

Wednesday, 26 January 2011

Mr Ben Gunneberg
PEFC Council
By email to Ben.Gunneberg@pefc.org

Dear Mr Gunneberg

COMPLAINT BY PEFC AGAINST CERTIFICATES HELD BY APP IN INDONESIA

Your letter of complaint dated 7 July 2010 related to the above, refers.

In response to this complaint, SGS commissioned an investigation to examine whether APP is using illegal material as input into APP mills certified against the PEFC Chain of Custody standard as claimed by Greenpeace. The investigation found that all material is legal.

Context

- 1) The APP brand represents one of the largest pulp & paper producers globally. APP is on record that it wishes to be the world leader in the pulp and paper making industry, and will do so in a responsible and sustainable manner.
- 2) APP introduced procedures for the avoidance of raw material from controversial sources at its pulp, paper and tissue mills. It used a three-pronged third party verification approach based on:
 - PEFC Chain of Custody (CoC) certification of the mills
 - SGS TLTV (VLO) Standard
 - Indonesian LEI Standard for Sustainable Plantation Forest Management System.
- 3) To produce PEFC-labelled products, APP mills blends PEFC-certified long-fibre pulp from imported sources with local verified non-controversial material. The LEI, TLTV and CoC approaches are utilized for the verification of non-controversial material.
- 4) SGS acted as the certification body for, amongst others, the PEFC CoC certification of a number of APP paper and tissue mills in Indonesia.
- 5) Greenpeace alleged in its public report "How Sinar Mas is Pulping the Planet" on 6 July 2010 that acacia logs were supplied to APP mills from plantations that were established on peat deeper than three meters, which Greenpeace claimed is illegal under Indonesian law.
- 6) The PEFC Council lodged a complaint with SGS on 7 July 2010 on the basis of the Greenpeace report.
- 7) SGS commissioned an investigation to determine the validity of these allegations and claims. The investigation was focussed on the Riau province of Sumatra, which is the area highlighted in the Greenpeace report.
- 8) The purpose of the investigation was to determine if the APP's pulpwood suppliers operations have planted any deep peat soils in contravention of the Indonesian law. The investigation was limited to those plantations supplying raw material to the PEFC certified processing plants of APP.

Summary of Findings

- 1) The following legal requirements apply to the case in question:
 - President Decree Number 32 of 1990 stipulates that peat lands with a depth of three meters or more and found/located in the upstream of a river or in a swamp shall be protected.
 - Government Regulation Number 26 of 2008 reconfirmed this requirement and ruled that land with a peat thickness of three meters or more found upstream or in swamps must be protected.

This is coupled with a requirement for local government to identify such protected deep peat areas.
- 2) Three levels of official forestry offices assisted by consultants, not APP, are responsible to identify protected deep peat areas situated upstream or swamp areas prior to any afforestation activities.
- 3) While there is evidence that APP's pulpwood suppliers established plantations on peat areas deeper than three meters, no protected areas have been identified by the forestry offices on land that has been converted by APP's pulpwood suppliers to plantations in Riau Province.
- 4) All the necessary official authorizations for the plantation establishment activities of APP's pulpwood suppliers have been approved and are in place.
- 5) The plantings of APP's pulpwood suppliers are legal.

Additional Observations

Greenpeace considered the terms of reference for the investigation to be too narrow given the seriousness it attaches to this case, especially concerning the criteria that should have been considered as part of the verification of APP's compliance with PEFC requirements. This includes the question whether the conversion of deep peat, even if permitted under Indonesian law, should be considered as "controversial" for the purpose of PEFC Chain of Custody certification. This resulted in the additional observations as summarized below.

Interviews with WWF found that WWF interprets Government Regulation Number 26 of 2008 as protecting peat lands with a depth of three meters or more or found/located in the upstream of a river or in a swamp. WWF considers all areas above the coastline to be upstream and views APP in breach of the law as it interprets it. However, the simple statement "all peat areas deeper than 3 m" would have sufficed if the objective of the legal requirement was that any peat area deeper than 3 m that is situated upstream (in terms of water flow) of any other downstream area should be protected.

Interviews with two soil scientists found that peat as categorized as deep peat based on the level of decomposition of organic material. It was stated that there is no scientific basis for a specification of three meters for deep peat, and it was also highlighted that such areas can be utilized if water management is done correctly.

Interviews with the Regency Forestry Offices, the Provincial Forestry Office, and the Ministry of Forestry Office confirmed that the various government levels involved confirmed APP activities as legal. It was confirmed that the water management of peat lands deeper than three meters is considered important.

In conclusion, the investigation found that the material used as input into APP mills certified against the PEFC Chain of Custody standard comes from legal sources. APP is not using material from forest conversions in the PEFC production, i.e. they have for all intents and purposes already declared such material as "controversial".

It is a general principle of administrative law that when a government institution takes an action in terms of their administrative function, that such action is considered/deemed to be valid until such an action is reviewed and/or set aside by a higher authority (i.e. administrative review or a court). If it is disputed by another third party, it will have to be taken further at national level i.e. the third party will formally have to question this before Government or court. It is therefore up to such third party to pursue this matter further along such lines, but this does not detract from the validity at this point of such authorizations until/if deemed otherwise by Government or court.

I trust you find this in order

Yours sincerely



Gerrit Marais

Director: SGS Qualifor