

SUMMARY

Of the revised judgement of the Timber Procurement Assessment Committee (TPAC) on the Malaysian Timber Certification System (MTCS) dated 22 October 2010

1. Introduction

On 22 October 2010, the Timber Procurement Assessment Committee (TPAC) judged that the Malaysian Timber Certification System (MTCS) does not meet the Dutch Procurement Criteria for timber. This judgement followed an objection launched by five Dutch NGOs against TPAC's positive judgement on MTCS in March 2010. TPAC carefully studied the objection and assessed the claims made by the NGOs through several rounds of questions, the analysis of MTCS audit reports and a public hearing of both parties. The information gathered during this process caused TPAC to revise its judgement. This document summarises TPAC's main arguments.

The judgement is an advice to the Dutch State Secretary for Infrastructure and the Environment, Mr Joop Atsma, who will decide whether or not MTCS-certified timber will be accepted for the Dutch sustainable procurement policy.

2. Rights Indigenous Peoples

Prior to its Judgement on MTCS in March 2010, TPAC received contradictory information on the extent to which rights of Indigenous Peoples (IPs) are recognised and respected in MTCS certified forests. On the one hand, the MTCS standard contains a number of stringent criteria relating to the rights of Malaysia's IPs, the *Orang Asli*. On the other hand, the key organisations representing the interests of the Orang Asli dissociated themselves from the MTCS time and again and reported violations of their rights. On the basis of this contradictory information TPAC concluded in March 2010 that Principle 2 of the Dutch Procurement Criteria – 'the interests of stakeholders'- was 'partially addressed' by MTCS. The objection of April 2010 prompted TPAC to study the topic again. Important sources of information were the MTCS audit reports, which previously had not been available.

The Malaysian forests have been used for centuries by the Orang Asli for hunting and collecting food. This traditional use confers certain customary rights on the Orang Asli, which are to be respected according to the Dutch Procurement Criteria. Two types of customary rights are to be distinguished: the right to use the forest resources, and the right to control external activities which affect the possibilities for traditional use. As it now appears the use rights related to 'subsistence use' are respected by MTCS and the certified forest managers. IP rights related to

'commercial use' are partially respected, as commercial uses are restricted through a licensing system operated by the state.

However, the IPs rights related to the control of external activities appear not to be respected in MTCS certified forests. According to the Malaysian Timber Certification Council (MTCC), which is responsible for the MTCS certification system, 'free and informed consent' of the IPs with external (forest) activities is only relevant in situations where the indigenous communities are recognised as the *legal owners* of the land. This restrictive interpretation of MTCC has far-reaching consequences as the IPs are only recognised as the legal owners of limited forest areas known as *Orang Asli reserves*. In the production forests Orang Asli communities are by definition not the legal owners of the land. Although the MTCS standard requires through its criteria 2.2, 3.1, 3.2 and 4.5, that the Orang Asli have a say in forest management on the basis of free and informed consent, the above implies that these criteria are not applied in MTCS certified forests.

It should be noted here that the requirement of free and informed consent is interpreted by TPAC as a balanced negotiation process, aiming at mutual agreement. However, structural negotiation processes between forest manager and IPs are likewise not in place in MTCS forest management.

3. Conversion and objects of high ecological value

Like in its previous judgement of March 2010, TPAC concludes that MTCS certified forests are not sufficiently protected against conversion - which in Malaysia is always initiated and decided by the state -. In particular, the MTCS criterion 6.10 which deals with conversion is very weak in its current form. A strengthening of MTCS criterion 6.10 and its indicators is therefore required. MTCC shares this view with TPAC, as became clear during the hearing that was organised by TPAC at 14 September last.

MTCC indicated that for the current revision of the MTCS standard a cap for conversion is envisaged for the certified forests. Subsequently, if in a Forest Management Unit (FMU) conversion exceeds the established cap, the certificate for the FMU is to be suspended or withdrawn. TPAC welcomes the envisaged cap as well as the consequence if the cap is exceeded, as this will truly provide the certainty to procurement officers and consumers that sustainable timber is coming from sustainable forests. However, TPAC also argues that for a cap to be both practical and meaningful, a – one time- redefinition of the boundaries of the forest is necessary leaving out all areas that are planned to be converted, and further that a cap is sufficiently low.

The last element that caused TPAC to revise its judgement is the lack of strong protection of objects of high ecological value in MTCS certified forests. Protection of these objects takes place primarily through the formal allocation (gazettement) of protection forests. As became clear from the reports of the Malaysian National Auditor – a federal institution which periodically assesses the performance of state departments, including Forestry Departments – this gazettement of protection forests is (seriously) lagging behind in five out of seven MTCS certified FMUs. In addition, it became clear from the MTCS audit reports that the assessment of environmental impacts of forestry management is primarily performed at state level through an official EIA procedure. In general these EIAs will not be sufficiently detailed to provide the necessary information for the protection of the objects of high ecological value.

4. Conclusion

Based on its findings related to indigenous peoples rights, conversion and protection of ecological objects, TPAC has concluded that the Malaysian certification system MTCS in its present form and present implementation does not meet the Dutch Procurement Criteria. Notwithstanding this judgement, TPAC brings forward that the MTCS has accomplished significant improvements within its organisation and the implementation of the MTCS system in the 4 million ha of MTCS certified forests in Malaysia. TPAC is convinced that the MTCS has a vital role to play in the improvement of sustainable forest management in Malaysia.