

## **Additional comments and suggestions for improvement**

### **1. Scoring**

It would appear critical that for certain criteria a score of 1 i.e. 'partially addressed' should not be possible, especially when assessing for legal compliance e.g. criteria 1.1.2. It is suggested that this should be expressed in the scoring system and the criteria could be worded more explicitly in order to reflect this. Clarification of the meaning of 'should', 'shall' and 'must' as detailed in the following comment could be useful in this respect. There should be peer review of scoring and the scores studied by the peer review for consistency. If they disagree then there must be a mechanism for resolution e.g. calling on another scorer.

**Assessment of certification schemes will be subject to stakeholder consultation.**

### **2. Use of should, shall and must**

In the 'Changes to Criteria' it states that 'The three words 'should', 'shall' and 'must' were used interchangeably in the first edition. 'Must' has now been used more consistently throughout.' However, often 'shall' has been replaced with 'should' which in ISO Guide 2 terms would denote a recommendation rather than a requirement of the CPET assessment standard.

Please indicate if you agree with this interpretation of the word 'should' as being a recommendation rather than a requirement. If a criterion is a requirement then the imperative 'shall' would be better than 'should' as defined in ISO Guide 2. This would additionally increase consistency of interpretation of the criteria by CPET.

**Agreed – 'should' is replaced by 'must' in many criteria such as 1.2.3-1.2.6**

### **3. Criteria and guidance**

In order to aid consistency of interpretation it would be useful to clarify the status of the Criteria and the Guidance. Are both normative and hence being assessed together?

**Criteria are normative, guidance is information and only criteria will be assessed against. Guidance is used to assist assessment.**

### **4. Performance based assessment**

The system for assessing against the CPET Criteria must as a minimum allow CPET to independently verify that the performance in relation to a particular supply contract is as indicated in the summary reports on one or more particular forest management unit or chain of custody certificates from the from the accredited certification authority (certification body).

**Category A criteria are used to assess schemes' requirement based on publicly available documentation. Verifiable evidence relating to non-compliance with the documented scheme requirements will also be considered.**

### **5. Social criteria**

As the Environmental Audit Committee on Sustainable Timber (Second Report of Session Vol.1, February 2006) states 'It is...of great concern to us that the Government's current interpretation of EU rules governing procurement do not allow social considerations to be taken into account when awarding a procurement contract.'

It goes on to say that 'A forest cannot be said to be sustainably managed if it does not protect the rights, health and livelihoods of people who live in or adjacent to forests and are dependent on them'

It has been established by studies into the permissibility of applying social criteria to national tender and/or contract specifications under the EC procurement directive that EU legislation and case law explicitly allow for the inclusion of social criteria in public procurement.

The ISEAL Alliance and the Centre for International Environmental Law (CIEL) were asked by ICCO in the Netherlands to assess whether the Forest Stewardship Council (FSC) Principles and Criteria, which include social criteria, meet the requirements to be considered an international standard in the context of applicable international trade law and if so, what the implications would be in relation to ongoing discussions relating to government procurement and the establishment of regulations relating to timber labelling in the Netherlands. Two legal opinions were taken, summaries of which accompany the report document.<sup>1</sup> The summaries examine the relationship of international standards with the WTO Technical Barriers to Trade (TBT) Agreement and with the WTO Agreement on Government Procurement (GPA) respectively.

ISEAL see no reason to dispute the claim that the FSC Principles & Criteria (P&C) (FSC-STD-01-001) is an established international standard, in accordance with the requirements of both the TBT Agreement and the GPA.

Governments are not obliged to reference specific forest certification systems in relation to regulations, standards or technical specifications relating to the trade in products of legal and sustainable forest management but could base such specifications on the FSC P&C and/or other relevant international standards, if they so choose.

ISEAL see no reason why the Dutch government would not comply with international trade law in referencing the FSC P&C in its forest management-related government procurement technical specifications, technical regulations or voluntary standards.

CPET should be alive to current discussions within UK Government on the inclusion of social criteria in the assessment standard and to independent studies and it is hoped that they can be incorporated within this review period.

### **Suggestions**

It is suggested that the following are added in order to strengthen CPET assessment of social responsibility within forest standards and accreditation schemes.

In support of this approach it is suggested that CPET draw on all social elements from those sources listed under CPET Criterion 1.2.1

It is strongly suggested that the following themes are covered in Section 1.2.

1. Tenure and use rights and responsibilities
2. Indigenous peoples' rights
3. Community relations and worker's rights

The following areas should be covered by the CEPT criterion:

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<sup>1</sup> Available from ISEAL Alliance: contact Dr Sasha Courville, Executive Director.

1. Evidence of long-term forest use rights to the land (e.g. land title, customary rights, or lease agreements):

Local communities with legal or customary tenure or use rights maintain control, to the extent necessary to protect their rights or resources, over forest operations unless they delegate control with free and informed consent to other agencies; appropriate mechanisms are employed to resolve disputes over tenure claims and use rights. The circumstances and status of any outstanding disputes are explicitly considered in the certification evaluation. Disputes of substantial magnitude involving a significant number of interests will normally disqualify an operation from being certified.

2. The legal and customary rights of indigenous peoples to own, use and manage their lands, territories, and resources is recognized and respected:

Indigenous peoples control forest management on their lands and territories unless they delegate control with free and informed consent to other agencies. Forest management shall not threaten or diminish, either directly or indirectly, the resources or tenure rights of indigenous peoples. Sites of special cultural, ecological, economic or religious significance to indigenous peoples are clearly identified in cooperation with such peoples, and recognized and protected by forest managers. Indigenous peoples are compensated for the application of their traditional knowledge regarding the use of forest species or management systems in forest operations. This compensation shall be formally agreed upon with their free and informed consent before forest operations commence and this would only apply to knowledge which is not already in the public domain.

3. Forest management operations maintain or enhance the long-term social and economic well-being of forest workers and local communities:

The communities within or adjacent to the forest management area should have the same access to opportunities for employment, training and other services as anyone else. Forest management meets or exceeds all applicable laws and/or regulations covering health and safety of employees and their families. The rights of workers to organize and voluntarily negotiate with their employers are guaranteed as outlined in Conventions 87 and 98 of the International Labour Organisation (ILO). Management planning and operations incorporate the results of evaluations of social impact; consultations are maintained with people and groups (both men and women) directly affected by management operations. Appropriate mechanisms are employed for resolving grievances and for providing fair compensation in the case of loss or damage affecting the legal or customary rights, property, resources, or livelihoods of local peoples; measures are taken to avoid such loss or damage.

Legal requirements related to 'Other parties' tenure and use rights' has been added in 1.1.2.

Amendments to the criteria have only been made where these have been considered necessary to improve clarity. No additional criterion related to social element has been added. However, the UK Government is currently re-examining the possibility of including social elements and has been discussing the possibility of harmonisation of procurement policies with several European governments including Denmark and the Netherlands.

## **6. Chain of Custody**

We suggest that the language be clarified in 4.4, 4.5 and 4.6.

1. Criterion 4.5 seems to say if a product or product line have less than 70% certified wood then the rest must be *sustainable*. Please clarify whether the expectation is that

there should be some kind of interim step between 'legal' and certified 'sustainable' to demonstrate this or whether this is an error. It is unlikely that any certification schemes could meet this requirement as it appears.

2. Companies mixing certified and uncertified material in a product or product group would usually calculate a percentage certified content based on a rolling average over a specified time period (e.g. one year- but could be less for limited or sporadic orders). It would be useful if the guidance related to this point clarified this.

3. Criterion 4.6. The guidance on interpretation for this requirement provides the example of 'mass balance' approaches where a portion of the product sold as certified is equivalent to the proportion of certified raw material entering the process. However, the criterion requires that 'the chain of custody should include'.. '70% of the total wood in a product or product line should come from certified forests'.

Mass balance systems inherently do not allow for such calculations to be made- particularly once you are a few steps down the supply chain. If the intention is to allow certified products into the system which have been produced using a 'mass balance' approach, as for 4.5, there should be some kind of control over the non-certified portion. Such processes should ensure that the amount sold as certified should be equivalent to the proportion of certified input to the system.

This criterion has now become criterion 4.4.

This criterion is designed to test if mixed products meet the Government requirements on sustainability. Even if no certification schemes can meet this requirement, it is necessary to keep this criterion.

Amendments to the criteria have only been made where these have been considered necessary to improve clarity.

4. Section 4.7 refers to a need for guidance on recycled material. In particular, it would be important to consider how products which are carrying a portion of post consumer recycled and certified material would be considered. Given that many products are increasingly carrying recycled content, would it be practical to count (post consumer) recycled material towards the percentage calculation for 'sustainable' sources in 4.5? Or could verified post consumer recycled material be included in the 'certified' category?

The Government guidance is explicit in saying that recycled material counts towards the percentage calculation for 'sustainable' sources (see Annex B: Model Contract Specification Clause, section 1.1) . For example, a mixed sources FSC label that includes recycled content will still be considered sustainable.

Amendments to the criteria have only been made where these have been considered necessary to improve clarity. No change has been made to this criterion.

## 7. Controlled wood content

Criterion 4.3 requires that 'the uncertified material must be covered by a verifiable system which ensures that it is from legal sources.'

For non certified wood it is both practical and cost effective to 'avoid' controversial sources such as illegal timber. The principle of avoidance and the adoption of a risk based approach in relation to non certified wood is a more realistic and practicable approach than insistence on 100% legal content where the risk is based on the existence of enforcement of legislation.

The criterion has been amended to read “is designed to ensure”.

## **8. ISEAL**

In the preamble to the CPET Criteria a summary of the relevance of ISO is given. As ISEAL is given similar importance in the standard as ISO, it would be helpful to have a summary of the relevance of ISEAL in the structuring of international standards.

ISEAL reference internally, but doesn't provide the breadth of coverage the ISO does.

## **9. Annexes:**

There are a few important annexes missing in the requirements which would be important to have an opportunity to provide input on. These include Annex 1 (Section 1.3.1), Annex 2 (Section 2.1) and Annex 3 (Section 3.1).

It is hoped that ISO and ISEAL are able to input to the relevant checklists proposed as this would add credibility and confidence in the content of the annexes..

All annexes are now available at CPET website. Annex 1 is checklist adopted from ISO Guide 59 and ISEAL Code of Good Practice for Social and Environmental Standards. Annex 2 is checklist adopted from ISO Guides 62, 65 and 66. Annex 3 is checklist adopted from ISO Guide 17011.