People, Planet, Palm Oil?

A Review of the Oil Palm and Forest Policies adopted by Dutch Banks

Milieudefensie - Friends of the Earth Netherlands, March 2006

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Commissioned by
Milieudefensie - Friends of the Earth Netherlands

March 2006

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Executive summary

In the 1990s, Dutch banks were very active in financing the expansion of the oil palm industry, especially in Indonesia. This expansion has brought about a range of environmental and social problems such as destruction of *High Conservation Value Forests (HCVF),* human-wildlife conflicts, open burning practices, land tenure conflicts and labour disputes. Milieudefensie - Friends of the Earth Netherlands commissioned this study in order to evaluate the content, scope and implementation of the *Oil Palm and/or Forestry Investment Policies* adopted by the Dutch banks in 2001-2002 after NGO lobby, campaigning and negotiations.

This report reviews the forestry and/or plantation investment policies adopted by five Dutch banks: ABN Amro Bank, FMO, Fortis Bank, ING Bank and Rabobank. In addition, the report analyzes the investment policies of three banks in the United States (Citigroup, Bank of America and JP Morgan Chase) and one British bank (HSBC Bank) for the purpose of comparison.
The study comprises a detailed analysis of the policies of the aforementioned banks, in terms of their content, scope and implementation strategies. The investment activities of the Dutch banks in the oil palm sector during the past four years were researched and compared with information about the practices of their clients on the ground. In addition, questionnaires were sent out and subsequent meetings held with each Dutch bank to verify the initial findings of this review. The policies of the four foreign banks were reviewed in a less intensive way, for use of comparison only.
Based on the review of the content, scope and implementation strategies of the mentioned banks, the following conclusions were drawn:

Content

In their policies or policy statements ABN Amro Bank, Fortis Bank, FMO, ING Bank and Rabobank have embraced as a minimum that they will assure that for new investments in the oil palm sector their clients:

1. Respect Indonesia's laws and relevant international conventions;
2. Are not involved in clearing of High Conservation Value Forests;
3. Respect the rights and wishes of local communities;
4. Are not involved in burning of forestland.

The four foreign banks have made similar commitments.
There are, however, significant differences in the way in which these criteria are formulated in the policies of the nine banks. A large number of weak, ambiguous and insufficiently specified formulations were encountered, leaving much room for doubt, misinterpretations and undesired financing activities.
A clear, concise and unambiguous content of the policy and the criteria adopted is of great

Indonesian tropical forest Photo: Eric Wakker

value, as it leaves no room for misunderstanding or confusion among the bank's staff, its clients and civil society as a whole. We encountered the following best practices with regard to the four criteria evaluated:

1. **Legal compliance**: ABN Amro Bank, FMO and Bank of America include compliance to international regulations adopted by the national state and reference to sub-national local and state government policies.
2. **High Conservation Value Forests**: ABN Amro Bank, FMO and Bank of America maintain a five-year limit which should be lapsed between the clearing of HCVF in a specific area and the moment that the bank is considering to invest in the establishment of an oil palm plantation in this area. NGOs recommend to take the year 1994 as a baseline, as in 1994 the criteria of the *Forest Stewardship Council (FSC)* were set with that year as a baseline for conversion.
3. **Social conflicts**: The policy of JP Morgan Chase is fairly strong on this issue, but not one of the policies explicitly ask for demonstrated support from all stakeholders potentially affected by the operation (indigenous communities, non-indigenous communities and potential smallholders and workers) based upon the principle of *Free Prior and Informed Consent (FPIC).*
4. **No burning**: ABN Amro Bank, FMO, Fortis Bank, Rabobank and Bank of America all refer to the practices of the client and not just to a zero-burning policy of the client as in practice such a policy is not always implemented.

No bank has adopted in its policy the best practice available in the industry with regard to all four criteria, while for two of the four criteria (HCVF and social conflicts) none of the banks completely meets the expectations of civil society.

Scope

The scope of the banks' policies specifies under which conditions the policy is applicable. This subject is as critical as the content of the policies: a policy with strong wording would not achieve much if it applies only to a part of the bank's investment portfolio. With regards to the scope of the reviewed banks' policies, there is room for improvement in all four dimensions considered in this evaluation:

- **Geographical scope**: Most banks now apply the policy worldwide, but some still focus exclusively on Indonesia;
- **Sectoral scope**: Some (Dutch) banks still focus their policy on oil palm plantations alone, while other types of activities (timber, pulp & paper, soy) are known to have similar social and environmental impacts;
- **Types of clients**: While some banks still insist that their policies only apply to clients active on the ground (plantations, forestry operations), most banks have accepted the need to apply their policies to holding companies and conglomerates which have a significant presence in the forest and plantation sectors.
  HSBC Bank and ABN AMRO Bank have most explicitly stated that their policies also applies to timber traders, while FMO and ING Bank stated that they also apply their policies also to oil palm traders.
- **Forms of financial services**: Most banks now agree that their policies should at least be applied to all commercial banking services as well as to project finance, but until now they have been hesitant to apply them to other types of financial services. Because forest and plantation companies increasingly finance investment by share and bond issuances, banks should begin to apply their policies in the field of investment banking. ABN Amro Bank, Fortis Bank, ING Bank, Bank of America and HSBC Bank have stated they will apply their policies in this area, but in practice this is not happening yet.

Implementation

The implementation of the relatively ambitious bank policies is not yet completed and at present appears to be the weakest spot. Obviously, the policies risk being rendered useless without sound implementation practices. This applies to most of the crucial elements we discerned in the implementation process:

- **Assignment of responsibilities**: Most banks have addressed this issue, but tend to let public relations staff deal with NGOs rather than the responsible officers within the bank. This is a potential source of delay and misunderstandings.
- **Operationalisation**: Most Dutch banks have undertaken efforts to operationalise their policies, by developing questionnaires and handbooks.
- **Training of staff**: Most banks have addressed this issue, but to what extent key staff is trained remains unclear.
- **Sources of information used**: Several banks (ABN Amro Bank, ING Bank, Rabobank, FMO) call in external experts to validate clients' compliance to the policy. Other banks appear to rely on their own capacity.
  Dutch banks have failed to upkeep a structured exchange of information and views

with the NGO community. Only Rabobank has made its policy available in a local language.

- **Monitoring of clients**: Some banks include a review of the client's compliance to the policy in the normal annual loan review process. Nevertheless, monitoring of the progress made by the client in adhering to the policy appears to be reactive and not tight enough in most cases.
- **Complaint mechanisms**: No bank has set up a formal complaint mechanism for stakeholders.
- **Events of default**: ABN Amro Bank, FMO, ING Bank, Rabobank and Bank of America all state that they will specify the terms of default in the financing contract with the client.
  Other banks have unclear or substantially weaker implementation policies in this respect. Unambiguous wording of covenants in loan contracts is also of crucial importance in this respect. ING Bank has improved its covenants after a weak start.
- **Transparency**: Citigroup, Bank of America and JP Morgan Chase mention that they will publicly report on the progress made with the implementation of their policies. Of the Dutch banks, the annual sustainability reports of ABN Amro Bank and Rabobank include information on the implementation of their forest and oil palm policies respectively.
  FMO quarterly publishes all newly contracted projects and companies on its website, but not a single private bank publishes names and details of companies financed, following the lead of multilateral banks and ECAs.
  Even regarding cases which they knew worried NGOs, Rabobank and FMO did not discuss new financial services with NGOs.
- **Linking up with RSPO**: The *Roundtable for Sustainable Palm Oil (RSPO)*, established in 2004, presents a golden opportunity for the banking sector to familiarise itself with the more detailed issues in the oil palm sector, and to network with those companies who have committed to address environmental and social concerns in the industry. At present, only Rabobank and HSBC are members of RSPO. FMO is not a member itself, but encourages its clients to join RSPO.

Recommendations to banks

The nine banks reviewed in this report, as well as other banks active in the forest and plantation sectors, are encouraged to draw up (or revise) and implement an encompassing forest policy using the following recommendations:

Content

Clearly specify the content of the policy, using best practice examples available in the industry and the *RSPO Principles and Criteria*. To let the policy meet these standards, the following elements should be addressed in a comprehensive way:

- Legal compliance, including compliance to relevant international regulations as well as to local and state level legislation;
- No conversion of *High Conservation Value Forests (HCVF)*, including a clear retrospectivity period of at least five years but preferably dating back to 1994;

- No involvement in, colluding with or purchasing timber from illegal or destructive logging operations;
- Demonstrated support from all stakeholders potentially affected by the operation (indigenous communities, non-indigenous communities and potential smallholders and workers) based upon the principle of *Free Prior and Informed Consent (FPIC);*
- Preference for financing smallholder projects;
- Explicit 'no burning' policy and practice;
- Environmental management aiming at minimising the use of agrochemicals, environmentally friendly waste-disposal and maintaining the quality of soil, air, and surface and ground water;
- Transparent processes for the systematic tracking of products to provide evidence that the ultimate origin of the commodities the client is trading and/or processing is known, is continuously being monitored and can be independently verified.

Scope

Clearly define the scope of the policy in all four dimensions, preferably in the following ways:

- **Geographical scope**: Worldwide.
- **Sectoral scope**: All sectors which can have a direct impact on forest management and forest conservation worldwide.
- **Types of clients**: All major players in the chain of custody including clients whose activities have an indirect impact on forest management and forest conservation, by trading and/or processing the products of companies or projects having a direct impact on forest management and forest conservation.
- **Forms of financial services**: All financial services provided by the bank (or by third parties under the bank's brand names), including commercial banking, investment banking, trade finance, project finance, asset management, trust banking and other financial services.

Implementation

To implement the bank's policy effectively, the following recommendations should be addressed in an adequate, systematic and comprehensive way:

- Clearly assign responsibility for the implementation of the policy to one of the directors of the bank;
- Develop unambiguous tools to operationalise the policy in practice, which are understandable and applicable for bank staff, clients and other stakeholders;
- Develop procedures and tools to enable a sophisticated exchange of knowledge and information on (possible) clients with NGOs, other banks, governments and sustainable rating agencies;
- Develop and apply clear loan contract covenants;
- Introduce formal client monitoring mechanisms that apply during the financing term, including independent third party audits;
- Translate the policy in languages understood by local stakeholders;
- Establish a complaint mechanism for local and other stakeholders, specifying who is

responsible for the policy within the banks; who is to respond to complaints about a clients' possible non-compliance with the policy; within which period a response can be expected; and what steps a bank would take after a well-founded complaint has been filed;

- Publish names and details of the bank's major clients on the bank's website, including social and environmental assessment reports;
- Be more proactive in financing companies and community initiatives that exhibit strong and innovative commitments to sustainable development;
- Participate in the *Roundtable for Sustainable Palm Oil (RSPO).*

Recommendations to the Dutch government

To date, the development of the policies and their implementation has been completely reliant on private sector – NGO dialogue without any involvement of the governmental regulatory framework. Whereas valuable results have been achieved, Milieudefensie feels that the Dutch government has a key role to play in the facilitation of the future process for various reasons:

- To create a level playing field between the Dutch banks active in the forest and plantation sectors by providing a legal framework;
- To safeguard the application of investment policies when banks encounter economic difficulties;
- To revive the international forerunner role for the Dutch financial sector in sustainable banking.

The following initiatives could be taken by the Dutch government in this respect:

- Give clear guidance on what is expected of banks with regard to article 22a of the *Act on the Supervision of the Credit System 1992 (Wet toezicht kredietwezen 1992 – Wtk),* which specifies that financial institutions must refrain from activities which are "socially unacceptable".
- Establish a *Reporting point for Socially Unacceptable Transactions (Meldpunt Maatschappelijk Onaanvaardbare Transacties – MMOT),* where NGOs and affected stakeholders could file complaints on what they see as "socially unacceptable" transactions of the Dutch banks.
- Promote European legislation to ensure responsible investment practices by all European banks, thereby expanding the level playing field for banks active in the plantation and forest sectors, in the framework of the *Basel Capital Accord II, the EU Financial Services Action Plan and the EU Action Plan for Forest Law Enforcement, Governance and Trade (FLEGT).*
- *The EU Action Plan for Forest Law Enforcement, Governance and Trade (FLEGT)* identifies improved financial due diligence as a key tool for reducing the demand for illegally logged timber. Banks and financial institutions are to take environmental and social factors into account when conducting due diligence assessments for forestry investments. [1] However, since the start of the *FLEGT Action Plan* in 2003, not much has happened. In January 2006 the financial sector was once again pinpointed as an area of focus for this year by DG Development representatives.

Cutting down a forest giant, Sarawak Photo: Gemma Claessen en Maarten Nypels

In this framework the Dutch government could do the following:

- Try to get financial institutes back into the FLEGT Action Plan debate and agenda. Banks have to make sure they do not invest in illegal forest operations. This can partly be achieved by involving them in financial aspects of the EU FLEGT action plan;
- Follow up the recommendations in a paper written by Chatham House, which lists concrete steps to achieve the first goals set out in the FLEGT Action Plan: banks and financial institutions should take environmental and social factors into account when conducting due diligence assessments for forestry investments;[2]
- Use the third directive on money laundering to list illegal logging as an offence.

Chapter 1

Introduction

1.1 Background

According to recent data compiled by the *UN Food and Agriculture Organisation (FAO)*, net forest loss in South and Southeast Asia amounted to 2.85 million hectares in the 2000-2005 period. The rate of deforestation in this region has been speeding up in the past ten years to an average 0.98% per year, over five times the global rate of forest loss (0.18%). The net rate of forest loss in South and Southeast Asia (not including Papua New Guinea) presently ranks second only to Central America. Two thirds of the forest loss in the region takes place in Indonesia, with 1.87 million hectares of annual forest loss..

The consequences of these losses are well known: loss of biological and cultural diversity, environmental degradation, social unrest and longer term economic losses. In addition, deforestation is a major contributor to global climate change and no where in the world has the rate of decline of living biomass stocks been so great as in South and Southeast Asia, the FAO reports.[3]

The causes of forest loss in South and Southeast Asia are complex and notoriously hard to address. However, in several key Asian forest countries such as Indonesia, Malaysia and Papua New Guinea, the rapid expansion of export oriented timber, oil palm and pulp & paper industries has evidently been a key driver of deforestation in the past few decades. All three countries have opened the larger part of their primary forests for logging companies, while in Indonesia and Malaysia vast areas are deforested to feed plywood and pulp mills and to develop new oil palm and pulpwood plantations. Illegal logging and timber trade are a regional concern while open burning continues to be practised to clear land for plantations, contributing to the annually recurring forest fires and smog problems in the Southeast Asian region. The rapid changes in land use put great strain on forest dependent local communities whose rights and wishes are often poorly respected, bringing about widespread and often long lasting conflicts between these communities and the forestry and plantation companies.[4]

Since much of the expansion of the forestry and plantation industry is driven by global market forces, NGOs in Southeast Asia have partnered up with their counterparts in Europe and Northern America to call upon governments, consumers, investors, traders and retailers to acknowledge their responsibility and to help put a halt to destructive practises. Even though the trends in forest loss are yet to be reversed, the NGOs joint lobby and campaigning has contributed to the change in attitude and policies of some key decision makers in the market place.

One such group of decision makers are foreign financial institutions from Europe, North America and East Asia, who have been deeply involved in providing capital to the palm oil sectors in Indonesia, Malaysia and Papua New Guinea in the 1990s. Almost all of these financing activities were not bound to any social or environmental terms and conditions that would prevent their clients from (illegally) clearing and burning tropical forests or would induce them to respect the rights and wishes of local communities.[5]

In late 2001, a joint Friends of the Earth Netherlands, Greenpeace Netherlands and Indonesian NGO campaign resulted in a success when the four main Dutch banks – ABN Amro Bank, Fortis Bank, ING Bank and Rabobank – were the first commercial financial institutions in the world to accept that through their investments, they played a potential role in destructive environmental and social impacts of the oil palm plantation companies in Southeast Asia. They each established *Oil Palm and/or Forestry Investment Policies* which outlined the conditions under which they could provide financial services to companies active in these sectors. [6]

Two of the Dutch banks, ABN Amro Bank and ING Bank, approached the subject in a broader context, developing a policy for all their dealings with clients whose activities could have an impact on forests, such as agricultural and wood plantation companies, pulp & paper companies, infrastructure projects, and other sectors.
The Dutch development bank FMO had already agreed to similar criteria by applying all World Bank safeguard policies and environmental health and safety guidelines to the projects it finances.

Their commitments also provided an importance incentive to the emergence of the *Roundtable on Sustainable Palm Oil (RSPO).* (see page 8).
The policies established by the Dutch banks also motivated NGOs in the United States and the United Kingdom to step up their efforts to engage other commercial banks in developing forest and plantation policies. Early 2004, Citigroup was the first US bank to announce its new environmental initiatives which included the forestry sector. Later that year, Bank of America followed suit.
In the United Kingdom, HSBC announced its forest policy in May 2004. In May 2005, JP Morgan Chase announced its new *Environmental Policy Statement*. More recently, in November 2005, it was announced that Goldman Sachs in the United States has also adopted an environmental policy which covers forest issues, climate, indigenous peoples and ecosystem services.[7]

1.2 Purpose and content of this report

Milieudefensie - Friends of the Earth Netherlands publicly credited the Dutch banks for adopting their *Oil Palm and/or Forestry Investment Policies* in October 2001 and in February 2002. Milieudefensie continued to monitor the banks' investment activities in 2003-2005 and repeatedly brought forward several cases to the attention of bank staff when and where questions arose about the implementation of their policies.[8]

More than four years after the adoption of the first investment policies, Milieudefensie - Friends of the Earth commissioned this study to Profundo and AIDEnvironment, in view of its ultimate aim to assure that the Dutch banks not only pride themselves on the existence of their policies, but also effectively apply them. In the view of Milieudefensie - Friends of the Earth Netherlands, this is ultimately best assured through governmental regulation of the banking sector so as to harmonise the different policies, create a level playing field and make banks legally accountable for their financing decisions.

The content of the forest and plantation policies of the nine banks will be discussed in Chapter 3 and the scope of the policies in Chapter 4. Various aspects of implementation are discussed in Chapter 5, including a comparison between the policy and the practise on the ground. In Chapter 6 conclusions are drawn followed by recommendations to the banks and to the Dutch government in Chapter 7.

Chapter 2

Methodology of the evaluation

2.1 Approach

For this review, Profundo and AIDEnvironment have chosen an approach that allows for a structured analysis of weaknesses and best practises in the content, scope and implementation strategy of the *Oil Palm and/or Forestry Investment Policies* adopted by four Dutch private banks and the Dutch development bank since 2001. Based on the weaknesses and best practises identified, recommendations were formulated to help strengthen and harmonise the banks' policies. In this context, the need for a Dutch corporate responsibility regulation of the financial sector is also reviewed.

Although other sectors – such as logging and timber processing, pulp and paper and other forms of agribusiness – are also contributing to the rapid pace of forest loss in Southeast Asia, in this report most emphasis is placed on the oil palm sector as this comprises the area that the banks and Milieudefensie reached consensus on. For comparison purposes, the more recently formulated policies of four American and British private banks were reviewed against the same criteria, albeit less intensively.

2.2 Research methods

The following research methods were applied:

- **Policy analysis**: to make a qualitative judgement on the content, scope and implementation strategy of each policy;
- **Financial research**: to identify the financial services provided by the Dutch banks to companies in the oil palm sector over the past four years;
- **Client research**: to gather information about the clients of the Dutch banks in the oil palm sector. This information has been gathered through field research in the past three years;
- **Questionnaires**: to gather complementary information on (the interpretation of) the content, scope and implementation strategy of the Dutch banks (see Annex 2);
- **Meetings**: to discuss the preliminary findings of the review, meetings were held with the staff of the five Dutch banks.
- **Feedback**: the five Dutch banks were given the opportunity to comment on the draft report.

The policies of the following banks were reviewed intensively, using all research methods described above:

- **ABN Amro Bank** Netherlands
- **FMO** Netherlands
- **Fortis Bank** Netherlands
- **ING Bank** Netherlands
- **Rabobank** Netherlands

For comparison purposes the policies of the following banks were reviewed more extensively, mainly using the policy analysis research method:

- **Bank of America** United States
- **Citibank** United States
- **HSBC Bank** United Kingdom
- **JP Morgan Chase** United States

The evaluation is reviewing the bank policies from three crucial angles:

- Content: which issues are covered by the policy and is the wording of the policy unambiguous?
- Scope: to which types of clients and forms of financial services is the policy applied?
- Implementation: is the bank effectively assuring compliance with its policy?

Each angle will be discussed separately: the content will be discussed in Chapter 3, the scope in Chapter 4 and implementation issues in Chapter 5.

This report does not present an explicit overall rating of the nine banks, for several reasons:

- We have researched the implementation of the Dutch banks' policies more in detail, we have sent them a questionnaire and have arranged meetings with them. The implementation of the policies of the foreign banks was not researched and they were not engaged in questionnaires and meetings. These differences in approach prevent a fair comparison between the Dutch banks and the foreign banks.
- A single bank can perform well in the wording of its policy, while its scope is only limited and implementation is poor. By combining these different angles in an overall rating, the central message of this report – wording, scope and implementation are all critically important – would be undermined.
- This report is aiming to challenge the banking sector as a whole to improve its performance and not to give some banks a licence for complacence while they only perform marginally better than their competitors.

Transport of logs in oil palm plantation Photo: Hilde Stroot

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Chapter 3

Content

3.1 Evaluation criteria

In 2001 and early 2002, all four major Dutch commercial banks – ABN Amro Bank, Fortis Bank, ING Bank and Rabobank – agreed to four criteria proposed by Milieudefensie - Friends of the Earth and Greenpeace Netherlands. These *minimum criteria* or principles were formulated by the Dutch NGOs in consultation with Sawit Watch, Telapak Indonesia and Walhi - Friends of the Earth Indonesia. With the adoption of these criteria, the banks committed to assure that their clients:

1. Respect Indonesia's laws and relevant international conventions;
2. Are not involved in clearing of *High Conservation Value Forests*;
3. Respect the rights and wishes of local communities;
4. Are not involved in burning of forestland.

The World Bank/IFC policies adopted earlier by the Dutch development bank FMO comprise similar criteria.

The Dutch banks' policies were also taken into account by the various foreign banks (in some cases, paragraphs were literally copied, cut and pasted). It must, however, be borne in mind that although the foreign banks – Citigroup, Bank of America, JP Morgan Chase and HSBC Bank – have some exposure in the oil palm sector, their starting point for policy development has been broader or slightly different from the onset.

The minimum criteria mentioned above obviously only reflect part of the broader sustainability issues that the oil palm industry is struggling with. For example, labour rights, smallholder issues and environmental pollution were not specified, either because the NGOs mentioned above did not have the full mandate from relevant stakeholders (e.g. labour unions, smallholder organisations) or because these issues were not adequately documented. The minimum criteria therefore did not and do not intend to achieve sustainable production in ecological, social and economical context.
This later became the main mandate of the multi-stakeholder *Criteria Working Group (CWG)* of the *Roundtable for Sustainable Palm Oil (RSPO)*, which came together only much later (2004-2005). The CWG considered and incorporated the above four minimum criteria in its draft *Principles and Criteria (P&C)*, adopted by the RSPO membership in November 2005.

To evaluate the content of the bank policies, we have focused on the question how the four minimum criteria agreed in 2001-2002 are reflected in the banks' policies and on the extent to which these criteria have been specified in a clear and unambiguous way. A clear, concise

Roundtable on Sustainable Palm Oil (RSPO)

The Roundtable for Sustainable Palm Oil (RSPO) is a private sector – NGO initiative with at present 87 members: plantation companies, traders and processors, retailers, investors and NGOs. The RSPO aims "to promote the growth and use of sustainable palm oil through co-operation within the supply chain and open dialogue between its stakeholders". At the time when the Dutch bank policies were first developed, RSPO was not yet in existence. It held its inaugural meeting in August 2003 in Kuala Lumpur and was established as an association in Switzerland in April 2004. [9]
The RSPO has achieved considerable progress since its establishment in that it has mobilized a substantial share of the palm oil producers – the RSPO estimates that it's membership represented one-third of the global palm oil trade by the end of 2005. The involvement of the banking sector in the emergence and development of RSPO has generally been weak, although HSBC (United Kingdom) is clearly playing an active role.

On November 23, 2005, the RSPO General Assembly unanimously adopted the *Principles and Criteria (P&C)* for sustainable palm oil production. Among other criteria, the issues of legality, deforestation, forest fires and the rights of local communities – the yardsticks used in this report – are incorporated in this document, which will form the basis of two-year field level trials by at least 17 plantation companies and groups throughout the world.
Milieudefensie has applauded RSPO for adopting the P&C, but has noted that their value is yet to be proven in practise.[10]

and unambiguous content of a bank's policy and associated criteria is of critical importance, so as to leave no room for differences in interpretation or confusion among the bank's staff, its clients and external stakeholders.
Of importance in this respect is if the policy defines the used terminology and if references to other policy documents are made. The kind of references can easily undermine the transparency and accessibility of the core policy, especially when it is not clarified exactly what part of the underlying policies and criteria apply and how rigidly they are applied.
To evaluate the interpretation and wording of the four minimum criteria, we have specially paid attention to the following crucial and/or controversial issues:

- *Legal compliance*
  Although every bank would be quick to say that its clients are expected to adhere to the law, differences in the expected compliance remain. Of importance is the inclusion of international conventions ratified by the host-country in which the client operates as a pre-condition for financing, as well as the inclusion of local legislation (which may include customary law) and state/provincial laws. The inclusion of local and state laws is valued in this assessment because local communities and governments play an increasingly important role in legislation in Indonesia (and elsewhere). Inclusion of local legislation in the policy reflects certain awareness on the part of the bank that these policies are important. Depending on the political and legal situation, local poli-

cies are not necessarily better for the environment or local communities and inclusion of this issue in the policy often implies significant additional assessment work for the bank's credit officer.

The bank policies were not evaluated against the extent to which banks expect their clients not to violate regulations of their own home-country and/or international regulations ratified by their own home-country, as this is beyond the scope of this study. In terms of consistency, however, it would be recommendable if banks would include such requirements in their policies.

Reference to specific legal requirements such as *Environmental Impact Assessments* in the bank policies is also not rated, as is assumed that the bank's credit officers are aware that these specific legal requirements are part of the general law compliance requirement.

- *High Conservation Value Forests (HCVF)*

  To the NGOs involved it is of crucial importance that the bank mentions the conversion of *High Conservation Value Forests (HCVF)* as an exclusion criterion. *High Conservation Value Forests (HCVF)* are defined as forests of outstanding and critical importance due to their environmental, socio-economic, biodiversity or landscape values.

  This issue has triggered discussions on the issue of *retrospectivity*, or the cut-off year. With retrospectivity a time period is meant which should be lapsed between the clearing of HCVF in a specific area and the moment that a bank is considering to finance the establishment of an oil palm plantation in this area. Some banks (ABN Amro Bank, FMO, Bank of America) maintain a five-year limit, others mention a three-year limit (ING Bank, Rabobank) while others do not specify retrospectivity for oil palm plantations in former HCVF areas at all.

  Obviously, the longer the retrospectivity period a bank has defined, the greater the disincentive to clear HCVF for plantation development. Milieudefensie does not support RSPO's policy on retrospectivity, which uses the date of acceptance of the *Principles and Criteria (P&C)* – November 23, 2005 – as the cut-off date. Milieudefensie maintains that a five-year *cut off date* is an absolute minimum, whereas it is generally recommended to take the year 1994 as a baseline. In 1994 the sustainable forestry criteria of the *Forest Stewardship Council (FSC)* were set with that year as a baseline for conversion.[11]

- *Social conflicts*

  Respecting the rights and wishes of local communities is without doubt the most difficult minimum criterion for banks to operationalise. This is because social conflicts in forest and plantation areas can have many different causes and they are notoriously difficult for outsiders to assess. But, social conflicts are very real and frequently evolve into violent conflicts.

  To evaluate the bank policies on this criterion, we looked at the following key aspects:
  - **Scope**: Does the policy only mention indigenous peoples, or all local communities and plantation workers as well?
  - **Smallholder projects**: Does the policy express a preference for financing smallholder projects? Smallholder projects are generally considered to promote social

development more effectively and equally than privately owned plantations.

- **Method of addressing social conflicts**: Does the policy make a vague acknowledgement of the rights and wishes of local communities, or does it mention informed participation of local communities in the decision making process? As local communities are sometimes forced to participate in decision making processes, the policy preferably refers to *Free, Prior Informed Consent (FPIC)* as the preferred method of addressing social conflicts.

- *No burning*
  For countries that have prohibited burning practices (such as Indonesia and Malaysia), this requirement can be considered to be included in the legal compliance criterion. However, the frequent occurrence of burning and resulting forest fires and haze, suggests that in practice, legal regulations alone are not enough. Specific no-burning paragraphs in policies therefore do seem to have a merit of their own (when properly monitored), both for countries without zero-burning regulations and for countries that do have the regulation but not the desired compliance yet.
  Preferably the policy should refer to the *practices* of the client, not just to a zero-burning policy of the client as in practice such a policy is not always implemented.

In the following paragraphs we review the key content of the policies adopted by the Dutch banks (paragraph 3.2) and the foreign banks (paragraph 3.3). The review is limited to articles in the policies which are relevant to the oil palm sector.

Free, Prior and Informed Consent

Indigenous peoples' right to *Free, Prior and Informed Consent (FPIC)* has been recognized and accepted by a number of intergovernmental organizations and international bodies, such as the United Nations, the European Commission and the Organization of African Unity, and increasingly in the laws of states. Consent must be freely given, obtained prior to implementation of activities and be founded upon an understanding of the full range of issues implicated by the activity or decision in question; hence the formulation: free, prior and informed consent.
Former *United Nations High Commissioner for Human Rights*, Mary Robinson, in 2001 stated that, for indigenous peoples "economic improvements cannot be envisaged without protection of land and resource rights. Rights over land need to include recognition of the spiritual relation indigenous peoples have with their ancestral territories. And the economic base that land provides needs to be accompanied by recognition of indigenous peoples' own political and legal institutions, cultural traditions and social organizations. Land and culture, development, spiritual values and knowledge are as one. To fail to recognize one is to fail on all."[12]

3.2 The content of Dutch bank policies

3.2.1 ABN Amro Bank

ABN Amro Bank was the first commercial bank to come up with a far reaching risk policy for forestry related activities, the *ABN Amro Bank Risk Policy on Forestry and Tree Plantations*. The policy is an offshoot of the bank's *Business Principles*, but can be used as a stand-alone document.[13] The policy has not been changed since, but at present the bank is looking into ways in which it can provide more favourable terms to clients that are deemed sustainable operators to provide further incentives for improved performance.[14]

Photo: ABN Amro Singapore

ABN Amro Bank Risk Policy on Forestry and Tree Plantations, October 2001			
HCVF	**Legal**	**Social conflicts**	**Burning**
ABN Amro does not finance projects or operations, which will result in resource extraction from, or the clearing of, either primary or high conservation value forests. Given the benefit of making productive already denuded or degraded land, ABN Amro will finance projects on previously cleared forest land, only after five years have passed and only if no direct link to the original deforestation can be demonstrated.	ABN Amro will not finance companies or projects that contravene any relevant binding international environmental agreement to which the member country concerned is a party or that violates local, state or national environmental, labour or social laws.	ABN AMRO does not finance companies that do not demonstrate an explicit policy and practice of respecting human or indigenous rights related to forest resource extraction or plantation management.	ABN Amro does not finance companies without an explicit policy and practice against the uncontrolled and / or illegal use of fire in their forestry or plantation operations.

Strengths

- The policy applies to forestry and all tree plantations;
- A five-year cut-off date for HCVF retrospectivity is maintained;
- Legislation is covered at all relevant levels;
- On various issues adherence to the criteria must be demonstrated by the client in its policy *and* practise;
- The minimum criteria are detailed in specific questions;
- The policy is elaborated with specific questions for purposes of due diligence;
- The used terminology is defined separately.

Weaknesses

- To improve oversight, sector specific policies would be helpful;
- The details of the social paragraph could be strengthened;
- The policy is not applicable to non-tree type plantations producing vegetable oils, such as soy, except in the field of project finance.

Overall, the content of the ABN Amro Bank policy adequately reflects the four minimum criteria, and efforts have been made to specify these criteria in greater detail.

3.2.2 FMO

The development bank FMO has incorporated the *IFC Safeguard policy on forestry* and the World Bank *Environmental and Health & Safety Guidelines on plantations* as an integral part in its sustainability policy, as it has done with other World Bank safeguard policies and guidelines.* FMO has also established frameworks on labour conditions (based on *ILO Conventions*) and on GMOs.[15]
In addition, FMO has developed a specific questionnaire in 2004 for clients that contains many policy elements. This questionnaire is therefore reviewed here as well.[14] FMO is currently streamlining and integrating its sustainability, social and governance policies and hopes to have its new policy ready for release together with the Annual and Social Reports of 2005.[17]

In its questionnaire, FMO encourages its clients to "become pro-active in NGO-Industry-Government initiative(s) that aim for making the palm oil industry more sustainable (like the *Roundtable on Sustainable Palm Oil*). This will also imply (the client) to formulate requirements to its external suppliers of CPO and/or FFB." Verbally, FMO commented it will "always demand clients in this sector to adhere to the RSPO *Principles and Criteria*".[18]

* The specific IFC/WB Polices applicable to investments in oil palm projects are the following:

1. IFC Operational Policy (OP 4.36) on Forestry;
2. IFC Environmental, Health and Safety Guidelines for Plantations;
3. WB Operational Directive (OD 4.20) on Indigenous Peoples;
4. WB Operational Directive (OD 4.30) on Involuntary Resettlement;
5. IFC Environmental and Social Guidelines for Occupational Health and Safety;
6. IFC Operational Policy (OP 4.01) on Environmental Assessment.

FMO policies and questionnaire for oil palm clients, 2004			
Legality	**HCVF**	**Social conflicts**	**Burning**
The plantations must be developed in accordance with the regulations of the national law and the applicable international regulations to which the government has committed itself.	Primary forests or secondary forests with considerable ecological and cultural value ("High Conservation Value Forest", as defined by the Forest Stewardship Council) are not cut down for the construction of plantations, nor should any area be acquired for the construction of plantations, that still was Primary Forest or High Conservation Value Forest less than five years ago.	The World Bank / IFC policies that may be applicable specifically to expansions and new plantations are the World Bank Forestry Policy, the World Bank Resettlement Policy, the World Bank Operational Policy on Environmental Assessment In addition to this, "to the extent possible" (the company) should only develop palm plantations or take over plantations that are linked to so-called plasma programme of the Indonesian government (only relevant for Indonesia and expansions and new developments) For labour issues, FMO's social policy requirements apply.	If land is developed for the construction of plantations, the related area may not be burnt off.

Strengths

- A five-year cut off date for HCVF retrospectivity is maintained.

Weaknesses

- The FMO policy on forestry and oil palm plantations is not easily accessible for clients and external stakeholders due to ample references made to third party policies (IFC, World Bank);
- FMO's preference for smallholder (plasma) programs is weakly defined ("to the extent possible [..] only..");
- The questionnaire makes extensive use of soft and non-binding wording and unspecified time frames, such as "FMO would like to see", "to the extent possible", "FMO will be looking at…" and "non-compliances may be corrected in within a realistic timeframe by formulating an action plan". These kind of wordings undermine the conditionality of and compliance to the IFC and World Bank criteria referred to;
- The used terminology is not defined separately.

Overall, the content of the FMO sustainability and social policies reasonably reflect the four minimum criteria, as they refer to the World Bank and IFC policies and guidelines that FMO has adopted. But FMO should not leave definitions of conditionality and compliance to the IFC and World Bank, and the wording on these issues in the questionnaire is seriously weak.

3.2.3 Fortis Bank

Fortis Bank has not yet published a written oil palm or forest policy. In 2005 Fortis drew up a *Global Credit Policy on Sustainability*. This policy aims to set a general framework for the integration of sustainability in the credit acceptance criteria. Fortis Bank intends to formulate one or more specific guideline(s) for agri-commodities in the first half of 2006.[19]

The evaluation of Fortis Bank's policy therefore has to be based on correspondence between Fortis and Milieudefensie and Greenpeace Netherlands in 2001, in which Fortis Bank agreed that it would apply the minimum criteria to new credit relations relevant to tropical deforestation, with the exception of export credits.[20]

Fortis Bank correspondence with Dutch NGOs, 2001			
Legality	**HCVF**	**Social conflicts**	**Burning**
Fortis will finance "no new plantation development or expansion that are established without clearing permit (..)".	-	"The bank will try to find out (in so far possible) if any other environmental damage or social unrest has or could occur".	Fortis will finance "no new plantation development or expansion that are established (..) through burning".

Strengths

- None

Weaknesses

- The minimum criteria remain unspecified;
- The legality criterion is interpreted in a very narrow way;
- No reference is made to HCVF;
- Fortis Bank uses very weak language: "will try to", "in so far possible".

Fortis Bank has indicated that it does conduct extensive client and prospect due diligence in its oil palm industry relations, including social and environmental matters. Account managers need to fill in a *know your customer* checklist for (short-term) trade finance requests for borrowers in the palm industry. The questions raised also deal with the issued defined in the four minimum-criteria.[21]

However, a checklist can not replace a policy, as it does not specify how the bank deals with the answers to the questions raised. Fortis Bank has still to specify its commitment to the four minimum criteria in a clear and unambiguous *Forest policy* and/or *Oil Palm policy*. The bank has promised to do so shortly.

3.2.4 ING Bank

A first version of the ING Policy on *Financing of Oil Palm Plantations and Pulp and Paper Industry* was released in February 2002. A second, marginally adjusted version was released in July 2003.[22] The policy refers to ING Group's *Business Principles* and to the *World Bank Forest Policy*.

At present ING Bank is searching for appropriate ways to revise its policy in which it will put best effort in incorporating the most recent best practices in the sector.[23]

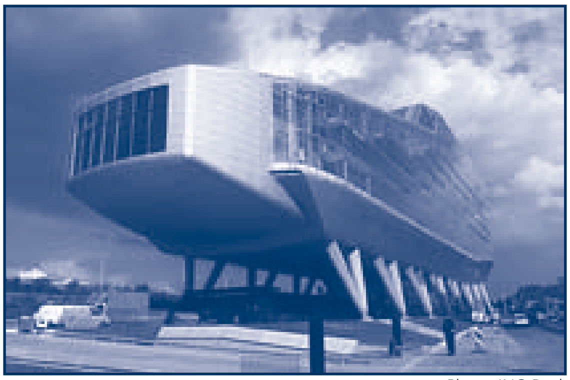


Photo: ING Bank

ING Policy on Financing of Oil Palm Plantations and Pulp and Paper Industry, July 2003			
Legality	**HCVF**	**Social conflicts**	**Burning**
The social and/or the requirements pertaining to labour law must be met as well as the relevant legislation and regulations regarding deforesting and environment, as laid down by the local government. ING will see to it that this legislation and requirements are observed by the company involved. See also HCVF and burning.	ING does not finance companies and projects that commit illegal deforesting (..) of tropical rain forests (HCVF) with the intention to set up oil palm plantations. A period of at least three years will be observed between the time of deforestating and the time of starting the afforestation of the oil palm plantation or wood plantation of another kind. There may be no relationship between the deforesting and the plantation to be set up.	ING will refrain from financing companies and projects that insufficiently respect the rights of the local population. ING will conduct specific research into the latter when a request for financing is submitted (as part of a due-diligence investigation). When it turns out that social conflicts have occurred in the past and that the company or project is involved has not adjusted their policy or attitude, ING will forbear from financing.	ING does not finance companies and projects that commit illegal (..) burning down of tropical rain forests (HCVF) with the intention to set up oil palm plantations.

Strengths

- The policy applies to forestry and tree plantation sectors;
- The used terminology is defined separately.

Weaknesses

- Legal compliance is set as the maximum performance level required for the HCVF and burning criteria;
- The reference to the World Bank Forest Policy is not specified in concrete terms;
- The social paragraph suggests "beyond the law compliance" but does not provide guidance on the term "insufficient respect";
- The terminology (the definition of illegal logging) is partly random.

Overall, ING Bank's policy uses the basic terminology of the minimum criteria, but frames these in the exclusive context of legal compliance only. The social criterion could be strong if it had been specified adequately.

3.2.5 Rabobank

Photo: Rabobank

The Rabobank in the palm oil industry ("Palm Oil Code") was developed in 2001 and is designed for oil palm plantations in the Indonesian context only.[24] Initially formulated in Dutch and English, the Palm Oil Code was translated in Bahasa Indonesia in 2005.

Rabobank's *Palm Oil Code* has been marginally adjusted since its inception. However, the bank has communicated verbally that the policy also applies to other countries but has not introduced this in its policy. Rabobank has recently started developing similar codes for other sectors, such as the soy sector.

The *Palm Oil Code* states that Rabobank seeks to link up with the guidelines of the World Bank and the International Finance Corporation. Rabobank is a member of the RSPO (see page 8) and verbally stated it intends to incorporate the *RSPO Principles and Criteria into its Palm Oil Code*. Where the Rabobank code currently has a higher standard than the *RSPO P&C*, the highest level will be maintained.[25]

The Rabobank in the palm oil industry, October 2001			
Legality	**HCVF**	**Social conflicts**	**Burning**
The plantations must be developed in accordance with the regulations of the Indonesian law and the applicable international regulations to which the Indonesian government has committed itself. (..) The Rabobank also bases its decisions relating to financing plantations on the environmental effect reports and social effect reports compiled by its clients (the so-called Amdal report).	Primary forests are not cut down for the construction of plantations. When constructing plantations, secondary forests with considerable ecological and cultural value are respected. The Rabobank observes an investment moratorium of at least three years if primary forest or HCV forest is removed with a view to constructing plantations.	The wishes and interests of the local population must be taken into account in the development and management of plantations. The bank prefers to finance plantations that are linked to so-called plasma programs of the Indonesian government (..).	If land is developed for the construction of plantations, the related area may not be burnt off.

Strengths

- The used terminology is defined separately;
- The policy includes a strong overall criterion on social issues, although this is poorly specified (see below).

Weaknesses

- The policy refers only to Indonesia, although the bank has verbally stated that it extends to Malaysia as well;

- No reference is made to social issues other than smallholders, which is a very narrow interpretation of "local communities";
- Rabobank's stated preference for financing smallholder programmes is specified in a passive manner. The commitment is neutralised by stating that the Indonesian government is not adequately supporting these programmes ("These programs enable the local population to acquire land themselves and to sell palm oil to the plantations at a fair price set by the government. The bank has unfortunately noted that the Indonesian government currently has insufficient funds to continue the plasma programmes and as a result the programmes are operating less effectively at some locations");
- Reference to IFC and World Bank Forest Policy is weakly formulated ("seeks to link up with") and not specified in concrete terms.

Overall, the content of the Rabobank policy adequately reflects the legal, HCVF and burning criteria, but is weak on the social side.

3.3 The content of foreign bank policies

3.3.1 Citigroup

Citigroup was the first American commercial bank to publish an explicit environmental policy that covered forest issues in January 2004: *Citigroup's New Environmental Initiatives*.[26] It was developed in dialogue with the American NGO Rainforest Action Network. The document refers to the *Equator Principles* (see page 29) as well as to the *IFC Indigenous Peoples Safeguard Policy*.

Although Citigroup's policy does not specify all sectors to which the policy applies, it is evidently broader than the Dutch bank policies. The policy covers critical habitats, illegal logging, climate change and ecologically sound development. Although the latter goal is not translated into real goals, it is interesting that Citigroup specifies not only what it is does not want to finance, but also highlights what it *does* wish to finance (certified forestry and renewable energy).

Citigroup's New Environmental Initiatives, January 2004			
Legality	**HCVF**	**Social conflicts**	**Burning**
Citigroup will not finance projects that contravene any relevant international environmental agreement which has been enacted into the law of, or otherwise has the force of law in, the country in which the project is located.	Citigroup will finance plantations only on nonforested areas (including previously planted areas) or on heavily degraded forestland. The project will not significantly degrade or convert the critical natural habitat. Project management has adequate capacity and willingness to ensure biodiversity protection and respect for the rights of indigenous communities whose livelihoods or cultural integrity could be adversely impacted.	Citigroup will not finance (..) if the project or use of proceeds is located within critical natural habitats, unless the sponsor or borrower, as appropriate, has demonstrated to Citigroup's satisfaction: Indigenous peoples impacted by the project, whether directly or by induced impact, have the opportunity and if needed, culturally appropriate representation, and have access to the information to engage in informed participation. The governmental authorities at the local, regional or national level have provided mechanisms for the affected communities to be represented or consulted, and international and local laws have been upheld; and an Environmental Impact Assessment has been prepared that takes into account such consultations and is publicly available.	Not specified

Strengths

- The policy applies to forestry and all tree plantations affecting critical habitats and climate change;
- The policy mentions the right of indigenous people to have access to informed participation;
- Government led mechanisms for consultation of affected communities in critical habitats are a condition for financing;
- References to third party policies (e.g. IFC) are partially specified;
- The used terminology is defined separately.

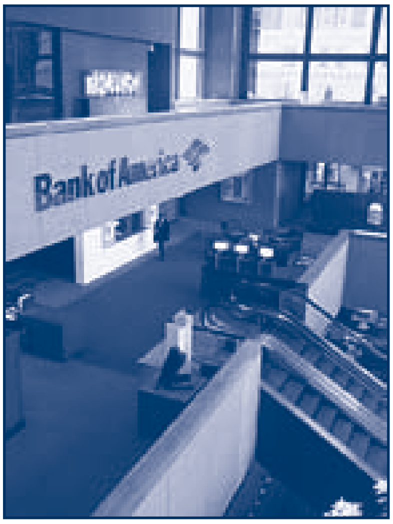
Weaknesses

- The bank does not use the term HCVF, although the definition of critical habitats is comparable;
- No retrospectivity or cut-off date for HCVF conversion is specified;
- Social criteria are only applicable in reference to critical habitats;

- No reference is made to labour issues or (preference for) smallholder projects;
- No reference is made to forest burning.

Overall, the Citigroup policy carries the spirit of the minimum criteria adopted by the Dutch banks but uses different wording and is weaker on some accounts (cut-off date, burning). The social paragraphs have a limited scope, but do require specific conditions to be met, which are not required by Dutch banks (informed participation, consultation of affected communities).

3.3.2 Bank of America



The *Forests Practices – Global Corporate Investment Bank Policy* of Bank of America was developed in dialogue with the American NGO *World Resources Institute (WRI)*. The policy was published in May 2004. [27]
The policy is a stand-alone document, with the exception of references made to mapping to be done by WRI.

Strengths

- The policy covers all forestry and tree plantations;
- A five-year cut off date for HCVF retrospectivity is maintained;
- The social paragraph requires informed participation;
- The social paragraph requires settlement of indigenous land claims;
- The policy has adequate paragraphs on legality and burning;
- The used terminology is defined separately.

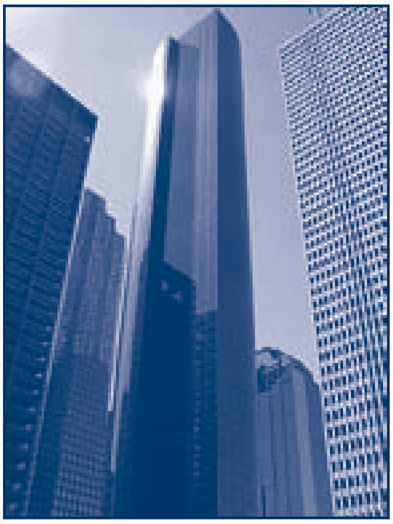
Weaknesses

- No specific reference is made to non-indigenous local communities, and (preference for) smallholder projects;
- Labour issues are mentioned only in the context of legality.

Overall, the content of the policy of Bank of America adequately reflects the four minimum criteria.

Bank of America Global Corporate Investment Bank Policy, May 2004			
Legality	**HCVF**	**Social conflicts**	**Burning**
Bank of America will not finance companies or projects that contravene any relevant binding international environmental agreement to which the member country concerned is a party to or that violate local, state or national environmental, labour or social laws.	Bank of America will (..) assure that lending proceeds are not used to finance commercial projects or operations that result in resource extraction from, or the clearing of: - Primary tropical moist forests; (..) Given the benefits associated with reforestation of cleared and degraded land, Bank of America will finance tree plantations on previously cleared forest land if the clearing and/or degradation of the land was conducted in accordance with applicable laws and regulations. Exceptions are allowed only after five years have passed and only if no direct link to the original deforestation can be demonstrated.	Bank of America respects the rights of indigenous communities whose livelihoods or cultural integrity could be adversely impacted. Due diligence procedures for projects in primary temperate/boreal or high conservation value forests will weigh the impact of credit decisions on the indigenous peoples that could be affected. The bank will not finance the operations unless it is determined that indigenous peoples impacted by projects in these sensitive areas, whether directly or by induced impact, have the opportunity and, if needed, culturally appropriate representation, and have access to the information to engage in informed participation. Additionally, Bank of America will not finance operations in areas where indigenous land claims are not settled.	Bank of America will not finance companies that do not have an explicit policy against the uncontrolled and/or illegal use of fire in their forestry or plantation operations.

3.3.3 JP Morgan Chase



The *Environmental Policy Statement* of the American bank JP Morgan Chase & Co. was published in April 2005.[28] The policy covers general environmental risk management, climate change and forestry and biodiversity. The document refers to third party policies such as those of the World Bank, International Finance Corporation and the *Equator Principles* (see page 29).

JP Morgan Chase Environmental Policy Statement, April 2005			
Legality	**HCVF**	**Social conflicts**	**Burning**
JPMorgan Chase will not finance projects that contravene any relevant international environmental agreement which has been enacted into the law of, or otherwise has the force of law in, the country in which the project is located.	JPMorgan Chase will finance plantations only on non-forested areas (including previously planted areas) or on heavily degraded forestland. JPMorgan Chase will not finance any project or provide loans where the use of proceeds is designated within critical natural habitats, unless the sponsor or borrower, as appropriate, has demonstrated the following: - They have considered economic and technically feasible alternatives to avoid such areas and have addressed these issues in a publicly available Environmental Assessment; - The project will not significantly convert or degrade the critical natural habitat; - Project management has adequate capacity and willingness to ensure biodiversity protection and respect for the rights of indigenous communities whose livelihoods or cultural integrity could be adversely impacted; - The governmental authorities at the local, regional or national level have provided mechanisms for the affected communities to be represented or consulted, and international, national and local laws have been upheld; and - An Environmental Assessment has been prepared that takes into account such consultations and is publicly available.	JPMorgan Chase prefers to only finance projects in indigenous areas where free, prior informed consultation results in support of the project by the affected indigenous peoples. Such projects will include measures to: (a) avoid potentially significant adverse effects on the indigenous peoples' communities; or (b) when avoidance fails, minimize, mitigate, and compensate for such affects. For such projects, which impact indigenous people in sensitive areas, whether directly or by induced impact, the project sponsor or borrower, as appropriate, will have demonstrated the following: - They have given indigenous people the opportunity and, if needed, culturally appropriate representation to engage in informed participation and collective decision-making; - Provided information on the ways in which the project may have a potentially adverse impact on them in a culturally appropriate manner at each stage of project preparation, implementation and operation; - Given adequate time to study the relevant information; and - Provided access to a grievance mechanism. In addition, the project sponsor or borrower, as appropriate, will have demonstrated the following: - Consultation approaches that rely on existing customary institutions, the role of community elders and leaders, and the established governance structure for tribal and indigenous communities; - Governmental authorities at the local, regional or national level have provided mechanisms for the affected communities to be represented or consulted, and international and local laws have been upheld; and - Major indigenous land claims are appropriately addressed.	We will not finance companies or projects that do not have an explicit policy against the uncontrolled and/or illegal use of fire in their forestry, plantation or extractive operations.

Strengths

- The policy covers general environmental risk management, climate change and forestry and biodiversity;
- The policy is strong (detailed, specific) with regard to indigenous peoples;
- The terminology is defined separately.

Weaknesses

- No cut off date for HCVF retrospectivity is defined;
- The policy's reference to Free, *Prior and Informed Consultation* can be misleading to those less familiar with the terminology. *FPI Consultation* (a term introduced by the World Bank), does not mean that the communities consulted also have to give their *Free, Prior, Informed Consent or FPIC* (see page 10) to a proposed project.
- No specific reference is made to non-indigenous local communities;
- In the burning criterion, no reference is made to implementation of a non-burning policy by the client.

Overall, the content of the policy of JP Morgan Chase reflects the spirit of the four minimum criteria. It is strong on indigenous peoples, but the use of the term Free, Prior, Informed Consultation is potentially misleading.

3.3.4 HSBC Bank

The Forest lands and forest products *guideline* of HSBC Bank (United Kingdom) was developed in close collaboration with the international NGO *World Wide Fund for Nature (WWF).* The guideline refers primarily to FSC-certification, although HSBC states that the policy also applies to plantations (pulp, timber, oil palm and rubber). The document was published in May 2004 and refers to the *IFC Safeguard Policies* in respect of forestry and to the *Equator Principles* (see page 29).[29]
Two months later, HSBC Bank issued a statement further explaining its policy on oil palm plantations.[30] We treat this statement as part of the bank's policy here.
HSBC Bank is a member of the *Roundtable on Sustainable Palm Oil (RSPO)* and will use the *RSPO Principles and Criteria* to help implement HSBC's guidelines in respect of financing in the oil palm sector.[31]

Strengths

- The policy is strong on forest certification (FSC).

Weaknesses

- HCVF is not mentioned and no cut off date for HCVF retrospectivity is defined;
- The policy makes no specific references to legal issues surrounding oil palm plantations;
- Wording on social conflicts is very defensive.

HSBC Forest Lands and Forest Products Guideline, May 2004			
Legality	**HCVF**	**Social conflicts**	**Burning**
Not specified for oil palm plantations	In particular, we will not provide facilities and other forms of financial assistance, including any involvement in debt and equity capital markets activities and advisory roles, in respect of: (..) - Projects located in and which significantly degrade or convert Critical Natural Habitats (…) Well-planned oil palm plantations can contribute to sustainable development – provided they are sited correctly, avoiding forests which are important for conservation. Expansion of existing plantations should be regarded as highly sensitive and needs to be carefully reviewed to ensure that it does not impact on existing forest-land. Plantations should be managed in accordance with proper forest stewardship principles and should address issues of forest protection, restoration and conversion, preservation of biodiversity.	We are keen to improve our understanding of the issues affecting the communities that exist close to the oil palm plantations and we believe in an open and transparent approach coupled to consultation.	There should be a ban on the clearing of land by burning existing forest.

Overall, HSBC policy was mainly designed for application in the forestry sector and does not include much content that is useful for investments in the oil palm sector, even when the bank states that the policy also applies there.

Chapter 4

Scope

4.1 Introduction

The scope of the banks' policies specifies under which conditions the policy is applicable. This subject was a key element in the discussions between the Dutch banks and NGOs in 2001 and it is as critical as the content of the policies. After all, a policy with strong wording would no achieve much if it applies only to a part of the bank's investment portfolio. The scope of investment policies needs to clarify when the policy is applicable in the following areas:

- **Geographical scope**: Indonesia, Southeast Asia, or worldwide?
- **Sectoral scope**: Oil palm plantations, all types of plantations, or all sectors which have an impact on forests?
- **Types of clients**: Clients who are active on the ground only, or also conglomerates which undertake various activities and traders and buyers downstream in the supply chain?
- **Forms of financial services**: Loans only, all commercial banking services, or all financial services including investment banking, asset management and trust banking?

We will discuss the four scope areas in the following paragraphs.

4.2 Geographical and sectoral scope

The geographical and sectoral scope of the bank policies was one of the key issues discussed between the Dutch banks and the NGOs in 2001. The discussion started around oil palm development in Indonesia, but it soon became apparent that applying investment policies to one country only would be inequitable and that it would transfer the problem from one country to another. Similarly, an investment policy for oil palm only would not make a great deal of sense when banks are also involved in financing logging and timber operations, the pulp and paper sector or other non-tree edible oil sectors, such as soy. Therefore, the NGOs argued they would like to see the policies to be expanded to cover all sectors that may impact forests and all global forest regions.

This review shows that different approaches were chosen by each bank. Fortis Bank's policy applies to oil palm plantations only. On the other hand, ABN Amro Bank and ING Bank both had significant exposure in other relevant sectors (logging, pulp & paper) and expanded their policies to cover these sectors as well. Rabobank had limited exposure in the forestry sector but since its overall focus is on the agri-business sector, its policy applies to oil palm. But the policy document does not cover other sectors, such as soy in which the bank also had a significant exposure. The bank later verbally stated that in practise the policy also

Oil palm nursery, Sumatra Photo: Milieudefensie

applies to the soybean sector. Similarly, Rabobank's policy applies to Indonesia only, but the bank has verbally stated that its policy also applies to other countries.

The American banks' policies all appear to be applicable worldwide and cover a wider range of sectors than most of the European banks. Some Dutch banks also have separate policies for other relevant sectors in place, which are not reviewed here. And in the field of project finance, ABN Amro Bank's policy is applicable to every project financed by the bank with potential impacts to forest resources, including soy, mining, oil and gas projects.

4.3 Types of clients

Dutch banks and NGOs agree that a bank's oil palm policy is applicable to all clients which are exclusively or predominantly active in the oil palm business. Two main challenges remain:

In Southeast Asia, oil palm plantation companies are often owned by corporate conglomerates that are also involved in several other sectors (e.g. food production, car manufacturing, retail, property development, tourism). Analysis of the financing behaviour of the Dutch banks shows that the bulk of the financing provided by Dutch banks to the oil palm sector is channelled through such corporate conglomerates. Depending on the type of financial service (issuance of bonds or credits for general purposes), the bank may not have knowledge of, or control over, the use of funds provided to a conglomerate company. Even when a loan is tied to a specific (non oil palm related) activity, the bank strengthens the conglomerate's liquidity, which may enable it to channel funds to other activities, such as expansion of oil palm plantations. For this reason, NGOs do hold banks accountable for assisting conglomerates with significant oil palm interests as well as other industries.

A similar challenge is to define up to what level in the chain of custody the policy is to be applied. Should it be applied only to plantation companies, or also to refineries, traders, processing companies and even retailers?

The Dutch banks have defined the scope of their policies in respect to the type of clients as follows:

- *The ABN Amro Bank Risk Policy on Forestry and Tree Plantations* "does not apply to financing of non-related sister companies as long as the legal counter party is not involved in resource extraction.[32]

- FMO explicitly applies its investment criteria to plantation companies and their parent companies and to companies all along the oil palm trade chain.[33]

- In 2001 Fortis Bank stated that it would not apply the investment criteria to the export credits it provides to Indonesian exporters of – among others – palm oil and timber, as the bank did not want "to do unnecessary harm to the Indonesian economy by limiting exports from existing plantations."[34] Recently, Fortis Bank has changed its position. The bank is financing the trade in agriproducts rather than the production of commodities (e.g. plantations) and is aware that its policy – which is under development – needs to deal with the whole trade chain.[35]

- *The ING Policy on Financing of Oil Palm Plantations and Pulp and Paper Industry* states that it is "not applicable to financing of group companies, as long as

Living in an oil palm plantation

those companies are not involved in the deforestation and/or burning of tropical rainforests."[36]
However, during a meeting ING Bank added that it does apply its policy to oil palm traders. ING distinguishes between traders that own and/or operate oil palm plantations and traders that only trade oil palm. The assessment of the trader that owns and/or operates oil palm plantations is more comprehensive that the assessment of the sole trader.[37]

- Rabobank states that "for the development or exploitation of oil palm plantations no financial services will be provided if the manager of the foreseen plantation is involved directly or indirectly (within a larger company group) in illegal logging and/or commercial logging of primary or *High Conservation Value (HCV) forest*."[38]

The guidelines quoted above are all but shining examples of clarity and unambiguous guidance.

ABN Amro Bank, ING Bank and Rabobank have all stated that in practice they have applied their oil palm policies to holding companies that were financed since their adoption. However, based on the case studies presented in Chapter 5 it will be argued that the application of the policy has not been effective in several instances.

The American banks and HSBC Bank appear to have accepted that their policies should be applied to holding companies as well. This is reflected by the way they describe the types of financial services that are subject to their policies.

With regards to the chain of custody, it is an encouraging trend that FMO and HSBC Bank have made their investment criteria applicable to traders and buyers of palm oil products, respectively timber products. Fortis Bank has verbally stated that it aims to do the same.
Furthermore, Rabobank and other banks have used their relationships with some of their major clients in the global palm oil market and the Dutch food industries, an important effort that has helped the emergence of the *Roundtable for Sustainable Palm Oil (RSPO).*

These are important precedents because several bank in the past showed reluctance to extend the scope of their policies to actors in the trade chain which, obviously, requires an adjusted approach as the standard guidelines for oil palm plantation companies and groups cannot simply be applied to all companies in the trade chain.

4.4 Forms of financial services

Banks provide various types of financial services, from which their clients (but also third parties) in the oil palm and forest sectors can profit. The most important forms of financial services in this respect are:

- *Commercial banking*
  Commercial banking includes all types of corporate loans and credits, i.e. investment loans, working capital facilities, trade credits, swap contracts**, et cetera. There is not much discussion that the bank policies should be applied to all these commercial banking services, although Fortis Bank excluded trade credits as these would not be used to expand plantation areas. Other banks sometimes dispute the applicability of their policy on similar grounds by stating that: "a working capital facility is not intended to finance plantation expansion". This may well be the intention, but preventing a client from (legally) reshuffling capital within the group is another matter.

- *Project finance*
  Project finance refers to specific forms of debt provided to stand-alone projects on a non-recourse basis*** with regard to the project owners. Project finance is applied fairly often in developing countries for oil and gas, mining, electricity and other infrastructure projects, to limit various political and financial risks. For plantation development project finance is hardly used, however. In the mid-1990s several Indonesian pulp & paper mills were financed on a project basis. More recently project finance is hardly used in this sector anymore, most pulp & paper mills are financed by commercial bank loans or bond issuances.
  Most banks are applying their forest and plantation policies to their project finance activities, also because they have committed to more or less comparable standards for their project finance activities by undersigning the *Equator Principles* (see below). But the *Equator Principles* only apply to project finance with a minimum capital cost of US$ 50 million. JP Morgan Chase has formally stated that it will use a lower threshold, namely US$ 10 million, for the application of the EP. In practice, other EP-signatories are also applying the EP to project finance activities below the US$ 50 million threshold.

- *Investment banking*
  Investment banking services include helping clients to sell shares and bonds to investors (asset managers, insurance companies, et cetera), as well financial advisory services. Most banks are not (yet) applying their forest and plantation policies to their investment banking division. Bank of America will apply its policy to bond underwriting where proceeds are project specific and HSBC Bank defines an even wider scope by applying its policy to all debt and equity capital markets.
  ABN Amro Bank has started to apply its policy on investment banking activities on a case by case basis. According to the bank *rolling out* its policies to other business

** Swap contracts are contracts by which the banks promises to convert a future income or payment into another currency, interest rate or type (f.i. from commodity to money). Swap contracts increase the predictability of the expected income or expenses of the customer.

*** Non-recourse means: if the project goes bankrupt, the project owners can only be held liable for the amount of money they have invested in the project, not for the debts of other financiers.

Equator Principles

The *Equator Principles (EP)* were first launched by a group of project finance banks in June 2003 and have now been undersigned by 41 financial institutions from around the globe. The EP signatories – including all nine banks discussed in this report – account for a very large share of the global project finance market. By undersigning the EP these banks have essentially committed to screen all projects against environmental *Safeguard Policies* of the International Finance Corporation (IFC), which in turn are linked to the World Bank's policies (hence the frequent reference made to the International Finance Corporation in the policies of the banks reviewed in this report).[39]

The IFC is presently in the process of replacing these *Safeguard Policies by Performance Standards*, which the *EP* signatories plan to adopt as well. NGOs collaborating in the private finance network BankTrack have questioned whether the provisions assure that local communities will be adequately consulted, and whether environmental impact assessment reports will be open to full public scrutiny. They are also concerned that the IFC and the EP banks are lowering the bar with regard to the rights of landless people and indigenous people.[40]

areas is an inherently complex and time consuming process, for instance because data sharing across business units is still difficult.[41] Fortis Bank, ING Bank, Bank of America and HSBC Bank also have indicated they are planning to implement their policies in their investment banking division, but in practice this is not happening yet.

According to our financial research issuing shares and bonds – with the help of investment banks – is an increasingly important means for plantation and forestry companies in Southeast Asia and Latin America to raise financing needed for expansion projects. Over the past ten years, (syndicated) investment loans have clearly become less important, while share and bond issuances have gained importance. If banks do not apply their policies to these investment banking activities, their policies therefore lose much of their potential effectiveness.

- *Trust banking*
  Trust banking refers to the day-to-day management of overseas financing companies (which generally do not have employees) on behalf of their owners. Such foreign financing companies are used by many companies in the forest and plantation sectors, to reduce their financing and tax costs.
  Trust banking services are not offered by all banks, but most Dutch banks were engaged in it because of the specific tax climate in the Netherlands which favours foreign financing companies. Fortis Bank is the only bank known to have applied the oil palm investment criteria to its trust banking activities. ABN Amro Bank did not, but instead sold its entire trust banking division recently.

- *Asset management*
  Asset management means investing in shares and bonds of companies and govern-

ments, on behalf of investment funds (which in turn are owned by many private investors), wealthy private clients and financial institutions such as pension funds and insurance companies.
None of the banks has applied its forest or plantation policy to its asset management activities, although for some banks these activities are very considerable. Banks mention two major reasons why they do not apply their policies to asset management activities.
Firstly, asset managers sell and buy shares and bonds of very many companies and claim that they do not have the means to check fast and cost-effectively if these companies adhere to the bank's policy. Closer cooperation and information sharing with NGOs and sustainable rating agencies could offer some solution to this problem.
Secondly, the companies which have issued the shares and bonds traded by asset managers, are not the clients of these asset managers. In this division, different from the other divisions, the bank should therefore apply its policy to a third party, which is legally and practically more difficult. Different from a credit officer, an asset manager has no access to the company's books, administration, et cetera.

In general it can be observed that the banks do apply their forest and plantation policies to their commercial banking and project finance divisions, but are more hesitant to "roll out" their policies in other divisions. On the other hand NGOs expect banks to apply their policies to all financial services that are offered under the bank's brand name. The American and UK banks are clearly more advanced in this area than the Dutch banks, both in terms of coverage as well as specifying to what financial transactions their policies are applied.

4.5 Comparison of the scope of bank policies

The scope of the various banks' policies is summarized in the tables below.

Dutch banks				
Bank	**Regions**	**Sectors**	**Type of clients**	**Forms of financial services**
ABN Amro Bank	Worldwide	Logging, pulp & paper, agriculture plantations	Companies / projects and holding companies involved in [forest] resource extraction	All, but not yet fully implemented in investment banking and asset management
FMO	Worldwide	All sectors for which World Bank guidelines exist	Plantation companies and groups, third party suppliers	Applicable to all transactions
Fortis Bank	Indonesia	Oil palm	Plantation companies	Commercial banking, trust banking
ING Bank	Worldwide	Logging, pulp & paper, oil palm	Plantation companies, holding companies	Commercial banking
Rabobank	Indonesia and Malaysia	Oil palm	Plantation companies, holding companies	Not specified

Foreign banks				
Bank	**Regions**	**Sectors**	**Type of clients**	**Forms of financial services**
Citigroup	Unspecified/ Worldwide	Logging, plantations, energy	Not specified	Project finance or general corporate loans to any project (where the use of proceeds is known)
Bank of America	Worldwide	Logging, plantations	Not specified	All extensions of credit and bond underwriting where proceeds are project specific.
JP Morgan Chase	Worldwide	Mining, forestry, plantations, oil and gas industries	Not specified	Equator Principles: all loans, debt and equity underwriting, financial advisories and project-linked derivative transactions where the use of proceeds is designated for potentially damaging projects. For transactions in the mining, forestry, oil and gas industries, the threshold for applying the Principles will be $10 million.
HSBC Bank	Worldwide	Forestry, timber and timber products/ processing, timber trading, plantations (pulp, timber, oil palm, rubber) and forest conversion.	Forestry companies, plantation companies and timber traders	Debt and equity capital markets activities and advisory roles
HSBC Bank	Worldwide	Forestry, timber and timber products/ processing, timber trading, plantations (pulp, timber, oil palm, rubber) and forest conversion.	Forestry companies, plantation companies and timber traders	Debt and equity capital markets activities and advisory roles

Chapter 5

Implementation

5.1 Introduction

A bank's policy is insignificant unless the commitments made are implemented. The policy documents reviewed provides only little guidance on how the policy is implemented and how its implementation is be monitored by the bank itself and by the client. Some additional information on this issue is gathered by the questionnaires and the meetings held with the Dutch banks.

By and large, it appears that the implementation of the policies is still very much under development. In paragraph 5.2 we will first discuss the crucial implementation issues in general terms, followed by the specific approach to implementation and monitoring of each individual bank in paragraphs 5.3 and 5.4.

5.2 Crucial issues

- *Assignment of responsibilities*

  Within ABN Amro Bank, the policy is implemented by the *Sustainable Business Advisory Unit* of the *Risk Management department*.[42] ING Bank has a similar procedure: before sending the credit application to the Credit Committee, the application is reviewed by the *Policy Desk*, a team within the *Corporate Credit Risk Management Department*. FMO implements its sustainability polices through the environmental and social unit of the *Investment and Mission review department*.

  Rabobank has created an *Internal Review Panel* consisting of representatives from *Credit Risk Management, Relationship Management and Food & Agribusiness Research*.[43] JP Morgan Chase is even more specific (see paragraph 5.4.4).

  With occasional exceptions, communication between the banks and NGOs has mostly been indirect, i.e. through the banks' public relation staff rather than with the investment officers and other decision makers within the banks.

- *Operationalisation*

  Most banks have undertaken various efforts to operationalise their policies, in the form of questionnaires and hand books. In view of the complexity of the issues and the often still generic nature of the policies, such efforts would be required to make the policies understandable and applicable for bank staff, clients and other stakeholders.

- *Training of staff*

  Appropriate training of the bank's staff to apply the policy in practice is of crucial

Harvesting fresh fruit bunches Photo: Milieudefensie

importance. Most banks indicate to have organised some form of training, but not much details are known.

- *Sources of information used*
  Several banks (ABN Amro Bank, ING Bank, Rabobank and FMO) state they will call in external/independent experts to judge or validate any issues regarding compliance to the policy. The other banks appear to rely on their own capacity. Only Citigroup has stated in its policy that it will consult its stakeholders during the implementation phase.
  Usage made by banks of the knowledge and information available to NGOs has been very limited and incidental, although ING Bank discusses potential clients with WWF. Rather than to consult NGOs, it appears that bank staff rely on information in the public domain (internet) when a new potential client requests financing. Structured dialogue and information exchange has been generally lacking.

- *Monitoring of clients*
  General, the policies heavily focus on an initial due diligence and do not specify the frequency by which the client should report to the bank during the term of the financing and what areas should be reported on. Some banks include a review of the client's compliance to the policy in the normal annual loan review process. Without such formal mechanisms, it will be near to impossible for the bank to call an event of default, rendering the policy toothless.

- *Complaint mechanisms*
  Local stakeholders in producer countries (such as Sawit Watch in Indonesia) have emphasized the importance of establishing complaint mechanisms that specify who is

responsible for the policy within the bank and for responding to complaints about a clients possible non-compliance with the policy. Such a complaint or feedback mechanism should also specify within which period a response can be expected, and what steps a bank would take after a well-founded complaint has been filed.
ABN Amro Bank has pointed out that "anyone can contact them anytime" about issues of non-compliance and as such a separate compliant mechanism was not deemed necessary.[44]
During the meeting a representative of Rabobank suggested that some sort of local complaint mechanism is under consideration, as part of the formal *Client Acceptance Procedure*. As part of this procedure local contact points will be appointed who will be responsible for the acceptance of clients. These contact points could also take a leading role in a complaint mechanism.[45]

- *Events of default*
  A critical incentive for plantation and forestry companies is to be aware that if they do not adhere to the bank's policies, the bank may call an event of default. The legal basis for such action on the bank's part is questionable unless this condition has been laid out in the contract and unless a structured monitoring mechanism is in place.
  ABN Amro Bank, FMO, ING Bank, Rabobank and Bank of America all state that they will specify social and environmental terms of default in the loan contracts with clients. HSBC Bank mentions that it may exit its relation with the client, but does not mention that such would be laid out in the initial contract. Citigroup and JP Morgan Chase have substantially weaker implementation policies in this respect. JP Morgan Chase will discuss the challenges with the client, apparently without a 'stick in reach'. Citigroup does not mention at all what happens in an event of default.
  The wording of covenants in loan contracts also is of crucial importance in this respect. ING Bank originally demanded clients not to use the proceeds of this loan for HCVF-conversion, burning, et cetera. After some negative experiences, the wording was changed and now the client is demanded not to be engaged in activities such as HCVF-clearing, burning, et cetera. Such a covenant is more effective and more in line with civil society expectations and can be considered a big improvement. Proving an event of default also is easier.

- *Transparency*
  Only Citigroup, Bank of America and JP Morgan Chase mention in their policies that they will publicly report on the progress made with the implementation of their policies.
  ABN Amro Bank and Rabobank have included some information on the implementation of the policies in their annual sustainability reports.
  FMO quarterly publishes all newly contracted projects and companies on its website, but not a single private bank publishes names and details of companies financed, even though much of this information eventually reaches the public domain.
  The benchmark in this field has been set for a long time already by multilateral development banks, such as the World Bank, the Asian Development Bank and others. These multilaterals publish on their websites details on all companies and projects they finance, including excerpts of environmental impact assessments (where applicable). After much NGO pressure, most national *Export Credit Agencies (ECA's)*, such as

Atradius (Netherlands), US Exim (United States) and Euler Hermes (Germany), now publish at least the basic details on the clients they are financing on their websites.[46] Originally, the ECA's had the same objections as most private banks still have: client confidentiality can not be broken. But at present most ECA's announce in advance to their clients that their names can be published, which has cleared the way for more transparency. Some private banks maintain that they can not be compared to (quasi-) public financial institutions on these issues, and fear that their clients will look for another bank when they adopt the same level of transparency.[47]
To gain the trust of NGOs and show civil society that these policies are really part of their core business, it remains recommendable to private banks to follow the multilaterals and ECA's in their transparency policies. As a first step, banks could publish on their website details on their participation in loan and underwriting syndicates in the forest and plantation sectors. As banks usually boast about their participation in such syndicates in large advertisements in the financial press, there does not seem to be a good argument against such a step.

- *Linking up with RSPO*
  At present there are only four financial institutions who have become members of RSPO: HSBC, the Co-operative Insurance Society (CIS), the International Finance Corporation (IFC) and Rabobank. FMO has participated in Roundtable meetings, but is not a member. It does, however, encourage its clients to become RSPO members. ING Bank, Fortis Bank, ABN Amro Bank and the American banks are not members and have never attended a RSPO meeting.

5.3 Policy implementation by individual banks

The implementation of the Dutch banks' policies was evaluated by desk research on the text of the policies; financial desk research; client desk research based on available information from NGOs; the questionnaires filled out by the banks and the meetings held with those banks subsequently. With these methods a fairly accurate picture of the policy implementation by the Dutch banks was gained.
However, it was beyond the limits of this study to undertake field studies to check the social and environmental practices of all clients of these banks in the forest and oil palm sectors for coherence with the policies of the banks. New information on cases may come forward and shed new light on the depth and quality of the implementation of the policies.

5.3.1 ABN Amro Bank

The *ABN Amro Bank Risk Policy on Forestry and Tree Plantations* stipulates the following on implementation issues:

> "*Risk Management* may request that certain conditions be met (…) in order to approve financing. In such cases, loan documentation should include these conditions in our "understandings with the client" with the understanding that documented non-compliance and failure to adhere to these conditions would be considered an event of default.
> (…)

ABN Amro will do its best to insure that proper due diligence is performed and that compliance with these policies is achieved. However we recognize that in some circumstances decisions will be taken based on the best information available at the time and based on the good faith that information presented to us was accurate. As such we will not be held liable if information after the fact demonstrates that a breach of policy occurred. In all cases this policy is to be considered an internal guideline and not as a legal or otherwise binding commitment to certain action.
(…)
Loan documentation should strive to allow a bank approved independent audit of a company's / project's performance with respect to environmental and social issues."[48]

In the questionnaire and during the meeting ABN Amro Bank's staff provided some additional information, summarized here:[49]

- During the implementation process internal staff, some NGOs and clients were consulted. Detailed guidance was prepared for investment officers, in the form of training and a *Forest Policy compliance questionnaire*. External consultants also have developed a list of countries which should always "trigger" the *Forest Policy*: when reviewing financing applications for investments in these countries, the investment officers should always check the application with the *Forest Policy*;
- Specific forms of financing and new client relationships for which the *Forest Policy* is applicable are first assessed by the *Sustainable Business Advisory Unit* when they materialize. The relationship manager(s), usually with assistance from the client, is required to complete relevant aspects of the Forest Policy compliance questionnaire. No standard forest policy covenants are formulated, as the bank relies on the standard environmental regulatory compliance clauses in loan contracts;

Oil palm plantation, Sumatra Photo: Milieudefensie

- Monitoring of policy compliance status of clients/projects is done during the normal annual review of loans, but the bank acknowledges this procedure can be improved. When the client is deemed in non-compliance, the bank prefers to seek dialogue to discuss ways to improve its performance. If the client is unwilling to work on improving the situation, the bank "could consider an exit."
- The bank is willing to discuss with NGOs the implementation of its forest policy in specific cases when issues arise, but is currently not prepared to disclose all names and transactions with clients;
- The bank is in discussion with several organizations to potentially conduct an external review of its risk policies.
- The *Forest Policy* is now fully implemented in the wholesale banking division. Implementation in other divisions is not complete yet, but ABN Amro Bank is working on implementation in the consumer and investment banking divisions.

Some recent cases of financial services provided by ABN Amro Bank to companies in the oil palm sector, which raise questions on the scope and implementation of the bank's policy:

- **PT Indofood Sukses Makmur Tbk**. is the largest food company in Indonesia and the largest domestic consumer of palm oil. The company owned five plantation companies in Riau, but repeatedly announced it aims to expand its palm oil production to satisfy its sourcing needs. Among its financiers are ABN Amro Bank, ING Bank (see paragraph 5.3.4) and Rabobank (see paragraph 5.3.5).
  In July 2003 WWF Indonesia published a field study on Indofood-subsidiary PT Gunung Mas Raya (GMR).[50] The company:
  - was found to be clearing HCVF at least up to March 2003;
  - appeared to be burning logging debris and made no effort to extinguish these fires as required by law;
  - faced land tenure conflicts with indigenous communities;
  - possibly was expanding beyond its concession boundaries;
  - facilitated access to the forest area to illegal loggers.

  Despite these findings, ABN Amro Bank since 2003 has provided various loans and credit facilities to Indofood.[51] Either the bank's assessment process had overlooked the WWF-report (which raises the question how thorough the assessment is done) or the content of the report has not prompted the bank to undertake action towards Indofood (which raises the question why no action was undertaken).
  When confronted with these questions, ABN Amro Bank commented that the gathering of information on new clients (from NGOs and other sources) by the investment officers can still be improved. If information is found during this assessment process which suggest problems, the client should be asked for an audit.
  ABN Amro Bank commented that, due to the diversified nature of the client, this client was not identified through its industry code as a palm oil/forestry client. For this reason the client was not assessed against the policy. The bank has promised to take a closer look to assess the issues raised.[52]

- The American company **Archer Daniels Midland Company (ADM)** is a co-owner of Wilmar Holdings in Singapore, the largest palm oil trader in the world. A former

ABN Amro Bank in the pulp & paper sector

ABN Amro Bank is also involved in the financing of other forest-related sectors, such as the pulp and paper industry. Although this sector was not covered intensively in the questionnaire sent by Milieudefensie or during the interview with the bank, the significant contribution of this sector on deforestation merits some separate mentioning here.
An important ABN Amro client in this sector is the Indonesian company PT Indah Kiat Tbk., a subsidiary of the Asia Pulp & Paper group and one of the largest pulp producers in the world with an annual capacity of about 2.0 million tonnes. Over the past five years, several studies of the Center for International Forestry Research (CIFOR) and others have clearly demonstrated that this company is not able to source its fibre needs from its pulp plantations, the deficit is sourced from logging natural forests. Although the Asia Pulp & Paper group, under pressure from creditors, NGOs and buyers, took steps to secure a sustainable fibre supply[57], a group of Indonesian NGOs comprising Walhi, Jikalahari and WWF Indonesia have gathered information demonstrating that the company's fibre sourcing from Riau province is still far from sustainable.[58]
Indah Kiat is a long-time client of ABN Amro Bank. After Indah Kiat's debt restructuring which became effective in April 2005, the company still had US$ 40.9 million outstanding to ABN Amro Bank. The term of most of this amount was extended with more than ten years.[59]

Wilmar subsidiary – PT Jatim Jaya Perkasa – has been found to be involved in using fires for land clearing and extending its plantations outside the concession area.[53] Other Wilmar-subsidiaries seem to be involved in the same practices, including PT Citra Riau Sarana which was acquired by Wilmar in 2004.[54]

ADM itself is one of the largest processors of palm oil, and one of the largest traders and processors of soybeans – the production of which causes severe deforestation in Latin America.

In September 2005, ABN Amro Bank participated in the underwriting syndicate for ADM's issuance of US$ 600 million twenty-year bonds.[55] This transaction was not screened against the policy, because the bank's forest policy is not yet implemented in its investment banking division.[56] This seriously undermines the credibility of the policy.

5.3.2 FMO

In a questionnaire that FMO has drawn up for a specific potential financing of a palm oil storage/logistic facility, FMO has stipulated the following on implementation issues related to activities other than the activity to be financed:

> "Only if there are serious indications of specific problems concerning an existing [the client's] operation, FMO may want to have an audit performed by independent consultants at the Indonesian plantations and/or processing facilities concerned. The mitigation of any non-compliance arising from such an audit will be formalised in an action plan.

Transporting logs

(…)
It should also be noted that we can set a realistic timeframe for the development of such a [management] system and that FMO is more than willing to assist in this. FMO can also investigate possibilities to obtain a grant for technical assistance by external experts.
FMO will be looking for a very short (1-pager) note on any of [the client's] new plantation acquisition (larger than xx m2). It is explicitly not FMO's intension to make [the client's] administration cumbersome and ineffective. The note should be sent to FMO after the actual acquisition date. FMO may require a reputable independent expert to perform an assessment.
(…)
Non-compliances may be corrected within a realistic timeframe by formulating an action plan. [The client] should describe in its environmental and social policy and management systems how it will assess the environmental and social practices of its suppliers. [The client] should formulate concrete requirements with regard to environmental and social practices in its contracts with outside suppliers and it should be prepared to terminate contracts with suppliers that continue to be in breach with any of these requirements. This specifically applies to suppliers that are associated with illegal (clearing) practices."[60]

In the questionnaire and during the meeting FMO's staff provided some additional information, summarized here:[61]

- The commercial staff "fills the pipeline" for projects. Every financing application starts with a two-pager written by the commercial staff, on which the social and environmental categorisation of the project is based. FMO uses the IFC categorization in A, B, and C projects, but applies other criteria. E.g. trade finance is not automatically categorized as C, but as B or A, depending on the commodity traded.

To evaluate a financing application, a "deal team" is formed. Due diligence is standardised and tailor made on a case-by-case basis. As the *Environmental and Social Unit* is safeguarding FMO's policies, every deal team contains an environmental and/or social specialist. These specialists act as independent advisors to the *Investment Committee*, which takes the final decisions on new loans or advises the *Management Board* to do so;

- The standard covenants in FMO loan contracts include compliance requirements to ILO conventions ratified by the country, plus adherence to the core labour standards and the primary labour conditions; national legislation (not including regional or local legislation); some of the UN Conventions, mentioned in the FMO social policy, World Bank/IFC safeguard polices and environmental and health and safety guidelines; and if an action plan is made by the client it should be referred to, including deadlines.
- Screening and monitoring of all projects is done by either FMO environmental and/or social specialists or hired external experts. A field visit is considered more important before an agreement about a deal has been reached,. Monitoring is largely based on annual forms as filled out and returned by clients. Based on this information the environmental specialist writes an annual review report, which is presented to FMO's *Investment Review Committee*. Commercial staff visits the client at least once a year Projects categorized as A or B are considered high risk and will get one or two visits by environmental and / or social specialists during the lifetime of a contract. Category C does not require extra visits; once the agreement has been reached the project can go ahead. About 80% of all FMO deals are Category B. Category C is the smallest part, whilst Category A is also relatively small.

Some recent cases of financial services provided by FMO to companies in the oil palm sector, which raise questions on the scope and implementation of the bank's policy:

- In 2002 FMO provided a US$ 5 million loan to the Indonesian **Bank NISP**, followed by a US$ 15 million loan in 2004. Both loans were intended for the extension of credits to dollar-generating export businesses, to promote Indonesia's export opportunities.[62] At the time, palm oil was one of the important export products of the country – as it is today.

  If and how the bank's investment criteria were applied to this transaction is not entirely clear. However, FMO explains that it has (together with the IFC) required implementation and operation of an environmental management system that provides for a structural screening of all (non category C) activities to be financed, against applicable environmental and social legislation. Bank NISP has such a management system in place.

- **Golden Agri-Resources Ltd**. in Singapore is one of the largest owners of Indonesian oil palm plantations, with concessions in Sumatra, Kalimantan and Irian Jaya. In April 2001 Milieudefensie published a study on PT Matrasawit, a subsidiary of Golden Agri-Resources in East Kalimantan, showing that the plantation company:[63]
  - had cleared large tracks of HCVF
  - did not have the required permits
  - used fire to burn forests
  - had serious conflicts with indigenous Dayak and transmigrant communities

Already in 1996 FMO had extended a loan to another plantation subsidiary of Golden Agri-Resources on the Bangka Islands. According to FMO the financial relationship with this Sinar Mas subsidiary was a heritage from the time before the adoption of FMO's *Social Policy* and *Environmental Policy*. After questions were raised by NGOs and some of its shareholders, FMO in 2001 has had an assessment performed by and independent expert to see if this client complied with its policies. At that time no major issues were encountered. Due to confidentiality constraints the assessment report was not published, but the results were presented in a meeting with Milieudefensie and Greenpeace in 2002.

The loan restructuring of September 2004 was a purely technical issue, dealt with by FMO's *Special Operations*. As it was a restructuring and not a new loan, environmental and social issues were not raised during the restructuring discussion and the *Environmental and Social Department* was not involved.[64]

5.3.3 Fortis Bank

In its letters to Milieudefensie and Greenpeace Netherlands in 2001, the only thing Fortis Bank stipulated on implementation issues was that it would end its trust banking activities for the financing companies of several Indonesian oil palm plantation companies.[65]

In the questionnaire and during the meeting Fortis Bank's staff provided some additional information, summarized here:[66]

- While a formal oil palm policy is not yet developed, the assessment of the sustainability of Fortis Bank's palm oil clients in practice is done by its relationship managers and reviewed by risk management as a part of the general client acceptance procedures. Although not fully standardised and formalised, environmental and social aspects are

Woman collecting palm fruits Photo: Milieudefensie

taken into account in those procedures.

- Fortis Bank Global Commodities Group uses a *know your customer* checklist for (short-term) trade finance requests for borrowers in the palm industry. It formally demands account managers to elaborate on the questions like:
    - Are there any known reports of convictions of the Borrower and/or its related companies for any environmental violations, e.g. burning of forests, illegal land clearance, unfair treatment of the local communities, charges on corruption and collusion?
    - Do we have any knowledge of any substantiated rumors of any environmental violations by the Borrower and/or its related companies?
    - Does the Borrower and/or its related companies have any internal policies on the protection of the environment?
    - Has the Account Manager conducted any due diligence visits to the operations of the Borrower and/or its related companies?

- The *account manager* does the continuous reviews and is responsible for the client management, which is checked and approved regularly by local risk management and approved by the *Credit Committees*.

A recent example of financial services provided by Fortis Bank to a company in the oil palm sector, which raises questions on the scope and implementation of the bank's policy:

- **SIPEF N.V.** is a Belgian agro-industrial group operating oil palm plantations in Indonesia, Papua New Guinea and Ivory Coast. Labour relations at SIPEF's subsidiary Tolan Tiga in North Sumatra have been tense for a long time, with several strikes, demonstrations and other labour conflicts in the past few years.[67]
The *Centre for Environmental Law and Community Rights (CELCOR)* also reported a series of problems in the area of Hargy Oil Palms, SIPEF's subsidiary in Papua New Guinea. These problems included the lack of buffer zones beside river shores, the location of treatment ponds very close to the sea shore (10 metres) and suspected waste water spillages. Villagers at Evasse Beach front complained of rash, chest pains, itches and frequent sore eyes from the factory steam vent.[68]

  In June 2004 SIPEF issued new shares on the Belgian capital market, raising € 16.5 million in new capital. Fortis Bank participated in the issuing syndicate and was responsible for selling 30% of the shares.[69] If and how the bank's oil palm investment criteria were applied to this transaction could not be clarified by Fortis Bank.

5.3.4 ING Bank

The *ING Policy on Financing of Oil Palm Plantations and Pulp and Paper Industry* stipulates the following on implementation issues:

> "All financing arrangements that will have consequences for the environment will be assessed on a case-by-case basis and handled at the Credit Management level. Only after an extensive due-diligence investigation has taken place, if necessary by an external party, which addresses the above-mentioned issues, ING will decide whether or not it will provide the financing. ING will conduct this research

as accurately and carefully as possible. ING would like to emphasize that any decision in this matter is also based on the assumption that information provided by third parties is accurate and thorough.

(…)

As a standard procedure, ING will put down the purpose of the credit or financing in the financing document. When during the term of the credit or financing a company is found guilty of illegal practices or when the funds are actually being used in other ways than agreed, ING reserves the right to give notice of default. During the annual review of the credit or financing the usage of the funds will be checked. In case a default situation would have occurred, the loan could be declared to be immediately due and payable." [70]

In the questionnaire and during the meeting ING Bank's staff provided some additional information, summarized here:[71]

- During the implementation process NGOs were consulted and detailed guidance for investment officers and clients was prepared;
- Requests for finance are first assessed by ING Bank's commercial departments, assessing financial and non-financial information and drafting a so called credit application. This application is checked by a risk manager to see whether or not applicable in- and external regulations have been applied. Finally the document is sent to the *Credit Committee* for approval.
  Financing requests in the oil palm sector (plantations and traders) that are considered by ING require an additional advice though. Before sending the credit application to the *Credit Committee*, the *Policy Desk* within the *Corporate Credit Risk Management Department* will review the application. The *Policy Desk* is an independent team that operates separately from ING Bank's commercial departments. They prepare independent advise to the *Credit Committee* based on a thorough assessment that includes among others a compliance check of the financing request with *ING Policy on Financing of Oil Palm Plantations and Pulp and Paper Industry*, an analysis of the environmental and social risk, the need for additional due diligence and the content of specific covenants and ongoing monitoring requirements. In 2005, two transactions in the oil palm sector have been declined this year due to violations with ING's policy.
- Standard covenants in loan contracts have been formulated, and later adapted. ING Bank originally demanded clients not to use the proceeds of this loan for HCVF-conversion, burning, et cetera. Now the client is demanded not to be engaged in activities such as HCVF-clearing, burning, et cetera. This can be considered a big improvement.
- The client has to send regular reports to ING Bank in which compliance with the policy is evidenced. The frequency depends on the reporting obligation agreed with the client. Usually annually, but if issues are identified which need immediate addressing by the client reporting can be more frequently;
- The bank is currently not prepared to disclose customer information to civil society and a formal/external evaluation and review of its policy is not foreseen.

Some recent cases of financial services provided by ING Bank to companies in the oil palm sector, which raise questions on the scope and implementation of the bank's policy:

- **PT Indofood Sukses Makmur Tbk**. is the largest food company in Indonesia and the largest domestic consumer of palm oil. The company owned five plantation companies in Riau, but repeatedly announced it would like to expands its palm oil production to satisfy its sourcing needs.

  In July 2003 WWF Indonesia published a field study on Indofood-subsidiary PT Gunung Mas Raya (GMR).[72] The company:
  - was found to be clearing HCVF at least up to March 2003;
  - appeared to be burning logging debris and made no effort to extinguish these fires as required by law;
  - faced land tenure conflicts with indigenous communities;
  - possibly was expanding beyond its concession boundaries;
  - facilitated access to the forest area for illegal loggers.

  ING Bank has for a long time been one of the principal bankers of PT Indofood Sukses Makmur Tbk. In April 2002, ING Bank arranged a syndicated two-year US$ 100 million loan for Indofood, which was described as "the largest offshore loan financing for an Indonesian corporate since the start of the Asian financial crisis in 1997".[73] When WWF Indonesia in 2003 questioned why ING Bank had not applied its policy to this loan, the bank argued that the policy was not applicable as the loan was to the holding company (Indofood) and was intended for wheat sales only. However, this case has stimulated ING Bank to review the scope of the policy and strengthen implementation: ING Bank now acknowledges that the policy should be applied to all financial services provided to Indofood and the bank has reformulated its standard covenants (see above).

  In September 2005 a new field check on GMR took place, commissioned by Milieudefensie.[74] The report established that GMR still is:
  - burning forests
  - converting HCVF
  - expanding outside its concession area
  - facilitating access to the forest area for illegal loggers.

  ING Bank has been providing new financial services to Indofood since 2003, but apparently the review of the scope and the strengthened implementation of the policy have not improved the practices of Indofood's plantation subsidiaries. Indofood now seems to be defaulting on ING Bank's plantation policy covenants and the question is how ING bank will act upon this default.

  ING Bank commented that due diligence on the ground is very difficult when financial services are provided to holding companies which own many plantations, such as Indofood. ING Bank now works with a short-list of consultants supplied by WWF Indonesia for such due diligence activities..
  The bank had discussed the points raised by WWF Indonesia in 2003 with the client and was surprised to hear from Milieudefensie that the situation at the ground has not improved. The bank has raised the issues again with Indofood at the end of 2005, but has not specified which further steps will be taken.[75]

Burning land Photo: SME

Meanwhile, according to media reports in April 2006 ING Bank was again arranging a syndicated two-year US$ 100 million loan for Indofood Sukses Makmur.[76]

- State-owned **China National Cereals, Oils and Foodstuffs Corporation (COFCO**) is the largest importer of palm oil in China, which is the second-largest palm oil market in the world behind the European Union.[77] Among its financiers are ING and Rabobank (see paragraph 5.3.5).
  COFCO also is a substantial shareholder of Wilmar Trading in Singapore, one of the largest palm oil traders in the world.[78] A former Wilmar subsidiary – PT Jatim Jaya Perkasa – has been found to be involved in using fires for land clearing and extending its plantations outside the concession area.[79] Other Wilmar-subsidiaries appear to be involved in the same practices, including PT Citra Riau Sarana which was acquired by Wilmar in 2004. [80]

  In the last three years, ING Bank has provided various financial services to COFCO, including arranging a US$ 150 million three-year letter of credit facility in September 2005.[81] If and how the bank's oil palm policy was applied to this transaction remains unclear. However, COFCO became a member of the RSPO at the end of 2005 and intends to work with several organisations to develop and implement a responsible purchasing policy for both palm oil and soy products.

5.3.5 Rabobank

The *Rabobank in the palm oil industry* stipulates the following on implementation issues:

> "The Rabobank engages the advice of independent experts in assessing its financial involvement in oil palm plantations. In addition, the bank employees periodically visit the plantations concerned.

The Rabobank requires its clients in the sector to comply with the above conditions. The bank also asks its customers to provide periodical environmental effect and social effect reports. If the bank has reason to doubt proper compliance with these criteria, it will commission a report by independent experts.
The bank will discuss the results of these reports with its clients and when necessary insist on improvements. If these discussions do not provide good prospects for operational changes that the bank deems satisfactory, the association with the plantation or parent company concerned will be reviewed.
For this purpose the criteria will also be established as binding condition between the bank and the client."[82]

In the questionnaire and during the meeting Rabobank's staff provided some additional information, summarized here:[83]

- Rabobank has developed an *Operating Procedure* for implementing its *Palm Oil Code*. The contents of the operating procedure are not known.
- Rabobank has created an *Internal Review Panel* consisting of representatives from *Credit Risk Management, Relationship Management and Food & Agribusiness Research*. The *Internal Review Panel* deals with every new application for a plantation project. New clients are researched well, if necessary by independent consultants.
- Rabobank is working on establishing more regular contacts with NGOs, to improve information exchange and transparency on its relationships with clients.
- The annual review consists of a survey filled out by the client. When doubts arise, an external expert is hired. Compliance to the policy is tested, but not each deviation is treated immediately as an event of default.

Some recent cases of financial services provided by Rabobank to companies in the oil palm sector, which raise questions on the scope and implementation of the bank's policy:

- **PT Agro Indomas** is a mid-sized Indonesian plantation company, which has developed a concession of 15,857 hectares near Lake Sembuluh in Central Kalimantan. The plantation development of Agro Indomas has been controversial for a long time, as the company has allegedly taken the lands and the livelihoods of communities living near Lake Sembuluh.[84]

  Rabobank has provided loans to this company in 1998 and 2001, and had been in discussion with the NGOs Down to Earth (United Kingdom) and Walhi KalTeng (Indonesia) on this company several times.[85]
  Rabobank at the end of 2004 provided a new loan to Agro Indomas without consultation with these NGOs.

  Rabobank commented that the loan to Agro Indomas was an old loan, which was restructured because of non-performance. Rabobank promised to update NGOs better on developments with this client.[86]

- **PT Indofood Sukses Makmur Tbk**. is the largest food company in Indonesia and the largest domestic consumer of palm oil. The company owned five plantation companies in Riau, but repeatedly announced it would like to expands its palm oil production to satisfy its sourcing needs.

In July 2003 WWF Indonesia published a field study on Indofood-subsidiary PT Gunung Mas Raya (GMR).[87] The company:

- was found to be clearing HCVF at least up to March 2003;
- appeared to be burning logging debris and made no effort to extinguish these fires as required by law;
- faced land tenure conflicts with indigenous communities;
- possibly was expanding beyond its concession boundaries;
- facilitated access to the forest area to illegal loggers.

Despite these findings, Rabobank in has been providing several financial services to PT Indofood Sukses Makmur Tbk. in 2004 and 2005, including import and export financing facilities and forward contracts. [88] Either the bank's assessment process had overlooked the WWF-report (which raises the question how thorough the assessment is done) or the content of the report has not prompted the bank to undertake action towards Indofood (which raises the question why no action was undertaken).

Rabobank responds that it was not aware of the WWF Indonesia report of 2003. According to Rabobank, NGOs should have alerted the bank about this information earlier as the bank can only react to evidence. The bank can not be expected to ask NGOs for information about a possible client before a client relationship has been established, the client would not accept this.[89]

- The Singaporean company **Wilmar Holdings Ltd**. is the largest palm oil trader in the world, owning many plantations and refineries in Indonesia. A former Wilmar subsidiary has been found to be involved in using fires for land clearing and extending its plantations outside the concession area. In September 2004 these practices were described for PT Jatim Jaya Perkasa in Riau, in a report commissioned by Milieudefensie, but this company was sold shortly afterwards by Wilmar.[90] Other Wilmar-subsidiaries appear to be involved in the same practices, including PT Citra Riau Sarana which was acquired by Wilmar in 2004.[91]

  Rabobank has been one of the principal bankers of Wilmar for a long time. Rabobank has responded to the Milieudefensie-report on PT Jatim Jaya Perkasa, by pressuring Wilmar to commission an independent assessment of some of its plantations. However, only the conclusions of the assessment were shared with NGOs in stead of the full assessments.
  Milieudefensie claims that Rabobank failed to inform NGOs that Wilmar had sold PT Jatim Jaya Perkasa shortly after the publication of the report, but Rabobank claims that it did not know this earlier as it was not the financing banker of this particular plantation.
  Milieudefensie also blames Rabobank that it did not mention to NGOs that it had participated in a new loan to Wilmar in March 2005 and that the bank has not made clear which plan of action and covenants have been agreed with Wilmar.

Rabobank comments that Wilmar cannot be described as a "rogue" client on the basis of two problematic plantations out of the 22 the company owns, also because PT Jatim Jaya Perkasa has been sold off. Rabobank has taken steps to convince Wilmar to improve its social and environmental behaviour. Two Wilmar plantations have been assessed for Rabobank by an independent consultant and no major issues were being found. Rabobank intends to commission assessments of two other Wilmar plantations.
Rabobank acknowledges that information exchange on the steps Rabobank is taking to push this client in the right direction should be improved. Assessment reports will be shared. Rabobank also notes that there is a "communication gap" between Wilmar and NGOs and Rabobank will encourage Wilmar to change this. [92]

- State-owned **China National Cereals, Oils and Foodstuffs Corporation (COFCO)** is the largest importer of palm oil in China, which is the second-largest palm oil market in the world behind the European Union.[93] COFCO also is a substantial shareholder of Wilmar Trading in Singapore (see above).[94]

  In the last three years, Rabobank has provided various financial services to COFCO, including arranging a US$ 150 million three-year letter of credit facility in September 2005.[95] If and how the bank's oil palm policy was applied to this transaction remains unclear. However, COFCO became a member of the RSPO at the end of 2005 and intends to work with several organisations to develop and implement a responsible purchasing policy for both palm oil and soy products.

  Rabobank comments that it is very difficult to apply its oil palm code to traders such as COFCO, because it would be too difficult to monitor the implementation. Rabobank is interested in the sourcing policy COFCO is developing, but is not yet intending to expand the scope of its policy to trading companies as well.[96]

- The Chinese state-owned **CITIC Group** is the holding company for many of the Chinese government's international investments, as well as its domestic joint-ventures with foreign companies. CITIC Group is controlled directly by the government's state council. Most investments of CITIC Group are in the financial sector, which accounts for approximately 81% of its total assets. Industry accounts for about 18% of the total assets of CITIC Group, involving industries and areas like information, infrastructure, energy, and real estate.[97]
  CITIC Group and the Indonesian Sinar Mas Group will be involved in the proposed scheme to develop 18 oil palm plantations in West and East Kalimantan, along Indonesia's mountainous 2,000 km border with Malaysia. This plan was developed by state-owned Perkebunan Nusantara group and was publicly announced by the Indonesian government in July 2005. The proposed scheme is expected to cover an area of 1.8 million hectares, located mostly in the ecologically valuable Heart of Borneo area.[98]
  In April 2005 CITIC Group and Sinar Mas group agreed to jointly invest US$ 500 million in the development scheme. During the visit of the Indonesian vice-president Jusuf Kalla to Beijing in August 2005 a contract was signed.[99]

In 2005 Rabobank was involved in two large syndicated loans to companies belonging to the wide CITIC Group, CITIC Pacific and CITIC Resources Holdings, both in Hong Kong. [100]
As it is unclear which subsidiary of the giant CITIC Group will get involved in the Kalimantan oil palm scheme, these loans cannot be seen as directly supporting the oil palm activities of the CITIC Group. These loans make clear, however, that Rabobank has a close banking relationship with CITIC Group and could get involved in the financing of CITIC Group's investments in the Kalimantan oil palm scheme.

Rabobank commented that these loans had no relationship with oil palm developments in Kalimantan or elsewhere. But Rabobank promised that its credit officers in Beijing and Hong Kong would be alerted on CITIC Group's role in the mega oil palm project in Kalimantan and should keep a close watch of developments.[101]

5.4 Comparison of the implementation of foreign bank policies

5.4.1 Introduction

The following sub-paragraphs provide a short overview of what the forest and oil palm policies of foreign banks stipulate on implementation issues. The investment activity by these banks has not been assessed nor were these banks sent a questionnaire or interviewed. The purpose of this paragraph is therefore solely to illustrate what banks abroad are saying about the implementation of their policy – it does not evaluate how well the policies are implemented.

5.4.2 Citigroup

Citigroup's *New Environmental Initiatives* stipulates the following on implementation issues:

> "Citigroup will carefully evaluate requests for project finance loans where the borrower's proposed use of proceeds would directly fund activities that Citigroup determines could adversely impact a critical natural habitat.
> Citigroup will ensure that the appropriate Citigroup bankers throughout the world are aware of and alert to this new Equator-based approach.
> (…)
> Citigroup will periodically engage with various stakeholders and evaluate its experience with these policies in a year with stakeholders and report annually in our *Corporate Citizenship Report*."[102]

Citigroup's written commitment to periodical stakeholder consultations and evaluations is a valuable approach that could also be adopted by Dutch banks.

5.4.3 Bank of America

The *Forests Practices – Global Corporate Investment Bank Policy* of Bank of America stipulates the following on implementation issues:

> "False declarations of compliance or failure to adhere to conditions are considered events of default and appropriate actions will be taken.

> Bank of America recognizes that successful implementation of these policies relies upon transparency to all stakeholders, appropriate training of all relevant associates worldwide and regular public corporate reporting according to the *Global Reporting Initiative (GRI).* The bank will implement a formal environmental training program and will report according the GRI standard starting with the 2004 sustainability report.
> Bank of America will follow corporate approved due diligence procedures when financing companies involved in the forestry industry. However we recognize that in some circumstances decisions will be taken based on the best information available at the time and based on the good faith that information presented to us was accurate. As such we will not be held liable if information after the fact demonstrates that a breach of policy occurred." [103]

Reporting according to GRI standards has the advantage that a standard reporting format is to be applied, allowing for greater consistency in reporting over the years. GRI formats, however, would need to be elaborated in order to better reflect the nature of the plantation sector.

5.4.4 JP Morgan Chase

The *Environmental Policy Statement* of JP Morgan Chase & Co. stipulates the following on implementation issues:

> "JP Morgan Chase will take necessary steps to train staff and provide tools and resources, so that environmental objectives are met and that procedures, policies and standards are implemented.
> (…)
> JP Morgan Chase will publish an annual sustainability report that includes JP Morgan Chase's sustainability profile. In addition to the implementation of its sus-

HSBC Bank and LonSum

HSBC Bank is one of the largest foreign financiers of the Indonesian and Malaysian oil palm sectors. One of its prominent and long-lasting clients was the Indonesian company PT PP London Sumatra Indonesia Tbk. (LonSum), which started developing a concession area of 4,000 hectares in North Sumatra into oil palm plantations in 1964. A marginal part of this area, only 165.5 hectares, was owned according to customary law by the 600 inhabitants of the Pergulaan village. Instead of negotiating a compromise, the company denied villagers the access to their farm lands in the past forty years. Peaceful protests have been met by violence and intimidation.
Until the end of the 1990s, HSBC Bank has financed the company with various, substantial long-term loans. This financing only halted because the company defaulted on its interest payments, not because of social or environmental reasons. Just before Friends of the Earth UK raised the co-responsibility of HSBC Bank for the behaviour of LonSum on the bank's annual meeting in May 2004, HSBC Bank had sold its debt to an investor specialized in "distressed debt".[107]

tainability policies and objectives, JP Morgan Chase will use a common framework for sustainability reporting such as the *Global Reporting Initiative*. JP Morgan Chase aims to also perform periodic environmental policy reviews to ensure compliance with existing policies and assess the need for additions to, or changes in, such policies.

The annual environmental and sustainability reports will set goals for the following year and report on progress made on achieving the previous year's goals.

(…)

The *Office of Environmental Affairs* reports to a member of the *Executive Committee* and is overseen by the *Public Responsibility Committee* of the Board. In addition, a firm-wide *Environmental Oversight Committee* made up of key business leaders is responsible for guiding the Office's initiatives." [104]

Reporting according to GRI standards has the advantage that a standard reporting format is to be applied, allowing for greater consistency in reporting over the years. GRI formats, however, would need to be elaborated in order to better reflect the nature of the plantation sector.

5.4.5 HSBC Bank

The *Forest lands and forest products guideline* of HSBC Bank stipulates the following on implementation issues:

"HSBC is prepared to deal with customers who do not have full FSC or equivalent certification but are following a credible path towards achieving compliance within a maximum of 5 years. As a condition for providing, or continuing to provide, facilities, we need to be satisfied that progress towards achieving certification is being made and loan documentation includes suitable conditions in this respect.

(…)

Our lending executives therefore are expected to make reasoned, common sense judgments in implementing this guideline; however exceptions will be a rare occurrence.

(…)

Where customers do not have FSC or equivalent certification and are not taking credible action to achieve this, we will consider measures to exit such relationships. This will also apply where a customer has FSC or equivalent certification and this is withdrawn, unless the reasons behind this are temporary and a plan has been established to regain certification."[105]

(…)

"We continually review our existing engagements and work with our clients to ensure they either meet or exceed our standards, or are taking action to do so. We will withdraw from relationships where this is not the case, but our preferred course of action is to support companies in their efforts to reduce environmental and social impacts."[106]

Chapter 6

Conclusions

6.1 Content

The analysis of the content of the policies adopted by the nine banks reviewed in this document reveals the following overall strengths and weaknesses:

Strengths

- Compliance with all relevant legislation at all levels (local, state level, national and international);
- Explicit exclusion of conversion of High Conservation Value Forests or critical habitats;
- Conditional retrospectivity (cut off date) for HCVF for 5 years;
- Informed consultation is conditional;
- Settlement of indigenous land claims is conditional;
- Explicit exclusion of burning practises;
- Both policies and practices must be demonstrated;
- Reference to specific articles in third party (World Bank, IFC, other) policies.

Weaknesses

- Tying legal requirements to non-legal terms (such as HCVF);
- Absence of retrospectivity/cut off dates;
- Failure to specify relevant social interest groups (indigenous communities, non-indigenous local communities, smallholders, labourers);
- Social criteria do not apply across the board, but are conditional (e.g. only when critical habitats are identified);
- Clients are required to demonstrate the presence of a policy, but not practice;
- Usage of weak language ("seeks to", "to the extent possible" etc.);
- Inaccessibility of the policy due to ample reference to third party policies (IFC, World Bank, Equator Principles);
- Inaccessibility of the policy because no clear distinction is made between different sectors to which the policy may apply.

At present, we encountered the following best practices in the *Forest and Oil Palm Policies* used in the banking sector with regard to the four criteria evaluated:

1. **Legal compliance**: ABN Amro Bank, FMO and Bank of America include compliance to international regulations adopted by the national state and reference to sub-national local and state government policies.
2. **High Conservation Value Forests**: ABN Amro Bank, FMO and Bank of America maintain a five-year limit which should be lapsed between the clearing of HCVF in a specific area and the moment that a bank is considering to invest in the establishment

of an oil palm plantation in this area. NGOs recommend to take the year 1994 as a baseline, as in 1994 the criteria of the *Forest Stewardship Council (FSC)* were set with that year as a baseline for conversion.

3. **Social conflicts**: The policy of JP Morgan Chase is fairly strong on this issue, but none of the policies explicitly asks for demonstrated support from all stakeholders potentially affected by the operation (indigenous communities, non-indigenous communities and potential smallholders and workers) based upon the principle of *Free Prior and Informed Consent (FPIC).*
4. **No burning**: ABN Amro Bank, FMO, Fortis Bank, Rabobank and Bank of America all refer to the practices of the client and not just to a zero-burning policy of the client as in practice such a policy is not always implemented.

We can conclude that no bank has adopted in its policy the best practice available in the industry with regard to all four criteria, while for two of the four criteria (HCVF and social conflicts) none of the banks completely meets expectations of civil society. This means that the policies of all banks have room for improvement. A clear, concise and unambiguous content of the policy and the criteria adopted is of great value, as it leaves no room for misunderstanding or confusion among the bank's staff, its clients and civil society as a whole.

It is expected that as RSPO members begin to implement the *RSPO Principles & Criteria* in the next few years, banks will be confronted with investment proposals that refer to the initiative. While, overall, this would be in line with the bank policies, there is a risk that some elements of their policies would come under strain when there is an imbalance between bank and RSPO policies. One bank (Rabobank) has verbally committed that it will not lower its standards, even if the RSPO (to which the bank is a member) has accepted a lower performance level. This should mean in practise, for example, that Rabobank will upkeep its five-year retrospectivity criterion, even when RSPO could endorse companies who cleared *High Conservation Value Forests* up to November 23, 2005.

6.2 Scope

With regards to the scope of the reviewed banks' policies, there is apparent room for improvement in all four dimensions considered in this evaluation:

- **Geographical scope**: Most banks now apply the policy worldwide, but some still focus exclusively on Indonesia;
- **Sectoral scope**: Some (Dutch) banks still focus their policy on oil palm plantations alone, while other types of activities (timber, pulp & paper, soy) are known to have similar social and environmental impacts. Adjusting their policy to apply to all forest-related activities would therefore be more coherent. Expanding the policy to competing edible oils, notably investments related to soy, is especially critical because the soy sector is fraught with problems similar to palm oil production and because banks must assure that a level playing field for producers of edible oils is maintained;
- **Types of clients**: While some banks still insist that their policies only apply to clients active on the ground (plantations, forestry operations), most banks have accepted the need to apply their policies to holding companies and conglomerates which have a

significant presence in the forest and plantation sectors.
HSBC Bank and ABN Amro Bank have most explicitly stated that their policies also applies to timber traders, while FMO and ING Bank apply their policies also to oil palm traders.
The need to somehow apply the policies to conglomerates and companies further downstream is fairly widely acknowledged, but the practical implications remain a challenge which banks and the NGO community are yet to address satisfactorily.

- **Forms of financial services**: Most banks now agree that their policies should at least be applied to all commercial banking services as well as to project finance, but until now they have been hesitant to apply them to other types of financial services. Because forest and plantation companies increasingly finance investment by share and bond issuances, banks should begin to apply their policies in the field of investment banking. ABN Amro Bank, Fortis Bank, ING Bank, Bank of America and HSBC Bank have stated they will apply their policies in this area, but in practice this is not happening yet.
  Fortis Bank was the only bank to apply its oil palm policy in the field of trust banking, although not in a very selective way – ending its trust banking relationships with all clients in this sector. None of the banks apply their policies to their asset management activities.

6.3 Implementation

The relatively ambitious bank policies have not yet been fully implemented and at present this appears to be their weakest spot. Obviously, the policies risk being rendered useless without sound implementation practices. This applies to most of the crucial elements we discerned in the implementation process:

- **Assignment of responsibilities**: Most banks have addressed this issue, but tend to let public relations staff deal with NGOs rather than the responsible officers within the bank. This is a potential source of delay and misunderstandings.
- **Operationalisation**: Most Dutch banks have undertaken efforts to operationalise their policies, by developing questionnaires and handbooks.
- **Training of staff**: Most banks have addressed this issue, but to what extent key staff is trained remains unclear.
- **Sources of information used**: Several banks (ABN Amro Bank, ING Bank, Rabobank, FMO) call in external experts to validate clients' compliance to the policy. Other banks appear to rely on their own capacity.
  Dutch banks have failed to upkeep a structured exchange of information and views with the NGO community. Only Rabobank has made its policy available in a local language.
- **Monitoring of clients**: Some banks include a review of the client's compliance to the policy in the normal annual loan review process. Nevertheless, monitoring of the progress made by the client in adhering to the policy appears to be reactive and not tight enough in most cases.
- **Complaint mechanisms**: No bank has set up a formal complaint mechanism for stakeholders.

- **Events of default**: ABN Amro Bank, ING Bank, Rabobank and Bank of America all state that they will specify the terms of default in the financing contract with the client. Other banks have unclear or substantially weaker implementation policies in this respect. Unambiguous wording of covenants in loan contracts is also of crucial importance in this respect. ING Bank has improved its covenants after a weak start.
- **Transparency**: Citigroup, Bank of America and JP Morgan Chase mention that they will publicly report on the progress made with the implementation of their policies. Of the Dutch banks, the annual sustainability reports of ABN Amro Bank and Rabobank include information on the implementation of their forest and oil palm policies respectively.
  FMO quarterly publishes all newly contracted projects and companies on its website, but not a single private bank publishes names and details of companies financed, following the lead of multilateral banks and ECA's.
  Even regarding cases which they knew worried NGOs, Rabobank and FMO did not discuss new financial services with NGOs.
- **Linking up with RSPO**: The *Roundtable for Sustainable Palm Oil (RSPO)*, established in 2004, presents a golden opportunity for the banking sector to familiarise itself with the more detailed issues in the oil palm sector, and to network with those companies who have committed to address environmental and social concerns in the industry.
  In view of these opportunities, it is disappointing that the involvement of the banks discussed in this report in the RSPO process has been minimal. At present, only Rabobank and HSBC are members of RSPO. FMO is not a member but encourages its clients to join RSPO.

Chapter 7

Recommendations

7.1 Recommendations to banks

The nine banks reviewed in this report, as well as other banks active in the forest and plantation sectors, are encouraged to draw up (or revise) and implement an encompassing forest policy using the following recommendations:

Content

Clearly specify the content of the policy, using best practice examples available in the industry and the *RSPO Principles and Criteria*. To let the policy meet these standards, the following elements should be addressed in a comprehensive way:

- Legal compliance, including compliance to relevant international regulations as well as to local and state level legislation;
- No conversion of *High Conservation Value Forests (HCVF)*, including a clear retrospectivity period of at least five years but preferably dating back to 1994;
- No involvement in, colluding with or purchasing timber from illegal or destructive logging operations;
- Demonstrated support from all stakeholders potentially affected by the operation (indigenous communities, non-indigenous communities and potential smallholders and workers) based upon the principle of *Free Prior and Informed Consent (FPIC);*
- Preference for financing smallholder projects;
- Explicit 'no burning' policy and practice;
- Environmental management aiming at minimising the use of agrochemicals, environmentally friendly waste-disposal and maintaining the quality of soil, air, and surface and ground water;
- Transparent processes for the systematic tracking of products to provide evidence that the ultimate origin of the commodities the client is trading and/or processing is known, is continuously being monitored and can be independently verified.

Scope

Clearly define the scope of the policy in all four dimensions, preferably in the following ways:

- Geographical scope: Worldwide.
- Sectoral scope: All sectors which can have a direct impact on forest management and forest conservation worldwide. These sectors include:
    - forestry and timber processing;
    - pulp and paper;
    - timber plantations;

    - agricultural plantations;
    - large-scale livestock grazing;
    - oil and gas;
    - mining;
    - real estate and leisure development;
    - physical infrastructure development (roads, railways, pipelines, etc.).
- Types of clients: All major players in the chain of custody including clients whose activities have an indirect impact on forest management and forest conservation, by trading and/or processing the products of companies or projects having a direct impact on forest management and forest conservation.
- Forms of financial services: All financial services provided by the bank (or by third parties under the bank's brand names), including commercial banking, investment banking, trade finance, project finance, asset management, trust banking and other financial services.

Implementation

To implement the bank's policy effectively, the following recommendations should be addressed in an adequate, systematic and comprehensive way:

- Clearly assign responsibility for the implementation of the policy to one of the directors of the bank;
- Develop unambiguous tools to operationalise the policy in practice, which are understandable and applicable for bank staff, clients and other stakeholders;
- Develop procedures and tools to enable a sophisticated exchange of knowledge and information on (possible) clients with NGOs, other banks, governments and sustainable rating agencies;
- Develop and apply clear loan contract covenants;
- Introduce formal client monitoring mechanisms that apply during the financing term, including independent third party audits;
- Translate the policy in languages understood by local stakeholders;
- Establish a complaint mechanism for local and other stakeholders, specifying who is responsible for the policy within the banks; who is to respond to complaints about a clients' possible non-compliance with the policy; within which period a response can be expected; and what steps a bank would take after a well-founded complaint has been filed;
- Follow the example set by multilateral banks and Export Credit Agencies (ECAs) in their transparency policies by publishing names and details of the bank's major clients on its website, including social and environmental assessment reports;
- Be more proactive in financing companies and community initiatives that exhibit strong and innovative commitments to sustainable development;
- Participate in the *Roundtable for Sustainable Palm Oil (RSPO)* to get familiarised with the more detailed issues in the oil palm sector and to network with those companies who have committed to address environmental and social concerns in the industry.

7.2 Recommendations to the Dutch government

To date, the development of the policies and their implementation has been completely reliant on private sector – NGO dialogue without any involvement from the governmental regulatory framework. Whereas valuable results have been achieved, Milieudefensie feels that the Dutch government has a key role to play in the facilitation of the future process for various reasons:

- To create a level playing field between the Dutch banks active in the forest and plantation sectors by providing a legal framework;
- To safeguard the application of investment policies when banks encounter economic difficulties;
- To revive the international forerunner role for the Dutch financial sector in sustainable banking.

The following initiatives could be taken by the Dutch government in this respect:

- The *Act on the Supervision of the Credit System 1992 (Wet toezicht kredietwezen 1992 – Wtk)* specifies in article 22a that financial institutions must refrain from activities which are "socially unacceptable". To make this Act operable, the Dutch government can request the *Dutch Central Bank (De Nederlandsche Bank)* to formulate unambiguous guidance to Dutch financial institutions on how this article 22a should be interpreted in the context of financial services to companies in the plantation and forest sectors. DNB can furthermore be equipped appropriately to assist banks in this field and to ensure the banks live up to these rules.
- A complimentary approach is to establish a *Reporting point for Socially Unacceptable Transactions (Meldpunt Maatschappelijk Onaanvaardbare Transacties – MMOT),* where NGOs and affected stakeholders could file complaints on what they see as Socially Unacceptable Transactions of the Dutch banks. A formal and structured complaints procedure would allow for further definition of socially unacceptable financial transactions, and thereby provide guidance to financial institutions on what is expected of them.
- Promote European legislation to ensure responsible investment practices by all European banks, thereby expanding the level playing field for banks active in the plantation and forest sectors. A large number of recent international and EU policy developments, for instance related to the Basel Capital Accord II and the *EU Financial Services Action Plan*, could be relevant for this objective.[108]
- The *EU Action Plan for Forest Law Enforcement, Governance and Trade (FLEGT)* identifies improved financial due diligence as a key tool for reducing the demand for illegally logged timber. Banks and financial institutions are to take environmental and social factors into account when conducting due diligence assessments for forestry investments. [109] However, since the start of the *FLEGT Action Plan* in 2003, not much has happened. In January 2006 the financial sector was once again pinpointed as an area of focus for this year by DG Development representatives.
  In this framework the Dutch government could do the following:
  - Try to get financial institutes back into the FLEGT Action Plan debate and agenda. Banks have to make sure they do not invest in illegal forest operations.

This can partly be achieved by involving them in financial aspects of the EU FLEGT action plan;

- Follow up the recommendations in a paper written by Chatham House, which lists concrete steps to achieve the first goals set out in the FLEGT Action Plan: banks and financial institutions should take environmental and social factors into account when conducting due diligence assessments for forestry investments;[110]
- Use the third directive on money laundering to list illegal logging as an offence.

Annex 1

Glossary

ECA	Export Credit Agency
EIA	Environmental Impact Assessment
EP	Equator Principles
EU	European Union
FLEGT	Forest Law Enforcement, Governance and Trade
FMO	Nederlandse FinancieringsMaatschappij voor Ontwikkelingslanden (Netherlands Development Finance Company)
FoE	Friends of the Earth
FPIC	Free Prior and Informed Consent
IFC	International Finance Corporation, the private-sector arm of the World Bank
ILO	International Labour Organisation
HCVF	High Conservation Value Forest
NGO	Non-Governmental Organisation
RSPO	Roundtable on Sustainable Palm Oil
WALHI	Wahana Lingkungan Hidup Indonesia (Friends of the Earth Indonesia)

Annex 2

Questionnaire on oil palm investments

September 2005

GENERAL

Is your bank's forest and/or plantation policy adopted at the end of 2001 still valid at present?
☐ Yes, the same policy applies
☐ Yes, but the document has been adjusted (please include a copy of any relevant documents)
☐ Yes, but the document has been replaced (please include a copy of any relevant documents)
☐ No, there is no longer a policy in place. Please indicate why:

SCOPE

Please indicate the types of clients to which the policy applies:
☐ Oil palm plantation companies
☐ Smallholder projects
☐ Holding companies with oil palm plantation subsidiaries only
☐ Holding companies with oil palm plantation and other subsidiaries
☐ Palm oil traders
☐ Palm oil processors (food, non-food)
☐ Electricity producers using palm oil as biomass
☐ Retailers
☐ Policy applies to several sectors, such as logging, soy, oil palm, etc.
Please indicate the sectors below:

Please indicate the geographic coverage of the policy:
☐ Policy applies to clients in palm oil producer countries only
☐ Policy applies to clients in producer countries and importing countries
☐ Policy applies all along the trade chain

Please indicate to which financial services the policy is applicable:
☐ Loans, credits and guarantees to plantation companies
☐ Loans, credits and guarantees to plantation holding companies
☐ Loans, credits and guarantees to holding companies with subsidiaries active in different sectors, including oil palm
☐ Export / trade credits
☐ Investment banking, namely:
  ☐ share and bond issuances
  ☐ underwriting
  ☐ corporate advice
☐ Asset management
☐ Other financial services, such as:

Is a minimum size of the financial service or investment required before the policy is applicable?
☐ No
☐ Yes
If so, what thresholds are applied?

CRITERIA

In 2001, Milieudefensie proposed that the following minimum criteria should be guaranteed by your clients:

- Respect for Indonesia's laws and relevant international conventions
- No involvement in clearing of High Conservation Value Forests (HCVF)
- Respect for the rights and wishes of local communities
- No involvement in burning of forestland

Does your policy fully cover these principles?

☐ Yes
☐ Yes and in addition additional requirements were formulated namely:
☐ No, not all criteria are covered. Please explain which criteria and why:

Is your bank a member of the Roundtable for Sustainable Palm Oil (RSPO)?

☐ Yes. Since when and why?
☐ No. Why not?

Is your bank planning to adjust its policy once the RSPO has adopted a definition for sustainable palm oil?

☐ Yes. Please indicate why:
☐ Possibly (depends on the outcome)
☐ No. Please indicate why not:

IMPLEMENTATION

Please tick the boxes which represent the steps your bank has taken to implement its oil palm investment policy:

☐ Further stakeholder consultation, namely:
☐ Further data gathering and analysis of the investment portfolio
☐ Prepared detailed guidance for investment officers / credit review teams
☐ Prepared guidance for (potential) clients
☐ Formulation of standard covenants in loan and other contracts
☐ Monitoring of policy implementation by employees
☐ Monitoring of adherence to conditions and covenants by clients
☐ Formal/external evaluation and review of policy

Has your bank encountered difficulties with regard to the implementation of the policy?
If so, in what areas of interest? Please elaborate where possible.

☐ Due diligence / information about the clients
☐ Training bank employees
☐ Defining the scope of the policy
☐ Decision processes within the bank
☐ Competitive (dis)advantages
☐ Other areas, namely:

DUE DILLIGENCE AND MONITORING

How are investment proposals reviewed against the policy?
Who conducts the reviews of clients and how is monitoring organized?

SALES AND REPORTING

When your bank offers shares or bonds of oil palm companies to institutional and retail investors – either directly or as part of an investment fund managed by the bank – does your bank provide information about the sustainability performance of a client in the oil palm sector?

☐ No. Please indicate why not:
☐ Yes. Please provide a sample:

IMPACT OF THE POLICY

Could you please summarize which financial services your bank has provided to companies operating in the oil palm sector since December 2001?

How has your bank's involvement in the sector grown or diminished since the policy was adopted? (Please express in terms of exposure in € or US$ and/or number of clients)

Have there been instances where the application of the policy resulted in non-acceptance of investment proposals?

☐ Yes. If so, what were the most common grounds for non-acceptance?
☐ No

Does your bank provide financial incentives to clients in the oil palm sector who aim to operate in a sustainable way?

☐ No
☐ Yes, if yes, which:

Are you aware of any tangible positive impacts of the policy on nature and local communities which resulted from your policy? If yes, please provide examples:

How would you assess the impacts of the policy on producer companies?

How would you assess the impacts of the policy on other financial institutions?

How would you assess the impacts of the policy on the financial viability/risk profile of your portfolio?

What future steps will your bank take to improve content, scope, implementation and promotion of the policy?

LEVEL PLAYING FIELD

Does your bank compete for clients on the basis of your sustainability policies, or does your bank prefer a level playing field in which all (key) banks adopt similar approaches?

☐ We compete on sustainability issues
☐ A level playing field on sustainability issues is preferred above competition

Has a level playing field been created in the financial market, i.e. are you satisfied that other financial institutions involved in the oil palm sector require the same performance levels?

	Dutch banks	Global banks	Local banks
Yes	☐	☐	☐
No	☐	☐	☐
To some extent	☐	☐	☐

Would your bank support additional government regulation that requires other financial institutions to adopt similar policies as yours:

	Dutch government	European Union	Producer countries
Yes	☐	☐	☐
No	☐	☐	☐
Conditional	☐	☐	☐

Would you be willing to work with NGOs on improving the implementation of your policy and on creating a level playing field for all financial institutions active in the oil palm sector?

☐ Yes
☐ No
☐ Conditional. Please explain:

Annex 3

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About Milieudefensie – Friends of the Earth Netherlands

Friends of the Earth Netherlands (Milieudefensie) is an independent environmental organisation with 85 thousand members and contributors. We are a grassroots organisation and part of the Friends of the Earth International Network which is active in 71 countries. We have campaigns on the legal protection of green and open landscapes, rules to improve air quality and curb the use of cars and for sustainable agriculture. In a "low" country like the Netherlands, climate change is especially relevant, so saving energy and sustainable energy are ongoing themes.

Our Campaign on Globalisation & Environment

FoE Netherlands campaigns for the conservation of the environment on a global scale, working in co-operation with the FoE network and southern partner organisations. We challenge the current model of corporate globalization, and promote solutions that will help to create sustainable and socially just societies. We have been succesful in stopping Dutch companies who neglect their environmental and social impact in developing countries. FoE Netherlands wants the Dutch government and transnational governmental institutions to set binding rules for corporate responsibility. This way we can prevent that precious and fragile ecosystems such as forests and oceans disappear or are destroyed. This is not only a question of decency, it's a matter of the preservation of life.

For more information call: +31 20 6262 620

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