

MISSING LINKS

Why the Malaysian Timber
Certification Council (MTCC)
certificate doesn't prove
that MTCC timber is legal
nor sustainable

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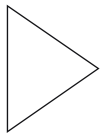
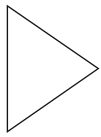


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certificate doesn't prove that MTCC timber is legal nor sustainable**

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SUMMARY

Illegal and unsustainable logging, in particular of tropical timber, has become a global environmental and social justice issue in recent decades. Initially slow to respond, Western governments are now focusing on the issue of legality, as a necessary precondition of any attempt to ensure sustainability of timber imports. The European Union is addressing this issue through its Action Plan for Forest Law Enforcement, Governance and Trade (FLEGT), which aims to support improved governance in producer countries and to introduce a licensing scheme for imports.

To verify the legality of its timber exports, Malaysia has proposed to use the Malaysian Timber Certification Council (MTCC) forest management and chain of custody certification scheme, founded on a joint project between Malaysia and the Netherlands in the mid-1990s to certify timber for sustainability, but now (on the strength of partial endorsements from the UK and Danish Governments) being promoted as offering guarantees of legality. However, research conducted by Greenpeace has cast grave doubts on MTCC's claims to certify the legality and sustainability of timber, while a Greenpeace field investigation has produced first-hand evidence of a major MTCC-certified timber company acquiring what appeared to be illegal Indonesian timber.

From repeated claims by the Malaysian Government and timber industry that forestry in the country has

long been sustainable, it seems that the MTCC scheme was never intended to introduce serious changes in forest management. Unfortunately, the reality is one of rampant forest degradation, with less than 20% of the country's virgin forest remaining untouched. Biodiversity has suffered a heavy toll, and many timber companies and the Government continually ignore the customary rights and land titles of indigenous communities and other forest-dwellers.

MTCC has done little to stop these abuses. States remain free to excise land for clear-felling from the supposedly sustainable Permanent Forest Reserves which the MTCC scheme covers. Illegal logging within and outside these reserves remains rife. Meanwhile, NGOs who were invited to participate in the setting-up of the scheme have withdrawn their support in protest at MTCC's lack of consultation and failure to uphold indigenous rights.

MTCC have recently made public what has either been suspected or known for a long time, that they do not address nor intend to address indigenous peoples land ownership and tenure rights. This is major failure of the MTCC in relation to the international standard for forest management and in breach of several UN conventions.

As for the supposed legality of MTCC-certified timber, the conclusions of the UK and Danish governments who

endorsed the scheme on this basis were rather naively based solely on information provided by MTCC itself. By contrast, Greenpeace's analysis has discovered serious gaps in MTCC's procedures, making its scheme a travesty of a genuine third-party chain of custody system and fatally undermining its credibility as a certifier of legal timber or sustainable forest management.

In effect, MTCC's CoC begins and ends at the timber processing plant - between the forest and the sawmill it relies on a flawed and unworkable system of verification by logging contractors themselves, while there are no arrangements at all in place to ensure the CoC of timber exported to Europe or elsewhere, in large part because MTCC has yet to be accepted by any national or international timber certification bodies outside Malaysia. Moreover, MTCC actually permits up to 30% of a batch of timber and 70% of batch for fibre to consist of uncertified timber, without any checks on its origin. New rules to be phased in 2006 will do little to improve this situation - it is proposed to extend the chain of custody from the processor to the international marketplace, but it is unclear how or when this will be achieved; while there will still be no effective chain of custody from stump to sawmill and no third-party checks on the origin of uncertified timber. All this means that there are, and will continue to be, manifold opportunities for suppliers and traders to introduce illegal timber into the chain of custody, to be ultimately sold as MTCC-certified.

To gain first-hand evidence of such practices, in 2004 Greenpeace conducted surveillance around Port Klang, Selangor State. This revealed that one major MTCC-certified timber processor was apparently taking delivery of illegal Indonesian timber.

In spite of these grave shortcomings, and the lack of any chain of custody outside Malaysia, European timber companies have already begun to offer 'MTCC-certified' timber for sale on the Dutch and UK markets, sometimes explicitly claiming that it provides assurances of sustainability and legality. MTCC itself has made similar, more subtle, claims through its PR bureau Weber Shandwick, endeavouring to persuade municipalities in the Netherlands that they can fulfil their obligations to source legally harvested timber by buying MTCC.

As Greenpeace's research has shown, these claims are false and misleading, both as regards the timber's verified legality and even as regards its MTCC-certified status, given the absence of chain of custody outside Malaysia. Greenpeace therefore urges timber buyers, governments and public authorities to beware of such claims and to avoid buying, specifying or recommending MTCC timber. Forest Stewardship Council is widely acknowledged as the international benchmark standard of environmentally responsible, socially equitable and economically viable forest management.

ABBREVIATIONS

CoC	chain of custody
Defra	UK Department for Environment, Food and Rural Affairs
EC	European Commission
EU	European Union
FLEGT	(EU Action Plan for) Forest Law Enforcement, Governance and Trade
FMU	Forest Management Unit
FSC	Forest Stewardship Council
HCVF	high conservation-value forest
ITTO	International Tropical Timber Organization
IUCN	World Conservation Union (formerly known as the International Union for Conservation of Nature and Natural Resources)
JWG	Malaysia/Netherlands Joint Working Group
MC&I (2002)	MTCC <i>Malaysian Criteria and Indicators for Forest Management Certification 2002</i>
MTCC	Malaysian Timber Certification Council
MTIB	Malaysian Timber Industry Board
NBvT	Dutch Association of Joinery Manufacturers
NFA	Malaysian National Forestry Act 1984
NGO	non-governmental organisation
NTCC	Malaysian National Timber Certification Committee
PEFC	Programme for Endorsement of Forest Certification Schemes
PFR	Permanent Forest Reserve
RAP/COC	MTCC <i>Requirements and Assessment Procedures for Chain of Custody Certification (2000)</i>
RCOC	MTCC <i>Requirements for Chain of Custody Certification (2004)</i>
TTF	UK Timber Trade Federation
VVNH	Netherlands Timber Trade Association

CHAPTER 1

INTRODUCTION

1.1 Forest law enforcement and the international timber trade

Forests throughout the world are the home of indigenous peoples as well as countless species of plants and animals. However, illegal and unsustainable logging has led to the loss or degradation of most of the planet's intact natural forest. The international timber trade is one important driving force behind this ongoing catastrophe.

Illegal and unsustainable logging and the related trade have become a priority issue internationally. The World Summit on Sustainable Development Plan of Implementation adopted in Johannesburg in 2002 included a commitment to take immediate action on domestic forest law enforcement and illegal international trade in forest products (para 43c). To address the problem, the European Commission (EC) adopted a European Union (EU) Action Plan for Forest Law Enforcement, Governance and Trade (FLEGT) in May 2003. EU Member States endorsed the Action Plan in October 2003, giving the Commission a mandate to begin implementation.

FLEGT defines a process and a set of measures through which the EC proposes to restrict illegal logging and related trade - a necessary prelude to any attempt to work toward promoting responsible forest management. It provides for research into the possibilities of new European legislation to outlaw the importation of timber which was illegally logged, or of products derived from such timber. At present, FLEGT's key strategies are to provide support for improved governance in wood-producing countries and to introduce a licensing scheme to ensure that only legal timber enters the EU. The licensing scheme is to be implemented through a series of voluntary partnerships with wood-producing countries (EC, 2004).

1.2 The Malaysian Timber Certification Council (MTCC)

MTCC originates with Malaysia's attempts in the 1980s to counter Western calls for a tropical timber boycott to halt deforestation. Initial counter-publicity efforts by

the Malaysian Timber Industry Board (MTIB) led to the setting up of what is now the Malaysian Timber Council (originally the Malaysian Timber Industry Development Council) to undertake the public relations role.

In response to growing demands for timber certification, and in particular to the establishment of the Forest Stewardship Council (FSC) in October 1993, MTIB began to issue certificates to Malaysian timber companies stating that the country was committed to sustainable management. This claim was founded on Malaysia's membership, since its inception in 1986, of the International Tropical Timber Organization (ITTO), a forum of producing and importing countries which had established a joint objective 'to achieve exports of tropical timber products from sustainably managed sources by the year 2000' (the Year 2000 Objective) (ITTO, 1992). However, such 'second-party' certification was soon perceived as inadequate in the face of the FSC scheme.

Accordingly, in 1994 Malaysia formed a Joint Working Group (JWG) with the Netherlands to carry forward both countries' implementation of the Year 2000 Objective.¹ In parallel, a National Timber Certification Committee (NTCC) was established to consider the development of a new certification scheme in response to the market demand for independent third-party accreditation. The NTCC would later evolve into the Malaysian Timber Certification Council (MTCC).

The National Timber Certification Council, Malaysia, soon renamed the Malaysian Timber Certification Council, came into being in October 1998. MTCC started its operations in January 1999, at a time when the focus of international debate remained on the sustainability rather than the legality of timber supplies. MTCC still describes itself in terms of sustainability, as:

an independent non-profit organisation established to plan and operate a voluntary national timber certification scheme to provide assurance to buyers of Malaysian timber products that the products have been sourced from sustainably managed forests. It has a Board of Trustees comprising representatives from

academic and research and development institutions, the timber industry, non-governmental organisations and government agencies. (www.mtcc.com.my)

However, as the global and in particular the European political climate is now focusing on issues to do with the legality of timber, MTCC has extended the claims it makes for its scheme to encompass legality. In a recent press release, it stated:

The Certificate for Forest Management provides the assurance that the FMU [Forest Management Unit - see section 2.3] has complied with the requirements of the MC&I [Malaysian Criteria and Indicators - see section 1.3] (2001) and that the timber is harvested legally, while the Certificate for Chain-of-Custody provides the assurance to buyers of MTCC-certified timber products that the raw material used in the products originate from MTCC-certified FMUs. (MTCC, 2005)

MTCC commenced the certification process in October 2001: Certificates for Forest Management within Peninsular Malaysia are issued on a whole-State basis. From 1 January 2002 until the end of April 2004, MTCC issued certificates to the Forestry Departments² of eight States in Peninsular Malaysia, whose Forest Management Units (FMUs) cover an area of 4.74 million hectares (Tham, 2004); in October 2004 it also certified its first FMU in Sarawak (where certification takes place on a licence-area rather than a State-level basis), covering an area of 55,949ha in the Ulu Baram region (MTCC, 2005).

MTCC has a fundamental weakness of not addressing the land ownership and tenure rights of indigenous people. *"MTCC on its part respects the decisions made by any courts in Malaysia with regard to the rights of the local communities in the forests, which are seeking certification under the MTCC scheme. However, land ownership and tenure rights for indigenous peoples lie outside the mandates of MTCC, forest and timber certification."* (MTCC 2005a).

This position ignores the rights of indigenous peoples agreed under the ILO Convention 169- Indigenous and Tribal Peoples Convention, as well as being totally at odds with the widely acknowledged international benchmark standard on forest management.

MTCC has also issued 45 CoC certificates to timber processing and exporting companies in Malaysia (MTCC, 2004b). The first MTCC timber was shipped to the Netherlands in July 2002, and by the end of 2004 almost 27,000m³ of MTCC-certified timber had been exported to Europe (the UK, the Netherlands, Belgium, France and Germany) and Australia. The Netherlands accounted for some 70% of these exports, representing about 3% of its timber imports from Malaysia over the period in question (Weber Shandwick, 2004). In 2004, MTCC stepped up marketing efforts by hiring PR bureau Weber Shandwick to represent its interests in the Netherlands.

1.3 In eager search of endorsement

In order for its certification scheme to gain access to international markets, MTCC has sought the endorsement of other organisations, including forest certification bodies and national and municipal governments.

In November 2002, MTCC became a member of the Programme for the Endorsement of Forest Certification Schemes (PEFC) Council, but is still awaiting a decision on possible PEFC endorsement of its scheme.³

MTCC has also sought recognition by the Dutch Keurhout Foundation,⁴ which was involved in the initial pilot study that led to the setting up of MTCC (see section 1.2). For MTCC, this endorsement is particularly critical, as it will enable Malaysian exporters to access the Keurhout CoC system, which operates between ports in the Netherlands and traders in the country. However, Keurhout has reviewed MTCC certificates several times between 1999 and 2004 and has so far been unable to accept any of them as sufficient proof of sustainable forest management. Keurhout's reviews

1 In fact, the Netherlands government had reset to meet the target objective by 1995. Objectives were not met by the Dutch government by 1995 nor 2000.

2 Each State in Malaysia has a Forestry Department. Those in Peninsular Malaysia, although they act in their own right, are nominally part of the Forestry Department, Peninsular Malaysia (FDPM) and are under the ultimate control of the Forestry Department Headquarters; while those of Sabah and Sarawak are not part of the FDPM and have no formal links with the headquarters in Peninsular Malaysia.

3 PEFC is a global umbrella organisation for the assessment and mutual recognition of national forest certification schemes. It is governed by the PEFC Council, which consists of representatives of the national certification schemes it endorses.

4 The Keurhout Foundation is a body administered by the Netherlands Timber Trade Association (VNNH) which assesses the sustainability and legality of imported timber and issues certificates for sustainable and legal forest management to Dutch companies involved in the timber industry, including members of the VNNH and the Dutch Association of Joinery Manufacturers (NBvT). Keurhout assesses certificates at the request of its members to determine if the certification meets Keurhout's interpretation of the the Dutch Government's criteria detailed in the document *Minimum Standards for Sustainable Forest Management* and it's own legality protocol.

have not yet determined whether MTCC can be used as proof of legality.

Most of all among the other assessment and certification bodies, however, MTCC is anxious to gain the approval of the FSC.⁵ In January 2005, MTCC started to phase in its new standard *Malaysian Criteria and Indicators for Forest Management Certification 2002 (MC&I (2002))* (MTCC, 2002b) which it refers to (MTCC, 2003) as an 'FSC-compatible' standard. However, this new standard is based on only a subset of the FSC standard, has not been developed according to the FSC guidelines and furthermore is not even been proposed for evaluation and endorsement by the FSC. Thus MTCC's claim of FSC compatibility and intention to be fully compatible with FSC is false and a direct violation of FSC logo regulations.

The MTCC scheme has also been reviewed by the Danish Ministry of Environment and the UK Department for Environment, Food and Rural Affairs (Defra) (see Chapter 3). Both assessments (Denmark, 2003a and 2003b; Defra 2004b) found that the scheme does not yet provide adequate guarantees for sustainable forest management. However, both ministries have stated that the scheme does provide satisfactory guarantees of legality, which represents MTCC's first step towards formal recognition of its scheme in the European marketplace.

In 1998 Hamburg was the first city in Germany to adopt a mandatory public procurement policy that accepted tropical timber products only if they were FSC-certified. In 2002, a new conservative administration was elected in the city, and announced that it would engage in a process of consultation with the goal of accepting the MTCC scheme in its timber procurement policy as a credible guarantee of sustainable forest management. However, as a result of MTCC's poor environmental and social performance the municipality has not so far accepted the scheme.

Nevertheless, Hamburg is now planning a two-year pilot project with MTCC to assist in identifying the gaps in its scheme and areas requiring improvement. The administration has stated in a meeting with Malaysian and European non-governmental organisations

(NGOs)⁶ that once this pilot project is in operation it will consider accepting MTCC timber in its procurement policy, but will phase it out after the pilot period if MTCC does not adequately address and reform its social and environmental criteria and on-the-ground practices. This decision was strongly criticised by social and environmental groups present.

1.4 Purpose of this study

Greenpeace only supports forest certification schemes which require forest management to adhere to the most rigorous ecological, social and human rights standards. These must be combined with solid certification procedures, external accreditation and credible CoC mechanisms to provide consumers with guarantees that forest products originate from sustainably harvested sources.

In this report, Greenpeace assesses the credibility of MTCC's certification scheme against these criteria in theory and practice. The report documents the findings of a desk study backed up by fieldwork which aimed to review MTCC's CoC mechanism in order to determine whether illegal timber could enter the system, specifically from Indonesia.

There have been widespread doubts that MTCC certification scheme can credibly guarantee sustainable or legal timber products. Greenpeace is deeply concerned especially given the possibility of the MTCC certification scheme receiving wider recognition in the EU market, allowing so-called 'MTCC timber' to be prescribed and used under the potentially false assumption that it is legally sourced from sustainably managed forests. This report demonstrates to government bodies (in particular of the EU and its Member States) and industry organisations such as PEFC and the Keurhout Foundation that they should not accept or endorse MTCC or its certificates as providing guarantees of legality.

5 The FSC is an independent, not-for-profit member organisation that provides standard-setting, trademark assurance and accreditation services for companies and organisations aiming to achieve sustainable forest practices. The FSC scheme is widely accepted as being the most credible and authoritative certification scheme in existence.

6 The meeting took place on 9 February 2005. Present were representatives of the City of Hamburg; the Federal Agency for Timber and Forestry; the Federal Research Centre for Forestry and Forest Products, Institute for World Forestry; the University of Hamburg; Greenpeace Germany; Robin Wood Pro Regenwald; Rainforest Foundation Norway; IDEAL (Institute for Development of Alternative Living in Sarawak, Malaysia); and the Center for Orang Asli Concerns.

CHAPTER 2

MTCC CERTIFICATION AS PROOF OF SUSTAINABILITY

2.1 Certifying 'business as usual'

Although this report does not aim to provide a comprehensive analysis of the *MC&I (2002)* as a guarantee of sustainable forest management, some attention has nonetheless been dedicated to this issue. This is because in addition to an assessment of MTCC's CoC claims, which are the main subject of this report, wood users and policy-makers may require some background on the value and validity of MTCC's sustainability claims.

As an important producer of timber, in terms of both volume and value, the sustainability and legality debate in the marketplace is of critical importance to Malaysia. The authorities in Peninsular Malaysia,

in particular, are eager to promote to wood users an image of timber production in Malaysia as being entirely sustainable and legal. Virtually all promotional information produced by the Malaysian Government and industry reflects a firm belief that Malaysian forestry has already been sustainable for many years. Indeed the Malaysian Parliament was recently told by Dato' Seri Dr. Lim Keng Yaik, the Minister for Primary Industries, that: 'It has been clarified that Malaysia and Sarawak [*sic*] have practised sustainable forest management since the 1980s' (Malaysia, 2005). Hence it is clear that, while MTCC might claim otherwise, the MTCC scheme was not designed to introduce significant changes in forest management. By and large, MTCC certifies *existing* legislation and 'business as usual'.



► Tello Abing, the only Penan woman living in Europe, protested against the MTCC certification of Samling, on behalf of the Penan community in Sarawak, at a ITTO workshop on certification in Berne, Switzerland, on 19 April 2005. © Bruno Manser Fonds 2005

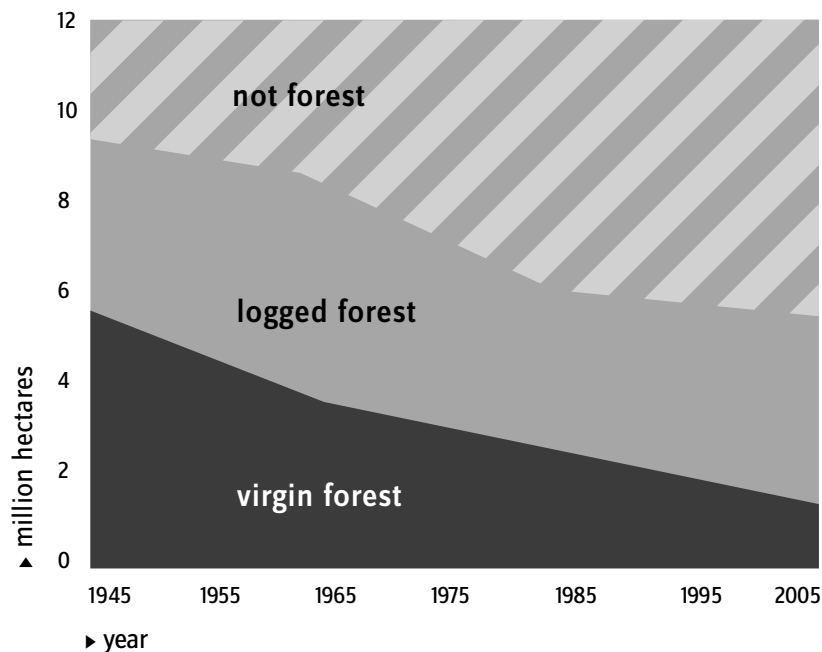


Figure 1 ► Changes in forest cover in Peninsular Malaysia between 1945 and 2005 (after Jomo et al., 2004).

2.2 Decades of systematic forest destruction

In reality, Malaysia's forestry is characterised largely by deforestation. Over half a million hectares of Peninsular Malaysia's forest (8% of the original total) were cleared between 1983 and 2003 (Mohd Imanuddin, 2004; Jomo et al., 2004); while the entire country (including Sarawak and Sabah) lost a mind-boggling 2.7 million hectares of forest (13.4%) during the 1990s alone (FAO, 2001). In fact, less than 20% of Malaysia's original virgin forest remains untouched (Jomo et al., 2004). The results of this long-term deforestation in Peninsular Malaysia are illustrated in Figures 1 and 2.

This loss of forest has led to a significant decline in Malaysia's biodiversity. Logging and deforestation have driven more than sixty endemic tree species to extinction since 1948, with a total of over 170 species of flowering plants endemic to Malaysia becoming extinct (e.g. *Shorea cuspidata* (Dipterocarpaceae), *Impatiens cryptoneura* (Balsaminaceae), *Piper collinum* (Piperaceae), and Ridley's staghorn fern *Platynerium ridleii* (Polypodiaceae)) (Kiew, 1998). Furthermore, several local extinctions of high order forest animals have occurred; for example, the Sumatran rhinoceros *Dicerorhinus sumatrensis* is extinct in the state of Sarawak and critically endangered in Peninsular Malaysia and Sabah (IUCN).

IUCN (the World Conservation Union) lists 123 Malaysian forest-dependent animal and plant species

as threatened with extinction as a result of human-induced habitat loss and degradation: 23 of these are 'critically endangered' - the highest category of threat. (IUCN, 2004).

2.3 MTCC's failure to counter deforestation

The loss of intact natural forests, combined with a steady domestic demand for wood, led to Peninsular Malaysia becoming a net importer of roundwood for the first time in 1995. This trend has been sustained over the past 10 years, with a shortfall of nearly 2 million cubic metres in 2003, when roundwood consumption in the Peninsula was 6.2 million cubic metres, with production reaching only 4.4 million cubic metres (Poh and Dan, 2004) - although this may be somewhat offset at a national level by some of the imports being from Sabah and Sarawak. Nevertheless, the importation of illegal timber appears to be a major factor in meeting Malaysia's domestic demand: a 2001 study demonstrated that 39% of national timber consumption could not be accounted for by domestic logging or legal imports (Brown, 2002).

Despite these legal and illegal imports, the demand for timber ensures that the forests of Peninsular Malaysia's States continue to be logged, even though a given State may have received an MTCC certificate for sustainable forest management. In this context, it is important for overseas timber consumers to look behind the impressive land-use statistics presented by MTCC's lobbyists,

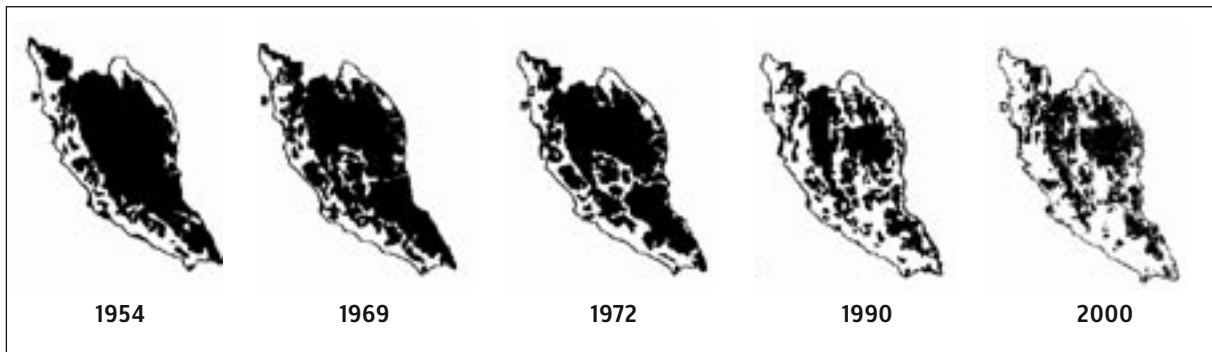


Figure 2 ▶ Deforestation in Peninsular Malaysia, as shown by the decline in the extent of 'natural' forest cover between 1954 and 2000 - most of the remaining forest shown as existing by 2000 was no longer virgin forest but had been selectively logged (adapted from Jomo et al., 2004 and Stibig et al., 2002).

and be aware that the so-called 'Permanent Forest Reserves' in MTCC-certified States are not as permanent as one is led to believe.

Forest land in Malaysia can be categorised under the following four types (these categories antedate the establishment of MTCC):

- (i) forests on State land;
- (ii) forests on 'alienated land' (ie private land);
- (iii) forests in Permanent Forest Reserves (PFRs) (open to 'sustained yield' logging - effectively selective logging); and
- (iv) forests in other reserves (eg Wildlife Reserves, National Parks, etc).

Forests on State land and alienated land are not actively managed by the Forestry Departments, and with few exceptions are intended to be cleared for other uses. Forests in other reserves are not generally used for timber production; so for the purpose of forest management certification MTCC is only concerned with the management of forests inside PFRs.

For the eight main forested States in Peninsular Malaysia, the total area of PFRs in a state constitutes as a Forest Management Unit (FMU) for that state.⁷

PFRs cannot be converted to non-forest use for as long as they are classified as PFRs. However they are not actually permanently protected from conversion, because State Governments can, at will, excise forest lands from

their PFRs (and thus from the FMU), and MTCC simply disregards forests excised from an FMU as outside its mandate - even if they are of a high conservation value and integral to the conversation management of forest areas at a landscape level (and it should be noted that WWF Malaysia considers *all natural forest in Malaysia to be of high conservation value* (Ginny Ng, WWF Malaysia, pers. comm.)). An MTCC-certified State that removes areas from its FMU for conversion will not as a result be decertified by MTCC.

Detailed information on the reasons for the excision of land from FMUs due to degazettement (the formal process of denotification) is not publicly available. Indeed, this lack of transparency has led some to conclude that such degazettements have sometimes been illegal. Commenting on the deforestation of the Bukit Cerakah Forest Reserve in the MTCC-certified Selangor FMU, a prominent local columnist reached this conclusion regarding the recent degazettement of forest reserves in Selangor:

Going by the provisions in the National Land Code, there must be a public inquiry before any land is termed as 'reserved land' or when the status of such land is revoked. So, the question here is: Were public inquiries held before the actions of the mentris besar [chief ministers] - past and present? Checks show there were none. So, this whole exercise of gazetting land and de-gazetting it ... is illegal because the laws were not followed. (Nadeswaran, 2005)

7 FMUs in Sabah and Sarawak are delineated on a licence-area basis.

Neither the Selangor State Government nor MTCC has responded to this allegation.

When an area is excised from an MTCC-certified FMU, the forest cover of that area is usually cleared. Timber from such deforestation operations can legally and probably does enter the MTCC CoC as part of the permitted 30% uncertified content in a certified batch (see section 4.2).⁸ Purchasers paying premiums for MTCC timber are thus, in all probability, unwittingly rewarding Malaysian State policies that allow deforestation of land originally designated as PFR - ie intended to be logged sustainably.

Indeed, few people in the marketplace are aware that most timber harvested in Peninsular Malaysia in fact originates from unsustainable deforestation operations. In 2003, 58% (129,739ha) of the total area logged lay outside the PFRs (Poh and Dan, 2004). Furthermore, logging of forest on State land and alienated land produces considerably more timber per hectare because all trees are cleared (Mohd Imanuddin, 2004), so the overall proportion of timber that comes from outside PFRs will be even higher.

There is also mounting evidence that illegal logging by timber thieves is rife in Peninsular Malaysia, often within PFRs (*New Straits Times*, 2002; Ridzwan Abdullah, 2003; Simon, 2005). While MTCC does not of course bear direct responsibility for this phenomenon, it appears to be making little effort to encourage the State Forestry Departments it has certified to take a more dynamic stance in protecting the reserves from opportunistic clear-felling and in co-operating with police to apprehend the perpetrators. Furthermore, this activity results in a pool of illegal timber which the thieves somehow need to sell in order to make a profit: given the inadequacy of MTCC's CoC in the forest, it is likely that some of this timber will ultimately be passed off as MTCC-certified.

2.4 Public criticism of MTCC and its failure to involve stakeholders or address social issues

Over the years, MTCC has attracted much criticism from Malaysian local and indigenous communities, as well as from NGOs both in Malaysia and in timber-im-

porting countries. Indeed, some organisations closely involved in the formation of MTCC have subsequently withdrawn their support for the scheme.

A number of community-based indigenous groups and social and environmental NGOs were invited to participate in the process of developing the MTCC scheme with the goal of making it FSC-compatible. In July 2001, the indigenous organisations and most other NGOs withdrew from the process, as they felt that MTCC continually ignored their concerns and objections over the recognition of the customary rights, tenures and user rights of indigenous peoples and local forest communities, and because they realised that their continued involvement would only serve to legitimise MTCC.

MTCC has recently publicly acknowledged its fundamental weakness of not addressing the land ownership and tenure rights of indigenous people.

"MTCC on its part respects the decisions made by any courts in Malaysia with regard to the rights of the local communities in the forests, which are seeking certification under the MTCC scheme. However, land ownership and tenure rights for indigenous peoples lie outside the mandates of MTCC, forest and timber certification." (MTCC 2005a).

This position runs counter to the rights of indigenous peoples agreed under such conventions as the International Labour Organisation Convention 169 - Indigenous and Tribal Peoples Convention and United Nations Draft Declaration on the Rights of the Indigenous Peoples, as well as being totally at odds with the widely acknowledged international benchmark standard on forest management.

The groups that withdrew from the process then formed a network named JOANGO Hutan to work on certification and forest issues as they relate to indigenous and local forest communities' ownership rights, user rights and access to resources (Yong, 2002). In a recent leaflet, JOANGO Hutan criticises MTCC for awarding certificates to FMUs even when there are unresolved issues concerning the granting of 'logging concessions in areas where indigenous customary rights are legally exercised and asserted by the people' (JOANGO Hutan, 2005).

⁸ MTCC's rules have weak controls on such uncertified timber; however, they lack credibility as they will rely on suppliers themselves to verify that the uncertified timber included is not from a high-conservation-value forests (HCVFs) - see section 4.2.

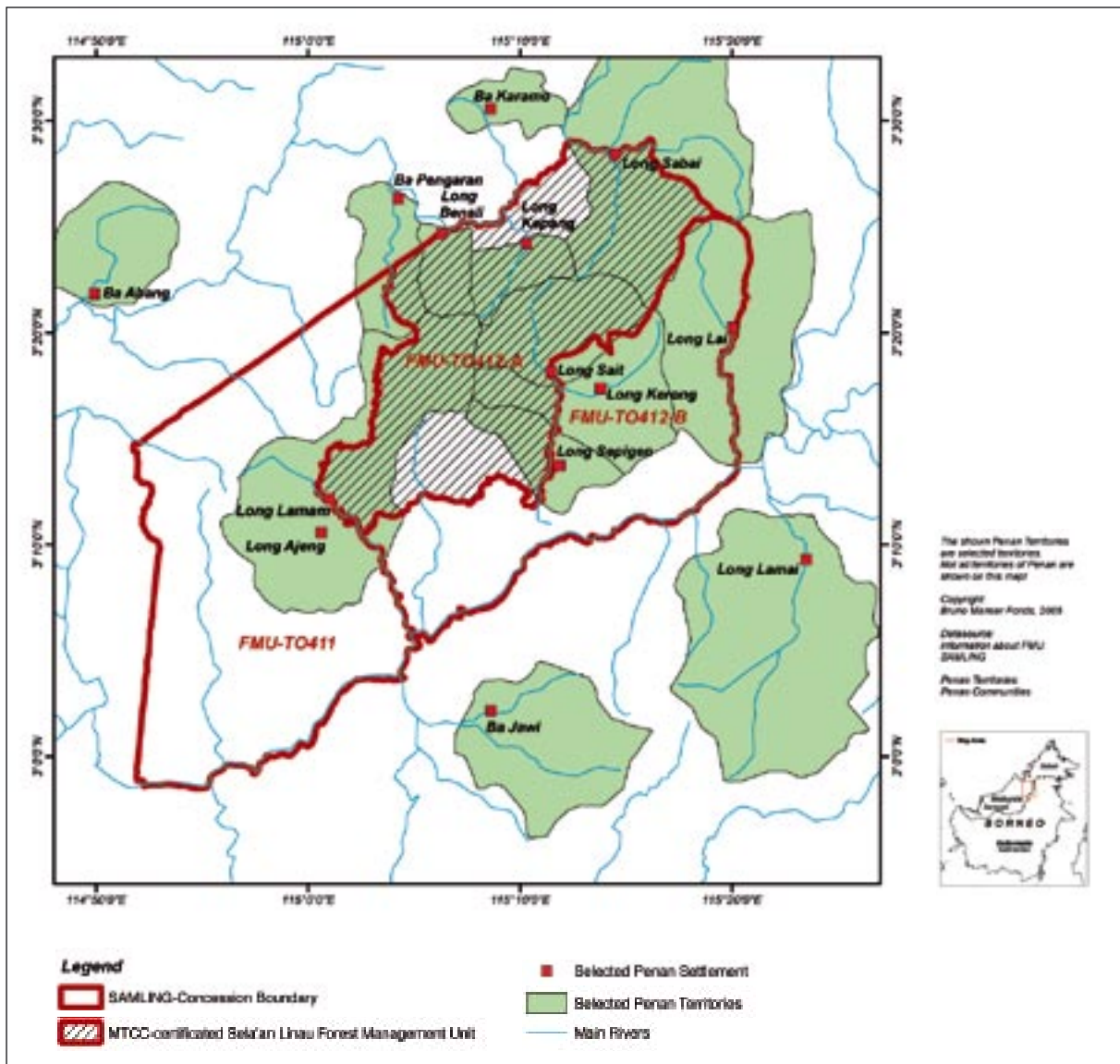


Figure 3 ▶ Penan Territories affected by the MTCC certified Samling Sela'an Linau Forest Management Unit

Other NGOs have reached similarly damning conclusions regarding MTCC's failure to involve stakeholders or address social issues. For example, in a position statement dated 19 March 2002, WWF Malaysia protested that MTCC's standard:

was not developed through a due consultative process and emphasises economic considerations while failing to adequately safeguard social values and environmental conservation. ... In our view, the MTCC scheme is not an adequate mechanism to improve forest management, encourage conservation of biodiversity, solve social conflict or provide a credible guarantee of good forest management

A number of indigenous peoples' groups and social NGOs have produced reports that describe numerous

weaknesses in the MTCC scheme (Wong, 2004; JOANGOHutan, 2004; GPI, 2004; Ng et al., 2002; Yong, 2002; FERN, 2004). These criticisms concern many aspects of the scheme, with the following being of particular concern:

- (i) undemocratic representation on the MTCC board of trustees;
- (ii) lack of representation of forest-dwelling communities on the MTCC board;
- (iii) deficiencies in the standard used for assessment;
- (iv) lack of transparency in the decision-making process;
- (v) bias towards the short-term interests of the timber industry; and
- (vi) absence of third-party accreditation.

One study (Wong, 2004) notes that *'there is no clear recognition of land rights and user rights, which is a serious omission in the Malaysian context and has, as a consequence, seriously undermined support for the standard in Malaysia.'* Wong further observes that *'issues of legality are not necessarily adequately addressed. ... By not recognising native customary law, the MTCC scheme aggravates the injustice to indigenous communities and challenges the legal rights of indigenous citizens as enshrined by the national constitution.'*

These criticisms of MTCC's failure to uphold the rights of indigenous peoples are well illustrated by the inauguration in January 2005 of the first FMU outside Peninsular Malaysia - the Sela'an Linau FMU covering over 50,000ha in the Ulu Baram region of Sarawak (Straumann, 2005). By contrast with the procedure in Peninsular Malaysia, the Certificate for Forest Management covering this FMU was awarded not to the State Forestry Department, but to a company - Samling Plywood (Baramas) Sdn Bhd - which has an established logging operation in the area.

The FMU covers one of the last surviving tracts of primary rainforest in Sarawak and it is also home to the indigenous Penan people (see Figure 3) The forest is not only the source of much of their food, but also the focus of their culture and belief system. The Penan have been peacefully opposing the logging of their territory by Samling and others for nearly twenty years - long before the setting up of MTCC. They have repeatedly petitioned the Sarawak State Government to withdraw logging licences covering their land. Although their blockades of logging roads in the 1990s were violently dismantled by police, soldiers and forestry officials, with several villagers dying as a result, the Penan have persisted in their opposition to the destruction of their ancestral forest and have mapped their territories in an attempt to achieve recognition of their indigenous customary rights. To this end, several communities brought a court case against Samling and the Sarawak Government as long ago as 1998.

This case is still pending in the High Court at Miri, Sarawak. However, although the recognition of the Penan's rights is still *sub judice*, MTCC pressed ahead with certification of Samling's FMU - flouting the express wishes of its indigenous inhabitants, and ignoring both due legal process and the mounting evidence of the harm caused by Samling's operations. As Penan community leaders wrote recently in a letter to MTCC's Chairman protesting at the certification: 'Our rivers are polluted, our sacred sites damaged and our animals chased away by people who deprive us of our

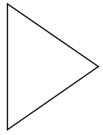
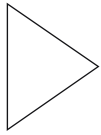


► *The Penan indigenous people of the Upper Ulu Baram area have appealed to the Sarawak government and UN Human Rights commission to recognise their indigenous customary land rights. Despite this unresolved conflict and neglect to engage proper consultation with the Penan, MTCC has certified the Samling operation in Penan territory claiming its practices are socially, ecologically and economically sustainable. © Greenpeace*

livelihood and culture' (Bilong Oyau, 2005). This, in social terms, appears to be the legacy to which MTCC certification gives an official seal of approval.

2.5 Conclusion

The forestry legislation on which MTCC is based has not brought about significant improvements in past or present forestry practices. By and large, MTCC endorses unsustainable forestry and inequitable decision-making processes. As such, the MTCC scheme fails to address both concerns over deforestation and forest degradation, and infringements of the legal framework that should uphold the rights of indigenous communities in Malaysia. MTCC has a major failure against the international benchmark standard for forest management by not addressing indigenous peoples land ownership and tenure rights.



CHAPTER 3

THE ISSUE OF LEGALITY AND MTCC'S CHAIN OF CUSTODY

3.1 Danish and British government endorsement

While the MTCC scheme was originally intended to certify sustainability claims, some of MTCC's promotional material now also suggests that the scheme can be used as a guarantee of the legality of timber products.

Recognition of MTCC's supposed competence to guarantee legality first came in 2003 with a booklet published by the Danish Ministry of the Environment, which stated:

MTCC is regarded as providing an adequate guarantee for legal forest management, on their way towards sustainability, whilst marketing of MTCC certified wood in Denmark will require the attachment of a CoC certificate from Malaysia. (Denmark, 2003a)

In November 2004, on the basis of the report of a UK study, the United Kingdom Environment Minister, Elliot Morley, declared the MTCC scheme to be 'a valuable guarantee of legality' (Defra, 2004b).

Initially, MTCC was quite reluctant to claim the ability to guarantee legality. However, it has now recognised the powerful marketing potential of having been endorsed by these Western governments as being able to deliver 'legal timber', and has since added the word 'legal' to 'sustainable' in publicity materials. Timber trade journals and newsletters issued by trade organisations have followed suit (see section 6.2).

It is important to note, however, that both the Danish and the UK studies were based solely on publicly available documentation and discussions with MTCC staff.

No non-governmental organisations in Malaysia were consulted to determine whether the deficiencies that they had observed in the standard used by MTCC (see 2.4 above) were perhaps related to legality and law enforcement, and no assessments were made of actual legal compliance and law enforcement in the field. Even more disturbing was the fact that the UK study carried out by consultants ProForest as well as the Danish study failed to identify the fundamental weakness of MTCC – that of it not addressing indigenous peoples land and tenure rights. Had they consulted with Malaysian social and environmental stakeholders they would have very quickly determined this.

The present study focuses on the integrity of MTCC's CoC system, and an assessment of the legality of MTCC-certified forest management on the ground is thus outside its scope. However, there is more than enough evidence of failings in MTCC's CoC to suggest that the governments who willingly (and on their own initiative) endorsed the scheme as a guarantee of legality were at best naïve.

3.2 Principles of MTCC's chain of custody assessment

Timber certification consists of two components: the first is the assessment of forest management practices (forest management certification), and the second is CoC certification. CoC certification involves the verification by an independent assessor that the wood products (including logs) purchased by a party in the trade chain actually derive from certified forests. In most certification schemes, every stage in the chain from the forest to the final retailer, including traders who repackage or process the raw materials or use them to manufacture goods, must obtain a CoC certificate.

The requirements and procedures for MTCC CoC certification are detailed in two publicly available documents:

- (i) *Requirements and Assessment Procedures for Chain of Custody Certification (RAP/COC)*, dated 3 November 2000 (MTCC, 2000); and
- (ii) *Procedures in MTCC Timber Certification Scheme*, dated 23 January 2002 (MTCC, 2002a).

These documents identify the requirements for all aspects of the MTCC CoC system, including application for certification, assessment, the certification decision, the issuing of certificates, trademark and logo rules, monitoring of compliance, cost guidelines and so on.

RAP/COC is intended to be replaced by a new document entitled *Requirements for Chain of Custody Certification (RCOC)*, dated 26 August 2004 (MTCC, 2004a). The MTCC website indicates that *RCOC* will come into force as of January 2006 and that companies can voluntarily be audited against it as of April 2005.

3.3 The UK's assessment of MTCC's chain of custody system

The UK study looked at the MTCC scheme according to the framework provided by the *UK Government Timber Procurement Policy: Criteria for Assessing Certification Schemes* (Defra, 2004a). Section 4 of this document deals with CoC. For the purpose of the present report, criterion 4.1.2 is of key importance:

There must be a certified Chain of Custody in place from the forest of origin to the final product. ... This means that there must be an appropriate and

valid Chain of Custody certificate or equivalent for each organisation in the chain from forest to final product which owns or processes the material in any way.

The UK study concluded that in MTCC's case this criterion was 'fully addressed by the *RAP/COC*' (Defra, 2004b), although it was noted that this applied only to timber certified as 100% MTCC.

However, as we shall see below, even this limited endorsement was over-optimistic. The gaps in the MTCC CoC within Malaysia, and the failure of the current CoC system to follow the product supply chain once it has left Malaysia, mean that timber sold in Europe or elsewhere as 100% MTCC may be neither 100% MTCC nor even legal. Moreover, the future MTCC rules (*RCOC*) will weaken the system still further by watering down *RAP/COC*'s already inadequate provisions for the tracking of timber between the forest of origin and the primary processing point (see section 4.2).

3.4 Gaps in the chain of custody system

In stark contrast to the UK Government's optimistic assessment, Greenpeace has found that the present MTCC CoC system fails to assure most of the critical links between the forest and the final consumer. The complete lack of audit both prior and subsequent to the processing stages allows companies to change, mix or misreport the actual content of a 'legal' or 'certified' batch of timber products, both between the forest and the processing plant, and at any stage in the supply chain between processing plant and final customer.

Figure 4 illustrates the present extent of coverage of the MTCC CoC. Under *RAP/COC*, only the stages highlighted

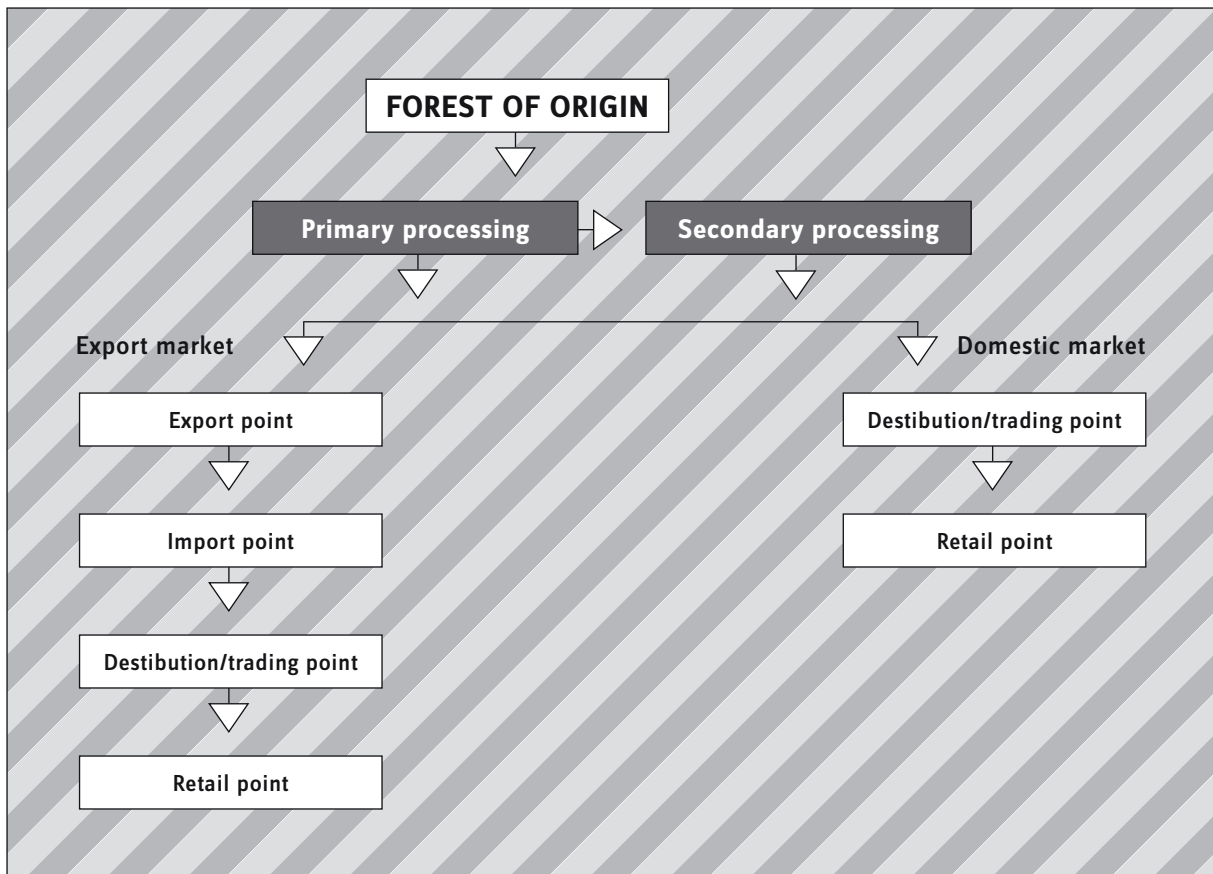


Figure 4 ▶ Tracking of wood products from the forest to the retail point. Shaded boxes indicate aspects of the chain which are covered by RAP/COG (adapted from RCOC (MTCC, 2004a) s.1.1, Figure 1).

are actually subject to MTCC third-party audit - RCOC proposes to extend the chain forward from the processing stage all the way to the retail point, but will still overlook the link between the forest of origin and the primary processing point.

The main gaps in MTCC's present CoC system may be itemised as follows:

- (i) Certified forest managers, concession holders and logging contractors are not required to obtain a CoC certificate (see section 4.1).
- (ii) Transportation from forest to sawmill is not subject to a CoC audit (see section 4.1).

- (iii) Timber companies marketing MTCC-certified products outside Malaysia are not required to obtain a CoC certificate from MTCC. Moreover, there is at present no other CoC system in the European marketplace or elsewhere that will accept and verify MTCC timber (see Chapter 6).

Furthermore, MTCC's present percentage-based standard allows companies to mix uncertified (and thus potentially illegal) wood products with certified ones, up to a maximum 70% of the total batch for fibre products and up to 30% for solid wood products (see section 4.2).

CHAPTER 4

Analysis of MTCC's chain of custody system - Malaysia

4.1 From the stump to the sawmill - MTCC's weakest link

The link between the forest of origin and the sawmill or plywood factory is a crucial element in any CoC system. In the MTCC system this link has not been audited by MTCC's registered assessors (the companies or individuals who carry out certification assessment on its behalf). Neither will *RCOC* address this serious weakness.

In the first place, the MTCC system (under both the present *RAP/COC* rules and the future *RCOC* rules) does not require FMUs, forest managers, logging concession holders or logging contractors to obtain a CoC certificate. The fact that MTCC issues forest management certificates either to State Forestry Departments (in Peninsular Malaysia) or to individual licensee companies (so far only in Sarawak), but in neither case to the contractors who actually conduct the logging and log transportation operations within an FMU. This makes it especially desirable that systems should be in place requiring concession holders and (sub)contractors to obtain independently verified CoC certification. This however is not the case.

The absence of a CoC requirement for parties involved in logging and log transportation is at odds with any accepted definition of what constitutes a credible CoC system, and does not meet the UK, Danish and Dutch requirements, which stipulate that *all* links in the chain must be certified. Instead, CoC certificates distributed to Malaysian primary processors by MTCC explicitly devolve MTCC's responsibility for the vital first stages in the CoC system, stating that the holder must itself have 'implemented a system that allows for identification and tracking [of] the origin of its products to Forest Management Units which have been issued with Certificates for Forest Management' (MTCC, 2002a). Moreover, the small print of the existing *RAP/COC* procedures (MTCC, 2000) does not even clearly specify that the CoC, as implemented by the processor, must start at

the stump. What is stipulated is merely that 'the Chain of Custody system allows for tracking of wood products from the forest transport to primary processing' (s.1.1). This ambiguous wording seems to imply that the processor's identification and tracking responsibilities begin, at best, only when timber is loaded for transport - or perhaps even, absurdly, when it is unloaded at the end of its journey to the processing plant. As noted below, this deficiency is not addressed by *RCOC*.

Thus MTCC has (and will have) no independent, third-party CoC auditing system in place at any stage between the stump and the first point of processing. The tracking of wood products by its registered assessors begins not only after the products have been harvested from the forest, and after they have been loaded onto forest transport vehicles and have left the custody of the forest manager; but actually not until they have arrived at the sawmill or plywood factory. Until this point MTCC relies on processors' verification of their own product chain, as stipulated in its CoC certificates. Because there is no independent third-party auditing between the stump and the processing facility, and because of the vagueness of MTCC's stipulations regarding the scope of the tracking to be carried out by processors, ample opportunities exist for the companies involved to let uncertified timber enter the MTCC CoC. Moreover, even assuming honest intentions on the part of the primary processor, both the present system and that to be introduced by *RCOC* have serious shortcomings as regards the documentation they require.

The present rules

RAP/COC states: 'The client must ensure that the *supplier* has provided a copy of a valid Certificate for Forest Management or a valid Certificate for Chain of Custody' (s.2.5.1 - our emphasis). However, in the States of Peninsular Malaysia it is common for logging to be controlled by numerous licensees (holders of timber harvesting concessions). These licensees in turn contract out the actual logging operations to a contractor

company, with further subcontracting being common. There may be many logging contractors working inside a single FMU at any one time, and their composition may change every few months. The contractors are the parties who, either in their own right (having paid a one-off fee) or on the licensees' behalf, *de facto* own, transport and sell the logs to the sawmills: they are in practice the *suppliers* at this stage of the product chain.

As stated above, these licensees and contractors are not required to obtain CoC certificates. Furthermore, MTCC awards the Certificate for Forest Management to the State Forestry Departments, not to individual licensees or contractors. *RAP/COC* does not require licensees or contractors to be audited against MTCC criteria, which means in practice that suppliers of roundwood do not have MTCC CoC certificates. Thus it is unclear how a client (processor) can fulfil the obligation laid on it by *RAP/COC* to ensure that its supplier (licensee or contractor) provides a copy of a Certificate for Forest Management or a CoC certificate.

In practice such certificates are not provided, and thus the rules laid down by *RAP/COC* are being broken every time a processor takes delivery of a consignment. MTCC and its assessors seem content to turn a blind eye to this travesty.

The new rules

This problem will not be solved by *RCOC*, which addresses this issue only to offer a solution almost as inadequate as the rules under *RAP/COC*. It drops the ineffectual requirement that all suppliers need to provide a copy of either a Certificate for Forest Management or a CoC certificate, and instead, states that:

For the purpose of Chain of Custody for logs emanating from a certified FMU, an accompanying valid Removal Pass issued by the respective forestry authority is deemed acceptable. (s.3.4.2)

At first glance, this may seem to represent an improvement, since the Removal Pass is at least a document that licensees or contractors will have in their possession. However, *RCOC* defines the Removal Pass as follows:

A pass for the removal of forest produce issued under Section 70 of the National Forestry Act 1984 for Peninsular Malaysia, or a timber disposal permit for the removal of forest produce issued under the Forest Rules 1969 (Rule 15) in the case of Sabah or a removal pass in Form IX in the Schedule to the Forest (Forms) Rules issued under Rule 22(5) of the Forest Rules, 1962 in the case of Sarawak. (RCOC preamble)

In effect, *RCOC* is asserting that for CoC purposes this Removal Pass is henceforth to be considered of equivalent value to an MTCC Certificate for Forest Management or CoC certificate. This has profound ramifications because:

- Removal Passes are issued by State Forestry Departments - which are actually the parties which undergo assessment for Certificates for Forest Management. Through an intricate network of shareholdings, the State Government to which a Forestry Department belongs may also have direct economic interests in the timber processing units to which logs are supplied; and
- contrary to the fundamental principles of independent certification, MTCC proposes to take Removal Passes at face value and does not intend to assess their veracity. Since the Removal Pass is to form the very first step of the CoC under *RCOC*, *the reliability of MTCC's CoC will therefore rest entirely on the integrity of the State Forestry Departments.*

Moreover, the Removal Pass was never intended to be used for CoC and should not be deemed acceptable for that purpose. This becomes clear when one understands its original purpose. As noted above, it is defined for States in Peninsular Malaysia by the National Forestry Act 1984 (NFA) (Malaysia, 1984). The NFA (Chapter 4 - Possession of Forest Produce, ss.68-71) makes it clear that the purpose of the Removal Pass is purely to control the payment of royalties to the State authorities for the removal of forest produce from an area by a licensee or its contractor. Nowhere in the NFA is it stated that the Removal Pass can be used for the purpose of CoC.

NATIONAL FORESTRY ACT 1984
FORM 8 (Section 70 (2)) REMOVAL PASS NO _____
PASS FOR THE REMOVAL OF FOREST PRODUCE
This pass permits Encik/Syarikat [Mr./Company]* _____ (N.R.I.C. No [identity card number] _____) of _____ to remove past the forest checking station at _____ the forest produce hereunder described which has been taken under licence/minor licence/use permit* No _____ and belongs to _____
Kind of Produce _____ Number or Quantity _____ Length (metres) _____ Mean Diameter (centimetres) _____ Cubic Metres _____ Volume _____ Deductions for hollowness, etc. _____ Volume on which royalty is paid _____ Total _____
Conveyance Registration No _____ Destination _____ Date _____ _____ <i>Authorized Forest Officer</i> *Delete whichever is not applicable. This pass must be kept by the driver of the conveyance or the person in charge of the forest produce.

Figure 5 ▶ English version of a Removal Pass (source: Malaysia, 1984).

Deeming the Removal Pass to be an acceptable equivalent to a Certificate for Forest Management or CoC certificate is particularly inappropriate in that Removal Passes do not provide critical information that is needed in order reliably to verify the origin of a forest product (nor is there any intention to reword the form so as to include this information). Specifically, the Removal Pass does not:

- (i) identify the forest of origin of the forest product;
- (ii) specify which MTCC Certificate for Forest Management was issued for the forest of origin;
- (iii) identify the certified status of the forest product;
- (iv) specify the percentage of the forest product that has been certified;
- (v) specify the name and address of the buyer of the forest product; or
- (vi) specify the date of delivery to the buyer.

These deficiencies mean that the Removal Pass actually fails to meet the requirements that MTCC specifies for documents related to purchasing. Both *RAP/COC* and *RCOC* state that:

The Client must ensure that all documents related to purchasing, including purchase orders, delivery notes, supplier invoices, import documents, correctly identify the certified status of the materials purchased. These documents shall include the supplier's Certificate for Forest Management or Certificate for Chain of Custody number, the type and quantity of material and date of delivery. (s.2.5.2 of RAP/COC; s.3.4.3 of RCOC)

But, contrary to MTCC's own guideline, the Removal Pass does not identify the certified status of the forest produce or give the supplier's Certificate for Forest Management or CoC certificate number – and it is unclear whether MTCC could determine this information by reference to the licence number stated on the Removal Pass. Its omission of the delivery date is also directly contrary to the stipulations of *RAP/COC* and *RCOC*.

It runs counter to the established international principles of auditing to rely on the Removal Pass when there is a significant risk of error and fraud concerning the origin of logs arriving at sawmills in Malaysia. In such scenarios, the principles of auditing require assessors to:

maintain an attitude of professional scepticism recognizing the possibility that a material misstatement

due to fraud could exist, notwithstanding the auditor's past experience with the entity about the honesty and integrity of management and those charged with governance. (IAASB, 2004)

This basic principle is recognised by the UK Timber Trade Federation (TTF), which acknowledges that independent tracking systems must be put in place whenever there is thought to be a risk of fraud. The TTF Draft Responsible Purchasing Policy states:

Where there is known to be good governance and the rule of law is respected, being able to trace timber back to stump is less important ... when sourcing from countries perceived to be corrupt, legality can only be guaranteed when tracking systems are used. Traceability is fundamental in the fight against illegal timber; the higher the risk of illegality, the greater the need for traceability. (Miller, 2004)

Various indices of corruption clearly put Malaysia into the category of countries perceived to be corrupt. In a survey carried out as part of the Transparency International Corruption Barometer 2003, a majority of respondents in Malaysia stated that corruption significantly affects the business environment, with corruption of law enforcement officials singled out as a particular problem (TI, 2003). The forestry and timber sector is particularly prone to corruption. For example, corruption concerning the improper allocation of timber land is common in Malaysia (Pillai, 2001; Majid Cooke, 1999; Milne, 1987).

It is therefore particularly incumbent upon MTCC and its assessors to provide an *independent* assessment of traceability, requiring the State Forestry Departments, the licensees and the subcontractors to be subject to a functional CoC system. However, it has been demonstrated that MTCC has not done this and, even under the revised requirements set out in *RCOC*, does not intend to do so.

4.2 Mixing of uncertified and illegal material with certified material

Even if the MTCC scheme were extended to cover the entire chain from the stump to the retailer, this would still be insufficient to prevent illegal foreign or domestic timber from being certified under MTCC. This is because MTCC's percentage-based labelling standard permits uncertified timber (up to a maximum of 30%) and (a maximum of 70%) per batch of fibre to be mixed with certified material. Under *RAP/COC*, MTCC does not screen for illegal timber, and indeed requires

no independent audit of the origin of the uncertified component of a batch. This means, for example, that MTCC would allow up to 30% of a shipment of sawn timber to come from unknown and potentially illegal sources and still permit the batch to be marketed as MTCC-certified.

This situation contravenes UK criterion 4.2.2, which states that *'If mixing of certified and uncertified material is permitted then there must be a verifiable system in place which ensures that all uncertified material used is from legal sources'* (Defra, 2004a). MTCC's failure to meet this condition was picked up by the UK assessment, the fine print of which stated that only certification as 100% MTCC could be considered a proof of legality (Defra, 2004b). However this detail was glossed over by the media release in which the UK Environment Minister proclaimed MTCC as among the schemes which were a 'valuable guarantee of legality' (UK, 2004). Furthermore, the 100% stipulation makes no sense when one remembers that the present MTCC scheme makes no provision for CoC outside Malaysia. Thus, not only is MTCC unable to require that timber sold in the UK as MTCC timber must have documentation specifying what percentage has been MTCC-certified; but it actually has no mechanisms to ensure that timber sold there as 100% MTCC-certified is in fact MTCC timber at all. - This complete lack of control over the labelling of actual or alleged MTCC timber seriously undermines the UK Environment Minister's endorsement.

RCOC proposes to address this issue by extending the CoC overseas - though it is as yet unclear when and how MTCC intends to implement and enforce its CoC in buyer countries. The RCOC rules also purport to include some limited screening for controversial timber. RCOC defines controversial sources as follows:

Controversial Sources *Wood that has been sourced [sic] through illegal or unauthorized harvesting such as 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. These sources also include wood derived from: (i) genetically modified trees, (ii) areas where there is a clear demonstration of violation of traditional, customary or civil rights, or of serious extant disputes with indigenous peoples or other social stakeholders, involving confrontation or violence, and (iii) uncertified high conservation value forests. (RCOC Glossary)*

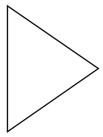
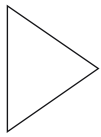
However, rather than setting up a system of independent verification, MTCC proposes to rely only 1st or 2nd party verification, from the timber trader that uncertified timber is not controversial. Therefore, even under RCOC, MTCC will provide no satisfactory guarantee that the uncertified portion of percentage-labelled timber is not from illegal sources.

In fact, RCOC will further compound the uncertainty surrounding the mixing of uncertified and illegal timber by introducing an 'Input/Output System'. Under this system, when 'a known percentage of certified material (ie input batch) enters into processing, the same percentage (on average) of the production (ie output batch) is considered to be certified' (RCOC section 2.2.2). The implications of this are that a particular item (eg a plank of wood, or a piece of furniture) labelled as certified by MTCC may actually have 0% certified content. The Input/Output System will therefore further undermine MTCC's claims to offer proof of legality.

4.3 Conclusion

MTCC's scheme does not have an independent CoC mechanism in place between the forest and the first point of timber processing. This is a serious flaw in the scheme; and the proposal to allow the use of Removal Passes in place of Certificates for Forest Management or CoC certificates will do precious little to alleviate it. Removal passes are an inappropriate alternative to Certificates for Forest Management or CoC certificates, since they are issued by the Forestry Department, which is also the certified party, and hence barely constitute independent proof of origin. They also fail to provide essential information required to trace back the origin of timber that enters a sawmill.

Furthermore, MTCC's percentage-based labelling standard allows companies in Malaysia to incorporate up to 30% of uncertified material into a certified batch of timber and up to 70% of uncertified pulp into batch of fibre. Worse, under the new RCOC rules, it will be possible for a particular certified item to have no certified content whatsoever. There is no mechanism in place, and no adequate system proposed, to trace the origin (or thus to gauge the legality) of uncertified material. Uncertified timber which has been illegally logged and/or smuggled into Malaysia is therefore likely to enter the MTCC CoC.



CHAPTER 5

DOES ILLEGAL TIMBER ENTER THE MTCC CHAIN?

5.1 Field investigation

In the previous chapter, it was concluded that MTCC has a broken CoC. This represents a failure to observe the fundamental principles of forestry certification, and it allows, in theory, for illegal or otherwise uncertified logs (from Indonesia or elsewhere) to enter the MTCC system. To establish evidence of whether MTCC-certified companies do actually buy timber from Indonesia (which would *de facto* almost certainly be considered illegal because of the current ban on exports of roundwood and unprocessed sawn timber from Indonesia) and then mix it with MTCC-certified timber, Greenpeace investigated timber transport activities in Port Klang, Selangor State.

5.2 The Minho Group

The largest exporter of Malaysian sawn timber to the Netherlands is the Malaysian Minho Group. One of the subsidiary companies in this group is Victory Enterprise Sdn Bhd. MTCC has certified Victory's compliance with the present CoC rules (certificate number MTCC COC 037). The company is a sawn and processed timber exporter specialising in dark red meranti (*Shorea* spp.) and other tropical hardwoods. Indeed, with a total production capacity of more than three million linear metres per month, Victory is one of the largest manufacturers and exporters of premium wood mouldings and sawn timber in Peninsular Malaysia. It was therefore decided that a particular focus of the fieldwork in Peninsular Malaysia would be on Victory and the rest of the Minho group of companies (see Figure 6).

The Minho Group has its own logging concession in the MTCC-certified State of Pahang. However, Minho also acknowledges that it imports significant volumes of timber from 'various overseas sources', with the importance of this imported timber growing in recent years - in 2000 it stated that total sales of imported timber 'amounted to a respectable RM27.6 million [around €5.6 million]' (Minho Group Annual Report 2000).

5.3 Port Klang

Field reports from Sumatra indicated that one of the key destinations of timber smuggled from there was the port of Klang about 30km west of Kuala Lumpur. Based on this intelligence, special efforts were made to uncover smuggling activities in this location.

There are four main ports in the Klang area: North Port, South Port, West Port and Port Klang. The largest of these is West Port, which is a huge container terminal. In addition to these large ports, Port Klang has 27 officially designated privately owned jetties for unloading and uploading cargoes, including timber.

5.4 Illegal timber at the Sritama jetty

The Greenpeace surveillance team recorded a steady stream of lorries laden with timber flitches (squared logs) arriving at the Minho site off Jalan Kapar (Kapar Road), Klang. By following the empty lorries to their presumed origin, the team was able to trace this tim-

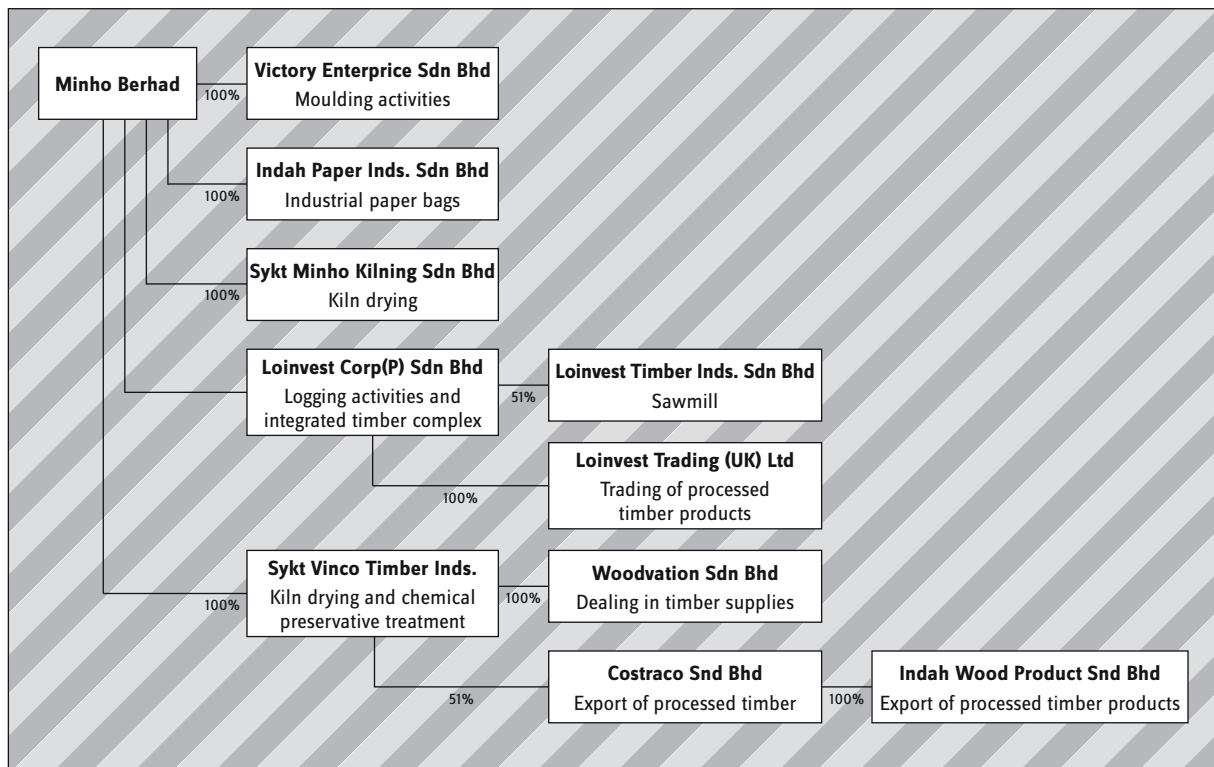


Figure 6 ▶ Structure of Minho Group (source: Minho Group, 2003).

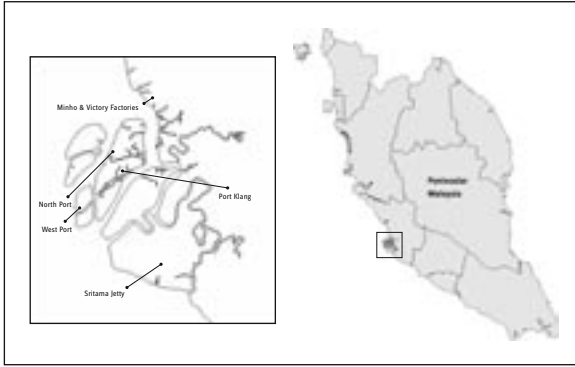
ber to a private jetty on Jalan Ferry about 15km south of Port Klang, operated by Sritama Industries (M) Sdn Bhd, a company dealing primarily in scrap metal.

Further surveillance confirmed that timber-laden open-topped vessels were entering the Langat estuary and arriving at this jetty three to four times a week. Local sources reported that the vessels were coming from Sumatra. The timber they carried was of mixed hardwood species in the form of rough-sawn flitches about 5m long, in bundles of five or six.

Upon arrival at the jetty the bundles were unloaded and transferred to the adjacent timber storage area. A large volume of timber was stored in an open-air storage bay (maximum capacity of approximately 1000 flitches) opposite the jetty, and a smaller volume (about 50 flitches total) was stored in a covered holding area adjacent to the jetty. From the holding area timber was loaded onto lorries, which took the flitches to the Minho sawmills, presumably for re-sawing to

smaller dimensions, kiln-drying and further processing (including sanding and moulding). Conversations with workers at the Minho site confirmed that the timber was intended for Victory. Large quantities of flitches were also observed in the Victory log yard adjacent to the main Minho site.

As an indication of the level of activity at the jetty, the arrival of a vessel was recorded on each of 6, 7 and 10 December 2004. The names of two vessels were recorded: *KM Samudra Indah* and *KM Kurniaw*; both vessels were flying the red and white Indonesian flag. The vessels unloaded their cargoes of flitches at the jetty, and on 13 December at 3pm the surveillance team managed to record the timber stock present near the jetty: there were 647 flitches recorded in the open bay, and 34 flitches and about 20m² of smaller planks in the covered area. The flitches observed were typical of imported Indonesian timber - they did not fit the profile of legal timber imported from other neighbouring countries.



► Location of the Sritama jetty on Jalan Ferry (Ferry Road), Teluk Panglima Garang, alongside the River Langat, at a point just upstream of the fork in the river, where one branch runs north to join the River Lumut and the other flows south-west to the sea. (Universal Transverse Mercator (UTM) Coordinates: 773310 819089)



► Unmarked timber fitches at the Sritama jetty no. 2, 6 December 2004. ©Greenpeace/Shariza



► Barges entering the River Langat destined for the Sritama jetty no. 2, 6 December 2004. ©Greenpeace/Shariza



► Suspect fitches in the Victory log yard adjacent to the main Minho site, December 6th 2004. ©Greenpeace/Shariza

5.5 Conclusions

It seems clear from the surveillance undertaken that the timber fitches observed in the Victory log yard were imported, almost certainly from Indonesia. Given the fact that exports of rough sawn timber from Indonesia have been banned since 24 September 2004, any such timber which arrived in the MTCC-certified Victory Enterprise facilities in December 2004 was certainly illegal.

Whether or not Victory then mixed this timber (during or after processing) with MTCC-certified batches could not be confirmed, but the key concern is the fact that the MTCC scheme does not have sufficient safeguards in place to prevent the company from doing so.

▶▶ CHAPTER 6

ANALYSIS OF MTCC'S CHAIN OF CUSTODY SYSTEM - THE MARKET

6.1 From exporter to the point of retail

The MTCC scheme was originally intended to be a national certification scheme, and as such the scope of its operations is limited to Malaysia. Its CoC system was in consequence only ever meant to verify timber flows up to the point of export from Malaysia (and as Figure 3 on p.19 shows, in practice does not even extend this far). Any shipment carrying ostensibly 'MTCC timber' arriving in Europe is thus not covered by the MTCC CoC. MTCC simply assumes that from the point of export onwards, importers will ensure that a CoC is in place.

The Netherlands-Malaysia Joint Working Group (see section 1.2) envisaged in the mid-1990s that the Keurhout Foundation, which was set up to develop a CoC system in the Netherlands, would recognise the MTCC system, so allowing MTCC timber to be tracked in the Dutch market – and elsewhere, if Keurhout's ambitions to establish itself in other European markets of importance to Malaysian exporters, such as Germany and Denmark, had met with success. However, Keurhout has failed to establish itself abroad, and in any case it has not as yet accepted MTCC certificates. Consequently, timber traders selling Malaysian timber either in the Netherlands or elsewhere cannot use the Keurhout CoC and market the timber as being MTCC-certified. As already mentioned, PEFC, the other international certification scheme, has yet to reach a decision on recognition of MTCC.

As a result, the 27,000m³ of 'MTCC timber' marketed in Europe and Australia independent between 2002 and the end of 2004 was not subjected to any form of independent CoC verification in the marketplace. In fact, from the moment this timber left Malaysian territory, it lost its certified status.

6.2 Implications for public claims in the marketplace

This absence of a functional CoC in the marketplace casts doubt on the credibility of any claims to sell

MTCC timber outside Malaysia. Companies that offer 'MTCC timber' outside Malaysia make such claims purely on their own account, as the so-called MTCC timber that they offer – even if purchased by them in good faith – has, in fact, been uncertified ever since it left Malaysia.

Moreover, without a valid CoC in the marketplace, timber traders and developers can at any time claim any timber as being MTCC-certified without having to provide independently verified proof to back their claim. MTCC exercises no legal control over claims made by overseas traders and cannot oversee what happens to its documentation. In fact, there is not a single obstacle in place to prevent timber traders, whether unwittingly or intentionally, from offering their customers illegal timber – from Indonesia or anywhere else – as 'MTCC-certified'.

There is thus a significant risk that untruthful claims regarding MTCC timber are being made in the marketplace. In particular, mixed shipments of 70% MTCC-certified timber may be being marketed as pure 'MTCC timber' – to say nothing of the possibility of timber that has at no stage been part of an MTCC batch being fraudulently marketed as though it were. At any event, without a CoC in the marketplace, customers have no assurance that the timber they are purchasing has not been subject to such practices.

Despite the absence of a CoC mechanism, however, both MTCC and timber traders have already begun advertising MTCC timber at various levels in the Dutch trade chain during 2004:

• **Polman Fijnhout:** *'Our specialities are meranti and merbau of high quality which we purchase from sustainable forest areas in Malaysia. These timber species are often certified with the MTCC label which stands for Malaysian Timber Certification Council.'* (www.polman.nl)

• **PontMeyer:** *'In our range of products, various timber species are included with FSC, MTCC, PEFC or FFCS certificate, including Chain-of-custody certificate.'* (www.pontmeyer.nl)

• **Sakol:** *'In our range of products, various timber species are included with FSC, MTCC, PEFC or FFCS certificate, including Chain-of-custody guarantee.'* (www.sakol.nl)

• **ITTO** reported that *'MTCC certified Seraya KD Sel.Bet PHND in 3x5" can be supplied at USD 1070/1080 CNF Rotterdam per ton of 50 cu. ft.'* (ITTO, 2004)

• **Centrum Hout** (the timber trade's promotional body in the Netherlands) stated in an information leaflet on MTCC that *'Malaysian timber with an MTCC certificate is being made available on the market. This provides a high degree of assurance that it is legal timber.'* (Centrum Hout, 2004)

• MTCC's PR bureau **Weber Shandwick** has sent letters to Dutch municipalities, suggesting that using MTCC timber can help them to implement national government policy on legal timber purchasing (Weber Shandwick, 2004).

The claims made by the various timber importers quoted above are misleading because they imply that the timber they offer if certified by MTCC. In reality, while the timber may have been certified within Malaysian territory, outside Malaysia it is no longer certified. The statements by PontMeyer and Sakol

are particularly misleading to consumers inasmuch as they imply that MTCC timber is subject to their companies' Chain of Custody system: in fact MTCC has not accredited these companies to verify the CoC of MTCC-certified timber.

6.3 MTCC envisages export-to-retail certification

When RCOC - including MTCC's plans to extend the CoC to the point of retail - is implemented, MTCC will in theory be able to track and check the movement of timber in the country to which it is exported. It will also be able to act upon false or misleading claims about its scheme.

However, MTCC has not so far made it clear when such extended auditing will come into force, or by whom and under what conditions it will be carried out.

6.4 Conclusion

The absence of valid CoC verification for MTCC timber in the marketplace is a major gap in the system. MTCC has stated that it plans to develop its own system from exporter to retailer but it appears that to date it has undertaken no tangible efforts to do so.

Meanwhile, MTCC and other parties have begun to promote MTCC and 'MTCC timber' in the marketplace. This is done without actual CoC, which creates space for timber traders and other parties to make - knowingly or unknowingly - misleading claims.

▶▶ CHAPTER 7

CONCLUSIONS - MTCC CERTIFICATION AS PROOF OF LEGALITY

7.1 Credibility of the MTCC scheme undermined

It can be safely concluded that no timber offered in either the domestic or the international marketplace as MTCC-certified has been subjected to *full* and *independent* verification. There are several major gaps in the existing MTCC CoC, and RCOC's proposed reliance on the Forestry Department Removal Pass will do nothing to enhance. MTCC's claim to operate a genuine third-party certification scheme even within Malaysia.

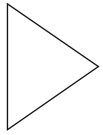
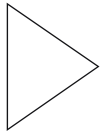
7.2 Possibility of illegal Indonesian timber in the MTCC chain of custody

It has been demonstrated that under the present MTCC rules, it is possible for illegal Indonesian timber to enter the MTCC CoC. Field investigations have generated strong suspicions that illegal Indonesian fitches are processed by the MTCC-certified exporter Victory Enterprise. It has not been confirmed that this timber enters the MTCC CoC, but since MTCC's percentage-based claims mechanism does not provide for checks on the origin of uncertified content, there are no reasons for the company not to mix so-called 'Indobukit' (Indonesian meranti) with MTCC timber.

7.3 Premature endorsement and misleading marketing activity

The UK and Danish government endorsements of the MTCC scheme as providing sufficient proof of legality were based on incomplete information. The conclusions drawn were premature. Similarly, the promotion of 'MTCC' timber in the European marketplace is at best based upon a misconception of the scheme's ability to guarantee CoC, and creates demand for a product which cannot be delivered - that is to say a fully and independently certified product.

Given these concerns, Greenpeace concludes that the MTCC scheme, in its present form, cannot be considered to provide sufficient guarantees that MTCC timber offered in the marketplace - in Europe or elsewhere - is fully derived from legal and sustainable sources.



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The Greenpeace logo is rendered in a bold, stylized, sans-serif font. The letters are white with a thick black outline, giving it a high-contrast, graphic appearance. The word "GREENPEACE" is written in all capital letters.

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