOs which participated in the NSC process, including the consultations which were held at regional and national levels in developing the MC&I(2002). The NSC also continued to keep the social NGOs which left the process informed of the progress in the NSC's work by sending them the minutes of the NSC meetings and drafts of the standard for their comments and feedback. The NSC had kept the door open at all times for them to return to the NSC process. At the same time, individual NSC members also made approaches for them to rejoin the process. As for the certification of the Sela'an Linau FMU in Sarawak that is managed by Samling, MTCC had proceeded with the assessment and subsequent decision to award the Certificate for Forest Management on the basis that the FMU had been gazetted as a permanent forest area in accordance with the relevant national and state laws, that Samling (as the manager of the FMU) had been issued with a proper Forest Timber Licence for the designated area, and that the Forest Management Plan (FMP) had been approved by the State Forestry Authority. The independent auditor proceeded with the assessment of the Sela'an Linau FMU only when it was confirmed that the FMU management had fulfilled all these requirements. As for the audit report, it is a standard practice of timber certification schemes to make publicly available a summary of the audit report (and not the detailed audit report). In the case of the Sela'an Linau FMU, the summary of the audit report and the surveillance audits are posted on the MTCC website. These summaries provide information regarding the audit process, the audit findings, the major and minor CARs issued, and details of the closing out of the Major CARs.

Summary (by TPAC)

- i. The NGOs representing indigenous peoples refused to engage with the other stakeholder groups represented in the standard setting body, other social NGOs however did participate. MTCC kept them informed.
- ii. The Samling FMU complies with relevant national and state laws.
- iii. It is common practice to make a summary of the audit report publically available.

Question TPAC to MTCC

How is *adat* incorporated into forest management? Does MTCC have guidelines for forest managers and auditors how to take into account the jurisprudence of the Madeli Salleh case, namely that *adat* is enforceable and that there can be occupation of land by indigenous peoples without physical presence on the land?

MTCC Response

We could like to provide further clarifications as follows:

- (i) The Samling certificate was awarded against the *MC&I(2001)* where the requirements related to the social aspects of forest management are not as stringent as those in the *MC&I(2002)*.
- (ii) We are aware of only one court case in Sarawak which is relevant to the Samling certificate. Therefore the reference to 200 legal cases in the court process is not relevant to the evaluation of the MTCS by TPAC.
- (iii) The application of *adat* in relation to forest management in a specific FMU will be assessed under Principles 2 and 3 of the *MC&I(2002)*.
- (iv) MTCC does not have the legal competence nor the jurisdiction to provide guidance for forest managers and auditors to take into account the jurisprudence of the Madeli Salleh case. For MTCC to provide such guidance would be tantamount to MTCC playing the role of a judge in the cases which have been filed in our courts of law. We understand that each case has to be decided on its own merits as to whether they are the same as the "landmark" cases such as Madeli Salleh and that the particular nature or rights associated with native title is a question of fact to be determined by the customs, practices and usages of each individual community. We wish to emphasise that only one of these court cases mentioned by "Anonymous" is related to one FMU previously certified by MTCC under the *MC&I(2001)*.
- (v) MTCC will however take into account the decisions of the courts of law which may have implications on the certification status of any FMU.
- (vi) Any issue related to ownership of forested land is deemed to have been addressed by the relevant authorities before the issuance of the licence to the forest concessionaire. In all cases, this has taken place long before the concessionaire makes a decision to undergo forest management certification.

Response TPAC

The issue of standard setting is dealt with on pages 15 through 17.

Concerns are expressed by an anonymous source regarding 200 cases that centre on "conflict between native communities and private sector logging/plantations". Similar concerns are expressed by JOAS in a statement dated October 19, 2009 (see pages 35 and 36). The concerns are serious, but the Committee notes that the "200 cases" could not be sufficiently substantiated or confirmed within the course of this assessment procedure. Also the Committee notes that the quoted Samling case pertains to *MC&I(2001)* and not the *MC&I(2002)*, which is subject to this TPAC assessment. MTCC has indicated that this is the only legal case that the organisation is aware of. The Committee concludes that, the situation being diffuse, criterion C2.1 (tenure and use rights of local population and indigenous peoples) and C2.2 (consultation and participation) are partially addressed.

SFM Principle 4 – Biodiversity

Greenpeace

Issue: Deforestation in MTCC certified forests

TPAS Criterion: C 4.3. Conversion of forests in the FMU to other types of land use, including timber plantations, shall not occur unless in justified exceptional circumstances. TPAS Criterion: C 4.5. Plantations shall not be established through the conversion of natural forests after 1997.

Major shortcoming: MTCS does not prohibit deforestation in the way TPAS demands

MTCS does not have an adequate standard. In contrary, within the MTCS it is possible to get forest conversion MTCC certified which is obviously not in line with the TPAS criteria. It is often said that 'MTCS' forest management standard is based on FSC Principles and Criteria'. Regardless the irrelevance of copying FSC Principles and Criteria if indicators, verifiers and the practice in the forests (see cases in second document) are different, this statement is simply not true in this case.

FSC's criterion 6.10 is: 'Forest conversion to plantations or non-forest land uses shall not occur, except in circumstances where conversion:

- a) entails a very limited portion of the forest management unit; and
- b) does not occur on high conservation value forest areas; and
- c) will enable clear, substantial, additional, secure, long term conservation benefits across the forest management unit.'

MC&I(2002) has the same criterion but has a vague and not measurable indicator, where FSC National Standards have much more detailed implementation: '6.10.1 Conversion of forest area to plantations, consistent with the provisions of relevant national and regional legal frameworks and policies, should provide substantial, additional, secure and long term benefits across the forest management unit.' This leads to an important question: which conversion practices are in fact certifiable by MTCC? The MTCS normative documents do not give sufficient answers. Greenpeace's cases as reported in our second document to the TPAC show that reality is not sustainable at all. In fact, NGOs have said so for the last 10 years. Equally relevant is that FSC has a Principle 10 for plantations. This principle says: 'Plantations shall be planned and managed in accordance with Principles and Criteria 1 - 9, and Principle 10 and its Criteria. (..)' The MTCS standard on plantations, *MC&I(Forest Plantation)*, is not identical to FSC: '6.10 Forest conversion to plantations or non-forest land uses shall not occur, except in circumstances where conversion:

- a) does not occur on high conservation value forest areas; and
- b) will enable clear, substantial, additional, secure, long term benefits across the forest management unit.

The indicator to this criterion directly contravenes FSC: '6.10.1 Conversion of forest area to forest plantations, consistent with the provisions of relevant federal and state legal frameworks and policies, does not occur on high conservation value forest areas, and shall provide substantial, additional, secure and long term benefits across the forest plantation management unit. (This Indicator shall be complied with by plantations established in areas converted from natural forests after 1 January 2010).' Furthermore, FSC's Principle 10 on plantations has nine (9) criteria. Criterion 10.9 says: 'Plantations established in areas converted from natural forests after November 1994 normally shall not qualify for certification. Certification may be allowed in circumstances where sufficient evidence is submitted to the certification body that the manager/owner is not responsible directly or indirectly of such conversion.' The *MC&I(Forest Plantation)*'s Principle 10 has only eight (8) criteria: the non-conversion criterion is simply missing.

Conclusion

Conclusion from the above is that MTCS is not similar to FSC but much weaker. It also clearly not fulfils the TPAS principle, criteria or guidance. MTCS:

- Has no cut-off date for conversion in or of existing forests which is not in line with TPAS;
- Accepts conversion of forest area to plantations, consistent with the provisions of relevant national and regional legal frameworks and policies. What are these legal frameworks and policies? The MTCS does not answer whether criteria (and guidance) are fulfilled by all federal and state laws, regulations and policies in all three provinces in Malaysia?
- Requirements for plantation gives more space to conversion of forests into plantation than FSC and TPAS;
- Requirements for plantation do not fulfil TPAS' cut-off date (end of 1997) nor FSC cut-off date for plantations (end of November 1994).

Summary (by TPAC)

- i. The MTCS natural forest standard accepts (substantial) conversion of forest areas into plantations because of weak and vague indicators of MTCS SFM C 6.10.
- ii. The MTCS plantation standard lacks a cut-off date for conversion.

MTCC Response

It is to be noted that the *MC&I(2002)* is the standard adopted by MTCC for the certification of natural forests located within the Permanent Reserved Forests (PRF) in Malaysia. It must be emphasized that the *MC&I(2002)* is the standard currently being assessed under the TPAS, and not the *MC&I(Forest Plantations)*, which has just been adopted as the standard for the certification of forest plantations under the MTCS in May 2009. We are therefore of the view that all comments relating to *MC&I(Forest Plantations)* may not be relevant here.

We are also of the view that all comparisons of the *MC&I(2002)* should be against the requirements of the TPAS and not that of the FSC, though the *MC&I(2002)* is developed based on the FSC P&C as the template.

With regard to the various questions raised on the *MC&I(Forest Plantations)*, the deadline of January 2010 stipulated prohibiting the "*Conversion of forest areas to forest plantations,..does not occur on high conversation value forest area.*" under Indicator 6.10.1 was agreed upon by the Malaysian stakeholders during the standard development process, to take into account the country's sovereign right for development, including the establishment of forest plantations to supplement supply from the natural forests, as well as the need for a specific time period (about a year) to inform and familiarize all plantation managers of the requirements of the *MC&I(Forest Plantations)*. It is to be noted that the *MC&I(Forest Plantations)* has been developed using the FSC P&C as a guide and not a template, with changes being made by the Malaysian stakeholders to ensure that the standard developed is applicable to Malaysian conditions.

We would like to seek clarification with regard to the rationale for the deadline of 1997 set by TPAS prohibiting the conversion of forests to forest plantation.

Summary (by TPAC)

- i. The MTCS standard, including its indicators and verifiers, was developed in consultation with Malaysian stakeholders. The country's sovereign right to development was taken into account.
- ii. The MC&I (2002) is being assessed and not the plantations standard.
- iii. Need for clarification by TPAC of the deadline for conversion of 1997.

Response TPAC

- i. TPAC would like to inform MTCC that the Dutch Procurement Criteria, including the cut-off date 1997, are the result of a dialogue including all Dutch stakeholders which started in 2002 and was concluded in June 2008 when the Dutch Minister of Environment officially established the Procurement criteria.
- ii. The Committee would like to inform MTCC that although TPAC underlines the sovereign right to development, choices made in view of this development, are not automatically in line with the requirements laid down in the Dutch timber procurement criteria.
- iii. TPAC would like to inform Greenpeace that MTCC has not offered its plantation standard for assessment. More specifically, only the MTCS documents and standards that are endorsed by PEFC International are subject to TPAC's present assessment, in particular MC&I(2002). MC&I(2001), the MTCS plantation standard, or the MTCS CoC requirements laid down in the MTCC RCOC are not considered by TPAC. This implies that the TPAC Final Judgement only pertains to MTCS timber which is eligible to carry the PEFC logo.
- iv. TPAC agrees with the forum comment that the robustness of MTCS criterion C6.10 is not translated into its indicators 6.10.1 and 6.10.21, as there appear to be no clear limits to conversion within certified forests. For this reason TPAC concludes that TPAS criterion 4.3 is inadequately addressed. (Please refer to part II of this report for more information on conversion).

¹ 6.10.1 Conversion of forest area to plantations, consistent with the provisions of relevant national and regional legal frameworks and policies, should provide substantial, additional, secure and long term benefits across the forest management unit.

6.10.2 Conversion of forest area to non-forest land uses, consistent with the provisions of relevant national and regional legal frameworks and policies, should provide higher economic values as compared to its original use, in the overall context of the need for socio-economic development of the country.

SFM Criterion 4.7 - GMOs

Greenpeace

Issue: Non-GMO demand from TPAS

TPAS Principle: P 4. Biodiversity shall be maintained and where possible enhanced.

TPAS Criterion: C 4.7. Genetically modified organisms are not used.

Major shortcoming: MTCS does not exclude usage of genetically modified organisms

The following criterion in MTCC's forest management standard documents, *MC&I(2002)* and *MC&I(Forest plantations)*, is identical to FSC's Principles and Criteria: "6.8: Use of biological control agents shall be documented, minimized, monitored and strictly controlled in accordance with national laws and internationally accepted scientific protocols. Use of genetically modified organisms shall be prohibited." But the next level of the standard, the indicators and verifiers, do not mention the issue of genetically modified organisms (GMOs) any more. This means that a gap exists between principles and criteria on the one hand and indicators on the other hand. Knowing that auditors work with indicators, it can be assumed that in the practice MTCC does not demand control on GMOs.

If that assumption is correct, MTCS has a clear shortcoming regarding a clear TPAS criterion. If that assumption is not correct, how does MTCC guarantee the non-GMO criterion. In other words, is MTCS' criterion applied in MTCC's practice? Are genetically modified organisms at this moment used in MTCC certified forest management systems or plantations? Is someone controlling this criterion? If they are not used at this moment in time, it might be used next year. Will someone find out that then there is MTCC certified timber that contravenes TPAS criteria?

Conclusion

Criterion C 4.7 of the TPAS clearly prohibits the use of genetically modified organisms. There is no grey zone here. A standard can only be positively assessed by the TPAC if this standard also clearly prohibits this use and has a system in place to control this requirement. MTCS does not have the correct standard as its indicators do not prohibit the use of genetically modified organisms. Its verifiers do not mention the need to control the criterion. Therefore, MTCC does not prohibit the use of genetically modified organisms nor does MTCC's reality in the field.

Summary (by TPAC)

GMOs can be used in MTCS certified forests because the indicator, unlike the criterion, does not prohibit the use of GMOs.

MTCC Response

At the time of the development of the *MC&I(2002)*, genetically modified organisms (GMOs) was not included as a Verifier simply because the various stakeholders in Malaysia acknowledged the absence of the use of such GMOs in the management of the natural forests in Malaysia. The stakeholders were also made aware that the *MC&I(2002)* will be subjected to periodic review once every five years and hence a Verifier on GMOs could be duly included if GMOs are being utilised by then. For your information, the *MC&I(2002)* is currently undergoing its first review beginning April 2009.

We would like to emphasise that the use of GMOs is strictly prohibited as defined under Criterion 6.8 of the *MC&I(2002)*. Its non-inclusion as a Verifier does not render its use legitimate, but rather an indication that GMOs are not being used in forestry practices in Malaysia, based on scientific information available at the time of the development of the standard.

Summary (by TPAC)

GMOs are not translated to the indicator level because the use of GMOs is not an issue in natural forests in Malaysia. If it should become an issue: it will be included in the standard with the next revision.

Response TPAC

TPAC notes that in principle indicators are only necessary if the criterion itself is not verifiable or measurable. The GMO requirement "Use of genetically modified organisms shall be prohibited" is verifiable without an indicator. In addition, TPAC notes that the MTCS standard for natural forests is currently being assessed by TPAC (not the plantation standard) and that GMOs are of little relevance for natural forests. Therefore TPAC concludes that SFM C4.7 is fully addressed.

CoC – Reliability of MTCS CoC

Greenpeace

Issue: Chain of Custody (1)

TPAS Principle: P 1. A Chain of Custody (CoC) must be in place from the forest unit of origin to the final point of sale, which provides a link between the certified material in the product or product line and certified forest units.

Major MTCC shortcomings

MTCC does not guarantee that a CoC is in place from the forest unit of origin to the final point of sale. There are at least two links missing in its CoC. The first is between the forest and the first point of processing. The second is between export from Malaysia and import to the country of sale.

First shortcoming: insufficient and no independent control between forest and processing

In contrast to other hallmarks, such as the FSC hallmark, the MTCC does not require that all the participants in the commercial chain be certified for their particular role in the process. Forest managers according to the rules of the MTCC do not have to have a CoC certificate. It is taken for granted that a certificate for forest management is enough to ensure that wood from the forest concerned is legal. The monitoring of the commercial chain is therefore already limited from the moment that the wood is transported from the forest. The forest managers are, due to this, outside the CoC. An additional complication is that the certificates for forest management are given to the forest manager and not to the organisation that carries out the logging. The only document which gives assurance with regard to the separation of wood flows between the forest and the next stage (the sawmill which is often CoC certified) is the removal pass. The removal pass is a document that is based on the national forestry legislation of Malaysia from 1984 (National Forestry Act) and is used to control the collection of tax revenue. This pass is issued by the government and is applicable to a collection of wood products, such as a lorry load of logs. Listed in this document are:

- The kind of Produce;
- Number or Quantity;
- Length (metres);
- Mean diameter;
- Volume, deductions for hollowness, etc, volumes on which royalty is paid;
- Station where control takes place;
- The licence / permit which is used for the logging;
- Name of the licence holder.

The *removal pass* does not identify the forest of origin of the forest product. The pass does certainly not deliver information to trace the logs back to the trunk in the forest. Because this information is missing the risk exists that illegally logged trees are added to the truck. This cannot be controlled on the basis of the *removal pass*. Furthermore, information is missing regarding the (MTCC) certificate for Forest Management (under which specific certificate are these specific forest products certified? This is an important element of CoC control). Also the pass does not specify to whom these products are delivered to or the date of delivery to the buyer.

A crucial weakness of the use of this pass is that it is issued by the government (State Forestry Departments). The same government manages the forests and thus cannot be seen as independent controller of the CoC. Thus, control on the Chain of Custody by an independent third party does not exist. This contravenes TPAS and MTCC's own guidelines. In both documents it is demanded that each step in the CoC is CoC certified and controlled by an independent and accredited third party. Is tree tagging the answer given by the standard setting documents? Since 2005 Greenpeace criticizes this *removal pass* system. See for example the report *Missing Links, why the Malaysian Timber Certification Council (MTCC) certificate doesn't prove that MTCC timber is legal or sustainable*; (Greenpeace International, Amsterdam 2005) and Greenpeace's successful procedure against a randomly chosen MTCC CoC allowance into the Keurhout LET system in 2006. The official MTCC documents that are referred to on TPAC's forum page do not mention this issue or give any answer to the existing criticism. In occasions were this issue aroused, like in the Keurhout procedure or in non-written statements by MTCC representatives, MTCC answered that there is also a *tree tagging system*, a system additional to the *removal pass*. Sometimes it is said that the *tree tagging* is mandatory in the MTCC system or mandatory by law in Malaysia or both. The fact is that it is not an element of the MTCC standards and that in the last four years no one, even not from MTCC, could show us the Malaysian regulation that makes the *tree tagging* mandatory. And even if this was common regulation it is still not an element in the MTCC CoC. Greenpeace asks the TPAC to check this weakness in the system: the *removal pass* is not a sufficient system and the *tree tagging* is not part of the MTCC standard.

Second shortcoming: No control between point of export and point of import

The second missing link in this CoC, which is in contradiction with TPAS, is that there is no link with the CoC outside Malaysia. There is no system in place, no MTCC standard or normative document that requires certification or any type of control during this stage of the CoC. One cannot check if the timber with the MTCC logo indeed is the MTCC certified timber. This is of great importance as open water is the least controlled part of the world and for instance illegally logged timber can easily being mixed with certified timber.

This is the second shortcoming in the reality of MTCC's Chain of Custody that contravenes not only its own principles and (written) standards (that the whole chain from forest to end consumer should be (independently) controlled) but also TPAS first principle for a good CoC.

Conclusion

It is relevant to remark that the requirements in the normative documents SO 1/2008 and Annex 4 are not applicable in both situations as they are applicable only to organisations with a CoC certification. The standard does not rule which organisations need to be CoC certified but in fact only rules that if an organisation is CoC certified how this should be done and controlled. It is a matter of fact that the link between forest and first point of processing is not certified in Malaysia by MTCC and that the MTCS does not deal with the link between export and import.

MTCC's chain of custody system requirements are not applicable in the whole chain and therefore do not guarantee the required control. The MTCS standards and MTCC's reality have major shortcoming and do not provide in good, independent third party control of relevant links in the chain.

Does TPAC realize that MTCS standards are not applied in all stages of the CoC? How does the 'system check', which is executed by the TPAC, take this into account? How does the TPAC control MTCC's requirements regarding these two CoC elements? And how does the TPAC control the reality?

Summary (by TPAC)

- i. Forest managers are not required to have an CoC certificate;
- ii. The SFM certificate is awarded to forest managers and not to the people that execute the forest management (licensees);
- iii. The CoC is not complete: there is no link with the CoC outside Malaysia;
- iv. The removal pass does not provide information on the forest of origin;
- v. The removal pass does not enable tracing to the trunk;
- vi. The removal pass does not specify to whom the products are delivered and date of delivery;
- vii. The removal pass is issued and monitored by the Malaysian government;

MTCC Response

With regard to the Certificate for Forest Management, it is issued to the Forest Management Unit (FMU) which, in the case of Peninsular Malaysia, is managed by the respective State Forestry Department while in Sabah and Sarawak, it is managed by the designated forest concessionaire. This is because it is the forest manager (i.e. State Forestry Department or forest concessionaire) which is responsible for implementing the forest management plan, forest harvesting plan and for controlling/monitoring the activities of the contractors involved.

Comment Greenpeace: First Shortcoming: The first is between the forest and the first point of processing

The MTCS recognizes the Removal Pass (which is a legal document) as the linkage between the trees in the certified forest, from which logs have been harvested, and the logs that are delivered to the first point of processing, such as sawmills and plywood mills.

Please find attached three documents which provide information on (i) *Activities and Procedures for Issuance of Removal Pass* (Appendix II); (ii) *Auditing of the Removal Pass System by the Independent Assessors under the MTCS* (Appendix III), and (iii) *Procedure for Random Checking of Removal Passes (Peninsular Malaysia)* (Appendix IV), for your information.

Please find our response to the claims made by Greenpeace as follows:

Comment Greenpeace: The Removal pass does not identify the forest of origin of the forest product

Among the important information that is recorded in the Removal Pass is the harvesting licence number [which identifies the Permanent Reserved Forest (PRF) from which the logs are harvested], name of licence holder, conveyor details (e.g. lorry number), type of forest product, species and sizes. If the PRF is part of a certified Forest Management Unit (FMU), the Removal Pass confirms that the logs harvested are from that particular certified FMU.

Comment Greenpeace: The Removal Pass does not deliver information to trace the logs back to the trunk in the forest

The Forestry Department has instituted a tree and log tagging system where the details of the log on the lorry, as shown on the tag on each log, must match the tree tag number recorded by the Forestry Department in the Tree Tagging and Timber Production Control Book. This will ensure that the log removed is from the specific tree which had been felled i.e. the log can be traced back to the specific tree stump.

For your information, the tree and log tagging system is stipulated in the *Forestry Manual* and is a mandatory requirement under the Selective Management System (SMS). Furthermore, it is one of the core activities audited under the ISO 9000 certification scheme implemented by the Forestry Department.

Comment Greenpeace: Information is missing regarding the (MTCC) Certificate for Forest Management (under which specific certificate are these specific forest products certified?)

Based on the harvesting licence number shown on in the Removal Pass, the identity of the certified FMU is made known. Please also see the Press Release issued by MTCC in response to the "Missing Link" report that was published by Greenpeace (Appendix V).

Comment Greenpeace: The pass does not specify to whom these products are delivered to or the date of delivery to the buyer

Please refer to Appendix V of the attachment of the *Activities and Procedures for Issuance of Removal Pass* (Appendix II), which provides both the information mentioned.

Comment Greenpeace: Second Shortcoming: The second is between export from Malaysia and import to the country of sale

MTCC has recognised three overseas-based CBs under the MTCS to carry out the assessment of overseas-based companies for CoC certification under the MTCS. Three overseas-based timber companies (please refer to the MTCC website) have also been awarded the *Certificate for Chain-of-Custody* under the MTCS.

With the endorsement of the MTCS by the PEFC Council effective 1 May 2009, importers and timber product manufacturers which use MTCS-certified products in the importing country can obtain CoC certification for MTCS-certified products after undergoing audits against the PEFC Annex 4 by any PEFC-accredited and notified Certification Bodies (CBs) in the importing country.

Furthermore, for The Netherlands, the CoC from the forest of origin to the point of export in Malaysia has been complemented by the CoC from the point of import to the final point of sale in The Netherlands by the Keurhout system.

Summary (by TPAC)

- i. SFM certificate is awarded to the FMU, which is managed by the state department (peninsular) or a concessionaire (Sabah and Sarawak). Therefore the certificate is awarded to those organisations which are responsible for the forest management.
- ii. The overseas CoC is complete: there are three overseas companies that have an MTCS CoC certificate. In addition, MTCS is endorsed by the meta-systems PEFC International and Keurhout which both issue CoC certificates and therefore complete the MTCS CoC for The Netherlands.

The MTCS documents

Appendix II - Activities and Procedures for Issuance of Removal Pass

Appendix III - Auditing of the Removal Pass System by the Independent Assessors under the MTCS

Appendix IV - Procedure for Random Checking of Removal Passes

indicate that:

- iii. The removal pass does provide information on the forest of origin through the harvesting licence number, which identifies the Permanent Forest Reserve (PFR).
- iv. The removal pass does enable tracing to the trunk through tree tagging system.
- v. The removal pass does specify to whom the products are delivered and the date of delivery.
- vi. The removal pass is audited by an independent CB and randomly checked.

Response TPAC

- i. According to Greenpeace, the tree-tagging in combination with the removal pass is insufficient to take care of the first part of the Chain of Custody, because the removal pass does not enable tracing to the trunk and because it is not monitored by an independent third party. However TPAC has not found evidence to support this statement. The MTCS appendices II, III and IV indicate that the present removal pass system does enable tracing to the trunk and is monitored by certifying bodies.
- ii. TPAC feels that it is not harmful that the SFM certificate is awarded to the forest managers, who are responsible for forest management, instead of the licensees or contractors. To TPAC's best knowledge this is also the case under other certification systems. Through certification, the certified party (in this case the forest manager) commits itself to ensure that all parties in the FMU are operating according to the requirements of certification. Compare for example with group certification, which

also implies one certified party and several others which do the actual forest management.

- iii. TPAC notes that MTCC has offered for assessment the following CoC documents: PEFC-Annex 4 and LG 2009, which deal with the use of the PEFC logo. The MTCC CoC documents RCOC and LG 2008, which deal with the use of the MTCC logo are not subject of TPAC's assessments. This implies that the current assessment only pertains to MTCS timber, eligible to carry the PEFC logo. This being the case, TPAC concludes that the overseas CoC is taken care of through PEFC.
- iv. TPAC notes that the MTCS documentation provides sufficient information that Greenpeace concerns iii through vi are taken care of.
- v. Concerning point vii of Greenpeace, TPAC regards the independent auditing and random checking of the removal pass by certification bodies to provide sufficient guarantees for the MTCS CoC.

CoC – Minimum percentage

Greenpeace

Issue: Chain of Custody (2)

TPAS Principle: P 1. A Chain of Custody (CoC) must be in place from the forest unit of origin to the final point of sale, which provides a link between the certified material in the product or product line and certified forest units.

Comment: no minimum threshold for average percentage method

TPAS criterion C 1.6 regarding the CoC standard allows a percentage based claim. This corresponds with MTCC's standard *Annex 4*: paragraph 3.4.1 sets requirements if an *average percentage method* is applied.

The *Annex 4* document says clearly that 'No minimum threshold is set to use the average percentage method. However, an individual forest certification or labelling scheme can set up a minimum for usage of its label and / or declaration.' These too open and too vague requirements are the reason that the general PEFC system as such was not a system that could be assessed by TPAC. The MTCS documents referred to by TPAC do not fill this gap and do not set such a minimum.

This would make very undesirable situations possible. First it would be possible to sell products, such as window frames, to Dutch governmental organisations and therefore to house owners with a positive sustainability label accepted by the Dutch government that contains only 3, 5 or 10% certified timber while the rest of the timber is uncertified, and perhaps unsustainable and responsible for deforestation, climate change and forced displacement of local communities. Does TPAC see this possibility as desirable?

Second, this regulation makes it possible that different products are sold to the customer than those that are certified. For example, low quality logs are certified but is exchanged with (the same amount) of high quality logs of uncertified (= unsustainably logged) logs because it creates more profits. Is it even possible to exchange low quality soft wood with high quality tropical timber? The TPAS standard does not give limiting guidelines, here. Is it correct that these opportunities exist? Does TPAC see this as desirable?

Summary (by TPAC)

- i. MTCS (by adhering to Annex 4 of PEFC) does not require a minimum threshold for the average percentage method thus implying a unjustified use of the logo.
- ii. Low quality certified logs can be exchanged with high quality uncertified logs.

MTCC Response

Criterion 1.6 dealing with CoC and logo use allows for a percentage based claim and requires that the percentage of SFM certified material in a product or product line is reported. The PEFC Technical Document Annex 4 which is used as the CoC standard for the MTCS allows for a percentage based claim (section 3.4.1), and also requires the actual percentage of certified raw material included in the certified product to be clearly stated [section 3.5.2(d)]. Therefore Annex 4 complies with this requirement.

Please find attached our new Logo Use Rules Manual LG 1/2009 dated 19 May 2009 (Appendix I) in which para 8.3 *Minimum threshold for Logo usage* states "The PEFC Logo can be used on-product if the sum of contents of PEFC certified raw material, which is verified by the chain of custody, exceeds the minimum threshold of 70%." Therefore MTCS only recognizes a minimum threshold of 70% certified material for a percentage based claim. Document LG 1/2009 deals with the use of the PEFC logo, while document LG 1/2008 dated 12 May 2008 deals with the use of the MTCC logo.

Summary (by TPAC)

- i. The LG 1/2009, which deals with the use of the PEFC logo, requires a minimum threshold of 70%.

Response TPAC

- i. TPAC would like to inform Greenpeace that the Dutch Procurement Criteria do *not* require a certification system to specify a minimum percentage of certified material for composed products. The Procurement Criteria *do* however require that the label is perfectly clear on the percentage of the certified material that is included in the product. Subsequently, it is up to the Dutch government to decide what minimum percentage of certified material is appropriate for its procurement policy. This minimum percentage is set by the government at 50.
- ii. Greenpeace is concerned that low quality certified logs can be exchanged with high quality uncertified logs because there is no minimum threshold for certified material in composed products. However, PEFC requires in LG 1/2009 a minimum threshold of 70%. TPAC therefore assumes that the concern is taken care of.

DAM Principle 1 – Stakeholder involvement in standard setting

Greenpeace

Issue: Standard Development

Criterion C 1.2. The standard development body comprises the relevant interested groups that serve the economic, social and environmental interests without undue dominance of one interest.

Criterion C 1.4. The development of the standard takes place with input of the relevant stakeholders. Potential limitations for certain groups such as indigenous peoples and small forest owners to contribute directly are taken into account.

Major shortcoming: Development of standard MC&I(2002) lacking input from stakeholders

Several Malaysian social, environmental, and community-based groups were invited in 2001 to participate in the process of developing the MTCC scheme, which led to the MC&I(2002) standard. In July 2001, the indigenous organisations and most NGOs withdrew from the process (July 2001, Statement Joangohutan) as the MTCC continuously ignored their concerns/objections over the recognition of customary rights, tenures and user rights of indigenous peoples and local forest communities and realised their continued involvement would only serve to legitimise MTCC 'multistakeholder' process. The longest involved environmental NGO in the MTCC scheme, WWF Malaysia, has declared it could not share in the responsibility for the scheme in its current form. WWF Malaysia stated the MTCC scheme "*is not an adequate mechanism to improve forest management, encourage conservation of biodiversity, solve social conflict or provide a credible guarantee of good forest management*" (WWF Malaysia position on statement on MTCC, 19 March 2002).

In its 2004 Indigenous Peoples Media Statement on the MTCC, Joangohutan repeated its rejection of the MTCC: "*We take this opportunity to state our stand on the timber certification scheme as promulgated by the Malaysian Timber Certification Council (MTCC). We do this because the scheme has caused, and continues to cause, the further marginalisation of our communities*" (Malaysian Indigenous Peoples reject the MTCC Timber Certification Scheme. 19 February 2004).

Also a large group of international social and environmental NGOs, including WWF International, Greenpeace International, Forest Peoples Programme, IFAW and Fern rejected the 2002 standard (development) by the MTCC (Joint NGO Statement. June 2002). Reasons given are, amongst others that it "*does not address satisfactorily and conclusively the land rights issues at home before promoting the scheme*" and that it "*ensures any scheme is developed with full participation and involvement of all stakeholders and is not dominated by the forestry industry or the government*".

Conclusion

These statements make clear that at least the development of the MC&I(2002) standard did not take place with input of relevant stakeholders, especially not indigenous peoples. It is also clear that the standard development body does not comprise the relevant interested groups that serve the economic, social and environmental interests without undue dominance of one interest.

Summary (by TPAC)

- i. The standard of MTCC is not developed in consultation with the relevant stakeholders.
- ii. In 2001, indigenous people organisations and NGOs withdrew from the process as MTCC continuously ignored their concerns and objections.
- iii. The longest involved environmental NGO, WWF Malaysia, has withdrawn its support.
- iv. In 2004, the rejection of indigenous peoples' organisations and NGOs was repeated.
- v. International NGOs have also rejected the standard (development).

MTCC Response

In addition to the information provided earlier under SFM P2 Indigenous Peoples, we would like to provide the following information:

MTCC wishes to highlight that the MC&I(2002) was developed through a multi-stakeholder National Steering Committee (NSC) comprising 28 members representing the social, environmental and economic stakeholder groups, as well as representatives from the direct resource managers (or relevant government agencies) in Malaysia. The NSC was formed as a result of the recommendation of the *Workshop on Forest Certification* held in December 2000, basically to discuss the terms and conditions to further MTCC-FSC collaboration, including the task of revising the MC&I to make it compatible with the FSC Principles and Criteria.

The First NSC meeting held on 24 April 2001 was attended by all the representatives of the social stakeholders except the three representatives from the Partners of Community Organisations (PACOS). The matters discussed were mainly procedural and no substantive issues were discussed. To enable the participation of the smaller social and environmental NGOs, MTCC has been providing financial assistance to the representatives from these organizations to attend the NSC meetings.

In July 2001, five of the eight social NGOs in the NSC (representing three organizations, i.e. PACOS; SAM - Sahabat Alam Malaysia; and POASM - Persatuan Orang Asli Semenanjung Malaysia) announced their withdrawal from the NSC and issued a *NGOs Statement to MTCC, July 2001*.

MTCC wishes to point out that the NSC held a total of seven meetings from April 2001 to August 2004 before the *MC&I(2002)* was finalized and adopted as the standard for forest management certification. The NGOs concerned chose to leave the consultation process even before the second meeting of the NSC held in August 2001. Therefore, it is not true to claim that these NGOs withdrew from the process "*as the MTCC continuously ignored their concerns/objections.*"

Please find attached our document entitled "*Standard Setting Process for the Malaysian Criteria and Indicators for Forest Management Certification [MC&I(2002)]*" (Appendix VI), which provides a comprehensive account on this subject matter.

With regard to the statement made by WWF Malaysia, it is to be noted that the said statement was raised as a concern with regard to the use of the *MC&I(2001)* which was based on the Criteria and Indicators of the ITTO. However, with regard to the *MC&I(2002)*, MTCC is appreciative of the active role played by WWF Malaysia in the development of the *MC&I(2002)*, both as a member of the Technical Working Group (TWG), and a member of the NSC, as well as for its contribution in the field testing of the standard in Peninsular Malaysia and Sabah.

Summary (by TPAC)

- i. The National Steering Committee comprised 28 members representing social, environmental and economic stakeholder groups.
- ii. The NGOs left the standard setting process before the second meeting. They therefore can not claim that "MTCC continuously ignored their concerns/objections".
- iii. WWF Malaysia has continued to contribute to the standard setting process of MC&I (2002); the statement cited by Greenpeace pertains to the 2001 standard.

Response TPAC

The issue at stake here is whether the certification system is effective in creating sufficient support for the standard. An indicator for this support is the actual participation of a broad variety of stakeholders. TPAC notes that quite a variety of social, environmental and economic groups have participated in the standard setting process of MC&I(2002), including WWF Malaysia (see <http://www.mtcc.com.my/faqs.asp#FAQ4>). However, MTCC has not been able to assure the continued support of several indigenous peoples' organisations as they have left the standard setting process in 2001. Although MTCC has tried to keep the indigenous peoples' organisations involved, it has clearly not succeeded as the organisations have continued to denounce MTCS. The Committee concludes that the criterion DAM C1.2 is partially addressed as various stakeholders have participated in the standard setting, but some important ones have not.

General – Role of Malaysian Government

Greenpeace

Issue: Certification and monitoring by MTCC are not independent.

The MTCS scheme is not an independent system due to the role of the Malaysian government. The MTCC scheme issues FM certificates to State Forestry Departments or to private companies. Although logging is controlled by licensees (logging concession holders) they in turn take on subcontractors who actually take care of the felling of the trees and the transportation of the wood inside the FMU. The size and the composition of the group of subcontractors vary periodically. The subcontractors are not subject to a CoC requirement under the MTCC scheme and they therefore consequently do not have a CoC certificate. These subcontractors are in fact the suppliers therefore the customer (processor) can not comply with the MTCC CoC requirement. The absence of the CoC requirement within the MTCC system for parties responsible for the logging and transportation of wood, means that the MTCC does not have a system for marking, following or setting aside (during the process of loading transportation or storage) individual logs or loads of wood. In fact the MTCC's chain of custody only begins when the wood arrives at the lumberyard.

A fundamental weakness in the CoC is the use of the removal pass that is issued by the government. This is the same authority that manages the forests; therefore their interests are divided, and they can therefore not be seen as an independent inspector of the CoC. Independent inspection of the commercial stages by an independent third party is therefore missing.

Conclusion:

The government is the owner of the MTCC's forestry certificates, decides about licensees, controls legislation during forestry activities, issues and inspects removal passes. The government can therefore obviously not be seen as an independent accredited third party.

The government is not accredited and is not inspected by anyone. This brings up the following questions:

Questions from Greenpeace for TPAC:

- i. How does TPAC judge the role of the Malaysian government in the MTCC system?
- ii. TPAS is based on the principle of a private and independent system. The reason is indeed that this adds to what the government is already doing. Has this principle been compromised?
- iii. Does MTC comply with the requirement of an independent standard?

Summary (by TPAC)

MTCS can not provide independent third party certification because of the five different roles of the Malaysian government:

- i. government is owner of the forest and the SFM certificates;
- ii. government decides over licensees that perform the actual forest management;
- iii. government enforces forest law;
- iv. government issues removal pass;
- v. government monitors/enforces compliance with removal pass requirements.

MTCC Response

MTCS is an independent scheme where the main players in the scheme have well defined and specific roles which are periodically monitored by the relevant authorities to ensure continued compliance with the stipulated conformity requirements.

Under the new institutional arrangement effective 1 July 2008, MTCC plays the role of the National Governing Body (NGB) in Malaysia which has overall responsibility for the operation of the MTCS. The Certification Bodies (CBs) which are accredited to Standards Malaysia, the National Accreditation Body (AB), are responsible for the conduct of audits for forest management and chain of custody certification, and the subsequent issuance and monitoring of certificates.

The implementation of the new institutional arrangement has further ensured that the MTCS is in conformity with international requirements pertaining to accreditation and certification arrangements and processes, including the requirements for the endorsement of the MTCS by the PEFC Council, which has been announced in May 2009.

The allegation made by Greenpeace regarding the absence of any checking of the Removal Pass by independent third parties is untrue. Such independent checks on the Removal Pass and the tree tagging and timber production control records have been, and continue to be, checked by the independent assessors (before 1 July 2008) and by the accredited CBs (after 1 July 2008). The independent assessors and CBs are private organizations. The requirement for such checks is specified in Criterion 8.3 in the MC&I(2002).

Summary (by TPAC)

- i. MTCS is in conformity with international requirements pertaining to accreditation and certification arrangements and processes;
- ii. The allegation regarding the absence of independent third party checking of the Removal Pass is not true;
- iii. Accredited CBs (after 1 July 2008) check the Removal Pass, the tree tagging and timber production control records.

Response TPAC

- i. TPAC would like to inform Greenpeace that to its opinion the first three of the five described government roles are not problematic: in most countries where the state is the owner of the forest, it will perform those roles. Concerning the last two roles, TPAC notes that MTCS Appendix III - Auditing of the Removal Pass System by the Independent Assessors under the MTCS demands that the removal pass is supervised by an independent Certification Body (CB). This is also what is required by TPAC. The Committee thus concludes that there is no government interference that conflicts with independent third party certification.
- ii. Regarding the questions posed by Greenpeace, TPAC would like to note that the Dutch Procurement criteria do not demand that a certification system is independent of the (national) government. On this aspect, the Dutch Procurement criteria are in line with the relevant international reference documents. ISO Guide 59 "Code of Good Practice for Standardisation" states in section 3.1 "This code is intended for use by any standardizing body, whether governmental or non-governmental, at international, regional, national or sub-national level." Also the ISEAL "Code of good practice for standard setting" does not require that the standard setting organisation should be private. As long as the requirements of the Dutch Procurement Criteria are met, in particular on standard setting and independent certification, the issue that the standard setting organisation is not a private entity, is no predicament.

Part II

-

Cases provided by Greenpeace

Preview Cases

Greenpeace Netherlands contributed six cases to the TPAC stakeholder forum.

- Case 1, illegal logging in Selangor FMU;
- Case 2, conversion for a dam project in the Pehang FMU;
- Case 3, conversion for a petrochemical project in the Johor FMU;
- Case 4, conversion for hydroelectric project in the Terengganu FMU;
- Case 5, conversion for a rubber plantation in the Kelantan FMU;
- Case 6, forest degradation in Kedah FMU.

TPAC is thankful for the information provided by Greenpeace, which contributed to a thorough analysis and decision making.

Four of the six cases: 2, 3, 4 and 5 relate to forest conversion to other types of land use. Also other sources, such as the Forest Department of Peninsular Malaysia, report on forest conversion. The department indicated that some 30,000 ha of natural forests have been converted to forest plantations in 2006 and 2007 in Johor and Kelantan.² Johor is currently not certified by MTCS.

The Committee qualifies the conversion as a very serious problem. Depending on the scale, it can have significant negative effects on indigenous peoples and on the ecology of the converted areas. Indigenous communities for example may lose their native land and source of income if forests are converted, vulnerable species such as the Malaysian tiger and Sumatran rhino may lose their habitats and risk extinction. As such, substantial forest conversion is not compatible with sustainable forest management.

TPAC learned however, that forest conversion in Malaysia is initiated and decided upon by a (democratic) political body, the Executive Council of the respective State Government.³ Conversion of natural forests for (timber) plantations or infrastructure is thus not initiated or decided upon by the certified forest manager.

Because forest conversion is politically-initiated, the certification system MTCS cannot be held accountable. This also means that it is not up to TPAC, as a technical Committee, to judge this politically-initiated conversion or to withhold MTCS the judgement 'conform' because of it. The judgement of the conversion, including possible consequences for the Dutch procurement policy, is up to the Dutch Minister of Environment.

The Committee has therefore asked the Minister for an engagement to discuss the issue. TPAC has also advised her to decide on possible consequences for the Dutch timber procurement as soon as possible. Whatever the outcome, the Minister has been advised to prioritise the issue in the international dialogue on forests and the (legality of) timber.

Finally, it is important to note that although the MTCS certified forest area is not secured against conversion, timber resulting from conversion of MTCS forest cannot be supplied on the market as SFM certified. The timber resulting from conversion is marked with a letter "P" and is separated from the SFM certified material. Also the converted area is excluded from the certified FMU.

² Table 'Forest Plantation established in permanent reserved forest at 31 December 2007', source: Forestry Department of Peninsular Malaysia.

³ See also minutes of the meeting of MTCC and TPAC on November 16th, 2009.

Case 1 – Illegal logging in Selangor FMU

Summary Greenpeace case:

- In Kuala Langat Selatan Forest Reserve illegal loggers have cleared 600 ha of peat swamp forest.
- The forest has been cleared for oil palm and other agricultural crops.
- The state department has admitted the encroachment of 600 ha.

Summary reaction MTCS:

- Encroachment took place from 1980s.
- The encroachments were detected during certification which resulted in an *observation* by the certification body in 2006.
- Temporary use permits were given to farmers to protect the forest from future encroachment.
- In May 2009 it was decided that all old permits were to be revoked and no new permits were to be issued by the State of Selangor.

Question TPAC to MTCC

Even though the state of Selangor issued temporary permits to the farmers which gave the activities a kind of legal status, the described situation conflicts with TPAS criterion C1.4 on 'illegal activities'. The fact that the permits have been revoked in May is an important improvement; however, to be able to satisfyingly conclude the case, TPAC requires further information on the current practice in Selangor. Could you provide further information on how the ban on encroachment is currently maintained in the Kuala Langat Selatan Forest Reserve in Selangor?

MTCC Response

The Selangor State Government has revoked the permits in May 2009. The original decision was to give all operators until the end of the year to move out of the encroached areas and operations to rehabilitate the said area with indigenous tree species were scheduled to begin in 2010. Following this decision, the various relevant State agencies (dealing with agriculture) have been tasked to discuss and come up with a comprehensive proposal for implementation, for the consideration and approval of the State Executive Council.

Response TPAC

The fact that the encroachment took place (long) before the forest was certified incites the Committee not to attach any conclusions to it for the assessment of MTCS. In addition, it was decided to rehabilitate the area with indigenous tree species. The Committee will be alert to signals pertaining to the actual developments in this area.

Case 2 – Indigenous people mistreated in Pehang FMU

Summary Greenpeace case:

- Orang Asli of the Temuan and Chewong tribes are forced to move out of their traditional area to make way for a dam project.
- Project will flood 1,549 ha of Lakum Forest Reserve.
- The Orang Asli were not adequately consulted or compensated.
- Benefits of the dam are questioned.

Summary reaction MTCS:

- The Federal and the State Governments are still engaged in the negotiation/discussion of this project.
- MTCC is not involved in the planning or decision making process related to this project.
- Limited conversion in the context of socio-economic development is allowed within MTCS certified forests.

Response TPAC:

TPAC qualifies the described case as serious. However, the case does not primarily concern forest management but infrastructural development. If the consultation of indigenous peoples has failed (which seems to be the case), this has to be primarily addressed by other mechanisms than those under MTCS. Concerning the conversion issue please see “preview cases” on page 21.

Case 3 – Stakeholders ignored in Johor FMU

Summary Greenpeace case:

- Source: Petition Safe our Seahorses, started July 2007
<http://www.thePetitionSite.com/takeaction/741033028>, www.sosmalaysia.org
- 913 ha of mangrove forest is planned to be cleared for petrochemical hub.
- Sungai Pulai is a Ramsar site (wetland of international importance).
- Save Our Seahorses (SOS), an NGO opposed to this development, was not consulted.

Summary reaction MTCS:

- The land was degazetted from PFR to State Land in 2004. The activities in this area fall under the jurisdiction of the State Government.
- The area is not a Ramsar site.
- Johor is currently not certified by MTCC.

Response TPAC

The Committee would like to note that Johor is no longer MTCS certified and was never awarded the MC&I(2002) certificate. For this reason the case has no implications for the assessment of MTCS.

TPAC would like to note that according to the following website, the Johor area is designated as a Ramsar site (<http://envdevmalaysia.wordpress.com/2008/11/24/book-release-biodiversity-of-sungai-pulai-ramsar-site>).

Case 4 – Endangered species in Terengganu FMU

Summary Greenpeace case:

- Source: WWF-Malaysia Press Release, November 13, 2008
- Tembat Forest Reserve is home of the several critically endangered species among which the Sumatran Rhino.
- A Detailed Environmental Impact Assessment (DEIA) has indicated the local extinction or further endangerment of those species because of:
 - current clearing of 6,130 ha for a hydroelectric project.
 - planned logging of 12,630 ha.
- This is not in line with the Protection of Wildlife Act (1972).
- Logging and clearing proceeded prior to the DEIA.

Summary reaction MTCS:

- The case concerns a development project for two dams initiated by the state Terengganu.
- In line with general practice, the matter will be brought to the attention of the CB.

Questions TPAC to MTCC

1. Is it correct that 6,130 ha are currently being cleared, even though the dams are still in their proposition phase as you mentioned?
2. Does this timber enter the MTCS CoC as MTCS certified timber?
3. Please indicate what the status is of the plan to log the 12,630 ha. Has the logging commenced?
4. If so, please indicate how the logging is in line with the Wildlife Act? And if adequate measures are taken to safeguard the endangered species, such as the Sumatran Rhino.

MTCC Response

1. Based on feedback received from the CB conducting Stage 2 audit of the FMU, logging has commenced on the 6,130 ha designated as the dam site.
2. The Terengganu FMU has initiated a new coding system (incorporating the letter "P" in the Harvesting Licence number and Removal Pass) to differentiate the logs derived from this project site. Such logs will not qualify as MTCS-certified timber.
3. The logging of the 12,630 ha in the Terengganu FMU is also related to dam construction and is a policy-initiated and approved conversion by the Terengganu State Government. It has been planned to be conducted in phases until 2013, the deadline given by the Tenaga Nasional Berhad, the national power company responsible for the construction of the dam.
4. The logging would be conducted in accordance with the National Forestry Act, 1984 and not the Wildlife Act (or rather the Protection of Wildlife Act, 1972). Mitigation measures on pertinent environmental issues including those related to endangered species will be addressed in the EIA report, as well as the Environmental Management Plan prepared under the project.

Response TPAC

TPAC considers the described case to be serious. It is not clear why the clearing and logging were not planned in accordance with the Protection of Wildlife Act 1972, particularly given the presence of many critically endangered species according to the IUCN Red list, including the critically endangered Sumatran rhino, the endangered Malayan tiger and the endangered Malayan tapir. Of the Sumatran rhino there are only six remaining populations, one of which in the given FMU on Peninsular Malaysia. These species should be fully protected on the basis of the Protection of Wildlife Act 1972, in the view of TPAC pointing at the desirability of a state reserve in this area. Instead, mitigation measures were only included in a Detailed Environmental Impact Assessment

(DEIA), which was published after the clearing and logging had already started. Moreover, it appears that a much larger area will be cleared in this highly sensitive area, than would have been necessary for the two dams.

TPAC has been informed by MTCC that the entire area (6,130 plus 12,630 ha) is converted and that this is initiated and approved by the Terengganu State Government. As mentioned above, the Committee qualifies this conversion as very problematic especially considering the IUCN red list species that are present in the area. However, the judgement of policy-initiated conversion is up to the Dutch Minister as is explained in "preview cases" on page 21.

Case 5 – Plantations in Kelantan FMU

Summary Greenpeace case:

Source: The Star, May 8, 2009

2400 ha of natural forest in the Kelantan FMU are being cleared to set up a rubber plantation.

Summary reaction MTCS:

As the case involves a PFR, it will be brought to the attention of the CB.

Response TPAC:

Please see "preview cases" on page 21.

Case 6 – Forest Degradation in Kedah FMU

Summary Greenpeace case:

- Sources: Joint Statement by the Friends of Ulu Muda II
- Plans are underway to log the virgin old-growth forest of Ulu Muda;
- This is in spite of the fact that Ulu Muda has been identified as an Environmentally Sensitive Area Rank I (because of water catchment) by the National Physical Plan. This means that the forest is for strict protection and logging is not allowed.
- Logging is strongly opposed by large group of NGOs.

Summary reaction MTCS:

There is a proposal for logging in Ulu Muda, no plans are finalised, nor are activities taking place.

Response TPAC

As no forest management activities have taken place at this point, TPAC is of the opinion that it is premature to make an assessment at this point whether or not the proposed logging is in conflict with the MC&I (2002) or TPAS criteria. The Committee will be alert to signals pertaining to the actual developments in this area.

Part III
-
Additional information

Minutes meeting MTCC and TPAC

Date: November 16, 2009

Time: 13.30 -16.00

Place: Weber Shandwick office, The Hague

Attending:

Mr. Chew Lye Teng (MTCC)
Mr. Yong Teng Koon (MTCC)
Ms. Sheam Satkuru-Granzella (MTC)
Mr. Cheah Kam Huan (MTC)
Mr. Jurgen de Vries (Weber Shandwick)
Mr. Erik Lammerts van Bueren (TPAC)
Mr. Gerard Persoon (TPAC)
Mr. Helias Udo de Haes (TPAC)
Ms. Myrthe Haase (TPAC)

1. Introduction

Mr. Udo de Haes thanks MTCC for this opportunity to meet. He proposes three aims for the meeting:

1. to get acquainted and improve mutual understanding;
2. to discuss TPAC's points of concern and the envisioned improvements by MTCC;
3. to support a choice on how to continue the procedure.

Mr. Udo de Haes agrees to chair the meeting and gives all people attending the opportunity to introduce themselves.

2. Agenda

Based on both the October 23rd as well as the November 12th version of the Preliminary judgment by the TPAC, Mr. Chew emphasises two issues that are directly related to the agenda:

1. Despite a formal request in the letter from MTCC dated October 28, which had pointed out that the October 23rd version of the preliminary judgment was in actual fact not complete since TPAC has not assessed MTCS on principle 2, the November 12th version of the preliminary judgment submitted by TPAC is still incomplete. Mr. Udo de Haes explains that TPAC holds the view that the Preliminary Judgement of October 23rd which included two question marks did most justice to the contradictory nature of the information that was received by TPAC concerning principle 2. Regarding the version of November 12, Ms. Haase explains that the Preliminary Judgement is in fact complete but that the *summary* indeed missed the score on P2.
2. Mr. Chew proposes to focus the discussion on Principle 2 and Principle 4. Mr. Chew also proposes to discuss principle 2 after principle 4.

Mr. Udo de Haes proposes to add two agenda points: 'State of affairs' and 'Any Other Business'.

TPAC agrees to write the minutes.

3. State of Affairs

Mr. Udo de Haes gives a short overview of recent developments. After receipt of MTCC's First Review of the TPAC Assessment, TPAC has raised the score of nine criteria and four principles. However, principle 4 is in the view of TPAC still inadequately addressed, causing MTCS not to meet the Dutch Procurement Criteria. Two question marks were included under Principle 2 due to contradictory information that TPAC received so far. As MTCC was of the view that the Preliminary Judgement is incomplete with the two question marks, TPAC - although still holding the view that the Preliminary Judgement of October 23rd did most justice to the contradictory nature of the information received - has decided to score both C2.1 and C2.2 as 'partially addressed'.

Mr. Udo de Haes calls to mind that the MTCC complaint has been settled by SMK and assures that intermediate reports or documents concerning MTCS have not been sent to third parties. Further steps in the procedure will be made in common agreement.

4. Biodiversity - Principle 4

Mr. Udo de Haes explains that the core concern of TPAC is that in 2006 and 2007 over 30.000 ha of MTCS certified forests have been converted into forest plantations. At the same time TPAC also acknowledges that three important improvements are planned by MTCC:

- a. the exclusion of all plantations from current and new MTCS certified FMUs;
- b. a coding system, causing the conversion timber not to enter the CoC as 'MTCS certified';
- c. a revision of the indicators of criterion 6.10.

Mr. Chew informs TPAC that MTCC has already implemented the first two improvements. A letter of MTCC to the certification bodies, dated 26 October 2009, indicates that all forest plantations shall be excluded from MC&I (2002) certified FMUs with immediate effect. A letter from the Terengganu Director of Forestry to his district officers does indicate that the harvesting licenses to be issued for development projects in PRFs (and thus involving clear cut) will be marked with the letter "P". According to Mr. Chew, the latter implies that timber resulting from conversion is marked with the letter P and cannot enter the MTCS Chain of Custody as certified timber. Instead it can enter the CoC as legal timber.

Regarding the indicators of C 6.10, MTCC informs TPAC that the stakeholders involved in the revision process of MC&I (2002), running from April 2009 until July 2010, will decide whether and how the indicators are to be revised. Mr. Udo de Haes thanks MTCC for the provided information and asks to what extent MTCC is in a position to make a proposal for the revision of the indicators. Mr. Chew replies that the MTCS standard is the result of a stakeholder consultation process, in which the relevant Malaysian stakeholder organisations participate. As the secretariat of the standard setting body, MTCC can only put forward suggestions and will share the TPAC feedback on this particular issue with the stakeholders.

Ms. Sheam comments that it is not reasonable to apply the TPAS cut-off date of 1997 to Malaysia, since Malaysia is a developing country and none of the Malaysian stakeholders were invited to comment on the Dutch Procurement Criteria. Further, she reiterates that TPAS' cut-off date of 1997 was conveyed to MTCC retrospectively, i.e. MTCC was only made aware of this cut-off date when it agreed to be assessed by TPAS in February 2009. The cut-off date was set 12 years ago, and no developing country would be able to meet this particular requirement. She regards this not as a reasonable approach for TPAS to take. Mr. Udo de Haes understands her concern and promises to bring the matter to the attention of the Dutch Minister of Environment.

Ms. Sheam inquires why TPAC focuses on conversion so much. To her opinion the conversion to forest plantations in Malaysia is insignificant: a total of 101,068 ha of forest plantations in the PFRs (2,1%) and a conversion of 0,6% per year in the 12 years since TPAS' cut-off date of 1997 until 2008. That is well below the 1% per year threshold that other certification systems use. TPAC replies that it is not aware of such a threshold and that no such threshold is included in the TPAS criteria. TPAC would like to find out more on this matter. Mr. Lammerts van Bueren replies that the trend is much more relevant than the average over the 12 years. The 30,000 ha conversion took place in two recent years (2006 and 2007). In addition, the conversion was concentrated in only two states. There are no clear limitations in place to prevent the same development in other states. To this, Ms. Sheam points out that the historical data presented by MTCC had clearly shown that the conversions were limited in nature; she also points out that the fact that Malaysia's natural forest cover has remained reasonably constant over this period at around 57%, attests to this fact.

Note from TPAC: In a study from Kathirithamby-Wells (Nature and Nation) on the state of the forest in Peninsular Malaysia in 2000, it was indicated that only 44% of the forest remained at that moment. Some data-sets (for example of FAO) are less useful because they do not make a clear distinction between natural forests and plantations.

Ms. Haase inquires how the 101,068 ha relates to the 60,014 ha that were communicated in MTCC's First Review. Does this imply that in 2008 41,054 ha of natural forests were converted to forest plantations? Mr. Yong explained that the earlier given figure did not include the area of forest plantations in Johor FMU which is currently not certified under the MTCS; he and Ms. Haase will be in touch to explain details behind the given figures.

Note from MTCC: We would like to provide further clarification regarding conversion. At the meeting, we have provided the figure of 101,068 ha as the extent of forest plantations established within the eight FMUs (including Johor FMU which is currently not certified under the MTCS) as at December 2008. However, we would like to point out that there had been a slight error, the correct figure for the eight FMUs should be 100,368 ha. Excluding the Johor FMU, the extent of forest plantations in the seven certified FMUs would amount to only 56,509 ha.

Mr. Udo de Haes explains that TPAC has received several cases on conversion on the TPAC stakeholder forum and that TPAC differentiates between conversion instigated by the government (for example for infrastructural projects) and conversion for forest plantations initiated by the forest manager. Mr. Chew explains that the latter form of conversion is also under the Federal Constitution of Malaysia where the prerogative lies with the Executive Council of the State Government, and could never be initiated by the forest manager. Ms. Sheam mentions that this does not only mean that conversion for forest plantations falls outside the responsibility of MTCC, she also points out that such conversion is in line with the TPAS guidance under undisputed government decision. Further, if such conversion does not exceed the allowable percentage accepted by most certification schemes, then it should also be accepted under TPAS. Mr. Udo de Haes indicates that the first point is new for TPAC; regarding the second point he points out that to his knowledge there is no allowable percentage of conversion "accepted by most certification systems". If MTCC has information indicating otherwise he would like to be informed. At any rate he stresses that TPAS does not include such allowable percentage.

Mr. Lammerts van Bueren inquires in what occasions the MTCC criteria and indicators regarding conversion are applicable, if all decisions to convert natural forests are initiated by the State government. Mr. Chew explains that the criteria and indicators exert some pressure on the political process against conversion, if such conversion would affect the certification status. Mr. Lammerts van Bueren concludes that the Permanent Forest Estate is apparently not secured, be it outside the responsibility of MTCC. Ms. Sheam mentions that the limitations which MTCC has in terms of the political decision-making

process were already explained in MTCC's response to the case studies submitted by Greenpeace to TPAC.

Note by TPAC: in its reaction to the case studies MTCC indeed pointed out MTCC's limitations in case of governmental development projects such as petrochemical hubs and dams. However, in that reaction it was not specified that a similar limitation was also applicable in case of the development of forest plantations (Greenpeace case 5).

5. Interests of Stakeholders – SFM principle 2 and DAM principle 1

Mr. Persoon explains that, concerning the interests of stakeholders, TPAC has received contradictory information. Especially an issue of concern and confusion has been the (lack of) participation of Orang Asli organisations in the standard setting process. Mr. Chew explains that the standard setting took place within the multi-stakeholder National Steering Committee (NSC) which comprised 28 members. Five members from three organisations (two social and one environmental), which later became members of JOAS, left the standard setting process after the first meeting, claiming that their demands concerning the standard development were not taken seriously. This claim cannot be substantiated as the first meeting addressed only procedural aspects of the standard setting process. Mr. Persoon asks what to the opinion of MTCC will be the reason for this course of action. Mr. Chew replies that the social organisations might have had too high expectations of the process; including expecting MTCC to change the law. In addition, some organisations may be opposed to logging all together. Mr. Chew is however optimistic about the present revision process of the MC&I (2002). Each of the three regions, Peninsular Malaysia, Sabah and Sarawak, has five representatives in the Standards Review Committee, one for each of the following groups: labour unions; indigenous peoples; environmental organisations; timber industry and government. The Standards Review Committee has thus fifteen members, six of whom are representatives of social interests.

Mr. Persoon points out that TPAC has also received information in the stakeholder forum that legal steps have been taken by indigenous peoples against certification of forests by MTCC. If this is true, this can implicate that the inventory of legal and customary rights prior to forest activities (C2.1), the communication with local people and indigenous peoples (C2.2) and free and informed consent (C2.3) are not adequately functioning. He inquires whether it would be possible to send TPAC an audit report illustrating how the inventory of indigenous rights and communication with indigenous peoples take place in practice. Mr. Chew agrees to send relevant sections of such an audit report. In addition, he explains that under certification the forest manager is required to actively identify sites of special cultural, ecological, economic or religious significance to indigenous peoples.

6. Input received from Greenpeace

Mr. Lammerts van Bueren explains that TPAC has received two documents from Greenpeace: an MTCC statement on rubberwood products and "Assessment procedures in using MC&I (2002)". Greenpeace has requested TPAC to reply on how the Committee views these two documents. In order to be able to respond to Greenpeace, TPAC has a few questions. Mr. Lammerts van Bueren asks why the statement on rubberwood products was made. Mr. Chew explains that in the past the Malaysian Timber Industry Board (MTIB) has made these statements. When the MTCC was established, this task was transferred to MTCC. He elaborates that as the name suggests, the *Statement on Rubberwood products* is just a statement and is distinctly different from a certificate issued under the MTCS. The statements are made only upon request. Mr. Lammerts van Bueren inquires whether MTCC plans to stop issuing these statements, because they may lead to confusion and may have negative implications for the image of the MTCC. He also enquires whether there is some sort of protocol underlying the statements. Mr. Chew

replies that there is no protocol for issuing these statements and that concerns such as voiced by TPAC will be noted by MTCC in considering whether to continue issuing such statements.

Concerning the "Assessment procedures in using MC&I (2002)", Mr. Chew explains that the document originates from the time that MTCC operated as a certifying body. All criteria were included in this document. But in the new organisational structure, where Certification Bodies issue the certificates, the document is no longer applicable.

7. Next steps in the procedure

Mr. Udo de Haes clarifies that there are three options for the assessment procedure: continuation as scheduled; withdrawal from the procedure; and postponement of the procedure. He asks Mr. Chew what option is preferred by MTCC. Mr. De Vries requests TPAC to give its preference first. Mr. Udo de Haes responds that he can only give his personal view as the Committee has not yet been able to discuss the new information provided during this meeting and its implications. He says that normally MTCC would now have the opportunity for a Second Review after which TPAC would come to a Final Judgement. However, taking into account the new and relevant information that MTCC has provided during this meeting including the two recent documents, he suggests the option that TPAC will take this information into account in a revised Preliminary Judgement.

Mr. De Vries asks when the revised Preliminary Judgement can be sent to MTCC. Mr. Udo de Haes replies that this will be done shortly after the TPAC meeting of January 12. Mr. Chew inquires whether it would be possible to speed up the process as the process has already been delayed. In addition, MTCC does not want to delay the assessment of PEFC International. Ms. Haase replies that she regrets that the December meeting of TPAC is already completely filled with the assessment of PEFC International and PEFC Austria. Mr. Udo de Haes states that the assessment procedure of MTCS should not interfere with the procedure for PEFC International. In case it will, TPAC will contact MTCC as soon as possible. He stresses that it is up to MTCC to decide whether the procedure (of finalising the Preliminary Judgement) will be prolonged or not. Mr. Chew, regretting that the process takes more time than expected, expresses that MTCC prefers a revised Preliminary Judgement and agrees this to take place in January 2010. Mr. Yong adds that he would like to have TPAC's view on how it will deal with new information from third parties after closure of the stakeholder forum. The longer the stakeholder process will last, the more information TPAC has to deal with, thus leading to a delay in the procedure.

Note by TPAC: the Committee will not take into account new information on MTCS that is provided by stakeholders.

8. Any Other Business

Mr. Udo de Haes informs MTCC that due to new requirements of the Ministry of VROM concerning so-called 'Category B evidence', TPAC will not be able to revise the User Manual before December as promised earlier. This will however not affect the present MTCS assessment.

9. Conclusion

Mr. Udo de Haes thanks all attending persons for their constructive input and the valuable information and concludes the meeting. Mr Chew also thanks the TPAC representatives for the meeting.

Minutes meeting Greenpeace and TPAC

Date: November 16, 2009

Time: 16.30 -18.30

Place: SMK office, The Hague

Attending:

Ms. Hilde Stroot (Greenpeace)

Mr. Wolfgang Richert (Wolf milieuvadvis)

Mr. Erik Lammerts van Bueren (TPAC)

Mr. Gerard Persoon (TPAC)

Mr. Helias Udo de Haes (TPAC)

Ms. Myrthe Haase (TPAC)

1. Introduction

Helias Udo de Haes thanks Greenpeace for this opportunity to meet and proposes that all persons attending introduce themselves.

2. Agenda

Helias Udo de Haes inquires whether Greenpeace agrees with the agenda as proposed. Hilde Stroot confirms and adds that clarification of the TPAC assessment procedure and Greenpeace' role in that procedure is most important to her.

3. TPAC response to Greenpeace letter

Helias Udo de Haes underlines that the Committee much appreciates the Greenpeace contribution to the stakeholder forum and gives a short clarification of TPAC's response to Greenpeace' letter dated October 5. TPAC does not agree with Greenpeace' statement that the principle of "hearing both sides" is not practiced in the TPAC assessment procedure. MTCC and Greenpeace are not equal stakeholders in the assessment process of MTCS. However, TPAC understands Greenpeace request to stay closely informed on the MTCS assessment procedure. This meeting provides an important opportunity for this. Hilde Stroot adds that the process has been somewhat confusing for Greenpeace, for example, whether TPAC expected that Greenpeace should respond again to the MTCC reaction on the Greenpeace forum contributions or how TPAC has dealt with the contributions made by Greenpeace. Myrthe Haase replies that the User Manual is not clear on some aspects of the procedure. This fact was also highlighted by MTCC. TPAC will therefore revise the User Manual as soon as possible. If Greenpeace has suggestions on how to improve the aspect of information exchange with stakeholders, this will be appreciated and taken into account where possible. Wolfgang Richert, in principle understanding the TPAC explanation that MTCC and Greenpeace are not equal stakeholders, states that on the level of the debate of sustainable timber on the Dutch market, parties such as Greenpeace and MTCC are equal stakeholders.

4. Stakeholder forum

Helias Udo de Haes proposes to speak about the Greenpeace forum contributions. TPAC has studied the contributions and according to TPAC some of the issues are "not of concern" to TPAC (CoC and GMO), while others are (conversion and social issues). He proposes to discuss the issues of concern in more detail.

Greenpeace has commented that criterion C6.8 of the MC&I(2002) on the prohibition of GMOs is not supported by an indicator. Erik Lammerts van Bueren states that to TPAC's opinion an indicator is redundant in case the criterion is clear and measurable in itself.

Regarding the CoC of MTCS, Greenpeace has made a number of comments including that the removal pass system does not enable tracing to the trunk and that the removal pass is not independently monitored. Based on the MTCS system documentation, TPAC has concluded that it does not share Greenpeace concerns on this point and that tracing to the trunk and independent monitoring is assured. Wolfgang Richert expresses his doubt whether the MTCS CoC really meets the Dutch Procurement Criteria. He points out that he would like to study this new information. Myrthe Haase replies that the documents concerned are available on the TPAC website and that she will send the link to Greenpeace.

Gerard Persoon explains that on social issues, TPAC has received contributions from an anonymous source which spoke of "200 legal cases" involving MTCS certified forests. TPAC has requested more specific information on this statement from the same source, but more specific information on these possible cases was not available. TPAC will take into account information while adhering to the procedure according to the User Manual.

Regarding the standard development, Gerard Persoon explains that it is of concern that the most important indigenous peoples organisations have left the standard setting process of MC&I(2002). This was underlined by the JOAS statement that TPAC has received. Gerard Persoon adds that according to MTCC there are improvements in this aspect: for the revision process of MC&I(2002) 6 of the 15 members of the Standards Review Committee represent social interests (and 3 represent environmental interests). Hilde Stroot replies that she will look into the composition of the Standards Review Committee and which organisations are represented.

Regarding conversion, Helias Udo de Haes explains that the Greenpeace forum cases stimulated the Committee to research this issue in more depth. The information that was gathered on conversion for forest plantations was of a serious nature. TPAC has communicated this information with MTCC. MTCC in turn has initiated modifications to its system to improve the situation: (1) labelling of conversion timber which should prevent this timber from entering the CoC as MTCS certified and (2) excision of all existing forest plantations from the MC&I(2002) certified FMUs. MTCC has also informed TPAC that - contrary to what TPAC believed - conversion for forest plantations is not initiated by the forest manager but decided upon by a political body, the Executive Committee of the State. Hilde Stroot replies that the fact of the ongoing conversion implies that MTCC apparently cannot guarantee the sustainability of certified forests. Greenpeace is convinced that MTCC does have a responsibility for the conversion, in particular because it perceives is a strong link between MTCC and the Malaysian government.

Wolfgang Richert inquires what the role of TPAC is on this specific issue. Helias Udo de Haes replies that TPAC has two roles here. The first is agenda-setting: to start a discussion on state-initiated conversion within a broader framework, preferably also including FSC- and PEFC International. The second role concerns giving advice to the Minister of Environment.

Wolfgang Richert also inquires what role the Committee has in the public procurement policy. Helias Udo de Haes replies that TPAC's main task is to assess whether certification systems meet the Dutch Procurement Criteria; it is subsequently up to the Minister to decide about the consequences of the advice for her procurement policy.

5. Additional information

In its letter of October 5, Greenpeace requested the Committee to examine two documents:

- MTCC Assessment Procedures in using MC&I(2002), dated 6 May 2005;
- MTCC statement on rubberwood products, dated 11 June 2009.

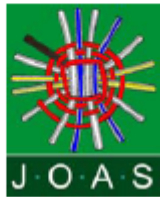
Erik Lammerts van Bueren states that the Committee has studied the documents and has discussed the content of both documents with MTCC. MTCC in turn has explained that the

“MTCC Assessment Procedures” are no longer used in the new organisational structure, where Certification Bodies issue the certificates and not MTCC. Concerning the rubberwood statement, TPAC has expressed to MTCC that such statements may well lead to confusion and thus may have negative implications for the image of the MTCC. Concerns such as voiced by TPAC may give rise to reconsidering the issuing of such statements in the future by MTCC.

6. Conclusion

Hilde Stroot points out that she wants to look into the details of some of the issues discussed during the meeting and that she might want to come back to some of those. Helias Udo de Haes thanks Hilde Stroot and Wolfgang Richert for their constructive input and the valuable discussion and concludes the meeting.

Statement of indigenous peoples' network of Malaysia to TPAC



JARINGAN ORANG ASAL SEMALAYSIA
INDIGENOUS PEOPLES NETWORK OF MALAYSIA

Lot 5, 1st Floor, Block M • Donggongon • 89500 Penampang, Sabah
Mailing address: P.O. Box 511 • 89507 Penampang, Sabah, Malaysia
Tel: +6088 726413 • Fax: +6088 718669 • Email: joasmalaysia@gmail.com

Secretariat TPAC
SMK
Eisenhowerlaan 150
P.O. Box 17186
2502 CD The Hague
Phone: +31 (0)70 3586 300
Fax: +31 (0)70 3502 517
E-mail: bslesazeck@smk.nl

19 October 2009

Dear Sirs/Madams

STATEMENT OF INDIGENOUS PEOPLES' NETWORK OF MALAYSIA TO DUTCH TIMBER PROCUREMENT ASSESSMENT COMMITTEE

1. This statement is prepared to clarify the position of the indigenous peoples' of Malaysia vis a vis timber certification processes. This statement is not meant as endorsement by JOAS of this consultation process. JOAS has withdrawn from all MTCC related processes because the processes did not allow for full and effective participation of indigenous peoples and groups genuinely concerned at addressing the tenure, rights and social impact issues. Although we have tried to negotiate in good faith, our presence was constructed to enable parties involved to claim we had participated but the process was such that our concerns were not taken seriously and, in some cases, not even included in official documentation.
2. We wish, however, to state the following principles:
3. As Parties that agreed to the adoption of UNDRIP, we believe that the Netherlands, EU and Malaysian governments should properly consider the rights of indigenous peoples, especially to lands, territories and resources and the free, prior and informed consent on projects that occur on indigenous peoples lands.
4. Moreover, national and state constitutional and legal frameworks not only acknowledge the rights of indigenous peoples but provide for native / indigenous peoples' ownership of lands and forests.
5. Statutory provisions are inconsistent with these frameworks, and these have been upheld by various case laws and judicial rulings.
6. This inconsistent application of 'legality' has long been a source of contention between the original rightsholders and other stakeholders. As sustainability aims for a higher standard than 'legality' even more investigation and analysis of the political and national context of the current MTCS certification scheme is needed.

7. As far as JOAS is concerned, it upholds its minimum demand that timber or its products must be free from aboriginal or native claims.
 8. Since time immemorial, indigenous peoples of Malaysia have interacted with forests, both depending on and nurturing forest areas for resources. From these, our system of land use and tenure, called adat, has been derived.
 9. As such, abuse of our forest resources without our free, prior and informed consent is not only a gross abuse of our rights as indigenous peoples and citizens of Malaysia but a direct threat to our culture, identity and our right to sustainable socio-economic development. Any attempt to sideline or obfuscate these concerns should be viewed as a direct mismanagement of any proper sustainability criteria.
-
10. We therefore believe that a proper evaluation of MTCS should include the following:
 - a. Conduct an independent assessment or evaluation of the assessors who have been ground-truthing MTCS criteria and indicators in specific FMUs;
 - b. Assess and evaluate the claims that stake-holder participation has been obtained, both in the development of the MC&I and in the field tests and evaluation processes;
 - c. Assess and evaluate whether all relevant laws in the country are applied and adhered to (including court judgments and developments in common law);
 - d. Assess and evaluate why EU countries are going for a lesser-standard of 'legality of timber harvested' rather than sustainable timber as required by FSC and aspired by MTCS;
 - e. Dialogues with top government officials involved in the FLEG process in Malaysia including former and present EC ambassadors and the Malaysian Minister for Plantations Industries and Commodities.
 - f. Review of current available literature that analyze Malaysian certification processes
 - g. Ground interviews with rightsholders of forest resources.
 11. Participation in online forums does not allow for proper feedback, much less from the peoples on the ground that are rightsholders of the resources in question. To ensure that the high standards of sustainability of the harvested wood products TPAC allows into the Netherlands are maintained, we urge committee members to include the above recommendations within its evaluation of MTCS.

Sincerely,

Adrian Lasimbang
President

cc. Leo van der Vlist
External relations
Netherlands Centre for Indigenous Peoples (NCIV)