

## **Public Procurement and Forest Certification:**

**Assessing the Implications for Policy, Law and International Trade**

**Comparing major certification schemes: FSC, PEFC, CSA, MTCC and SFI**

**Final Report**

**29. May 2006**

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**This report was generously co-funded by the European Commission to facilitate discussion and harmonisation of public procurement processes. It should be noted that this report expresses only the opinion of its authors and should not be interpreted as a position of the European Commission.**

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## Introduction

The use of public procurement policy to achieve sustainable development objectives has increased steadily over the past decade. Amongst the various “green procurement” initiatives, forestry is a sector which received much attention. However, unlike areas such as product safety or energy efficiency, the use of public procurement to enhance sustainable forest management (SFM) is extremely complex – largely because the elements of SFM are broad ranging, variable, and to some extent controversial.

Recent developments at European and national levels indicate the increasing importance of forest certification schemes in public procurement policies. At the national level, several EU Member States have already implemented or are going to implement public procurement policies aimed to support well-managed forestry, in which certification schemes may play a central role.

Against this background, this report analyses the linkages between public procurement and forest certification. The first part of this report discusses:

- the possible contributions of public procurement rules to sustainable forest management,
- legal and policy obstacles to and opportunities for making such procurement rules fully effective,
- practical possibilities and obstacles in the way of making procurement policies fully effective<sup>1</sup>,
- the implications of such policies for exporters, particularly from developing countries;
- the emerging challenges and opportunities in using this tool in the context of public procurement policy.

The second part of this report focuses on some of the central instruments grounding these policies – providing a survey and comparison of some of the major forest certification schemes: FSC, PEFC, CSA, MTCC and SFI.

The third part of this report offers conclusions from the first and second part of this report.

Finally, the fourth part of this report is a summary of an expert workshop on public procurement and forest certification, held on June 7<sup>th</sup> and 8<sup>th</sup>, 2005 in Berlin.

However, two caveats must be stated at the outset. The first is that the current context is changing at a rapid pace. National policies are evolving and several certification schemes are in a constant state of review, modification and implementation. The second caveat is that public procurement policy for forest products is not uniformly inspired. In recent times, this has been driven by two divergent yet linked objectives: preventing the flow of illegal timber and enhancing SFM. Both agendas will be addressed in this paper. Collection of material for this report was largely closed in autumn of 2005.

This study was generously co-funded by the European Commission with the intention to facilitate the discussion and harmonisation of approaches of public procurement processes. Earlier drafts of this report benefited from comments provided by the European Commission. Additionally, earlier drafts were revised in light of the findings of the expert workshop mentioned above. It should be noted that this paper does not necessarily reflect the point of view of the European Commission.

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<sup>1</sup> Effective in the sense that the policy excludes illegal timber from the market and ensures the use of timber from well managed forests.

## **Acronyms**

AF&PA - American Forest & Paper Association

AFS - Australian Forestry Standard

AGP - Agreement on Government Procurement

CARs - Corrective Action Requests

CEPI - European Confederation of Paper and Pulp Industries

CERFLOR - Sistema Brasileiro de Certificação Florestal

CIFOR - Center for International Forestry Research

CITES - Convention on International Trade in Endangered Species of Wild Fauna and Flora

C&I - Criteria and Indicators

CPET - Central Point of Expertise on Timber

CSA - Canadian Standardisation Association

CSP - Certification Support Programme

CoC - Chain of Custody

FERN - Forests and the European Union Resource Network

FLEG(T) - Forest Law Enforcement and Governance (and Trade)

FSC - Forest Stewardship Council

GFTN - Global Forest and Trade Network

GTZ - Gesellschaft für technische Zusammenarbeit

ISO - International Organization for Standardization

ITTO - International Timber Trade Organisation

MCPFE - Ministerial Conferences for the Protection of Forests in Europe

MTCC - Malaysian Timber Certification Council

NEPCon - Nature, Environmental and People's Consult

NGO - Non-Governmental Organisation

P&C - Principles and Criteria

PEOLG - Pan European Operational Level Guidelines

PEFC - Programme for the Endorsement of Forest Certification Schemes

PPMs - Process or Production Methods

QUACC - questionnaire for assessing the comprehensiveness of certification schemes

SLIMF - Small and Low Intensity Forest Management

SFI - Sustainable Forest Initiative

SFM - Sustainable Forest Management

TBT - Technical Barriers to Trade

TFT - Tropical Forest Trust

WTO - World Trade Organisation

WWF - World Wide Fund for Nature

# Public Procurement and Forest Certification – Summary

By Peter Sprang

## ***Part 1: Assessing the Implications for Policy, Law and International Trade***

Forest certification is seen as a combination of three elements: standard setting, assessment and accreditation. It has been described as an alternative tool to the boycott of forest products, particularly from the tropics. Forest certification is frequently described as a market based incentive for well management of forests. In this context special emphasis is placed on the differences between ***performance-based and system-based certification approaches***.<sup>2</sup> The performance-based approach is seen as a key component in the discussion of this report, as it provides the opportunity for procurement policies to be based on actual performance, for example, compliance with national law.

A ***survey of public procurement schemes with respect to their reference to forest certification*** identifies that as long ago as the 1970s, public procurement actions were aimed at achieving environmental objectives. In general, however, such action has been introduced more recently with the development of procurement policies in the UK, Denmark, France, the Netherlands and Germany, stimulated by the G8 Action Plan on Forests, and the Forest Law Enforcement and Governance (FLEG) process. An overview of developments in these countries is provided, identifying significant incoherence. The UK stands out compared to the other countries since an analysis of different certification schemes was conducted, classifying those which assure legality and sustainability.

The difficulties of defining “sustainability” are highlighted. Therefore, the issues covered by international processes and debates on sustainable forest management are listed. These range from technical and economic to social to environmental aspects. Denmark has taken the lead as it maintains that ensuring future supplies entails addressing the social aspects for forestry in addition to the economic and environmental. The UK public procurement policy does not allow timber purchasers to specify criteria that are not directly related to the subject matter of the contract. In contrast to the Danish case, the UK does not consider social criteria to be directly related to the subject matter.

While the scope of the Danish procurement policy applies only to tropical timber and excludes paper, British and Dutch (and in future the French) policies apply to all sources. In general, European countries have adopted different approaches. Furthermore governments are consumers (through public procurement) as well as regulators (through policies favouring forest products from sustainable sources) which may lead to additional complications.

The ***role of certification in meeting public procurement policies*** is highlighted. The paper points out that for public procurement policy, the role certification plays, and judgements

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<sup>2</sup> This discussion forms a basis for the comparison provided in part two.

about individual schemes, may vary between countries. There is the question of which documentary evidence other than certification is acceptable. While the degree of specification differs from country to country, all appear to demand an independent assessment.

The paper points out *the impact of international and EU law*, emphasising that there have been no relevant legal rulings issued by WTO dispute settlement bodies that interpret the Agreement on Government Procurement (AGP) provisions relevant to this inquiry – therefore no authoritative views can be asserted yet. However, it appears that the AGP does allow considerable flexibility to procurement authorities to add sustainable development conditions to public procurement tenders. It is of critical importance that whenever there is a reference to a particular “trademark, etc”, the words “or equivalent” are to be included in the tender documentation. Furthermore, it is stated that technical specifications should not have the purpose or effect of creating unnecessary obstacles to international trade. It is suggested that international standards should be used as technical specifications where they exist. Apart from tender specifications additional entry points for SFM criteria are in the supplier qualification and award stages. All of this might allow procurement authorities to favour suppliers who can provide certain SFM certification.

It appears that certification schemes can be used as a basis for a public procurement policy as long as it is voluntary or if a reference is made to provisions for alternative documentation. Furthermore there is an option under WTO law to make exceptional provisions for the protection of animal, plant life, or health.

Regarding *EU law*, the paper highlights that public procurement is covered by two new Directives<sup>3</sup>, which have to be transposed by member states into national law by the 31st of January, 2006. Traditionally, environmental criteria could only be considered to a very limited extent at the award stage. In 2002 the European Court of Justice ruled that non-economic factors (such as noise levels or pollution) could be taken into account at the award stage as long as they follow certain criteria. These criteria have been taken into consideration during the development of the new Directives, the exact application is however yet unknown.

EU law allows production methods to be specified, and criteria set out in Eco-labelling schemes can be referred to (without requiring a specific label to be used), though the methods must be relevant to the product being purchased. Alternatively, specific green variants can be added to previous technical specifications. Furthermore, selection criteria and contract performance criteria may be included in the contract or awards, such as environmental factors, even if they are not of direct advantage to the contracting authority.

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<sup>3</sup> Directive 2004/17/EC and Directive 2004/18/EC, which have to be transposed by member states into national law by the 31st of January, 2006

A guiding handbook has been issued by the European Commission which states that only those specifications which are related to the subject matter of the contract may be included. Purchasing authorities are given the green light to indicate in the contract notice or tender documents that a forest certification scheme will be accepted as a possible means of proof of fulfilment of these requirements, so long as equivalent means of proof are also acceptable.

While the subject is still under discussion the Directives are viewed by some as broad enough to cover all sustainability criteria, including social issues. Certification schemes may cover areas not related to the performance and functional characteristics of the product (such as social issues involving forest-dependent people). This could cause difficulties where award criteria may not relate to matters of no direct economic concern to the contracting authority.

Opposing arguments remain, i.e. allowing national governments more flexibility in setting their own additional requirements, but requesting that they meet the non-discriminatory and transparency requirements of the Directives and the EC treaties.

***Practical possibilities and obstacles in the way of making public procurement policies fully effective*** are explored. Effectiveness is seen in the sense that the policy excludes illegal timber from the market and ensures the use of timber from well managed forests. It is discussed which practical benefits and obstacles a public procurement scheme will face, if forest and chain of custody (CoC) certification is chosen as one of equivalent tools to ensure effectiveness. The report supports the idea of choosing forest certification as the preferred tool for ensuring an effective public procurement scheme. If alternative methods are chosen for public procurement schemes, it may well be that these schemes are very efficient but at the high risk of not being effective at all. The argument offered is that any attempt to identify the origin of wood will most likely be ineffective if not impractical, if this exercise is conducted without the certification tools. An emphasis is placed on the importance of chain of custody certification. A certificate of origin is useless for a public procurement scheme unless the complete link between the forest and the final buyer is established and independently verified.

Specific obstacles are referred to, such as the level of natural forest management practice in many tropical countries, resulting in the lack of certified material from certain countries or specific product groups. Special attention is given to the option to mix certified and non-certified material as long as this material can be verified to be uncontroversially or clearly “controlled wood”.

A description of the ***impacts on developing country exporters*** is offered. It is highlighted that the area of credibly certified forestry in the tropics is significantly lower compared to those in the temperate and boreal zones. While countries like Brazil and Bolivia with exceptional large areas of certified tropical forestry are discussed, a general picture for developing countries is drawn which calls for their special status with certain minimum criteria, offered as a starting point.

It is pointed out that some of the certificates in the tropics had to be suspended, clearly demonstrating how socio-political circumstances can work in opposition to good forest management. Developing countries face many constraints, especially lack of funding or qualified staff to improve forest management practices. Those companies which have committed time and money to achieving certification should receive the market benefits by receiving public procurement orders first. Thus, the use of certified forest products from developing countries to meeting public procurement targets will be rather small. This means that exporters from developing countries will need alternative methods of documentation to demonstrate their compliance to these lower standards to satisfy the demands from procurement authorities. The chapter explores options for these methods of alternative documentation, such as the participation in forest certification support programmes, stepwise certification or compliance with the FSC controlled wood standard.

## ***Part 2: A survey and comparison of major certification schemes: FSC, PEFC, CSA, MTCC and SFI***

There is a proliferation and increase in complexity of forest certification schemes over the last 15 years, increasing the difficulty in distinguishing between the different certification schemes as described by their technical documents. This comparison therefore tries to include aspects of implementation.

***A review of individual schemes*** is undertaken, starting with an historic overview (forest certification was introduced in 1989) and a description of the status quo. The **Forest Stewardship Council (FSC)** and its separate FSC accreditation unit have one system worldwide. FSC accredits certification bodies and standards but so far has not endorsed or mutually recognized any other scheme.

FSC is exceptional in that it has received continuous support from a large range of different interest groups (some who previously had problems coming to a compromise with each other). This meaningful participation is related to the balance of powers within the FSC voting system and the transparency of report findings which support the possibility of suspension.

Findings indicate that the FSC operates strictly under publicly available performance standards which are generally more strict than those of other schemes. FSC shows a higher audit intensity than other schemes.

The FSC allows certification bodies to use interim standards in countries without a national scheme/standard. Inconsistencies in the development of FSC standards are discussed, for example the possible weaknesses in the development of interim standards by certification bodies. The example of FSC certification in the Baltic States highlights that the interim standard has the potential to adequately address the specific problems of a particular type of forestry. However, this appears to be more difficult in other countries, such as the Ukraine, where less interest group input to standards was observed.

Through the review of publicly available Corrective Action Requests (CARs) the FSC has the ability to demonstrate measurable performance, and in most cases, a significant improvement of forest management is apparent.

FSC differentiates itself through the chain of custody (CoC) and the chosen claim of well-managed forestry. FSC has developed new options for companies which mix FSC and non-FSC material, including a system and standard for the 'control' of the non-FSC part (shall not include timber which is illegally harvested, genetically modified, from high conservation value forest or from areas where the rights of indigenous people are violated).

Finally, FSC is also different from other schemes in respect to the range and quantity of products available with a FSC logo, which has the highest level of consumer recognition compared to other forest certification schemes.

A description of **PEFC (Platform for the Endorsement of Forest Certification schemes)** is given, which provides a worldwide framework for mutual recognition of forest certification schemes since 2002 (on European level since 1999). PEFC provides a link between certification and processes initially started as policy guidelines. One example is the use of the Pan European Operational Level Guidelines (PEOLG) as a reference basis for standard development. In 2005, PEFC was the largest scheme in terms of certified area and the fastest in terms of growth.

Subject to successful endorsement of standards and procedures, the control of implementation of the certification and accreditation process lies at a national level. The PEFC trade-mark licences are issued centrally by the PEFC secretariat in Luxemburg.

In terms of key supporters the PEFC is favoured by forest owners' associations and several members of the forest industry, but there is persistent resistance by various international ENGOs to support or even participate in the scheme. It is pointed out that decision making mechanisms do not ensure that a major stakeholder group cannot dominate the decision making process.

PEFC shows a larger degree of variation among its endorsed schemes and standards, auditing or accreditation. Transparency issues have been a problem for PEFC. PEFC's latest revision of the certification procedures include the requirement to make key findings available to the public. At the time of writing this report, it was too late to benefit from such new findings and it was too early to assess the actual implementation of this requirement.<sup>4</sup>

There is evidence that PEFC has endorsed schemes and standards which are system based and only show weak performance elements. At least one PEFC endorsed standard (Brazil) allows the use of genetically modified organism (GMO). This does not indicate that there are systems under the PEFC, which have developed clear performance standards.

One example from a PEFC endorsed certification in Tasmania is chosen to illustrate that logging in high conservation value forests and converting them partially into plantations is acceptable under PEFC.

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<sup>4</sup> So far only one example is recorded of the PEFC suspension of the Swiss Q-label scheme for three reasons, one the failure to provide public summaries of certification reports. PEFC-News, dated 18<sup>th</sup> of November, 2005

The PEFC Council permits the use of the claim mentioning “sustainable”, although this should not be done according to ISO guidelines (see details below).

The PEFC CoC requirements indicate an ineffective system to exclude controversial sources from PEFC labelled products of mixed (certified and non-certified) origin.

The **Canadian Standard Association (CSA)** scheme is a classical example of a system based approach to certification, a finding supported by researchers, which included field tests at the end of 2004 and statements on the CSA webpage. Performance is defined locally, but little evidence exists that the performance requirements have been meaningful.

CSA was endorsed by PEFC in March 2005. CSA certified products may carry a PEFC label, since there is a strong CoC system, but no CSA logo. CSA itself does not make a claim of sustainability. The UK public procurement scheme has already recognised CSA at its first round of evaluation as ensuring both legality and sustainability.

The **Malaysian Timber Council Certification (MTCC)** is described. It was founded in 1999 and is based on the ITTO C&I and the FSC P&C, but does not ensure meaningful recognition of indigenous people’s rights.

Part of the MTCC is a certification committee which selects auditors and peer reviewers and decides whether to certify based on their independent reports. MTCC is accredited on a national level and if the forest owner agrees, a summary of the certified FMU is made publicly available on MTCC’s web site.

The Danish public procurement guidelines suggest the MTCC as proof of ‘legal and progressing to sustainable’ forestry, but the FERN report<sup>5</sup> does not recognise its standard as performance based. Until November 2005, PEFC and MTCC had not reached an agreement on mutual recognition.

There is controversy over a possible gap in MTCC’s CoC, which may allow non-certified timber to enter as certified. A revised CoC standard is expected to be in use by the beginning of 2006. The MTCC promotes its own label and claim, which does not use the term “sustainability.”

The **Sustainable Forestry Initiative (SFI)**, which was founded by the American Forest & Paper Association (AF&PA) and operational in 1995, has also been discussed. Due to a lack of ENGO engagement the standard is less demanding than other standards. This is supported by parallel testing results of UPM forest practices against SFI and other standards in 2004.

SFI certificates can be issued, even if periodic (annual) surveillance audits are not chosen. A third party audit is only required for the on-product use of the logo. External audit summaries are demanded, including ‘a summary of findings’, which is not necessarily equivalent to a

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<sup>5</sup> FERN (author: Saskia Ozinga), Report titled: *Footprints in the forest – Current practices and future challenges of forest certification*, February 2004

CAR. Accreditation of certification bodies must be provided by the National accreditation agency.

In September 2005, SFI had not been endorsed by PEFC. SFI promotes its own label and uses the term “sustainable” in its name. As mentioned above, according to ISO 14021, the term sustainable should be avoided in the context of certification.

A **summary table** provides an overview of the comparison of certification schemes and conclusions are highlighted in part 3 of this report.

# Part 1: Public Procurement and Forest Certification - Assessing the Implications for Policy, Law and International Trade

## 1 Definition of forest certification in light of performance-based and system-based certification approaches

By Peter Sprang

### 1.1 Definition of system-based and performance-based forest certification

1. The certification of forests is described as the process by which an independent body (third party) assesses whether the forest management practices fulfil a given set of requirements.<sup>6</sup> Certification, standardisation (definition of requirements) and accreditation (supervision of certification bodies) are used in combination, and the rules for all three activities should be clearly described and should generally follow procedures outlined by the International Organization for Standardization (ISO).<sup>7</sup>

2. Certification is defined<sup>8</sup> as a mechanism by which to ascertain the quality of a given product or production process. Forest certification therefore has the potential of functioning as a marketing tool. This function is closely related to the claim a given certification provides. An examination of the claims made by the two dominant certification schemes, the Forest Stewardship Council (FSC) and the Programme for the Endorsement of Forest Certification schemes (PEFC) reveals that the FSC generally asserts that products carrying its logo originate from “well managed forest”<sup>9</sup>, while the PEFC states that “products are promoting the sustainable management of forests”.<sup>10</sup> For the discussion of public procurement and forest certification, it is necessary to highlight the difference between these two claims: while the FSC claim refers to *performance* (well managed forests being established and maintained) the PEFC refers to a *system* in which “sustainable”<sup>11</sup> forestry is promoted. This reports argues that a claim of “sustainability” should not be made, since it is not certifiable.

3. The differences between these two claims illustrate that certification can be based upon two different approaches: system-based and performance-based.<sup>12</sup> ISO 14001 (an environmental management system) is the best-known example of a system-based approach to environmental management, including the management of forest companies. Another example of a system-based certification approach is that of the Canadian Standard

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<sup>6</sup> N. Vallejo, P. Hauselmann (PI Environmental Consulting), GTZ- Forest Certification Project Working Paper 2 *Institutional Requirements for Forest Certification - A Manual for Stakeholders*, June 2000, page 4.

<sup>7</sup> For example: ISO/IEC (1994) ISO/IEC Guide 59 - Code of good practice for standardization.

<sup>8</sup> GTZ (Gesellschaft für technische Zusammenarbeit), 2000. <http://www.gtz.de/en/themen/laendliche-entwicklung/natuerliche-ressourcen/5379.htm> .

<sup>9</sup> In the case of a product, made from FSC and non-FSC material the claim includes “controlled” sources.

<sup>10</sup> PEFC *About PEFC* (www.pefc.org), accessed May 30<sup>th</sup>, 2005.

<sup>11</sup> As highlighted in 4.2.1, ISO guide 14021 requests that the term “sustainable” should not be used for certification claims.

<sup>12</sup> N. Vallejo, P. Hauselmann, p. 5.

Association (CSA), which maintains that "...an audit performed by CSA determines if the organization's system and process... meet the requirements of CSA... but does not provide a determination of compliance of the organization or its facility with legislative and regulatory requirements, nor does it evaluate an organization's performance."<sup>13</sup>

4. The process of certification under the FSC approach is not purely performance-based, but also includes system-based elements, notably in Principle 7 (management plan) of the FSC Standards. Importantly, however, the FSC system clearly obliges forest management to comply with performance-based requirements. For example, Principle 1 of the FSC system states that "forest management shall respect all applicable laws of the country in which they occur...". This performance-based approach obliges the organisation to fulfil the respective requirements of the country in which it is operating in order to be awarded a certificate. These requirements are not introduced by the organisation, but are instead defined independently and externally.

## **1.2 Validation of claims depending on the certification approach**

5. A performance-based certification, as illustrated above, can validate the claim that a sufficient level of environmental (or other) performance has been attained. However, a clear shortcoming of performance-based certification is that any management system that has undertaken significant steps towards self-improvement, but is still not performing well enough to be certified, does not experience market benefits from certification. This lack of market benefits causes a problem of lack of return of investment. This is mainly associated with the tropics, where comparatively huge investments are needed to reach the required standard of management. This can help to explain why certificates issued under FSC accreditation have so far been located largely in Europe, North America and forest plantations in the southern hemisphere. There are many examples of FSC certified (semi-) natural forest management in the tropics (especially Bolivia, Guatemala and Mexico) and Russia's Far East, but for many operations a performance-based approach makes attaining certification difficult. While many operations in such countries do manage forests unsustainably<sup>14</sup>, arguably the certification of the "promotion of sustainable forest management", such as that provided by the PEFC, provides a real incentive for improvement under certain circumstances, even if it is not guaranteed that "sustainable" forest management has been or will be reached in the end.

6. Given the diversity of forest ecosystems and national framework conditions, forest certification must use locally or regionally adapted standards. The PEFC decided to accept guidelines from intergovernmental processes (e.g. the PEOLG<sup>15</sup>), which can provide an indicative reference for the establishment of system certification standards in a national context. Some schemes endorsed by the PEFC have developed performance-based standards.<sup>16</sup> This does not, however, mean that all PEFC-endorsed standards are performance-based.

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<sup>13</sup> CSA [http://www.csa-international.org/product\\_areas/forest\\_products\\_marking/program\\_overview](http://www.csa-international.org/product_areas/forest_products_marking/program_overview) , accessed May 30<sup>th</sup>, 2005.

<sup>14</sup> In 2002 an FSC-accredited certification body suspended the FSC certificates for teak plantations on Java, Indonesia, after audits had proven that illegal logging had not been brought under control.

<sup>15</sup> Pan European Operational Level Guidelines of the MCPFE (Ministerial Conferences on the Protection of Forests in Europe).

<sup>16</sup> One of the best examples of a performance based PEFC standard is that of Austria.

7. The most recognised example of a set of performance based guidelines is that of the Principles and Criteria (P&C) of the FSC.<sup>17</sup> These P&C are not used for assessments directly, but rather to direct the development of standards that are adapted nationally, regionally, or by a certification body. These standards, which have to provide for a minimum level of performance, are then used for certification. Simplified standards are used for small, low-intensity forest management (SLIMF).<sup>18</sup> Furthermore, an alternative FSC standard was developed in 2004 that defines uncontroversial forest management, providing a claim of “controlled wood”. This wood can be mixed with FSC-certified wood during processing if desired, providing a “mixed sources” claim.<sup>19</sup> These aspects are further elaborated in section 6 of this paper.

8. Despite the limitations of forest certification under a performance-based approach, such an approach provides clear advantages, notably the assurance that certain objectives are met (such as compliance with the law), and that a meaningful claim can be made. It is thus relevant to consider whether a procurement scheme simply requires that products be certified, or that they reach a certain performance level. The identification of this performance-based approach is consequently a key component in the discussion of public procurement and forest certification, as it provides the chance for procurement to be based on actual performance, such as compliance with national law. If a procurement policy is partly based on system-based certification, actual performance is not ensured. The study recognises that WTO agreements<sup>20</sup> request that equivalent means of certification must be accepted. As a consequence, system-based certification should not be considered equivalent to performance-based certification.

## 2 Survey of EU public procurement schemes for sustainable forest management

*By Richard G. Tarasofsky, Friederike Mechel (for the German case)<sup>21</sup>*

### 2.1 Introduction<sup>22</sup>

9. Some countries’ public procurement actions aimed at achieving environmental objectives originated almost thirty years ago, when the growing understanding of global environmental degradation began to affect government policy. As early as the 1970s, for example, West Germany had a policy to require tropical timber from well managed forests for federal building projects.

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<sup>17</sup> FSC Principles and Criteria for Forest Stewardship (FSC-STD-01-001), the latest revision, dated April 2004 is available at [www.fsc.org/en/about/documents/Docs\\_cent/2,16](http://www.fsc.org/en/about/documents/Docs_cent/2,16) .

<sup>18</sup> For details refer to SLIMF (Small and Low Intensity Managed Forests) on [www.fsc.org/slimf/](http://www.fsc.org/slimf/) .

<sup>19</sup> For details refer to the “Controlled Wood Standard” on [www.fsc.org/coc/](http://www.fsc.org/coc/) .

<sup>20</sup> [www.wto.org](http://www.wto.org) [The World Trade Organization’s multilateral Agreement on Government Procurement \(AGP\)](http://www.wto.org/Trade_Organizations/agreements/agreements.htm)

<sup>21</sup> Friederike Mechel was involved in this project until August 2005.

<sup>22</sup> This chapter draws on Public Procurement for Timber: EU member state initiatives for sourcing legal and sustainable timber, by Duncan Brack and Jade Saunders (2004), available on [www.illegal-logging.info](http://www.illegal-logging.info). It also draws on information from governments presented at expert workshops in 2004 and 2005, especially, <http://www.skovognatur.dk/NR/rdonlyres/48BD6199-85AF-4998-A820-956CB9AA9BE2/9198/workshoponpublicprocurementoftimbercopenhagen27920.pdf> and <http://www.ecologic.de/modules.php?name=News&file=article&sid=1315> .

10. In general, however, action on public procurement has been much more recent. In 1997, for example, the UK government issued voluntary guidance advising government departments to purchase timber and timber products from sustainable and legal sources. In July 2000, it was announced that this was to become a binding commitment. In recent years, Denmark, France and the Netherlands have begun to develop their own procurement policies, and Germany committed itself to more sustainable timber purchasing policies.

11. Much of the more recent action has been stimulated by the G8 Action Plan on Forests, and its focus in particular on illegal logging and the international trade in illegally logged timber. This plan subsequently led to a series of Forest Law Enforcement and Governance (FLEG) conferences coordinated by the World Bank, including those in East Asia (Bali, September 2001), Africa (Yaoundé, October 2003), and others are planned for Russia and possibly for Latin America.

12. Each of these initiatives has included a focus on the role of consumers in world markets in fuelling the demand for timber and thereby potentially contributing to illegal logging. One of the actions agreed on by the G8 countries was an assessment of their internal measures, including public procurement policies, aimed at controlling illegal logging and the international trade in illegally logged timber (though in the final report of the Action Programme, published in 2002, the only reference is to the UK policy<sup>23</sup>). Ministers at the Bali FLEG conference agreed to “explore ways in which the export and import of illegally harvested timber can be eliminated”.<sup>24</sup>

13. Spurred by the Bali conference in April 2002, the European Commission hosted a workshop in Brussels designed to identify options for the EU to help control illegal logging in general and the import of illegally logged timber into the EU in particular. Much of the discussion focused on means of identifying legal timber and excluding imports not identified as legal, but the topic of government procurement was also raised as an important way of guaranteeing markets for legal – and possibly sustainable – products. The topic was particularly relevant because, as indicated above, a number of EU member states were already using procurement policy to encourage the use of sustainable and legal timber and wood products.

14. However, a recent Commission working paper states that “Governments are consumers (through public procurement) as well as regulators and an increasing number of Member States are adopting procurement policies favouring the purchase of forest products from sustainable sources. This may eventually cause problems about coherence between the different roles of EU governments and their various requirements.”<sup>25</sup>

## **2.2 Key issues regarding “green” public procurement for forest products**

15. Procurement policies for legal and/or sustainable timber have been introduced or are under development in the following four EU member states:

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<sup>23</sup> G8 Action Programme on Forests: Backgrounders 2002, p. 13; available at [www.illegal-logging.info/papers/G8-final-backgrounders-en.pdf](http://www.illegal-logging.info/papers/G8-final-backgrounders-en.pdf).

<sup>24</sup> Forest Law Enforcement and Governance East Asia Ministerial Conference, Ministerial Declaration, p. 2; available at [www.illegal-logging.info/papers/Bali\\_ministerial\\_declaration.pdf](http://www.illegal-logging.info/papers/Bali_ministerial_declaration.pdf).

<sup>25</sup> Commission Staff Working Document, Annex to the Communication on the implementation of the EU Forestry Strategy, Commission of the European Communities, COM(2005)84, p.70, 10.03.2005.

- In Denmark, the parliament agreed in June 2001 that central government should modify its public procurement policies in order to ensure that tropical timber purchases were derived only from legal and sustainable sources. The original proposal was for all timber, but the parliament decided to limit this to tropical timber. Guidelines for purchasers were published in June 2003, and will be reviewed during 2005. Denmark<sup>26</sup> made the controversial move to include “socio-economic, cultural and spiritual” aspects in their list of criteria (see further below). Furthermore, the proposal is back on the table to develop rules for all timber. In addition, a proposal is made to move from a voluntary to a binding policy which requires yearly evaluations. The discussion in Denmark gives recognition of both forest and chain of custody certification, and highlights the importance of trademark integrity of a given scheme.
- In France, the “Government Action Plan in Favour of Tropical Forests” was adopted, with a view, inter alia, of ensuring that 50% by 2007 and 100% by 2010 of timber and wood products purchased by public buyers originate from legal and sustainable sources. That commitment has translated into an Advice Note approved on the 5th of April, 2005, which includes a letter by the Prime Minister outlining the policy and technical annex of procurement specifications. The specifications include no distinction between tropical and other timber. The policy is mandatory for national government purchasers and is recommended to local authorities – it requires that public purchasers take account of the legality of the applicable forestry activities and/or sustainable forest management criteria where there is a sufficient supply available. The policy contains different requirements for different categories of products and types of purchases. The common specifications for awarding the contract include compliance with the EC Council Regulation on implementing the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES),<sup>27</sup> and with sustainable forest management specifications.
- The Netherlands has possessed criteria for what qualifies as “sustainable” timber for some time and has targets for the proportion of timber in the Dutch market which should be “sustainable” – but this is all being revised. On the 24th of June, 2004, the cabinet of the Netherlands announced that all governmental organisations should commit themselves to buying timber from well managed forests whenever possible and, in due time, increasing this to 100%. In addition, governmental organisations are to assure themselves that the timber is legal. The national foundation that operated as a controlling organisation for existing certification schemes, Keurhout, has recently been disbanded – its replacement is being developed and is expected to become operational in 2006. At present, the overall public procurement policy for timber products is still under development, as are the revised guidelines on sustainability. Current plans indicate that the procurement policy will make verified legal timber mandatory, with a preference for “green” bids. The contract conditions will specify sustainability and legality aspects. The sustainability criteria will be informed by the National Assessment Guidelines, which are expected to be completed in 2005.

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<sup>26</sup> Presentation by Christian L. Jensen from the Danish Ministry of Environment during the Ecologic workshop in June 2005

<sup>27</sup> Council Regulation (EC) 338/117 of 9 December 1996.

- In the UK, voluntary guidance advising government departments to purchase timber and timber products from sustainable and legal sources was issued in 1997. In 2000 this became a binding commitment, and in November 2004 the outcome of the first phase of work from the ‘Central Point of Expertise on Timber’ (CPET) was announced (see further below). The current Timber Procurement Advice Note indicates that a new contract condition will require contractors to ensure that the timber and wood supplied to the government was legally logged and traded.

16. Both the Danish and British approaches envisage the possibility of so-called ‘variant bids’, in which different levels of bid could be invited, and/or made, for the same contract – for example, bids providing baseline legal timber, and higher quality bids providing sustainable timber.<sup>28</sup> In the case of the UK, although there is a commitment to procure timber that is both legal and sustainable, the basic specification does not contain any reference to “sustainable”. Rather, sustainability is only a feature of a variant bid. However, UK policy clearly states that bids of higher quality will be preferred, provided that they offer clear value for money.

17. Despite the evolution of public procurement policy as a tool to promote sustainable forest management, European countries taking these initiatives have adopted different approaches. As a result, a number of unresolved issues exist.

### **2.2.1 Definitions of “sustainability”**

18. There is no internationally agreed definition of sustainable forest management – indeed, definitions vary. According to the ISO guide 14021, the term “sustainable” should not be used for (self declared) certification claims on the grounds that *“At this time there are no definitive methods for measuring sustainability or confirming its accomplishment. Therefore, no claim of sustainability shall be made.”*<sup>29</sup> It is consequently recommended that authorities should not demand “sustainable” timber, but should use certifiable criteria such as wood from “well-managed” forest. Notwithstanding this very formal perspective, the content of the concept can be illustrated by cataloguing the array of issues dealt with by international processes and debates on sustainable forest management:<sup>30</sup>

#### **Technical and economic:**

- legal compliance
- economic viability
- management plan
- operating procedures
- silvicultural guidelines

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<sup>28</sup> The UK Timber Procurement Advice Note states: This variant specification includes all the minimum criteria plus additional criteria that require the majority of the timber/wood supplied to be either recycled or from forests that are managed to protect their well being and sustain future supplies of timber. This higher quality variant is the preferred choice of the UK Government.

<sup>29</sup> ISO 14021 - 5.5 “Environmental labels and declarations – Self-declared environmental claims (Type II labeling).”

<sup>30</sup> For example the Ministerial Conference on the Protection of Forests in Europe (MCPFE), for further examples see Ruth Nussbaum, Stephen Jennings and Michael Garforth, Assessing forest certification schemes: a practical guide, ProForest, 2002.

- monitoring and review
- training and supervision
- sustained yield
- control of illegal activities (less technical/economic, more social/political)
- tenure and use rights (less technical/economic, more social/political)

**Social:**

- health and safety
- workers' rights to organise and to at least minimum wage
- capacity building among local workers
- assessment of social impacts
- benefits for local communities
- rights of indigenous people
- complaints and dispute resolution
- participation and consultation

**Environmental:**

- assessment of environmental impacts
- protection of soil, water, air and forest
- protection of biodiversity (genetic, species ecosystem diversity)
- control of pollution
- control of biological agents

19. The Danish approach to defining sustainable forest management, for the purpose of public procurement, is the most straightforward, deriving general criteria and indicators from the 1992 Forest Principles,<sup>31</sup> ITTO,<sup>32</sup> and CIFOR,<sup>33</sup> which cover:

- Legislative and institutional frameworks
- Size of forest resource
- Condition of health and vitality of the forests
- Production function of forests
- Protection function of forests
- Biodiversity
- Socio-economic, cultural and spiritual aspects

Detailed recommendations on the sustainability standards applicable to each of these criteria are provided in the background documentation for these guidelines.<sup>34</sup>

20. The Danish approach differs from many other country's procurement guidelines since it includes a socio-economic criterion. The Danish guideline goes beyond the Dutch approach as it explicitly justifies the connection between sustainability and social criteria since "...many

<sup>31</sup> Non-Legally Binding Authoritative Statement Of Principle For A Global Consensus On The Management, Conservation And Sustainable Development Of All Types Of Forests, Report of the UN Conference on Environment and Development, UN Doc. A/CONF.151/26 (Vol. III), 14 August 1992.

<sup>32</sup> International Timber Trade Organisation See, e.g. [http://www.itto.or.jp/live/Live\\_Server/963/ps15e.pdf](http://www.itto.or.jp/live/Live_Server/963/ps15e.pdf).

<sup>33</sup> Center for International Forestry Research See <http://www.cifor.cgiar.org/acm/pub/toolbox.html> for further information.

<sup>34</sup> Danish Environmental Protection Agency and Danish Forest and Nature Agency, Purchasing Tropical Timber – Environmental guidelines. background material, 2003.

local and indigenous people are completely dependent on their surrounding forests. It is essential to the conservation of the forests that these people also benefit from the values of the forests. Otherwise, there is the risk that over time the forests will be converted to other uses...<sup>35</sup>

21. A key requirement in the Danish approach is that the specific standards have been developed in a consultative process, open to participation by all affected parties, including financial, environmental and social stakeholders.

22. Regarding “sustainability”, the UK provisions provide a numeric threshold as well as qualitative elements:

1. Sustainable Timber

- 1.1 The Contractor shall take all reasonable steps to ensure that at least 70% of each category of timber acquired by the Contractor for supply or use in the performance of the contract shall be either - (a) “recycled wood”; or (b) “virgin” timber from a well managed forest source as defined below; or (c) a combination of (a) and (b). ...
- 1.2 The terms “sustainable sources” and “sustainable forest” or “well managed forest” in the context of this Contract Specification refer to production and process methods, hereinafter referred to as sustainable forest management standards, which sustain forest biodiversity, productivity and vitality, and minimise harm to ecosystems, including people, that depend on forests for their well being.<sup>36</sup>

### **2.2.2 Legality**

23. As noted above, only the British and Danish policies need to define ‘legal’, which in both cases essentially means compliance with laws in the country of origin of the products.<sup>37</sup> The Danish guidelines consider bilateral agreements with the producer country in question as the best base for definitions of legality. When this is not available, it suggests including the following minimum requirements: possession of the necessary rights and permits, fulfilment of all relevant national legislation in the producer country, and payment of all taxes and dues.

24. The UK requires evidence of legality. The UK General Conditions of Contract stipulate:

- 5.1 The Contractor shall, before delivering any timber under this contract, obtain documentary evidence that the timber is both “legal timber” and “legally traded timber”. If requested in writing by the Authority, the Contractor shall submit such documentary evidence to the Authority either prior to delivery or at such other times as the Authority may require. The Contractor shall identify, as part of the evidence

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<sup>35</sup> *Purchasing Tropical Timber – Environmental guidelines, Background material*, Danish Environmental Protection Agency/Danish Forest and Nature Agency, p. 15, Copenhagen 2003.

<sup>36</sup> Annex A of Timber Procurement Advice Note, January 2004.

<sup>37</sup> Paragraph 4.1 of the UK General Conditions of Contract. The terms “Legal Timber” and “Legally Traded Timber” in the context of this Contract Condition refer to the propriety of tree felling in the forest or plantation where the trees in question were grown. The contractor is required to ensure that the organisation or body that felled the trees and provided the timber therefrom from which the wood supplied under the Contract derived had legal use rights to the forest, holds a register of all local and national laws and codes of practice relevant to forest operations, complied with all relevant local and national laws and codes of practice including environmental, labour and health and safety laws and paid all relevant royalties and taxes.

submitted, a chain of custody from the source of the timber through to delivery of the final product.

### **2.2.3 Legal but moving towards sustainability**

25. A middle category, of 'legal and progressing to sustainable', has emerged. Though some doubts have been expressed in the UK about the feasibility of measuring it, this step may not be implemented in Britain, at least initially. The Danish guidelines suggest the Malaysian Timber Certification Council (MTCC) as proof of 'legal and progressing to sustainable'. Denmark has taken the lead in including this intermediate step between legality and sustainable wood. However, it has not developed a precise or operable definition of this step, nor have any validation procedures been developed. The stepwise approach (as described below) might play an important role in this context.

### **2.2.4 Social criteria**

26. The question of including social criteria over and above those legislated for in the producer country itself – for example, international health and safety standards amongst the logging workforce, or land tenure rights of indigenous communities – is controversial. Some of these criteria are reflected in the FSC certification scheme, which is widely accepted as proof of well managed production, and Denmark regards the use of social criteria in some way.

27. Denmark, for example, recommends that some social criteria should be included as an integral element of – and precondition for – sustainable forest management (equivalent to 'sustainably produced'). This approach reflects the view that ensuring future supplies entail addressing social aspects for forestry. This is considered to be in compliance with EU law, which does not allow timber purchasers to specify criteria not directly related to the subject matter of the contract, but provides room for interpreting the term "directly related".

28. The UK public procurement policy applies a more rigid interpretation of the term "directly related". Permitted criteria include the production and process methods of the timber and timber products, but not social or ethical issues that tend to have no discernible effect on product quality or performance. However, the UK policy does allow for the specification of criteria of sustainable forest management that have been, as a consequence, a benefit to social well being.<sup>38</sup> Unless such issues are covered by national law in the home country – e.g. health and safety legislation in the country of production – they will not be expressly considered in the contract specification, selection of suppliers or award of contracts. They will, however, be considered in the context of verifying legality. [Similar to other countries.](#) The UK approach indirectly includes social aspects if they form part of the criteria of acceptable forest certification schemes, i.e. to the extent that FSC is accepted to assure legal and sustainable, social criteria will be included.— This overall approach is based the

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<sup>38</sup> The Timber Procurement Advice Note: January 2004 states: "However, it is legitimate to require that forests are managed in sustainable ways that may also have the consequence of benefiting social well being. The model specification is drafted with this aim. The interests of people who depend on forests for their livelihoods or social well being may be protected to an extent as a consequence of forests being managed to sustain forest productivity, health, vitality and bio diversity. These are outcomes that can be legitimately reflected in production and process specifications because they relate directly to the material used to create the product being demanded. It doesn't matter that the finished product could look and perform equally well if made from trees grown in a badly managed forest. The Authority can legitimately specify production and process methods that can affect the physical product or sustain its future supply."

UK's interpretation of EU procurement directives (see further below), which is not consistent throughout the EU. Some countries, such as France, have not yet adopted a firm position on social criteria.

### **2.2.5 Scope -- (tropical or all timber, all forest products?)**

29. The national policies on sustainable public wood consumption vary considerably regarding the scope of the covered commodities and goods.

30. Danish procurement policy applies only to tropical timber and excludes paper.

31. Existing British policy applies to all timber and timber products as well as to paper products.

32. The coverage of the developing Dutch policy has not yet been decided, but may be those categories specified in the EU FLEGT draft regulation, i.e. raw timber, sawnwood and plywood, but not processed products (such as furniture) or paper.

33. French policy originated in an action plan on tropical forests, but the procurement policy, when implemented, will apply to all sources. The policy covers all categories, but with slightly stricter criteria for logs and sawnwood than for other timber products, paper and engineered wood. The French approach has been to distinguish between Category I products (timber, sawn and veneer products, and plywood), for which certification and information on origin, species, and suppliers is mandatory, and Category II products (all processed products) for which certain certificates are recommended.

### 3 Role of certification in meeting public procurement requirements

By Richard G. Tarasofsky

#### 3.1 Introduction

34. Certification of forests and forest products is widely recognised as an important instrument for achieving SFM. Several schemes have been developed, with different standards, governance structure, and geographical reach. In this respect, the 6<sup>th</sup> Community Environment Action Programme of the European Union calls for: stimulating the increase of the market share for sustainably produced wood, *inter alia*, through encouraging certification for sustainable forest management and encouraging labelling of related products.<sup>39</sup>

The EU's 1998 Forestry Strategy<sup>40</sup> lays down some basic requirements and also points to some of the challenges:

- 15. EMPHASISES that priority must be given to the improvement of public and consumer opinion about forestry and forest products, assuring them that forests are managed sustainably, noting that forest certification schemes are market-based instruments which seek to improve consumer awareness of the environmental qualities of sustainable forest management, to promote the use of wood and forest products as environmentally friendly and renewable raw materials, and that forest certification schemes should be comparable, and the performance indicators should be compatible with internationally agreed principles of sustainable forest management principles and, furthermore, that they should comply with conditions regarding their voluntary nature, credibility, transparency, cost efficiency, open access and non-discriminatory character with respect to forest types and owners, and considering that one essential point in ensuring credibility should be the independent audit of forest management;

INVITES the Commission to consider the possibility for further action at European Union level

35. Given the general support for the use of certification, it follows that this tool should also play an important role in public procurement policy. However, the actual role certification plays, and judgements about individual schemes, may vary between countries.

36. The Dutch policy will rest on its own certification system (a replacement of Keurhout), probably similar in principle to FSC. On an interim basis, procurement authorities are to rely on the Keurhout and FSC principles and criteria for guidance.

37. The French approach is rather flexible. The French scheme allows for certification, labels, declarations or other means of verification, depending on the category of forest product and type of purchase, but there is an expectation that the various options will become more stringent over time.

<sup>39</sup> Article 6.2 (h), Decision 1600/2002/EC of the European Parliament and the Council of 22.07.2002 laying down the Sixth Community Environment Action Programme.

<sup>40</sup> A Forestry Strategy for the European Union, COM(1998) 649, 03.11.1998.

38. UK policy to date has relied on FSC, or equivalent, as standards of sustainability, but the UK is in the process of establishing a comprehensive means of defining and verifying sustainability and legality – aimed partly at assessing existing certification schemes, but also at meeting the problem identified by the Danish guidelines, that of verifying alternative documentation. A Central Point of Expertise on Timber (CPET) was established in June 2004, and its work proceeded in phases. Phase One aimed to establish robust contract definitions for legal and sustainable timber, assess how well five of the major certification schemes provided assurance to customers, and revised current guidance. The assessment was of published criteria, not performance of the certification schemes. First, results of this work were announced in November 2004. Two of the five schemes were found to guarantee legal and sustainable timber, and the remaining three to guarantee legal, but not sustainable, timber.<sup>41</sup> The main hurdles facing those certification schemes that did not meet the standards of legality and sustainability included: the rigour of chain of custody requirements permitting mixing with uncertified material, participation of stakeholders, public consultation process, and the actual decision-making procedures. In 2005 after addressing the shortcomings, two more schemes<sup>42</sup> were found to guarantee sustainable timber after addressing the shortcomings. Successive phases will expand the Phase One work<sup>43</sup> and it is envisaged that in due course CPET<sup>44</sup> will be used by the entire UK public sector and its suppliers.

39. The Danish acceptability criteria for certification within their procurement policy are generally based on international consensus, as far as it exists:

- standards that are precise and measurable, developed in a consultative and open process, and ensuring legal and sustainable production
- a certification process that includes monitoring, assessment and final approval/rejection by a competent and independent third party
- a credible process for accreditation of certifiers
- traceability that covers documentation and monitoring of a wood product's journey from forest to end user
- precise rules of credible labelling
- trademark protection

40. In Denmark, FSC certification is considered a credible guarantee for legally and “sustainably” produced tropical timber (and MTCC certification for legal and progressing to sustainable). LEI and Keurhout are not in themselves regarded as adequate guarantees for legality or sustainability, although they may be used in conjunction with other documentation to satisfy both areas. The Danish policy recommends that alternative documentation should

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<sup>41</sup> See ‘Environment Minister Elliot Morley announces move to ensure government sourcing of legal and sustainable timber’, DEFRA press release 9 November 2004. The two schemes meeting the criteria for legal and sustainable timber were the Forest Stewardship Council (FSC) and the Canadian Standards Association (CSA).

<sup>42</sup> The Programme for the Endorsement of Forest Certification Schemes (PEFC), the North American Sustainable Forestry Initiative (SFI).

<sup>43</sup> Establishment of an interactive helpline service, facilitate consultations with stakeholders, develop education and training and help set targets for implementation.

<sup>44</sup> CPET is currently being run by two consultancies, ERM and ProForest. A steering group will be established to ensure that CPET is credibly independent.

be 'submitted for assessment to an impartial third party' but recognises that 'there are, as yet, no established systems for doing this'.<sup>45</sup>

41. In France, for Category I products, five forms of certification are acceptable:

- A certificate delivered by the producer and verified by an independent body proving that timber has been legally logged or, eventually, license of legality delivered by the logging country (this delivery must be verified in compliance with international agreements)
- A sustainable forestry management certificate verified by an independent body (existing sustainable forestry management certification schemes are said to give good guarantee *when* verified by an independent body)
- A document attesting a forestry management plan approved by a local authority and whose implementation is regularly verified by an independent body having forestry experience
- A document attesting that the forestry manager or owner subscribes to a code of good conduct which includes legal and sustainable forestry management commitments, and which is regularly verified by an independent body
- A document attesting that the supplier subscribes to a code of good conduct which includes commitments of buying timber from legal and sustainable managed forests and which is regularly verified by an independent body

For Category II (secondary) products, eco-labels or certificates of "sustainable" forest management are recommended. Beginning in 2006, further information on forest certification schemes and eco-labels will be publicly available.

## **3.2 Key controversies about the role of certification**

### **3.2.1 Acceptable alternative documentation?**

42. The UK and Danish policies clearly state that not all covered products need to be certified. The UK policy stipulates that acceptable evidence of sustainability includes certification or other documentary evidence.<sup>46</sup> The only example of evidence given is

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<sup>45</sup> Ministry of the Environment (Denmark), Purchasing Tropical Timber: Environmental Guidelines (2003).

<sup>46</sup> See Model Contract Specification Clause (revised September 2003):

3. Proof of Source of Virgin Timber

3.1 The Contractor is required to notify the Authority of the source or sources of all virgin timber supplied. Source in this context means the forest or plantation where the trees were grown and all subsequent places of delivery through the supply chain prior to receipt by the Authority. The Contractor shall separately identify virgin timber supplied from forests and plantations that are claimed to be subject sustainable forest management and shall submit to the Authority documentation in respect of such wood to confirm that the criteria for sustainable forest management set out in this specification have been met.

3.2 The Authority will accept evidence from either or both of the following two categories.

Category A evidence

3.3 An eco-label or a declaration certified by a qualified independent body whose organisation, systems and procedures conform to ISO Guide 65: 1996 (EN45011:1998) General Requirements for Bodies Operating Product Certification Systems and who have been accredited by a national or international organisation whose organisation, systems and procedures conform to ISO Guide 61: General Requirements for Assessment and Accreditation of Certification Bodies.

Category B evidence

“declarations by the Contractor or his suppliers”. Such evidence is subject to verification. It would appear that the onus and cost is on the supplier.

43. Regarding legality, the UK policy is to rely extensively on independent verification<sup>47</sup>:

- 6.1 The Authority reserves the right to decide whether the evidence submitted to demonstrate legality is adequate to satisfy the Authority that the timber is ‘legal timber’ and/or legally traded timber”. In the event that the Authority is not so satisfied, the Contractor shall, on written request by the Authority, commission and meet the costs of an independent report to (a) verify the source of the timber or wood and (b) assess whether the trees used were legally felled.
- 6.2 In this Contract<sup>48</sup> “Independent Verification” means a report by an individual or body whose organisation, systems and procedures conform to ISO Guide 65:1996 (EN 45011:1998) General requirements for bodies operating product certification systems, and who is accredited to audit against forest management standards by a national or international body whose organisation, systems and procedures conform to ISO Guide 61 General Requirements for Assessment and Accreditation of Certification Bodies.
- 6.3 Where the Contract requires the Contractor to acquire “sustainable” timber, as defined in the Specification, and to submit evidence to demonstrate compliance, the Authority reserves the right to decide whether the evidence of forest management is sufficient to satisfy the Authority that the specification has been fully complied with. In the event that the Authority is not so satisfied, the Contractor shall, on written request by the Authority, commission and meet the costs of an independent report to (a) verify the source of the timber or wood and (b) assess whether the forests of origin were managed in accordance with the specified quality standards.

44. In Denmark, acceptable alternative documentation includes supporting elements, which could be assessed by impartial third parties with market insight and knowledge about forestry conditions in the tropics. Without stipulating well defined requirements on alternative documentation, such documentation would appear to include:

- Certificates or verification schemes
- Export permits, certificates of origin, and other declarations from authorities and suppliers
- Concession agreements
- Documented eco-management system in accordance with ISO 14001 or EMAS II
- Specification of standards and guidelines for SFM, including information on the process for their development

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3.4 Documentary evidence other than Category A evidence. Such Category B evidence may include, for example, declarations by the Contractor or his suppliers. The Contractor’s attention is drawn to the General Conditions of contract which requires him or her to provide credible evidence on the source of products supplied that has been or can be independently verified as such by an individual or body whose organisation, systems and procedures conform to ISO Guide 65:1996 (EN 45011:1998) General Requirements for Bodies Operating Product Certification Systems: and who is accredited to audit against forest management standards by a national or international body whose organisation, systems and procedures conform to ISO Guide 61 General Requirements for Assessment and Accreditation of Certification Bodies.

<sup>47</sup> See New Guidance and Revised Model Contract Specification Clause (revised September 2003): 6. Independent Verification

<sup>48</sup> The policy refers to a model contract.

- Specification of principles and criteria
- Specification of methods for monitoring compliance standards
- Documentation for legally produced tropical wood in accordance with bilateral agreements (if any) between the EU and supplying countries

### **3.2.2 What about rival certification schemes?**

45. Denmark, the UK, and the Netherlands (on an interim basis) indicate preferences for certain certification schemes for both legality and sustainability. Germany, according to the coalition treaty of the 15<sup>th</sup> legislative period, clearly committed to a specific certification scheme. As indicated above, however, this part of the coalition treaty has not been transposed into acquisition guidelines. In the current coalition treaty of the 16<sup>th</sup> legislative period, the preference for one certification scheme has not been taken up. The preference for certain certification schemes can lead to considerable conflicts, particularly since there is a heated debate about the merits of rival schemes, and governments have divergent views about these. However, up to this point no formal challenges to the countries' assessments indicated above have taken place.

## 4 The impact of international and EU law on public procurement requirements

*By Richard G. Tarasofsky*

### 4.1 WTO law

46. In international law, the main legal instrument governing public procurement is the World Trade Organization's multilateral Agreement on Government Procurement (AGP). Thus, by its very nature, the AGP does not cover all WTO Members,<sup>49</sup> and its substantive scope is limited to monetary thresholds and country-specific Annexes. So far, there have been no legal rulings issued by WTO dispute settlement bodies that interpret the AGP provisions relevant to this inquiry – therefore no authoritative views can be asserted yet.

47. So far in the literature, there has been a general discussion on whether sustainable development conditions could be added to public procurement tenders. It would appear that the AGP does allow considerable flexibility to procurement authorities. The AGP allows national technical specifications of the procurement goods to refer to "... symbols ... marking and labelling, or the processes and methods for their production. ..." (Article VI(1)). This suggests possible scope to include labels for SFM in the technical specification. The use of particular labels appears to be frowned upon, as Article VI(3) GPA does not permit a requirement or reference to a particular trademark or trade name, specific origin, producer or supplier..... unless there is no sufficiently precise or intelligible way of describing the procurement requirement..." Where there is a reference to a particular "trademark, etc", the words "or equivalent" are to be included in the tender documentation (Article VI(3)). It is unclear whether this can also refer to labels asserting compliance with generic standards, as opposed to the more company-specific information that is contained in trademarks. Article VI(1) also specifies that technical specifications should not have the purpose or effect of creating unnecessary obstacles to international trade. As indicated above, there is no direct WTO jurisprudence on this provision. It is particularly unclear whether all process or production methods (PPMs) are permitted, especially since many such standards can be perceived as creating obstacles to international trade. In other discussions in the WTO, e.g. under the Technical Barriers to Trade Agreement, the legality of PPMs standards is subject to considerable controversy, although recent WTO Appellate Body rulings appear to allow for them.<sup>50</sup> And even if a wide approach to PPMs was permitted, it is unclear whether PPM standards that are based on social criteria -- which can be considered quite far removed from the end product – would be covered.

48. The AGP would appear to allow considerable scope to parties to use SFM criteria in their tender specification. There may also be a case, given the inherent ambiguity in the concept, for referring to a particular certification scheme. Article VI(2) states that technical specifications should be based on international standards where they exist. As the 2002

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<sup>49</sup> Membership so far consists mainly of OECD countries.

<sup>50</sup> E.g. WTO cases: Shrimp Turtle (WTO Appellate Body Report on U.S. - Import Prohibition of Certain Shrimp and Shrimp Products, WT/DS58/AB/R (October 12, 1998)) and Shrimp Turtle Implementation (Report of the Appellate Body, U.S. - Import Prohibitions of Certain Shrimp & Shrimp Products; Recourse to Article 21.5 of the DSU by Malaysia, WT/DS58/AB/RW (Oct. 22, 2001).

Sardines case indicates,<sup>51</sup> the WTO will not hesitate to interpret the content of international standards in determining whether a particular measure is covered by such a standard. At a minimum, labels' standards reflected in ISO standards would likely be covered, but as indicated above, there are no ISO standards on SFM. However, labelling schemes that are adopted in accordance with ISO mandated procedures may possibly be covered by this provision. Other possible entry points for SFM criteria are in the supplier qualification and award stages. In the first instance, the holders of certificates may be better able to demonstrate their ability to carry out the terms of the tender, although Article VIII probably does not allow the setting of a requirement to hold a particular SFM certificate. As regards the contract award stage, some flexibility is provided in Article XIII for procurement authorities to go beyond pure economic considerations and award the most "advantageous" bid. In addition, some optional clauses are permitted, but they must not circumvent the provisions of the AGP. All of this might allow procurement authorities to favour suppliers providing a certain SFM certification or equivalent guarantee.

49. Both WTO and EU procurement rules rest on principles of non-discrimination (against products deriving from parties to the AGP, and from other EU member states, respectively). In theory, this could give rise to a WTO challenge to procurement policies covering only tropical timber, though not many tropical countries are signatories to the AGP. However, since Denmark's policy – being the only one focusing on tropical timber – is voluntary rather than mandatory, however, and it could survive a WTO challenge. A more likely challenge would come from an AGP party that is closely aligned with a certification scheme that is not favoured by a national procurement policy. However, a possible defence from those countries that make reference to such certification schemes is that they also allow for alternative documentation.

50. Finally, even if a procurement rule was found to be afoul of such a substantive provision, there is an exception for the protection of animal, plant life, or health (Article XXIII). There is only a limited case law on similar provisions in other WTO agreements in relation to labelling. The 1991 GATT Panel on Mexican Tuna (not adopted) found that a "dolphin safe" label on tuna cans was not inconsistent with the GATT.<sup>52</sup>

## **4.2 EU law**

51. Until 2004, EU legislation in the field of public procurement was covered by four different Directives dealing with services, supplies, works and utilities; some of it dating back to the early 1970s. On March 31, 2004, these four Directives were replaced by two new ones: Directive 2004/18, on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (the 'classical' directive) and Directive 2004/17, on the coordination of procurement procedures of entities operating in the water, energy, transport and postal services sector (the 'special sectors' or "utilities" directive). Member states have until January 31, 2006 to transpose these Directives into national law.

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<sup>51</sup> Appellate Body Report, European Communities — Trade Description of Sardines, adopted on 23 October 2002.

<sup>52</sup> GATT Dispute Panel Report on U.S. Restrictions on Imports of Tuna, Sept. 3, 1991, GATT B.I.S.D. (39th Supp.) at 155 (1993).

52. The application of old Directives to 'green procurement' was disputed. It was always clear that some environmental criteria could be included in the technical specifications of a tender when it was drawn up, but the Commission argued that such criteria, at the award stage, could only be considered to a very limited extent, as they did not necessarily bring an economic advantage that directly benefited the public authority.

53. However, in September 2002, in the Concordia bus case (which covered the purchase of low-emission buses by the City of Helsinki),<sup>53</sup> the European Court of Justice ruled that non-economic factors (such as noise levels or pollution) *could* be taken into account at the award stage, so long as they satisfied four specific criteria. According to this landmark decision, the criteria used to determine the "economically most advantageous tender" must be linked to the subject matter of the contract, must not confer unrestricted freedom of choice regarding the contract award upon the awarding authority, and must be applied transparently and in a manner that does not discriminate against bidders from any other member state of the EU.<sup>54</sup>

54. The effect of this ruling has made its way into the new directives, but their exact application is unknown. However, the Commission's website<sup>55</sup> summarises its position as follows:

- Technical specifications: both environmental product characteristics and production methods can be specified, and criteria set out in eco-labelling schemes can be referred to (without requiring a specific label to be used), though the methods must be relevant to the product being purchased.
- Variants: the contracting authority may specify a base set of technical specifications, and a (specific) green variant. Companies can submit bids for either.
- Selection criteria: may be included in the contract; covers issues like exclusion criteria (e.g. convictions for an environmental offence, non-payment of taxes, etc.) and technical capacity criteria (does the bidder have the necessary capacity and experience for the contract?).
- Award: environmental factors, such as emission levels, or energy consumption levels, can be used in the award of the contract, and they do not have to bring a direct advantage to the contracting authority itself.
- Contract performance: specifications such as delivery of products in bulk rather than separate containers, but must always be clearly specified and related to the execution of the contract.

55. The new directives also recognise the specifications of eco-labelling schemes to be used for environmental characteristics relating to performance of functional requirements,<sup>56</sup> which should include those labels that are awarded in the framework of forest certification. The directives lay out some rules for such specifications, i.e. they must be appropriate to define the characteristics of supplies/services that are the objective of the contract, they must be drawn up on the basis of scientific information, they must be adopted through procedures

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<sup>53</sup> C-513/99, Concordia Bus Finland Oy, [2002] ECR. I-7213)

<sup>54</sup> *Ibid*, at para. 59-69, see in particular para. 64.

<sup>55</sup> <http://europa.eu.int/comm/environment/gpp/index.htm> .

<sup>56</sup> See Article 23(6) of Directive 2004/18/EC.

involving all stakeholders, and they must be accessible to all interested parties.<sup>57</sup> Thus, while products carrying those labels are presumed to comply with the technical specifications, other forms of evidence of compliance must be accepted by procurement authorities from those who are not certified to use those labels.<sup>58</sup>

56. The Commission's publication *Buying green! A handbook on environmental public procurement*, published in August 2004,<sup>59</sup> recognises the current debate around legal and sustainable timber, and contains a section specifically on the topic. It concludes the following:

***Some useful technical specifications for timber purchase***

*For example, the following criteria can be used in the technical specifications of a contract that is sustainable in environmental terms:*

- The assurance that the rate of harvesting of timber does not exceed levels that can be permanently sustained.*
- Use of environmentally friendly non-chemical methods of pest control, and the avoidance of chemical pesticides.*

As with all technical specifications, only those specifications which are related to the subject matter of the contract may be included. This means that specifications of a scheme on, for example, the protection of forest-dependent people, may not be included.

However, one can as a purchasing authority, indicate in the contract notice or tender documents that a forest certification scheme will be accepted as a possible means of proof of fulfilment of these requirements. One must, of course, accept equivalent means of proof too.

Since such forest certification schemes often include other requirements concerning the legality of the harvesting of the timber not linked to the tender in question, the promotion of such schemes will indirectly increase chances of the wood being harvested from legal sources.<sup>60</sup>

57. Despite the respective terms of the Commission Handbook mentioned above, there are some views that the Directives are broad enough to include all sustainability criteria, particularly regarding technical specifications. Ultimately, the question revolves around how close the product characteristics are to sustainability criteria. The directives suggest that there must be a measurable connection between the specifications and environmental characteristics.<sup>61</sup> Procurement authorities can also take into account production processes in developing technical specifications,<sup>62</sup> some of which may have an indirect connection to

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<sup>57</sup> Ibid.

<sup>58</sup> Ibid.

<sup>59</sup> SEC(2004)1050, available at <http://europa.eu.int/comm/environment/gpp/>

<sup>60</sup> Ibid., section 3.4.5, pp. 24–25.

<sup>61</sup> E.g. see Article 23 of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.

<sup>62</sup> See. E.g. See definition of “technical specification” for public works contracts, Annex VI of Directive 2004/18/EC, *ibid.*.

social issues. And it would appear that using certification as a proof of compliance with public procurement rules, social issues could be indirectly promoted.

58. But ambiguities also exist regarding the award criteria. According to the award criterion “economically most advantageous tender”, there must be a link to the subject matter of the contract that is specific and quantifiable.<sup>63</sup> FERN<sup>64</sup> suggested<sup>65</sup> in 2004 that although the assessment of tenders is now no longer limited to purely economics, the current rules may not permit award criteria to relate to matters of no direct economic concern to the contracting authority (e.g. social issues of forest-dependent peoples). There are opposing views, however, arguing that some of the old European Court of Justice case-law on procurement may still be relevant in allowing national governments flexibility to set additional own requirements, so long as the non-discriminatory and transparency requirements of the directives and the EC treaties are met.<sup>66</sup>

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<sup>63</sup> ECJ, *op cit.* fn. 49 para. 60.

<sup>64</sup> FERN is the Forests and the European Union Resource Network ([www.fern.org](http://www.fern.org)).

<sup>65</sup> FERN (2004) *To Buy or Not to Buy*.

<sup>66</sup> E.g. CEI, Beentjes, and Nord-Pas-de-Calais cases.

## **5 Practical possibilities and obstacles in the way of making public procurement policies fully effective<sup>67</sup>**

*By Peter Sprang*

### **5.1 Identification of forest and chain of custody certification as a practical option to a public procurement policy**

59. This chapter covers the benefits and obstacles a public procurement scheme will face if forest and chain of custody certification is chosen by policy makers as a tool to ensure effectiveness. The backing of a recognised certification scheme and the use of independent third-party auditors should reduce the resistance of companies and suppliers to providing information on where they source materials. Practical obstacles may arise, although these will be minor compared to those faced if a recognised certification scheme is not used. As a consequence and apart from forest certification, the submission of equivalent ways of proof must be permitted.

### **5.2 Practical possibilities and obstacles**

60. The advantages of combining a procurement programme with a well-defined (forest and chain of custody) certification scheme should be recognised. If such a certification scheme is used, the effectiveness of a procurement programme can be increased. A procurement programme need not duplicate the efforts made by a certification scheme, but can rather build on the experiences and information offered by a certification scheme. Since these schemes work through independent third-party auditors, companies and suppliers should generally not object to provide information on where they source materials. Practical obstacles may arise, although these will be minor compared to those faced if a recognised certification scheme is not used.

61. Not all certification schemes or equivalent ways of proof are equally suitable for the purposes of a public procurement programme. To be effective, a certification scheme must not only cover the forest management system but also all the steps of processing, trade and sales (the chain of custody, or simply CoC). Only if the entire CoC, from trees in the forest to the procured end-product is certified, can any claim associated with the product be taken seriously. An established CoC certification scheme can define product categories, types of companies (brokers, traders and agents, for example, have to follow different requirements) or different types of CoC system used (physical separation, batch-run production, percentage based production, credit account system, input-output system, etc.). The previous list illustrates that there are many ways that a CoC certification system can be applied in a given case. These specifications have grown over time and generally follow the demands of producers, who want to keep things practical, efficient and well-defined.

62. The importance of the chain of custody can not be overemphasized when discussing practical obstacles to making public procurement fully effective. Procurement policies should take into account from the start, including both forest certification and chain of custody

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<sup>67</sup> Effective in the sense that the policy excludes illegal timber from the market and ensures the use of timber from well managed forests..

certification. The chain of custody is an important practical solution to link well-managed forestry with public procurement schemes. Processing companies and traders are generally familiar with the concept of CoC standards, but have no particular interest in or understanding of forest certification or concepts of well-managed forestry.

63. There is a risk if the process becomes too complicated, that end-users could replace wood with other materials. For example, an architect installing window-frames could use plastic instead of wood. This would be clearly contrary to the aim of forest certification and the EU Resolution<sup>68</sup> to promote the use of wood and forest products as environmentally friendly and renewable raw materials.

### **5.3 Incompatibility of different schemes**

64. There is no reason for a procurement programme to demand “equivalence” of schemes, as long as they all meet certain minimum requirements. While choosing these requirements it must be kept in mind that different schemes may prove to be incompatible in practice. Obstacles are likely when schemes do not mutually recognise each other. For example, the Forest Stewardship Council (FSC) and the Programme for the Endorsement of Forest Certification Schemes (PEFC), the only two multinational certification schemes currently available, do not share mutual recognition. A producer who is following a public procurement programme that specifies, for example, that FSC and PEFC are equivalent, will face practical obstacles if he only holds a Chain of Custody certificate for one of the schemes. While the public procurement programme views material under either scheme as equivalent, a CoC auditor following one of the two schemes cannot recognise it as such.

### **5.4 Lack of awareness**

65. In Denmark, as described in 5.1, a guideline for the public procurement of forest products was introduced that recognises one particular scheme as a credible guarantee for wood produced legally and “sustainably”. A Danish ENGO (Nepenthes) interviewed 35 municipalities about the guide; the results<sup>69</sup> of these interviews showed that only half of the municipalities knew about the guide and only one municipality had considered it in their public purchasing. It should be noted, however, that the data was collected by the ENGO before the government had initiated an information campaign and held a workshop in 2004.

66. The case in Denmark highlights that clear communication is needed to make a public procurement scheme effective. This is an area in which forest certification schemes can play a vital role. With the help of their communication facilities and supporting organisations, a wider range of public bodies can be reached and guided on the implementation of a given procurement programme.

### **5.5 Forests that are not managed well**

67. Forest certification is not the goal but rather a tool to demonstrate that a particular enterprise is managing its resources well. If a public procurement programme chooses forest

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<sup>68</sup> Article 15 of the 1998 Council Resolution on a Forestry Strategy for the EU.

<sup>69</sup> Results were written in Danish, information based on communication with P. Feilberg, director of NEPCon and Jens Kanstrup, technical adviser for Nepenthes.

certification as one of truly equivalent means to provide a market preference for products from such forests, it is important to keep in mind that this tool is a fairly new one, and that despite significant progress towards independent verification of well managed forestry in Europe and North America, this process has not reached many natural or semi-natural forest management operations in the tropics. Bolivia is one of the few exceptions<sup>70</sup> with more than 2 million ha of (semi-)natural tropical forests certified under the FSC. This lack of certified tropical timber may introduce practical obstacles for importers dependent on such timber. If forest certification is made a requirement for public procurement, many importers of tropical timber will find that they have to change their sources of supply until the management practices of their previous supplier improve to where they can be certified. While this is an obstacle for many, it will be an opportunity for those who have invested in improving forest management in the tropics and have been certified. Market recognition of these few leaders is in fact needed to spread the word that it pays to manage forests well.

### **5.6 Particular products that are currently not available in certified form**

68. Particular types of wood or finished products (such as maps) may not yet be certified. This provides a practical obstacle that deserves exploration. The process of hydraulic engineering (renovation of waterworks) in the Netherlands, for example, is dependent on the use of hardwood that meets technical standard requirements. These requirements are met by the Bongassi (Azobe, “ironwood”) species, which is widely available in the Congo basin but has not yet been certified by any of the recognised certification schemes. In the event that no enterprise clearly committed to sustainable forestry can be identified in the Congo basin, there is nevertheless the possibility of financing studies to identify alternative, lesser-known species that are harvested from certified forests.

69. The support of lesser-known species is particularly important to tropical forestry based on (semi-) natural forests. If forestry in these ecosystems comes to depend exclusively on well-known species, it could easily lead to plantation forestry rather than using the wide range of species available in a natural forest. By establishing a market for previously economically unattractive species, management of the natural forests in which they exist may become economically feasible. Although this has less to do with practical obstacles, the point should be made that the support of a diversified market for timber from (tropical) natural forests may help maintain them.

70. Procuring small amounts of certified timber may be problematic, illustrated by a small carpentry business<sup>71</sup> using certified timber for a municipality construction site. The quantity of certified timber to be used may be fairly small, in which case the carpenter may not be able to obtain such volumes on the market. While suppliers might be able to provide a large quantity of certified material, they may not be co-operative in supplying amounts of the product below a certain volume. Even if a supplier is willing to provide the requested quantity of a product, it may be time consuming to arrange the desired order.

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<sup>70</sup> Indonesia has provided the latest cases of successful FSC certification of large scale natural forest management.

<sup>71</sup> Interview with the contact person for *Meisterteam Gruppenleitung LGF GmbH* (GFA-CoC-2029) a group certificate holder of small carpenter enterprises during the Interzum Fair, May 2<sup>nd</sup> 2005.

## **5.7 Mix of certified and non-certified material**

71. Based on the realities of the practices of large plywood factories, as well as paper and sawmills, there are alternative CoC certification procedures that allow for the mixing of certified and non-certified material. This mix can be based on distinguishing the sources of different parts of a product (e.g. in a piece of furniture), although this method still requires the physical separation of the constituent parts. The mix may also be calculated using an input-output model, which does not trace the real physical flows of certified material, but simply takes into account the amount of certified material that enters production and calculates the possible number of certified finished products.

72. A company producing an input-output “FSC mixed” product is subject to certain restrictions. These mainly concern the non-FSC material that can be used in the production of “FSC mixed” products. The FSC expects that these materials are verified as “controlled” and exclude: a) wood harvested from forest areas where traditional or civil rights are violated, b) wood harvested from non-FSC-certified forest areas having high conservation value and which are threatened, c) wood harvested from genetically modified (GM) trees, d) illegally harvested wood, e) natural forest that has been converted to plantation or non-forest use. Any wood that cannot be declared as “controlled” will need to be physically separated. Following these rules, a minimum claim of a “mixed product” is considered credible. This approach reduces companies’ practical obstacles to supplying certified products as long as they can demonstrate that their purchased wood is of legal origin.

## 6 Impacts on developing country exporters

*By Richard G. Tarasofsky and Peter Sprang*

73. There has been a great deal of debate about the impacts of certification schemes on developing countries, illustrated by the summary report<sup>72</sup> of a meeting in October 2004 of The Forest Dialogue<sup>73</sup>:

“... there was an almost universal agreement [among the participants] that none of the systems have had very much impact on critical forest-related issues in the developing economies. Many companies and other users are shifting their energy from the debate over standards in Europe and North America to their business needs in the developing world. Debate on which system is "better" at the high end becomes meaningless to them when it is unclear whether some countries or areas meet preconditions to even begin a journey towards certification. Emphasis focused on issues related to illegal logging (corruption, laws, enforcement, etc.) and basic social needs and human rights (rights of indigenous peoples, worker rights and safety, etc.). This suggested a significant opportunity for certification schemes and their users to collaborate to develop common "starting points" for phased approaches to certification. Realistic expectations need to be developed about degrees of sophistication and potential rates of progress toward typical standards in the absence of requisite infrastructure from "rule of law" to availability of enforcement, technology, research, trained personnel, etc.”

74. While recognising the impact on transition countries, the current situation for most developing countries is, that they take no share of the certified natural forest area. Less than 0.5% of the world's tropical forest area is certified and less than 10% of all certified forests are tropical. With the exception of nearly 2 million ha of FSC certified natural forest in Bolivia and smaller areas in other countries, most of the certified area in the tropics are plantation forestry.<sup>74</sup> In addition, it has been argued that forest concessions which have now been certified, were already performing well prior to their certification, and therefore the impacts of certification on forest management has been limited. Contrary to this opinion, the example of FSC certification shows a number of issued pre-conditions, conditions and corrective action requests (CARs) which reflects the changes and therefore the impact forest certification has on concessions. These conditions and CARs are publicly available on the certification body's web-pages as part of the public summary. Under the FSC, a company has to reach and maintain a level of performance before a certificate can be issued. In Indonesia in mid-2000, for example, five plantation areas of teak and pine with a combined area of approximately

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<sup>72</sup> Scott Wallinger and Nigel Sizer: Co-Chairs' Summary Report of the 2nd international stakeholder dialogue on Forest Certification (19-21 October 2004); <http://research.yale.edu/gisf/assets/pdf/tfd/secondfcsu.pdf>

<sup>73</sup> The Forest Dialogue (TFD) is a group of individuals from diverse interests and regions that are committed to the conservation and sustainable use of forests. TFD is hosted by the [Global Institute of Sustainable Forestry](http://research.yale.edu/gisf/tfd/) at the School of Forestry and Environmental Studies at Yale University. <http://research.yale.edu/gisf/tfd/>

<sup>74</sup> For details please refer to [www.certified-forests.org](http://www.certified-forests.org), with regularly updated detailed country charts, statistical graphs and maps

100,000 ha, were certified under the FSC. However, when the plantations came under new management, there was an increase in illegal logging and social conflicts. By the end of 2001, all these certificates were suspended by the certification body SmartWood after it became apparent that practice was no longer in compliance with FSC requirements. This shows that certification alone will not guarantee the continuation of good forest management if socio-political circumstances work in opposition.<sup>75</sup>

75. There may be a number of reasons for this situation, ranging from inappropriateness of certification standards, developing country contexts and lack of consideration of forests in the context of broader land use issues (e.g. agriculture), to incompatibility between certification standards and local laws, especially in relation to social issues.<sup>76</sup> In addition, the long term benefits for developing countries are unclear and the costs of certification tend to be higher for tropical forests than for temperate ones.<sup>77</sup>

76. Those companies which have invested in achieving credible certification deserve, and to some extent, depend on the market benefit for receiving public procurement orders. With the exception of plantation timber and countries like Bolivia, the possibility of using forest products certified as legal and “sustainable” from developing countries to meet public procurement targets is still rather small. It is likely that certification of products from natural forests in developing countries will have more to do with legal requirements than sustainability. An implication of this might be that developing country exporters would need alternative documentation to demonstrate compliance with certain standards designed specifically for their circumstances. Public procurement schemes can therefore either reward achieved forest certification or recognise companies which are clearly working towards certification.

77. One way to address/approach this might be the previously mentioned documentation of continuous improvement, with a goal to reach forest certification at a later stage. There are several approaches to this, with the aim of raising companies’ forest management practices above the threshold of performance-based forest certification. One method is the Stepwise Approach by the Global Forest and Trade Network (GFTN), the Certification Support Programme (CSP), and the Tropical Forest Trust (TFT) is the final recognised method. The CSP is currently operating in South America, Malaysia and Papua New Guinea. The purpose of the TFT is to financially assist forest enterprises, for example when they want to carry out a scoping audit to assess how close they are to being certified. Stepwise improvement activities can include the start of stakeholder consultation processes, manager training, writing management plans, identifying high conservation value forest areas, solving land tenure conflicts, or closing technology gaps.

78. Positive examples exist in the case of Brazil and Bolivia, where the management of large areas of tropical forest received FSC certification.<sup>78</sup> These promising cases contrast with the difficulties forest enterprises face, in other tropical countries, to reach the stage of certification by a recognised forest certification scheme. Therefore, any public procurement programme is advised to allow for a special status of forestry operations which have taken

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<sup>75</sup> Several FSC forest certificates which were issued in early 2006 in Indonesia (East-Kalimantan) indicate that the socio-political situation does allow FSC certification in Indonesia.

<sup>76</sup> Forest Certification: Pending Challenges for Tropical Timber, ITTO Technical Paper 19, October 2002.

<sup>77</sup> Ibid.

<sup>78</sup> FSC certified area as of 10<sup>th</sup> October, 2005: Brazil: close to 3.5 million ha; Bolivia: close to 2 million ha

clearly defined and measurable steps towards reaching the forest certification required by the programme. A list of such operations could be developed in cooperation with the selected forest certification scheme, their accredited certification bodies and the organisations CSP and TFT mentioned above. Wood from these sources can be integrated in a FSC supply chain, since the new FSC Chain of Custody standard (approved in September 2004) allows for mixture of FSC wood with “controlled wood”. This would help to avoid opening up loopholes for companies which are not clearly committed to reaching the required certification scheme. At the same time, it should be kept in mind/it should be noted that any forest certification scheme has limited influence on the socio-political framework in a given country. If permanent socio-political obstacles to legal procedures or good management are identified in particular countries, such countries can be recorded in a register of areas excluded from the supply.

It is possible that “controlled wood” could be used as a minimum requirement for a procurement programme, while “certified wood” could be given preference.

# Part 2: Public Procurement and Forest Certification - A survey and comparison of major certification schemes: FSC, PEFC, CSA, MTCC and SFI

By Peter Sprang<sup>79</sup>

## 1 Introduction

79. The first forest certification scheme<sup>80</sup> was established about 15 years ago. The CEPI comparative matrix<sup>81</sup> illustrates how such schemes have proliferated since. The increase in complexity is amply represented by the volume of technical documentation.

80. A new discussion of the subject is therefore important in order to recognise the most recent documents. But while this development is a sign of the continuous evolution of forest certification as a concept, it has become increasingly difficult to distinguish between the different certification schemes. Indeed, the differences between schemes appear to diminish with every contribution to or revision of the technical documents. One option, of course, would be to conduct increasingly complex comparative studies taking all these documents into account.

81. Through a review of the latest available documents and on the ground results, this comparison study attempts to contribute new aspects to the discussion. These results will depend on how the comparison is designed. For example, if the question is asked “Are stakeholders invited to participate?”, there will be little difference between the answers, but if it is posed “Which stakeholders participate?” a large degree of differentiation between the schemes may be expected. This comparison will try to identify such differences and locate the explanations for such differences in the technical documents. It is worth noting that by the time a survey is completed, further revisions of technical documents will have been conducted, possibly outdating previous findings.

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<sup>79</sup> Peter Sprang wrote a thesis, titled *Aspects of quality assurance under the certification schemes FSC and PEFC* at the University of Freiburg, Germany, in 2001 available at the gtz forest certification database of documents in English and Spanish language: <http://www.gtz.de/de/dokumente/en-d42-aspects-quality-assurance-certification-schemes-fsc-a.pdf>

<sup>80</sup> The SmartWood program of the Rainforest Alliance

<sup>81</sup> European Confederation of Paper and Pulp Industries (CEPI) comparative matrix of forest certification schemes, 2004 [www.cepi.org/files/Matrix%20leaflet%2004-133618A.pdf](http://www.cepi.org/files/Matrix%20leaflet%2004-133618A.pdf)

## 2 Schemes chosen for this comparison

82. This is not an in-depth review of the details of every scheme but attempts to identify the main similarities and differences between them. More detailed findings are provided for the two international schemes: the FSC International, herein referred to as FSC and the PEFC Council, referred to as PEFC. Whenever FSC or PEFC national schemes are mentioned, they are specified as such. Three large national certification schemes have also been included.

- The CSA (Canadian Standardisation Association) is not only of interest as a national scheme, but also provides a case study of PEFC application as it was endorsed by the PEFC Council in 2005.
- The SFI (Sustainable Forest Initiative) from North America has been included.
- The MTCC (Malaysian Timber Certification Council).

83. Further schemes, such as the recently PEFC-endorsed Australian and Brazilian schemes, have been chosen as single case references. A summary table is provided at the end of this part, followed by an Annex describing the documents used.

## 3 Review of individual schemes

### 3.1 *Historical overview and status quo*

84. When first introduced, forest certification was seen as an alternative to the boycotting of tropical timber promoted by many Environmental Non-Governmental Organisations (ENGOS) in the 1980s.<sup>82</sup> The first practical example of forest certification dates back to 1989, when the SmartWood program responded to the requests of furniture manufacturers for assurances that purchased wood was sourced from well managed tropical forests.<sup>83</sup> Following the establishment of the SmartWood program, the proliferation of claims of "sustainable" forest management increased the need for an accreditation organisation that could ensure the quality and credibility of such claims. The Forest Stewardship Council (FSC) was established in 1993 to fulfil this need. Despite the aim to limit the number of certification systems, other certification schemes continued to be developed during the 1990s, such as the MTCC in Malaysia and LEI in Indonesia. In 1999 the Pan European Forest Certification Council (PEFC) was established, which in 2002 changed its name to the "Programme for the Endorsement of Forest Certification schemes".

85. In 2005, forest certification was dominated by the FSC and the PEFC, the only two schemes considered multinational. In May 2005, FSC was responsible for about 700 forest management certificates in 66 countries, covering an area of close to 54 million hectares.<sup>84</sup> PEFC had endorsed the same area (55 million hectares) in December 2004, and almost

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<sup>82</sup> N. Vallejo, P. Hauselmann, p. 2

<sup>83</sup> N. Vallejo, P. Hauselmann, p. 2 and R. Donavon, SmartWood Director, personal communication

<sup>84</sup> Exact number: 698 certificates covering an area of 53.907.555 ha. Detailed pdf list at Forest Stewardship Council *FSC Certified Forests*, May 10<sup>th</sup> 2005 ([www.fsc.org](http://www.fsc.org)), accessed May 30<sup>th</sup>, '05

doubled this area by March 2005 following its endorsement of the Canadian certification system (CSA).<sup>85</sup>

## **3.2 Forest Stewardship Council (FSC)**

### **3.2.1 Application and Governance**

86. The FSC remains the only provider of a worldwide<sup>86</sup> forest certification scheme based on an uniform set of Principles and Criteria<sup>87</sup>. The FSC-governance structure involves an international centre<sup>88</sup>, regional offices and national FSC working groups, mainly responsible for standard development. The FSC maintains worldwide control of scheme development and governance, certification, accreditation (including annual on-site visits of each certification body's office and field work) and chain of custody.

87. FSC differs from PEFC certification in that it controls the implementation of respective requirements, using the same set of systems<sup>89</sup>. In contrast to PEFC, FSC has not endorsed any other schemes or standards or come to an agreement of mutual recognition<sup>90</sup>. However, there are more than 15 certification bodies accredited under the FSC and all of these mutually recognize the certificates issued by the other. At the time of writing, there was only one case in one country<sup>91</sup> for which FSC and PEFC had independently agreed to use the same forestry standard for certification.

88. A difference between FSC and PEFC is that the FSC makes certification possible in countries without their own national scheme. Certification bodies accredited under FSC can conduct assessments based on interim standards<sup>92</sup>. Such a procedure is applied wherever there is no FSC national working group and therefore no specification of the FSC Principles and Criteria has been endorsed.

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<sup>85</sup> PEFC *A short history* and *PEFC members & schemes* ([www.pefc.org](http://www.pefc.org)), accessed May 30<sup>th</sup>, 2005.

<sup>86</sup> At the end of September 2005, FSC certification existed in 65 countries.

<sup>87</sup> ProForest: *Use of the questionnaire for assessing the comprehensiveness of certification schemes/systems* (in this paper referred to as: QACC final report), June 2005, page 25 recognises FSC's international PC&I (on which national standards are based) to be widely recognized and to provide equitable principles and criteria. The PEFC does not pass this question with satisfaction. The QACC final report is available at the homepage of the World Bank under: [http://lnweb18.worldbank.org/essd/envext.nsf/80ByDocName/ASynthesisReportonuseoftheQACC/\\$FILE/Final+report+QACC++Synthesis.pdf](http://lnweb18.worldbank.org/essd/envext.nsf/80ByDocName/ASynthesisReportonuseoftheQACC/$FILE/Final+report+QACC++Synthesis.pdf)

<sup>88</sup> Since 2003 the FSC International Center has been located in Bonn, Germany. It was previously located in Oaxaca, Mexico.

<sup>89</sup> Single Enterprise certification, Group of Enterprises certification, Enterprise with Multiple Sites certification; Small and Low Intensity Forest Management certification (SLIMF).

<sup>90</sup> The process of mutual recognition so far has come closest with the Indonesian LEI scheme, where a MoU was signed and joint certification assessments have been conducted.

<sup>91</sup> The UKWAS standard in the UK; in Sweden no agreement on Indigenous Peoples' rights was found.

<sup>92</sup> Interim standards are developed through a revision of a certification body's generic standards according to national or regional conditions.

### **3.2.2 Key supporters**

89. FSC is unusual in that it receives continuous support from different interest groups, notably large international representatives from the business<sup>93</sup> and NGO sectors, who were previously unable to reach a compromise. This compromise is so far upheld by large international Environmental Non-Government Organisations (ENGOs) like WWF and Greenpeace, who support<sup>94</sup> the FSC but do not support other certification schemes. The QACC study points out<sup>95</sup> that only the FSC provides “meaningful participation in decision making by all major stakeholder groups<sup>96</sup>” because when the PEFC and FSC were evaluated using the following questions, only FSC was favourably evaluated against all<sup>97</sup>:

- Are there mechanisms for participation of all major stakeholder groups in the governance of the certification scheme/system?
- Are all major stakeholder groups represented at the body's meetings?
- Have all of the major stakeholder groups participated in the development of the system?
- Have any of the major stakeholder groups been absent from the development of the system/scheme?.

90. This difference is partly related to the balance of powers within the FSC voting system: each chamber (environmental, economic and social) has equal voting rights and no chamber shall show sustained opposition. Furthermore, the FSC has a long track record for suspending or terminating certificates for various reasons. For example, the suspension of several teak plantation certificates in Indonesia in 2001, several garden furniture producers and traders in Vietnam over the last two years and a paper factory in Estonia<sup>98</sup>. In many cases the suspension was issued by one of the certification bodies, suggesting that they are independent from the companies they assess and audit.

In recent months, the PEFC also used suspension for the first time.<sup>99</sup>

### **3.2.3 Audit intensity and transparency**

91. The results of previous comparative studies<sup>100</sup> suggest that FSC generally operates under stricter performance standards, a finding supported by the recent UPM field-test<sup>101</sup>.

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<sup>93</sup> Examples are those companies who have obtained FSC certification ([www.fsc-info.org](http://www.fsc-info.org)) or are participating in the Global Forest and Trade Network (GFTN).

<sup>94</sup> This does not imply that WWF or Greenpeace agrees with all the individual certificates issued under the FSC. Those certificates, issued under a certification body's standard have been particularly subject to challenge and objections to the process of developing certification body's standards are expected to be brought up during FSC's next general assembly.

<sup>95</sup> ProForest, QACC final report, June 2005, page 21.

<sup>96</sup> Major stakeholder groups include:  
Forest owners and managers including industrial, non-industrial private and community; Government; Environmental NGOs; Social NGOs including representatives of indigenous peoples and communities; Product manufacturers, distributors, retailers and consumers; Academics, researchers and other technical experts.

<sup>97</sup> QACC Version 1.3-1, dated 31<sup>st</sup> of January, 2005, page 6.

<sup>98</sup> Many of these suspensions were issued by the certification bodies without a dispute resolution process or external challenge.

<sup>99</sup> The PEFC suspended the Swiss Q-label scheme for three reasons, one being the failure to provide public summaries of certification reports. PEFC-News, dated 18<sup>th</sup> of November, 2005.

<sup>100</sup> FERN, Footprints in the forest – current practice and future challenges in forest certification, 2004.

Even under the audit regulations for small and low intensity forest management (SLIMF), annual (desk) audits have to be conducted. During an audit, Corrective Action Requests (CARs) with deadlines may be issued. This is not a unique procedure for the FSC, but these CARs are publicly available under the FSC scheme (as part of the certification body's summary report for each FSC forest management assessment or audit). The MTCC and PEFC Germany have made CARs publicly available, but this has so far been a rare exception among PEFC Council endorsed schemes.<sup>102</sup> These CARs, in combination with the publicly available standards, allow external parties involvement in audits since they can contact the certification body if they see evidence of non-conformance. Furthermore, these CARs can be evaluated to demonstrate improvement of management practices of a certificate. Certification bodies<sup>103</sup>, individual researchers<sup>104</sup> and as mentioned above, WWF, have used these CARs to assess the impact of FSC certification. The impartiality of these assessments may be in doubt and therefore caution must be exercised in their use. However, for the purpose of this report the findings which are based on available documents have been included.

### **3.2.4 Inconsistencies**

92. Although there is one set of Principles and Criteria<sup>105</sup>, there is a degree of variation on the level of FSC indicators, which define how conformity with a criteria is measured at the national or regional level. This variation is necessary in order to certify different types of forestry. Variation may also occur across the same region if, for example, less input from the forest industry in some national or regional standard-setting processes has allowed an emphasis to be placed on environmental indicators<sup>106</sup>. As an example, the FSC Maritimes Standard was evaluated in the case of application for UPM as difficult to achieve for many forest industry companies practising the commercial forestry typical of New Brunswick (Canada). Generally the case of UPM showed that FSC standards were deemed more ambitious since they led to higher numbers of identified non-conformance. But economic chamber participation in the FSC standard setting process is not weaker for all countries. In Sweden and the UK, UPM saw no major difficulties in ruling out the identified non-conformance in the specified time.

93. As mentioned above, FSC accredited certification bodies may still certify in countries where no FSC endorsed standard-setting process exists. FSC sets requirements<sup>107</sup> for this process e.g. that certification bodies must consult with local stakeholders to develop an interim standard. However, the outcome may not be as balanced as it would be under an FSC endorsed national working group. The QACC report highlights<sup>108</sup> the weakness of the

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<sup>101</sup> The field test of various standards against UPM forest practices in Europe and Canada showed that against FSC standards higher numbers of non-conformities are identified.

<sup>102</sup> With the latest PEFC requirements this might be subject to change.

<sup>103</sup> *The global impact of SmartWood certification*, D. Newsom and D. Hewitt, Rainforest Alliance, June 2005

<sup>104</sup> For example Hando Hain, 2005 for the case of Estonia.

<sup>105</sup> FSC Principles and Criteria for Forest Stewardship (FSC-STD-01-001), dated April 2004, available at [http://fsc.org/fsc/about/documents/Docs\\_cent/2](http://fsc.org/fsc/about/documents/Docs_cent/2) .

<sup>106</sup> DNV report on UPM field test of forest certification.

<sup>107</sup> FSC-STD-20-003 Local adaptation of certification body generic forest stewardship standards V2.1, 30 Nov 2004.

<sup>108</sup> QACC final report, June 2005, page 25.

FSC interim standards as they may not necessarily represent the best available technical knowledge and scientific understanding. This is a point where PEFC scores better, since they do not use interim standards. WWF expects this area for improvement will be addressed during the next FSC General Assembly in December 2005. However, this does not imply that certification carried out under an interim standard is poorly defined. In the example of FSC certification in the Baltic States, the interim standards were developed with the strong support of interest groups.<sup>109</sup> In other countries (e.g. Ukraine) it is more difficult to identify interest groups who participate in the development of an interim standard.

### **3.2.5 Measuring impact**

94. Despite the criticism of the manner in which interim standards are developed, a review of CARs issued under national and interim standards shows that significant improvement is reached even when endorsed FSC national or regional standards are absent. The WWF report highlights<sup>110</sup> significant numbers of CARs in countries such as Russia or the Baltic States, where interim standards are used. These CARs cover aspects like preserving deadwood, protection of woodland key habitats, reduction of chemicals, increasing workers' safety, etc. Even for an interim standard, specific performance criteria have to be followed to avoid CARs and the improvement against each of the CARs is clearly visible. Companies who do not solve their CARs are facing suspension of their certificate. FSC is in this respect unique, with its ability to demonstrate measurable performance and, in most cases, a significant improvement of forest management is apparent wherever it is applied.<sup>111</sup>

### **3.2.6 CoC and claim**

95. Finally, FSC differentiates itself through the Chain of Custody (CoC) and the claims<sup>112</sup> it uses. In accordance with ISO guidelines<sup>113</sup>, FSC does not make a claim of sustainability<sup>114</sup>, but for example of well-managed forestry. In line with the ISO guideline, a claim of sustainability shall not be made. In the FSC's CoC system, physical separation of products is required if a claim of FSC pure (100%) is intended. If a company mixes FSC and non-FSC material, a credit system calculation is possible. This credit system option was approved in late 2004 and has been developed by FSC into extensive new CoC standards<sup>115</sup> and a standard<sup>116</sup> for the non-FSC section of "controlled wood.". FSC intends to exclude timber which is illegally harvested, genetically modified, from high conservation value forest, or from areas where the rights of indigenous people are violated. In addition, a rolling average of 10% as a minimum threshold of FSC material has to be maintained during production. This allows for a claim that refers to the product group deriving "... from well managed forests and

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<sup>109</sup> Lithuanian Fund for Nature, WWF Latvia, amongst others.

<sup>110</sup> WWF, An analysis of Corrective Action Reports, Summary report, February 2005.

<sup>111</sup> With the latest changes to PEFC's Annex 6 the publication of CARs has been requested but application of this requirement was not requested during the time this paper was written.

<sup>112</sup> FSC-STD-40-201 (version 1.0): FSC on-product label requirements. October 2004.

<sup>113</sup> ISO 14021 clause 5.5.

<sup>114</sup> It is only the FSC working group Germany which has embraced the term "Nachhaltigkeit" as it argues that in the German language this term is not misleading as it is actually understood in the sense of "well managed forests".

<sup>115</sup> FSC-STD-40-004 (version 1.0) FSC Chain of custody standards for companies supplying and manufacturing FSC certified products. October 2004

<sup>116</sup> FSC-STD-40-005 (version 1.0) FSC standards for non FSC-certified controlled wood. October 2004

other controlled sources". Even for a product with a mixed sources claim, the FSC is developing a system to assure that the actual ingredients of that product fulfil a minimum standard.

96. FSC is also distinctive from other schemes regarding the range and quantity of products available with a FSC logo. Recent surveys in Switzerland, for example, point out that the FSC logo is known to one third of the consumers. And this recognition is expected to rise. In Germany, train ticket machines print their tickets on FSC paper; best-selling books such as the sixth edition of "Harry Potter" carry the FSC logo since they are printed on FSC paper.<sup>117</sup> No other scheme's name or logo has attained a significant market recognition.

### **3.3 PEFC (Platform for the Endorsement of Forest Certification schemes)**

#### **3.3.1 Application and governance**

97. PEFC provides a worldwide framework for the mutual recognition of forest certification schemes. Until the end of 2003, PEFC was restricted to European countries but has since widened its range to endorse schemes world-wide, as well as changing its systems and name<sup>118</sup>. PEFC provides a link between certification and processes initially started/conceptualized as policy guidelines. One example is the use of the Pan European Operational Level Guidelines (PEOLG)<sup>119</sup> as a reference basis for standard development. In 2005, PEFC was the largest scheme in terms of certified area and the fastest in terms of growth. This growth has been achieved despite the fact that PEFC does not accept certificates outside of endorsed national certification schemes. Unlike FSC, PEFC does not give certification bodies the option to operate in countries on the basis of a certification body led standard adaptation.

98. Subject to successful endorsement of standards and procedures, control over the implementation of certification and accreditation process lies at a national level. The PEFC does not conduct inspections to ensure that certified operations follow the standards they are certified against. PEFC does not conduct inspections of certification bodies or member schemes, either. This is left to national accreditation bodies and appointed third party auditing firms, who conduct re-evaluation of PEFC endorsed member schemes every 5 years. The PEFC trade-mark licences are issued centrally and controlled by the PEFC secretariat in Luxemburg.<sup>120</sup>

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<sup>117</sup> According to a FSC press release the fibre used for this paper comes from trees harvested from the community forests of Adelsheim and other seven towns in the well-known Black Forest region of Germany

<sup>118</sup> PEFC was founded as Pan European Forest Certification Council in 1999

<sup>119</sup> A review of the original PEOLG ([http://www.mcpfe.org/mcpfe/resolutions/lisbon/resolution\\_l2a2.pdf](http://www.mcpfe.org/mcpfe/resolutions/lisbon/resolution_l2a2.pdf)) identifies that this policy tool was not developed with certification as a main objective: "..., although certification and other quality assurance systems or programmes as such would remain independent from the Pan-European Process and are voluntary to the interested parties, the Guidelines could provide an indicative reference for the establishment of standards for those systems."

<sup>120</sup> PEFC Normative Document Annex 6, *Certification and Accreditation Procedures*, dated 11 April, 2005

### **3.3.2 Key supporters**

99. While the PEFC is supported by forest owners associations and several members of the forest industry, various international ENGOs refuse to support or even participate in the scheme. This resistance can be explained through the findings of the QACC<sup>121</sup> data, which point out<sup>122</sup> that PEFC does not make sure that “decision making mechanisms ensure that no major stakeholder group can dominate the decision making process”. This may be one of the reasons, why international ENGOs have not participated in the PEFC process. The QACC report also states<sup>123</sup> that the PEFC Council is comprised of voting delegates<sup>124</sup> from the National Governing Bodies. As such, there is no requirement for participation of all major stakeholder groups. The nomination of voting delegates by National Governing Bodies does not prevent the absence of stakeholder groups, as National Governing Bodies are not required to involve all major stakeholder groups. Even if all major stakeholder groups are represented, domination by one group is still possible because the PEFC Council applies single majority voting among their 6 major stakeholder groups, which can overrule the opposing opinion of one major stakeholder. There are however examples in the group of PEFC endorsed schemes, which show an equal distribution of power, such as PEFC Austria. In this case, each participant was given a right to veto proceedings in 2000. This brought some national ENGOs to the table, resulting in standards with significant ecological requirements<sup>125</sup>.

### **3.3.3 Inconsistencies and measuring impacts**

100. One of the major differences between the PEFC and the FSC is the larger degree of variation among PEFC endorsed schemes<sup>126</sup>. The QACC data show<sup>127</sup> that there is a degree of variation in PEFC endorsed national systems and standards, for example, in regard to periodic auditing or accreditation<sup>128</sup>. One recent example is the endorsement of CERFLOR, a Brazilian certification system. In contrast to some other PEFC endorsed schemes, the CERFLOR standard<sup>129</sup> allows the introduction and the utilization of ‘genetically modified organisms’, as long as bio-security standards are followed.<sup>130</sup> Another example is pointed out by the CAR review conducted by the WWF mentioned above, which showed that only PEFC Germany made summaries of audit reports available.<sup>131</sup> This finding was confirmed by the

<sup>121</sup> As mentioned above “QACC” stands for *Questionnaire for Assessing the Comprehensiveness of Certification Systems/Schemes* and was developed by the World Bank/WWF Alliance

<sup>122</sup> ProForest: QACC final report, dated June 2005 indicator 1.9.2, page 18

<sup>123</sup> QACC final report, page 29

<sup>124</sup> PEFC Council Technical Document section 3.1

<sup>125</sup> Sprang, *Aspects of Quality Assurance under the FSC and PEFC forest certification schemes*, Freiburg, 2001.

<sup>126</sup> The FSC is not free of inconsistency, as mentioned above in regard to the use of interim standards. PEFC however shows inconsistency on the level of standards and systems.

<sup>127</sup> QACC final report, page 31 points out for example that under PEFC Austria no provision for surveillance after certification exist. An issued certificate lasts for 5 years; re-assessment is only conducted after this period.

<sup>128</sup> QACC final report, page 32 points out the lack of consistent accreditation procedures: PEFC Austria, Finland, France, Germany – the public summary report is either not available or public summary written by certified organisation.

<sup>129</sup> Forestry Standard of CERFLOR Brasilia, 3.3.1 Criterion 3.1.

<sup>130</sup> Ibid, Indicator d.

<sup>131</sup> The review of the PEFC Germany CARs concluded that no significant improvement had been reached.

QACC analysis indicating that PEFC national schemes vary in the amount of information they make available after an assessment/audit.<sup>132</sup> It has therefore not always been possible to evaluate the audits or the CARs which are issued. In PEFC's latest revision of the certification procedures, it is stated<sup>133</sup> that 'a summary of the certification report, including a summary of findings on the audit's conformity with the forest management standard, written by the certification body, shall be made available to the public by the auditor in accordance with any applicable requirements defined by the respective forest certification scheme.' If this PEFC requirement is implemented as intended by all member states, a key difference to the FSC scheme will disappear.

101. The QACC report recognises that PEFC has performance elements in their standards, but the UPM field test showed that PEFC has endorsed schemes and standards which are system based, thereby only showing weak performance elements.<sup>134</sup> PEFC at the time of writing, has not provided a transparent tool to measure their actual impact on forest management. So far CARs have generally not been made public under PEFC certification and research based on PEFC CARs is unusual. The WWF analysis of PEFC certification CARs in Germany concluded that no significant improvements were reached. The UPM field test highlights that some minor CARs were issued but it is still unknown if these CARs will be disclosed in one year's time.

102. To demonstrate the difference between products which can receive PEFC endorsed certification but would not be endorsed by FSC the following example is chosen. It must be pointed out that this example is not representative of all PEFC endorsed certification, but was chosen for illustration of a point. Gunns Ltd. (Tasmania) is Australia's largest forest products company and was the first company to achieve certification to the PEFC endorsed AFSC scheme.<sup>135</sup> Gunns is currently logging ancient, high conservation value forests, converting them partially into plantations.<sup>136</sup> They are also running court cases against ENGOs<sup>137</sup> who oppose them. Logging of old growth forests is acceptable according to the AFS standard. PEFC certified operations in other parts of Australia (such as Queensland) have already shifted their operations out of the remaining ancient forests and concentrate on recent plantations. This introduces the problem that well-managed forestry endorsed under the PEFC may risk losing credibility through association. Similar accusations were raised 5 years ago by Greenpeace in response to PEFC endorsed certification of logging of ancient forests

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<sup>132</sup> QACC final report, page 32: PEFC Austria includes the requirement that a summary of the findings may be published by the applicant, PEFC France requirements include that after assessment by the CB, the applicant decides to what extent the report will be made public. PEFC Germany requires a resume of the most important results to be made accessible to the public, including major and minor non-compliances documented in the audit minutes.

<sup>133</sup> PEFC Normative Document Annex 6, *Certification and Accreditation Procedures*, dated 11 April, 2005.

<sup>134</sup> UPM did not include the PEFC endorsed CSA standard because of lack of performance elements in the CSA standard. The CSA homepage itself points out that no claim of performance can be concluded from their certification.

<sup>135</sup> National Association of Forest Industries, *Australia's achievements in Sustainable Forest Management*, 2005.

<sup>136</sup> As recently as on the 26<sup>th</sup> of December, 2005 the campaigns on Tasmania against the destructive forest practices of Gunns were reported. Spiegel Online: Susanne Fischer, "Tasmanien - *Grüner wird's nicht*" <http://www.spiegel.de/reise/fernweh/0,1518,390854,00.html>

<sup>137</sup> Australia's largest ENGO: the Wilderness Society.

in Finland<sup>138</sup>. This highlights one clear difference to the FSC: logging of high conservation value forest or the conversion of undisturbed forests into plantations would be a clear violation of the FSC Principles and Criteria.

### **3.3.4 CoC and claim**

103. The PEFC Council controls the use of their logo and permits the use of the claim 'From sustainably managed forests'<sup>139</sup> for products from 100% certified material<sup>140</sup>. According to ISO 14021<sup>141</sup> such a claim of sustainability shall not be made. A claim can only be made for something that is certifiable, such as "well-managed" forestry.

104. The PEFC allows for a percentage based CoC certification that is based on volume credit or a batch calculation: The PEFC volume credit has no minimum threshold (in the FSC the rolling average has to be at least 10% high). Both FSC and PEFC set the maximum rolling average time at 12 months. The PEFC batch system can be defined over time<sup>142</sup> by the product or the production site, an option not available under FSC CoC requirements. As an example of the latter, a company may own several paper mills around the world and as long as sufficient certified material was being brought into one of these mills, the products for all could receive certification. For such products (or those containing recycled materials), a modified claim must be used, such as "Promoting sustainable forest management (and recycling)." Non-certified material must not be from controversial sources i.e. "illegal or unauthorised harvesting" which is described by PEFC as "Examples of illegal and unauthorised harvesting include harvesting in forest areas protected by law as well as in forest areas officially published by government authorities (or body with the legal authority to do so) as planned to become strictly protected by law, without the government authorities (or the body with the legal authority to do so) giving permission to harvest."<sup>143</sup> In contrast to this short note, the FSC has developed a detailed standard for the non-FSC part in a mixed FSC product.

## **3.4 Canadian Standard Association (CSA)**

105. The CSA scheme is a classical example of a system based approach to certification.<sup>144</sup> The scheme is still described today as the result of a collaboration between the Canadian Forest Industry with the Canadian ISO affiliate, the Canadian Standards

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<sup>138</sup> Greenpeace Nordic, Luonto-Liito. Anything Goes? Report on PEFC-Certified Finnish Forestry, January 2001.

<sup>139</sup> www.pefc.org.

<sup>140</sup> PEFC Annex 5, *PEFC Logo Use Rules*, dated 17 June, 2005.

<sup>141</sup> On claims of sustainability ISO 14021 clause 5.5 states that "the concepts involved in sustainability are highly complex and still under study. At this time there are no definitive methods for measuring sustainability or confirming its accomplishment. Therefore, no claim of achieving sustainability shall be made."

<sup>142</sup> One batch can last for up to three months. PEFC Annex 4, *Chain of Custody for forest based products - Requirements*, dated 17 June, 2005.

<sup>143</sup> PEFC Annex 4, *Chain of Custody for forest based products - Requirements*, dated 17 June, 2005.

<sup>144</sup> The Canadian CSA standard is built on ISO 14001 EMS standard, but it includes additional elements.

Association to develop a forestry/specific, ISO/based standard.<sup>145</sup> As Bass and Simula pointed out as early as 1999<sup>146</sup> the Canadian CSA standard is a special case, as it requires the fulfillment of the common national-level C&I. In addition, it also requires that organizations need to develop performance criteria locally, through a clearly defined public participation process. Bass and Simula considered the CSA as a hybrid combining both management system and performance requirements in a unique way.

106. When the UPM field test was under preparation at the end of 2004, it was concluded that the “CSA is more similar to a management system and has few comparable criteria and defined performance thresholds for testing in the field.”<sup>147</sup>

107. CSA follows national accreditation and was endorsed by PEFC in March 2005. Whenever a CSA certified company wants to use the PEFC label it has to follow the PEFC standard for CoC. CSA does not have its own logo and does not make a claim of sustainability. On the contrary, CSA states on their homepage that “... an audit performed by CSA determines if the organization’s system and process... meet the requirements of CSA...but does not provide a determination of compliance of the organization or its facility with legislative and regulatory requirements, nor does it evaluate an organization’s performance.”<sup>148</sup> For details on the difference between performance and system based certification please refer to chapter 1.1 in part one of this report.

108. The UK public procurement scheme recognized CSA in its first round of evaluation as providing assurance of both legality and sustainability.

### **3.5 Malaysian Timber Council Certification (MTCC)**

109. In 1999 Malaysian stakeholders invested significantly in order to develop an independent national certification scheme<sup>149</sup> which became fully operational in 2001. A first standard was based on the ITTO C&I and the FSC P&C but does not recognise indigenous people’s rights. For the year 2005, MTCC wants to use a new standard (MC&I 2002) which is, according to MTCC<sup>150</sup>, developed through broad-based consultations and consensus. Social aspects like the recognition of indigenous people’s rights, however, as yet do not figure strongly in this revised standard.

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<sup>145</sup> Errol Meidinger, *The Administrative Law of Private/Public Global Forestry Regulation*, 2005 draft, please check following URL for latest draft <http://www.law.buffalo.edu/eemeid/scholarship/FCAdlaw.pdf> .

<sup>146</sup> Stephen Bass (IIED), Markku Simula (Indufor Oy) *Independent Certification: Verification of Forest Management*, background paper for the WorldBank WWF Alliance workshop, November 1999.

<sup>147</sup> UPM Forestry and Wood Sourcing Environmental Forestry Affairs, *Parallel testing of forest certification standards*, page 8, 2005.

<sup>148</sup> CSA [http://www.csa-international.org/product\\_areas/forest\\_products\\_marking/program\\_overview](http://www.csa-international.org/product_areas/forest_products_marking/program_overview) , accessed May 30<sup>th</sup>, 2005.

<sup>149</sup> MTCC, Power Point Presentation by Mr. T.K. Yong during the workshop entitled “Public Procurement and Forest Certification: Assessing the Implications for Policy, Law and International Trade” 7-8 June 2005, in Berlin.

<sup>150</sup> T.K. Yong, see above.

110. The MTCC is a national membership organisation whose Board of Trustees appoint a certification committee. The committee then selects auditors and peer reviewers, and decides whether to certify based on their independent reports. MTCC is accredited on a national level.<sup>151</sup>

111. According to paragraph 2.6.6 of the MTCC timber certification procedures,<sup>152</sup> a summary of the certified FMU shall be made publicly available on MTCC's web site. However, a forest owner may refuse permission to allow a summary of his reports or Corrective Action Requests to be made public. A spot check identified that at least in one report,<sup>153</sup> a summary of CARs and Close-out-Details was included.

112. The Danish public procurement guidelines recognise the MTCC as proof of fulfilling legal requirements and progress towards sustainability ("legal and progressing to sustainable".)<sup>154</sup>

113. There is controversy<sup>155</sup> over a possible gap in MTCCs CoC, which may allow for non-certified timber to enter as certified. According to MTCC, these accusations are unfounded. In any case, a revised standard entitled Requirements for Chain-of-Custody Certification (RCOC) will be in use by the beginning of 2006. In September 2005, PEFC and MTCC had not reached an agreement on mutual recognition. The MTCC promotes its own label and claim, but does not use the term sustainability.

### **3.6 Sustainable Forestry Initiative (SFI)**

114. The SFI was founded by the American Forest & Paper Association (AF&PA) and became operational in 1995.<sup>156</sup> According to the SFI website (which is still hosted by the AF&PA), the scheme is under the control of a nominally independent multi-stakeholder board. The SFI has not been very successful in convincing environmental NGOs to support their scheme. As recently as October 2005, eight North American conservation organisations launched a report<sup>157</sup> about SFI in which they conclude that SFI and its revised certification standard are not legitimate measures of environmentally and socially responsible forestry.

115. Since 1998 the SFI has provided voluntary verification, and it was left to participants to choose third party auditing. Due to a lack of ENGO engagement the standard is less demanding than other standards. This was highlighted in a study<sup>158</sup> currently posted on the

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<sup>151</sup> MTCC, Procedures in MTCC timber certification scheme, updated December 16<sup>th</sup>, 2004.

<sup>152</sup> MTCC, *Procedures in MTCC timber certification scheme* paragraph 2.6.6. page 9, updated December 16<sup>th</sup>, 2004.

<sup>153</sup> MTCC, *PUBLIC SUMMARY OF PERAK STATE FMU ASSESSMENT FOR FOREST MANAGEMENT CERTIFICATION*, November 2004.

<sup>154</sup> See part 1 of this report

<sup>155</sup> Greenpeace International, *Missing Links – Why the Malaysian Timber Certification Council (MTCC) certification doesn't prove that MTCC timber is legal nor sustainable*.

<sup>156</sup> Bass and Simular, see above, page 18.

<sup>157</sup> www.dontbuysfi.com.

<sup>158</sup> National Wildlife Federation et al, *A Comparison of the American Forest & Paper Association's Sustainable Forestry Initiative and the Forest Stewardship Council's Certification System*, 2001.

web-pages<sup>159</sup> of the Yale School of Forestry. In 2004, parallel testing of UPM forest practices against SFI standards showed 100% compliance, with no minor or major unconformities identified. All other schemes (apart from the CSA) had identified at least two non-conformities.<sup>160</sup>

116. SFI issues SFI Certification, even if periodic (annual) surveillance audits are not chosen<sup>161</sup>. This differs with other schemes, where certificates are generally not maintained without annual audits. External audit summaries are required including ‘a summary of findings’<sup>162</sup>, which is not necessarily the same as CARs. Accreditation of certification bodies must be provided by the National accreditation agency.

117. In September 2005, SFI had not been endorsed by PEFC. SFI promotes its own label and restricts its on-product use to those members who choose annual audits. SFI uses the term “sustainable” in its name. As mentioned above, according to ISO 14021, the term “sustainable” shall not be used for a certification claim.

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<sup>159</sup> <http://www.yale.edu/forestcertification/> .

<sup>160</sup> UPM, see above

<sup>161</sup> *Highlights of SFI Program Certification Requirements*  
[http://www.afandpa.org/Content/NavigationMenu/Environment\\_and\\_Recycling/SFI/The\\_SFI\\_Standard/SFI\\_Certification.htm](http://www.afandpa.org/Content/NavigationMenu/Environment_and_Recycling/SFI/The_SFI_Standard/SFI_Certification.htm), accessed October 10th, 2005

<sup>162</sup> same as above

#### 4 Summary table comparing certification schemes

	FSC	PEFC	CSA	MTCC	SFI
Range of application	Worldwide	All countries with an endorsed scheme	Canada	Malaysia	North America
Governance	Membership / board of directors, with equal voting power for an environmental, economic and social chamber. Centrally controlled, endorsement of national working groups, standards and certification bodies.	National Governing Bodies, with each NGB appointing voting delegates. Single majority voting, which can overrule a single stakeholder group. PEFC provides mutual recognition through an endorsement process, but control at national level, except for logo licences.	National association. Controlled through national accreditation.	National membership organisation with a Board of Trustees who appoint a certification committee. The committee selects auditors and peer reviewers and decides about certification based on their independent reports. National accreditation.	Program participant based organisation. Implementation committees in the US and Canada provide landowner outreach. Under PEFC review process for endorsement. National accreditation of auditors.
Standard setting	Based on one set of principles and criteria, specified by national / regional working groups or certification	National schemes develop standards which can derive from different reference documents. At least one	National scheme has developed a system-based standard with locally defined performance.	One standard for Peninsular Malaysia and Sarawak. Rights of indigenous people are not	Standard was written without significant input from ENGOs. Rejected as lately as October 2005 by key

	body where no standard is available.	endorsed standard allows the use of GMO (genetically modified organisms).		specified in the standard	conservation NGOs.
Key supporters	Exclusively supported by many large international social and environmental NGOs <sup>163</sup> . Growing industry and retailer support.	In most countries strong forest industry and forest owner's support. No international ENGO support on Council or national level.	Sectors of the Canadian forest industry. Others support the FSC, for example in Alberta, where FSC's largest certificate recipient is located.	Malaysian government and sectors of the Malaysian forest industry.	Majority of USA forest industry.
Transparency	Standards and report summaries with all Corrective Action Requests (CARs) are made public for each forest assessment and audit.	Standards and the result of the assessment or audit are made available. CARs were so far only made public in exceptional cases. By the new requirements possible CARs have to be made publicly available.	Standards and the result of the assessment or audit are made available. CARs are not made public (might change with new PEFC requirement).	The standard and a summary of the certified company's records should be publicly available on MTCC's web site. The forest owner can refuse this publication. An example showed that a summary of CARs was included.	Standards and list of participating companies are made public. CARs are not made public, only "findings".

<sup>163</sup> WWF International, Greenpeace International, Friends of the Earth, criticised by some national and international ENGOs like the Rainforest Foundation

Accreditation of certification bodies	A separate unit within the FSC carries out accreditation and annual inspections of certification body's office and field work	PEFC does not inspect certification bodies. National accreditation of c. b. in compliance with PEFC's requirements.	CSA is the certification body and receives national accreditation.	MTCC gives accreditation to individual assessors and peer reviewers.	Certification body or person must have national accreditation.
Audit intensity	Annual audits. Generally a peer review of assessment reports is conducted <sup>164</sup>	Generally annual audits but one schemes has been endorsed which does not require annual audits. Generally no peer review required	Annual audits. No requirement for peer review.	Annual audits (every 6 to 12 months). Peer review of assessment is conducted.	Annual audits if a participant decides to use logo on product. Certificate can be kept without audits.
Measurable impact	Case studies and review of CARs indicate significant impact.	Significant impact has not been documented. New requirement to make CARs public will allow measurement of impact in future	Mainly system based certification which makes it difficult to measure impact.	CARs are sometimes made public for assessment but not for audits, the impact can therefore not be estimated.	Comparative field studies indicate that CARs, which do not have to be made public, are rare.
CoC (Chain of Custody)	Either physical separation for pure products or "control" of all non-FSC	Either physical separation, batch definition or volume calculation without	According to PEFC requirements, 50 CoC certificates were issued by October 2005.	Controversy about a gap in MTCCs CoC which allows external timber to enter as	Neither <a href="http://www.pefc.org">www.pefc.org</a> or <a href="http://www.afandpa.org">www.afandpa.org</a> indicate that a national CoC system

<sup>164</sup> Exception for reports of small and low intensity managed forests (SLIMF)

	sources for mixed products (10% threshold).	threshold.		certified	is in place. So far no PEFC CoC certs have been issued.
Claim/Logo	FSC pure (100%) or FSC mixed sources. In compliance with ISO guides; no claim of sustainability is made. Own logo.	For PEFC 100%: ' from sustainably managed forests', for less than 100%: 'promoting sustainable forestry'. Own logo, for which licences are sold centrally.	No claim is made.	No claim was identified which mentions sustainability. Own logo.	The schemes' name includes already the claim of sustainability. Own logo. Members need audits to use logo on-product.

## 5 Annex: Documents used for comparison of major certification schemes

In summer 2005 the results of various evaluation studies were made publicly available:

- A recent report (June 2005) was written by ProForest who had been commissioned by the WWF/World Bank Alliance to conduct a trial of the Alliance's Questionnaire for Assessing the Comprehensiveness of Certification Schemes/Systems (QACC). The trial was conducted in 12 European countries and evaluated the FSC and PEFC schemes only. This study is of particular relevance for this paper as all the findings are based on (at the time) publicly available documents.
- Another study conducted in the field was the parallel certification of the forest management organisation UPM, who chose a certification body<sup>165</sup> and WWF as observer to test various scheme in Europe and Canada. This study<sup>166</sup> included FSC, PEFC, the North American certification system SFI and also provided findings on the Canadian system CSA.
- The impact of forest certification was also assessed through a review by the WWF of corrective action requests (CARs) issued. The study evaluates CARs issued during FSC certification in 6 European countries<sup>167</sup>, and CARs issued during PEFC certification (available in one country<sup>168</sup> only).

Some of the latest available technical documents reviewed for this paper include:

- PEFC Normative Document Annex 6, titled "Certification and Accreditation Procedures", dated 11 April, 2005
- PEFC Normative Doc. Annex 4, titled "Chain of Custody for forest based products - Requirements", dated 17 June, 2005
- PEFC Normative Doc. Annex 5, "PEFC Logo Use Rules", dated 17 June, 2005
- FSC-STD-40-004 (version 1.0) FSC CoC standards for companies supplying and manufacturing FSC certified products. October 2004
- FSC-STD-40-005 (version 1.0) FSC: standards for non FSC-certified controlled wood. October 2004
- FSC-STD-40-201 (version 1.0): FSC on-product label requirements. Oct. 2004.

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<sup>165</sup> international certification body Det Norske Veritas (DNV)

<sup>166</sup> UPM Forestry and Wood Sourcing Environmental Forestry Affairs, *Parallel testing of forest certification standards*, 2005

<sup>167</sup> Estonia, Germany, Latvia, UK, Russia and Sweden. A similar CARs analysis of 129 certified operations in 21 countries was released in 2005 by the certification body SmartWood.

<sup>168</sup> PEFC Germany

## Part 3: Public Procurement and Forest Certification - Conclusions

*By Peter Sprang*

### 1 Conclusions of part 1

Given that most wood is not certified, there must be viable opportunities for non-certified wood, lest the procurement policy be subject to challenge in the WTO by those parties to the AGP where certification, or the certification system of choice, has not been mainstreamed.

Issues relating to equivalence between certification schemes are still very real. This could become problematic, given that in some EU countries, such as Austria, Belgium, Germany, Finland, and France governments<sup>169</sup> seem to have been rather involved in the process of establishing the PEFC, while in others, apart from market demand, ENGOs exert sufficient influence to shift public opinion towards FSC.

The differences in procurement approaches to handling the social aspects of “sustainable” forest management are very significant, and in several respects, very complex. On the one hand, there does not seem to be a principled reason for including some of the more indirect environmental or ecosystem impacts in the category of legitimate factors, while excluding the social impacts. It has also been speculated that the social impacts of certification are probably positive. However, the reality is that there is much less international consensus on social issues and assessing social impacts than there is on environmental impacts and their assessment. There are also significant differences between the main certification schemes on social issues. These differences would need to be examined more closely by those countries that include social issues in their procurement policy. It is therefore suggested that the European Commission may facilitate independent processes which contribute to the development of national or regional standards as well as harmonization of standards. Special attention may be given to clarify controversial social and environmental aspects.

Using forest certification as a basis for a public procurement scheme is seen as a practical possibility, which gives full recognition to those suppliers who have invested in and reached a high level of performance. There is an opportunity for the further

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<sup>169</sup> In the case of Germany, it was not the federal government, but rather states who supported PEFC certification.

development of the “step-wise” approach to certification. In recognition of the difficulties experienced by forest stakeholders, especially in developing countries, as well as the desirability of providing short-term incentives, the notion of a step-wise approach was developed. This is a complicated and controversial approach, since it involves a delicate balance that does not always compromise existing standards and processes. An ITTO workshop on this topic recommended that a first step might be to focus on legality. As indicated above, Denmark has included this category within its procurement programme; the UK had also included it, but withdrew it for reasons of feasibility. Nonetheless, there appear to be some private initiatives, such as the CSP and TFT, which have developed procedures for identifying forests that are on their way to sustainability. Governments could build on this.

## **2 Conclusions of part 2**

As illustrated in the summary table of part 2, the main differences between schemes occur at the level of application, governance, standard setting, key supporters, transparency, accreditation of certification bodies, audit intensity, measurable impact, Chain of Custody and claims.

Generally, it can be concluded that the FSC has more checks and balances in place to keep inconsistency at a minimum while providing clear evidence of its impact on forest management. None-the-less inconsistencies have been observed for example in a possible lack of harmonisation between national and interim standards.

While individual members may be able to measure the impact of PEFC certification, it is not yet possible to draw broader conclusions due to the lack of publicly available data. Following continuous improvement of PEFC’s procedures, report summaries should shortly become publicly available. While national schemes under the PEFC endorsed members may already be at this stage and show aspects of strong performance, this is not a general rule for all members.

Although direct engagement is rather unlikely, the EU can play an important part in assisting the independent development of national and regional standards as well as facilitating independent processes which aim at the reduction of inconsistencies and achieving harmonisation. But while this issue was raised by the EU Forest Strategy,<sup>170</sup> the prevailing view is to leave market forces free of government interference. However, given the incompatibility between some schemes and some

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<sup>170</sup> Note that the 1998 EU Forest Strategy did lay out the possibility of a legal instrument to harmonise certification and labelling in the EU, but so far no action to implement this has occurred

Member State approaches, this strategy might be reconsidered. Some interesting initiatives have revealed that it may be possible to develop common assessment frameworks for certification schemes – which would be a first step in any harmonisation effort.<sup>171</sup> However, the harmonisation process would very likely be a difficult one.

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<sup>171</sup> See Ruth Nussbaum and Markku Simula, *Forest Certification – A Review of Impacts and Assessment Frameworks*, TFD Publication No 1, 2004

## **Part 4: Summary of Expert Workshop on Public Procurement and Forest Certification (7-8 June 2005, Berlin)**<sup>172</sup>

*By Peter Sprang*, based on notes taken by Brian West and David Huberman

Representatives from six EU Member States, the EU Commission, international and national organisations, private enterprises and academia participated in an international workshop on the issue of “Public Procurement and Forest Certification”. Participants with a Southern perspective provided key contributions to the dialogue. The event, which was generously co-funded by the European Commission and organised by Ecologic – Institute for International and European Environmental Policy, took place at Logenhaus, Berlin, Germany, on 7-8 June 2005. R. Andreas Kraemer, Director of Ecologic, chaired the workshop.

The workshop offered a thorough assessment of the relationship between forest certification and public procurement programs of EU member states. Furthermore, the applications in Southern countries as well as the implications for exporters from such countries were addressed.

Participants were strongly concerned about the rate of unsustainable and illegal logging activities worldwide. At the same time there was general agreement to support sustainable management of forests worldwide and to promote the trade and use of products from such forests, in particular in the case of public procurement. Participants largely found that forest certification can play a helpful role in public procurement policy. Participants expressed different concepts on the exact role of forest certification in such a policy. Participants expressed different positions on the acceptable types of forest certification and standard elements.

Participants highlighted recent developments at the European level, such as the initiative on Forest Law Enforcement Governance and Trade (FLEGT), as well as at the national level, with the implementation by several member states of a public procurement policy aiming at supporting sustainable management of forests. Participants noted a large increase in the use of such national policy, but not at European-level harmonisation, as of yet, for such policy. Additionally there has been an increase in forest certification initiatives, but there is, as of yet, no international policy consensus at NGO or governmental level.

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<sup>172</sup> This summary does not contain a binding summary of the discussion and should not be interpreted as an approved position of any of the participants or as a position of the European Commission.

Participants acknowledged the current passive approach that the Commission has adopted with regards to market-based instruments, such as certification. At the same time it was recognized that some action at the Community level may become necessary.

Participants recognized key issues for public procurement policy: defining the scope (prove of legality or also “sustainability“; all forest products or just tropical wood); defining criteria for “sustainable” forest management; defining how the criteria should be used (technical specifications, variants, selection criteria, award criteria and/or contract performance); defining alternative forms of documentation.

Some participants called for the inclusion of social requirements in public procurement policy. There was general agreement that “sustainability” should not exclude social dimensions but some participants questioned how to establish a direct relation of social aspects to a timber product.

Participants gave account of the WTO Agreement on Government Procurement, binding those WTO Members who especially ratify it, which permits “technical specifications” relating to the environment and indication that reference to SFM labels is allowed.

Participants also gave account of two new EC Directives<sup>173</sup>, which specify that government contracts may refer to certification labels as long as any other appropriate means of proof is accepted. Participants recognized that these Directives have to be implemented by the member states by 31st January 2006.

Some participants stressed the advantages of choosing a well established certification scheme as a way of making a public procurement policy effective. There was general agreement that both the Chain of Custody and clear communication of a procurement policy are essential for its effectiveness. It was recognised that especially for tropical timber (but on a country to country basis) step-wise certification may be a suitable alternative means of proof of compliance.

Participants shared their experience on how to evaluate different certification schemes’ capacity to assure legality and/or “sustainability”. It was emphasised that such an evaluation requires substantial expertise and independence and may exclude aspects like performance on the ground. It was noted that the results of the first round of evaluation caused an immediate revision of the certification schemes which fell short of compliance, highlighting the impact public procurement policy can have on improving certification schemes.

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<sup>173</sup> Directive 2004/17/EC and Directive 2004/18/EC

Participants admitted that a public procurement policy has its limitations and still depends on the market forces for full implementation. Some participants highlighted that there are mainly advantages and some complications with their choice of a forest certification scheme for their procurement and marketing. Some participants emphasised that a company can be at risk of losing a public tender if the certification costs have caused a less competitive bid while a given public entity fails to accept the necessary extra cost (or is simply unaware of the new procurement policy).

In general the workshop proved to be highly informative and an excellent learning opportunity from the various practitioners' experience with the actual implementation of public procurement policies. At the same time it became apparent that there is a clear demand for more guidance for the local authorities and public institutions, in terms of selection process and training/awareness. Participants as well were left with the impression that there is incoherence between the governments. And while the workshop did not provide an answer to the question of harmonisation, it has certainly contributed to the process of limiting further incoherence and hopefully facilitated the chances of providing a market for products from well managed forests.

## Annexes

### Workshop Programme

**Tuesday, 7 June 2005**

Time	Issue	Speaker
11.00	Registration	
11.10	Welcome and Introduction	European Commission, DG Environment Zoltán Rakonczay
11.15	Public Procurement and Forest Certification	Ecologic R. Andreas Kraemer
11.30	Overall Relationship between Forest Certification Scheme and Public Procurement	Royal Institute of International Affairs Richard G. Tarasofsky
12.00	Discussion	
12.15	Lunch	
13.45	Practical Obstacles in the way of Making such Procurement Policies Fully Effective	Freiburg University Peter Sprang
14.15	Discussion	
14.30	Coffee and Tea	
15.00	Examples of the Member States United Kingdom	Department for the Environment, Food and Rural Affairs Bob Andrew ProForest, Oxford Neil Judd
15.30	Examples of the Member States Netherlands	Ministry of Housing, Spatial Planning and the Environment Janneke de Jong
15.50	Examples of the Member States Denmark	Ministry for the Environment Christian Lundmark Jensen
16.10	Examples of the Member States France	Ministry for Ecology and Sustainable Development Rémy Risser Ministry for Agriculture, Food, Fisheries and Rural Affairs Véronique Joucla
16.30	Discussion	
17.00	End of first day	
17.30	Dinner	

**Wednesday, 8 June 2005**

Time	Issue	Speaker
9.00	Public Procurement and Forest Certification - Implications for Exporters Statement: ScanCom Group	ScanComGroup Ms Le Thi Nhu Hoa
9.15	Public Procurement and Forest Certification - Implications for Importers Statement: Glenalmond Timber Co Ltd	Glenalmond Timber Co Ltd Fraser Steele
9.30	Discussion	
11.00	Coffee and Tea	
11.20	Possible Contributions of Public Procurement Programmes to Sustainable Forest Management Statement: FSC International	Forest Stewardship Council Matthew Wenban-Smith
11.35	Statement: PEFC Council	Programme for the Endorsement of Forest Certification schemes (PEFC Council) Jaroslav Tymrak
11.50	Statement: Malaysian Timber Certification Council	Forest Manager for Forest Certification, Malaysian Timber Certification Council Yong Teng Koon
12.05	Discussion	
12.35	Lunch	
13.35	Discussion: The Way Forward	
14:45	Moderator's Résumé	
15.00	End of Second Day	

Moderator: R. Andreas Kraemer, Director, Ecologic

**Workshop Location:**

AVZ Logenhaus Berlin  
Emser Strasse 12-13  
10719 Berlin - Wilmersdorf  
Germany

[www.logenhaus.de](http://www.logenhaus.de)

### **Registered Participants**

1.	Contact	Institution	Department	Country rep.
2.	<b>Bob Andrew</b>	Department for the Environment, Food and Rural Affairs	Procurement and Contracts Division	United Kingdom
3.	<b>Sabine Bresemann</b>	AG Deutsche Waldbesitzerverbände e.V.		Germany
4.	<b>Ulrich Bick</b>	German Federal Research Centre for Forestry and Forest Products		Germany
5.	<b>Janneke de Jong</b>	Ministry of Housing, Spatial Planning and the Environment	Climate Change and Industry Directorate	The Netherlands
6.	<b>Ludovic Frere</b>	Greenpeace France	Forest Campaign	France
7.	<b>Maria Gafo Gomez-Zamalloa</b>	European Commission	Directorate General Enterprise, Forest Based Industries	
8.	<b>Gunther Hentschel</b>	Timber Trade Federation		United Kingdom
9.	<b>Anke Höltermann</b>	Federal Agency for Nature Conservation (BfN)		Germany
10.	<b>Michael Krüger Jakobsen</b>	NEPCon - Nature, Ecology and People Consult		Denmark
11.	<b>Veronique Joucla</b>	Ministry for Agriculture, Food, Fisheries and Rural Affairs		France
12.	<b>Neil Judd</b>	Proforest		United Kingdom
13.	<b>Guntram Kaiser</b>	Malaysian Timber Certification Council	Office Berlin	Malaysia
14.	<b>Jutta Kill</b>	FERN		United Kingdom
15.	<b>R. Andreas Kraemer</b>	Ecologic	Institute for International and European Environmental Policy	Germany

16.	<b>Andreas Kress</b>	Climate Alliance	Forestry	Germany
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21.	<b>Zoltan Rakonczai</b>	European Commission	DG Environment B III	
22.	<b>Remy Risser</b>	Ministry for Ecology and Sustainable Development	Department of Sustainable Development	France
23.	<b>Tessa Robertson</b>	WWF United Kingdom	Forests Programme	United Kingdom
24.	<b>Uwe Sayer</b>	Forest Stewardship Council	Working Group Germany	Germany
25.	<b>Peter Sprang</b>	University Freiburg	Institute of Forestry Economics	Germany
26.	<b>Fraser Steele</b>	Glenalmond Timber Company Limited		United Kingdom
27.	<b>Caroline Stein</b>	United Nations Economic Commission for Europe (UNECE)	Timber Division	
28.	<b>Richard G. Tarasofsky</b>	Chatham House	Sustainable Development Programme	United Kingdom
29.	<b>Dirk Teegelbeekers</b>	Programme for the Endorsement of Forest Certification Schemes (PEFC Germany)		Germany
30.	<b>Jaroslav Tymrak</b>	PEFC Council, Programme for the Endorsement of Forest Certification schemes		Luxembourg
31.	<b>Matthew Wenban-Smith</b>	Forest Stewardship Council, FSC International Center	Policy and Standards Unit	
32.	<b>Waldemar Wojtaszek</b>	Ministry of the Environment	Department of Forestry	Poland
33.	<b>Yong Teng Koon</b>	Malaysian Timber Certification Council		Malaysia

