



OECD Guidelines for Multinational Enterprises

Specific Instance

Regarding Finnvera's involvement in Pulp Paper Mill Investment in Fray Bentos Uruguay by Botnia S.A.

**Presented by the Center for Human Rights and Environment (CEDHA)
Argentina**

June 8th, 2006

submitted to:

OECD National Contact Point Finland

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Summary of Specific Instance:

The Center for Human Rights and Environment (CEDHA) is submitting a Specific Instance against Finnvera plc for its complicity in anticipated breaches of the OECD Guidelines for Multinational Enterprises (henceforth “the Guidelines”) as a result of its support to the Botnia SA Orion pulp mill project (Orion) currently under construction in Fray Bentos Uruguay.

Finnvera has publicly confirmed its decision to consider supporting the Botnia project, and publicly expressed on its website that the project is in “publication phase”.⁽¹⁾ Considering that Botnia’s Orion project is already the object of a Specific Instance complaint presented to the Finnish National Contact Point on April 18th, 2006 ⁽²⁾, and considering that the Botnia Orion Project is additionally the object a great number of other national and international procedural and legal complaints for violations to national and international environmental and human rights law, Finnvera’s expressed interest to finance Botnia, and the relevance and importance that this expression has on the financial viability of the Botnia project, *prima facie*, make Finnvera complicit in the same violations of the Guidelines attributed to Botnia, even if it is found that it has not yet disbursed any funds to Botnia. The Finnvera Specific Instance is a separate Specific Instance to the Botnia Specific Instance and the National Contact Point’s admittance or rejection of the Finnvera Specific Instance should have no bearing on the treatment of the Botnia Specific Instance.

By supporting Botnia, or showing any intention to do so, and by virtue of the nature of its role as guarantor, Finnvera is complicit to the accusations made against Botnia, including by the World Bank-hired consultants and by the Compliance Advisory Ombudsman (CAO), by the IFC, and by the World Bank President. Finnvera’s participation in the Botnia project also imply violations of additional regional and international law, further adding to its explicit responsibility in violations to the OECD Guidelines, but also to its responsibility in violations of international law.

By supporting Botnia, Finnvera is directly involved in the Botnia Orion Project supply chain, as contemplated by the Guidelines, and would therefore be jointly responsible for same Guideline breaches enumerated in the Botnia Specific Instance. Expressed interest in supporting Botnia, the extremely important implications this expressed interest has on ability of Botnia to attract other investors, or the eventual confirmation of Finnvera’s direct support to Botnia.

The Botnia Orion Project is grounded on *irresponsible business conduct* resulting not only in violations of the rights of local stakeholders, but also in extremely volatile impacts and collapse of diplomatic relations between Argentina and Uruguay, which just one day after the filing of this Specific Instance, are to present initial oral arguments before the International Court of Justice for an injunction request by Argentina to the ICJ to order the Uruguayan State to force Botnia to stop mill construction due to the mills anticipated irreversible environmental impacts.

Finland, as a member of the OECD, and Finnvera as an agency of the State of Finland, must fulfill its duties to adhere to, uphold and promote the Guidelines, which includes in this case, take action to address the irresponsible and illegal behavior of Botnia SA (henceforth Botnia) which result in: the violations of national, regional and international law, violations of international organization regulations regarding social and environmental protection, diplomatic and public tension, destabilization of diplomatic, business and social environments in Argentina and Uruguay, and giving rise to economic and diplomatic and social conflict caused directly by this project.

Already, the Botnia project has been the subject of a complaint against the government of Uruguay by stakeholder victims before the Inter American Commission on Human Rights-which has opened investigations-, a complaint before the IFC’s Compliance Advisor/Ombudsman (CAO)-which has resulted in a highly critical Assessment Report and Full Compliance Audit by the CAO, two Equator Principle Compliance Complaints (directed to ING Group, and to Calyon of France, eventual financial supporters of the Botnia project) and a Human Rights and Corporate Social Responsibility Complaint to Nordea, a Swedish-based financial group also planning to support the Botnia project, surely due to Finnvera’s consideration to provide investment guarantees.

While the Guidelines suggest **that multinational enterprises have an important opportunity to implement best practice policies for sustainable development that seek to ensure coherence between social, economic and environmental objectives**, this project does exactly the contrary. Not only has Botnia failed to keep its project to stringent environmental and social safeguards established by the World Bank, and particularly by the IFC to ensure that contaminating industries from the industrialized world do not unduly attempt to gain undue competitive advantage in the developing world by exporting contaminating industries, resulting in enormous public and environmental risk, but Botnia is also offering other companies around the world the lamentable example, of how moving to a developing country can offer enormous tax benefits, less stringent and more flexible environmental law compliance and enforcement, and enormous profit. It is important to note that the Botnia investment of over 1.2 billion dollars, happens to be Finland’s largest private foreign investment ever, further magnifying the significance of this case and problem. The implication for affected communities is

1 See: <http://www.finnvera.fi/index.cfm?id=1720>

2 http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/oecd-specific-instance-botnia-eng.pdf

that this profit and benefit for Botnia and its financial partners is at the expense of the natural environment, the health of workers and nearby communities, and the local livelihoods of the impacted communities of Argentina and Uruguay.

The investments and project sponsored by Botnia and the way in which the company has handled public concern and environmental and social risk (which is largely to have ignored them), is clearly working against the basic principles and conditions for the promotion of equitable and sustainable development and is counter to the very essential and elemental principles of the OECD Guidelines for Multinational Enterprises. Finnvera's indication that it is considering supporting Botnia's Orion Project, irresponsibly, negligently, and lamentably undermines the objectives of the Guidelines.

This Specific Instance offers evidence, sustained largely by the World Bank's own Compliance Advisory Ombudsman, the Argentine government and independent experts, that Botnia and as a consequence, its partners such as Finnvera, have breached the Guidelines on the following counts:

Violations of Guidelines' Chapter II - General Policies respective to:

- Project's detrimental contribution to sustainable development, social and economic progress (paragraph 1), not only due to expected environmental degradation of land, soil and water which are substantiated in numerous technical documents mentioned in this Specific Instance, but also due to impacts on the livelihoods of local communities dependent on the rich environment for its tourism based industry;
- Project violation of Human Rights of affected communities, including right to health, right to life, right of access to information, right to participation, right to economic development, right to property, among others; (paragraph 2);
- Project promotion of lax control of environmental, social and health, control and protection (paragraph 5);
- Failure to incorporate self-regulatory practices and management systems (Chapter 2, commentary 8);

Violations of Guidelines' Chapter III – Disclosure Policy

- No timely, regular or reliable information about the projects, specifically relative to environmental concerns of local community (paragraph 1), this violation was confirmed by the CAO in its Assessment Report;
- Poor or no information about project's non-financial information including on environment and social impacts (paragraph 1);

Violations of Guidelines' Chapter V - Environment recommendations:

- No consideration for host government's obligations under relevant international agreements, principles, objectives and standards (introduction); such was the consequence of this violation that today Argentina is taking Uruguay to the International Court of Justice precisely due to violations of international bilateral law;
- No effort to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development (introduction); company objectives of developing one industry are at the expense of another, greater local industry;
- Failure to collect and adequately evaluate information regarding project impact on environment, health, and safety dimensions (paragraph 1a);
- Failure to consider foreseeable environmental, health and safety impacts (paragraph 1a, paragraph 3);
- Failure to engage in adequate communication and consultation with affected communities (paragraph 2b), particularly with communities on the Argentine side of the sphere of influence;
- Failure to prepare an appropriate environmental impact assessment that considers preventative measures (paragraph 3);
- Failure to take into account the legitimate concerns of the public regarding environment, health, and economic livelihoods to be impacted by project (paragraph 3), particularly with regards to impacts to the tourism and agro-industry sectors;
- Failure to base investment decisions on full scientific certainty regarding environmental and social impacts of project investment (paragraph 4), particularly with respect to water and air impacts;
- Failure to develop a contingency plan to prevent and control serious environmental and health damage for project operations including relative to accidents and emergencies (paragraph 5);
- Failure to utilize best available technology (paragraph 6);
- Failure to prevent internal company double standards across Botnia's international operations (paragraph 6a); and
- Failure to embark on sound environmental management (introduction, commentary 31).

Applicability of Guidelines to Finnish Companies

As a signatory to the Guidelines, the government of Finland (and subsequently its agencies), has committed to adhere, uphold, promote Guideline compliance (3) and encourage their widest possible observance (4). The Guidelines apply to

3 OECD Guidelines for Multinational Enterprises, Chapter I, Point 10

4 OECD Guidelines for Multinational Enterprises, Chapter I, Point 5

multinational companies headquartered in OECD countries operating in non-OECD countries. The Guidelines apply to the operations of multinational enterprises in all countries (5) but since Uruguay is not an OECD member the specific instance is submitted to Finland's National Contact Point.

Guidelines Applicability Finnvera plc

Finnvera plc is Finland's official, 100% owned state owned export credit agency (ECA) and is a public limited company (plc) appearing on Finland's company register list. At the time of writing, Finnvera states that it is considering providing export credit guarantees for Botnia's Orion pulp mill. Export credit guarantees will insure the project against political risk. (6) Finnvera's website reveals the project is in 'publication phase', which is a 30 day minimum phase between the publication of environmental documents for Category A projects and signing of the guarantee. (7)

The Guidelines apply to state owned entities such as Finnvera as 'ownership (of multinational enterprises) may be private, state or mixed.'(8) Contemplating the widest application of the Guidelines possible, the OECD does not provide a specific definition of multinational enterprises. The wide reach of the Guidelines is espoused in Chapter I paragraph 3 of the Guidelines which states that a 'precise definition of multinational enterprises is not required for the purposes of the Guidelines'.

In terms of Guideline applicability, Finnvera may also clearly be considered a multinational enterprise for the purposes of the case, and thereby expanding and furthering its obligations already acquired as a State agency. As a joint stock company, Finnvera strives for independence and financial self sustainability, while exhibiting structural and financial qualities of a traditional Finnish business. Finnvera is a limited specialist finance company that operates profitably in addition to receiving government subsidies to implement regional policy, furthermore **it is organized as a limited company.**(9) At the time of the release of the 2005 Annual Report, Finnvera group comprised of five subsidiaries. (10)

Finnvera aims to execute the Finnish national government's industrial policy by means of risk financing (11). Taking into account that the government of Finland is burdened with the task to promote and encourage Guideline adherence for companies based in their jurisdiction, there exists a greater necessity for guideline compliance, an enterprise under direct government control must be treated equally in the eyes of the law as any multinational enterprise.

Finnvera's operations are also multinational, a basic condition for applicability of the Guidelines. Finnvera in considering supporting the Orion project based in Uruguay, complies with this condition, forming an integral part of the supply chain of an established multinational enterprises in the name of Botnia SA. By supporting Botnia, Finnvera will have a sufficient investment nexus to the enterprise directly responsible for guideline breaches.(12) Additional evidence confirming the applicability of the Guidelines to Finnvera comes from the institution itself. Finnvera acknowledges obligations that arise from the OECD Guidelines which is crystallised on its website, substantiating 'when granting export credit guarantees, Finnvera adheres to the regulations issued by the OECD and the EU.' (13)

The 2004 OECD "Annual Report on the OECD Guidelines for Multinational Enterprises" (p.16) says the following about export promotion in Finland:

This programme, adopted in July 2001, introduces 'environmental and other principles' for 'export credit guarantees'. It calls the 'attention of guarantee applicants' to the Guidelines.

This statement brings Finland's export credit agencies and its clients under the umbrella of the Guidelines. (14) Since all of Finnvera's clients are bound by the Guidelines, thus *ipso facto*, Finnvera must adhere to the Guidelines, and as a matter of

5 OECD Guidelines for Multinational Enterprises, Chapter I, Comment 2

6 Ville Jaakonsalo, PROJECT ORION: Funding a Pulp Mill Investment in Uruguay, Metsä Group Financial Services Oy

7 <http://www.finnvera.fi/index.cfm?id=1720>

8 OECD Guidelines for Multinational Enterprises, chapter I, paragraph 3

9 www.finnvera.fi/index.cfm?id=1793

10 www.finnvera.fi/osavuositiedot/finnvera_ovk_en_2005.html

11 Finnvera has three main tasks defined by law: to provide risk financing for and to develop SMEs; to promote the exports and internationalisation of enterprises; and to implement the government's industrial policy and regional policy goals, <http://www.finnvera.fi/index.cfm?id=1793>

12 The CIME recommends that the consideration of an 'investment nexus' must be considered with flexibility on a case by case approach. Source: The OECD Guidelines for Multinational Enterprises and Supply Chain Responsibility: A Discussion paper, December 2004, page 3

13 www.finnvera.fi/index.cfm?id=1793

14 TUAC trade union advisory committee to the OECD organisation for economic cooperation and development
TUAC Survey of the functioning of OECD Multinational Guidelines National Contact Points

natural logic, this defacto obligation must be explicitly recognized by Finland's National Contact Point with regard to Finnvera's Guideline breaches. Finnvera's website also calls guarantee loan applicants to the attention of the OECD Guidelines for Multinational Enterprises, but Finnvera itself cannot delegate responsibility for Guideline breaches solely to the export credit applicant as the Guidelines are 'suitable recommendations for all types of companies'. (15)

Finnvera is a unique entity who's operations influence external countries, many of those, like Uruguay, are not OECD members and do not have adequate corporate guidelines by which to uphold human rights and protect the environment, making the use of the Guidelines especially important in countries such as this. Further, export credit guarantees are a critical and necessary part of the sort of international development finance investment taking place in Uruguay under the Botnia Orion project. Other private enterprises look to the existence of guarantee loans in order to confirm their own investment. In this regard, Finnvera cannot ignore the enormous importance its consideration of supporting Botnia has on the overall investment viability of the Botnia Orion Project.

On the Higher Degree of Responsibility and Complicity of Export Credit Agencies to Overall Investment Viability.

Finnvera's consideration of support to Botnia, as mentioned above, is critical to the financial viability of the Botnia project, and its support to Botnia, and even its publicly announced consideration of support to Botnia, is instrumental to the project, and will inevitably result in complicity in the violations of the Guidelines, of human rights norms and environmental law. **The role played by Finnvera (or for that matter, any Export Credit Agency, or other international export guarantee provider) must necessarily be considered as having a much higher priority and higher degree of importance than other private and even public investors, since the decision of an ECA to participate in such an investment (through ECA extension of guarantee loans), is a *sine qua non* to bring other financial supporters into the investment scheme.** Without ECA support, and in this case without Finnvera's support to Botnia, this project surely becomes unviable. In this regard, the mere publicly expressed interest in financing an international development project, due to this magnitude of relevance and the implications on the viability of the overall investment, is sufficient to consider the ECAs (Finnvera's) full and explicit participation in the investment, irrespective of its eventual decision to finance the project or not or if funds are ever transferred or not to Botnia or put at their disposition through a guarantee loan. If export credits are supplied, or if the presence of Finnvera is indefinitely sustained (without a resolution), as it has been now since May 31, 2005 (according to Finnvera's own website) ... is lending undue ongoing credibility to the Botnia Orion project. Even if Finnvera were to decide to withdraw consideration of support to Botnia, it has acted during this extended time, to legitimize and attract other investors, and thereby promoting the violations of the Guidelines presented here and in the Botnia Specific Instance.

The Finnish National Contact Point is asked to intervene to raise these concerns to Finnvera, in order that Finnvera publicly and distinctly withdraw consideration of support to the Botnia Orion.

Finnvera's Current Position with regards to Botnia SA

Finnvera was approached by Botnia SA in early 2004 to determine the optimal internal financial structure and risk sharing partners for the Orion pulp mill. (16) Since then Finnvera has remained a crucial component of Botnia's financial package, but the export credit guarantees have not yet been signed as Finnvera has been forced to reappraise its potential role in light of the IFC's calls for new studies, but more importantly, due to the large public and international dispute that this project has caused locally, regionally and internationally. On the 28th of April, 2006, Mr Topi Vesteri, the vice chief executive of Finnvera was reported as saying the project's financial package may need to be reappraised due to tensions between Argentina and Uruguay.

'The political risk of the project has grown. We have been forced to consider the impact of Argentina's resistance to our ability to dispense guarantees. Opposition may bring about changes in the mill's entire financing package' (17)

Despite the reappraisal of Finnvera's ability to dispense guarantees, the withdrawal of Finnvera as supplier of export credits does not appear to be contemplated as a part of the changes to the finance package. In fact, Mr Vesteri was further reported as saying that Finnvera's support of Botnia SA will be increasingly likely as a response to diplomatic tensions created by the mill.

www.union-network.org/unimultinationals.nsf/0/98bdbef03c0cbb9cc1256a6a00530f50?OpenDocument

15 <http://www.finnvera.net/index.cfm?id=1744>

16 Ville Jaakonsalo, PROJECT ORION: Funding a Pulp Mill Investment in Uruguay, Metsä Group Financial Services Oy

17 Newsroom Finland, Financing of Metsä-Botnia mill seen threatened by Argentina-Uruguay row -Paper

28.4.2006

<http://newsroom.finland.fi/stt/showarticle.asp?intNWSAID=12480&group=Business>

'Argentina's attitude is difficult and harsh. It has progressed to such a high political level that **it would be difficult for us to back down without losing face.**'(18)

With this statement, the vice chief executive of Finnvera indicates that the foundation of Finnvera's support to Botnia SA may be in part based on a political pride, rather than an objective environmental and social risk assessment of the project, nor an assessment process that would take into account the guideline breaches listed in this specific instance and in the Specific Instance presented against Botnia.

Relevant to Conflict of Interest

Stakeholders and interested parties are made aware that of the significant **conflict of interest** faced by the Finland National Contact Point as a result of this Specific Instance. Finnvera comes under the auspices of Finland's Ministry of Trade and Industry, and implements government industrial policy through risk financing. Policy is the scope and direction of the policy is determined by Finnish government and parliament. It must be noted that the Finland National Contact Point forms part of the Ministry of Trade and Industry, the same department responsible for the direction of Finnvera. (19)

OECD Arrangement on Officially Supported Export Credits and OECD Recommendation on Common Approaches on Environment and Officially Supported Export Credits

Finnvera, in its obligations to uphold OECD documents, must take into account the *OECD Recommendation on Common Approaches on Environment and Officially Supported Export Credits* of which Chapter III, paragraph 12.1 refers to Environmental Impact Assessment requires adherence to standards of the World Bank Group. The Specific Instance refers to applicable breaches of the Environmental and Social Safeguards applicable to the International Financial Corporation (IFC), the arm of the World Bank that deals exclusively with financing private developments. IFC Operational Policies referred to in the complaint overlap with requirements under the OECD Guidelines, but for the National Contact Point to fully understand the extent of the breaches they are directed to the Compliance Advisor Ombudsman Preliminary Assessment Report(20), produced after conducting interviews and on-site assessment in late 2005. A thorough Full Compliance Audit has been completed by the CAO and is available on the CAO's website as has extensive information about the breaches of this project confirmed by the CAO(21). As mentioned in the body of the Specific Instance, the project is utilizing Elemental-Chlorine Free (ECF) technology contrary to standards of the World Bank Group Pollution Prevention and Abatement Handbook.

The OECD Arrangement on Officially Supported Export Credits, Chapter IV, Article 13 states that:

Members should evaluate information resulting from screening and review, decide whether to request further information, decline or provide official support and, if support is to be provided, whether this should involve conditions to fulfill prior to, or after the final commitment for official support, e.g. mitigation measures, covenants, monitoring requirements.

The screening and review of the environmental impact assessment should lead to the decision to provide official support to the project. Finnvera's website provides links to the Botnia's EIA and the Draft Cumulative Impact Statement on the IFC website. The project is listed under 'Guaranteed Transactions' on Finnvera's website, such that official support to the project has already taken place which may have taken place as early as 1 July 2005(22). The IFC recognized that the Botnia EIA, along with the EIA of ENCE, lacked consideration of cumulative impacts. In November 2005, the IFC Ombudsman concluded that the initial EIAs failed to comply with IFC policy, thus failing to present the true environmental impacts.

The environmental impacts of the project have been presented in the form of a Draft Cumulative Impact Statement finalised on 17 February 2006. The IFC are only NOW considering the validity and legitimacy of the EIA and in fact, due to the conclusions of a new IFC-commissioned study to review the cumulative impact findings, the Hatfield Report, findings suggests that to date, large gaps exist on numerous critical issues such as water and air contamination, impacts to tourism and other local industries, impacts on subterranean waters, and many others. According to the *OECD Arrangement on Officially Supported Export Credits* Finnvera cannot use information which has not been deemed legitimate and adequate by the World Bank Group as part of its risk assessment.

18 as above

19 The OECD Guidelines for Multinational Enterprises: First Annual Meeting of the National Contact Points
SUMMARY REPORT OF THE CHAIR OF THE MEETING ON THE ACTIVITIES OF NATIONAL CONTACT POINTS

21 September 2001, p10

20 www.cao-ombudsman.org/html-english/documents/preliminary_assessmentFINAL.pdf

21 <http://www.cao-ombudsman.org/html-english/documents/CAOAuditofOrionandCMBPulpMillsFinalReportENGLISH.pdf>

22 www.finnvera.fi/index.cfm?id=1720

Relevant to Finnish National Law

The Guidelines state that 'obeying the law is the first obligation of business' (23) and the National Contact Point should be made aware of the risks of violations to national law in Finland if Finnvera were to proceed with supporting Botnia SA.

Act on the State's Export Credit Guarantees (422/2001)

Finnvera provides the Finnish State's export credit guarantees and is subject to Finnish national legislation on the Act on the States Export Credit Guarantees (422/2001) which states:

Section 7 - Factors to be taken into account when export credit guarantees are granted

The following factors shall be taken into account when export credit guarantees are granted and when the terms and conditions of the guarantees are confirmed.

1. International rules and regulations applied to export credit guarantees and binding on Finland.
2. Factors related to international competitiveness.
3. The environmental impacts of the project to be guaranteed, as part of the total risk assessment of the project.

The environmental impacts of the project have been presented in the form of a DRAFT Cumulative Impact Statement finalised on 17 February 2006. As mentioned previously, the IFC have requested further environmental information in order to adequately assess the environmental impacts and to comply with their own operational policy. The World Bank President, Paul Wolfowitz has refused Uruguayan President requests to accelerate loan issuance to the Botnia mill, on the grounds that the World Bank still does not have the necessary guarantees that the project has complied with Bank policy. Under such circumstances, and considering the widespread doubt on project social and environmental impact, as well as evident non-compliance with Bank social and environmental policy, Finnvera is obliged by law to assess the environmental impacts of the project to be guaranteed and this should be done in such a way that the environmental assessment documents adequately assess all impacts. Further international rules and regulations applied to export credit agencies and binding on Finland, such as the OECD documents already mentioned, have also been breached by the environmental assessment procedure.

Relevant to International Treaties

International Covenant on Economic Social and Social Rights (ICESCR)

Finnvera is a state owned enterprise, and as an organ of the Finnish government Finnvera must carry out Finland's responsibilities under applicable international law. Article 2 of the ICESCR has an extraterritorial provision that requires operations in Finland to promote the observance of the treaty in foreign countries. Finnvera must 'respect, protect and fulfill' these obligations.(24) It is worth mentioning that Finland has incorporated the ICESCR in domestic law. See Sara et. al. v Finland, Comm. No 431/1990 (1994) Point 8.1 and 8.2 are relevant to domestic implementation of the ICESCR.(25)

Inevitable substantive violations (to be caused by the magnitude of production of the mills) to the ICESCR itself (aside from article 2) with respect to Botnia's pulp mill are examined in the context of the submission to the Inter American Commission on Human Rights,²⁶ and translate to the breaches of the following articles of the ICESCR:

- Article 5 (1) Responsibility for breaches of ICESCR rights;
- Article 5 (2) Fundamental Human Rights;
- Article 12 (1) Right to physical and mental health;
- Article 12 (2b) Standards of Environmental and Industrial Hygiene; and
- Article 18 Finland's reporting obligations

As such, Finnish national courts can enforce the ICESCR on the part of the Finnish government's 'extra-territorial' obligations to enforce the ICESCR in Uruguay. Finnish courts may take into account evidence provided by the CAO, the submission to the Inter American Commission on Human Rights, more recently the evidence presented to the IFC and to the International Court of Justice by the State of Argentina regarding the violations by Botnia and the expected impacts of

23 OECD Guidelines for Multinational Enterprises, Chapter II, Commentary paragraph 2, p11

24 See International Commission of Jurists and the ICESCR, www.icj.org/IMG/pdf/7.pdf

25 The judgment can be found at www1.umn.edu/humanrts/undocs/html/dec431.htm.

26 http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/peticion-cidh-final.doc

this project at this site, as well as the myriad of documentation denouncing the inadequacy of the existing company and IFC environmental impact assessment documents, the documents which Finnvera is purportedly relying on to arrive at an evaluation of environmental risk. Supporting the Botnia Orion project places the Finnish government under scrutiny of its own national court system, further, the Finnish state is exposed to other accountability mechanisms available to complainants under international law.

International Covenant on Civil and Political Rights (ICCPR)

Concerning violation of international law with regards to the ICCPR, in *Anni Äärelä and Jouni Näkkäläjärvi v. Finland*, Communication No. 779/1997 (4 February 1997) (27) violations of the ICCPR were invoked as well as responsibility on the part of the Finnish state were brought before the Human Rights Commission. It should be briefly noted that following this precedent and taking into account the available evidence, Finland's culpability for the actions of Finnvera supporting the known is at risk of violating the following provisions of the ICCPR:

- Right to life (Article 6.1) and
- Freedom of expression (Article 19 - violence against anti pulp mill advocates which appears in the IACHR submission).

Finland is a signatory to the ICCPR which has legal status in international law, creating responsibility on the Finnish state to ensure its compliance.

Moral, Social and Legal Obligations: Universal Declaration of Human Rights

The Guidelines source norms and standards from international instruments. The Guidelines are subsequently ensconced by international law, the violation of certain instruments consisting of a direct violations of the Guidelines. The commentary of the Guidelines (28) refers to the 1948 Universal Declaration of Human Rights which state that "every individual and every organ of society ... promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance".

Finnvera as an organ of society, and more concretely, and even more specifically so as an agency of the State of Finland, which is a Signatory to the Universal Declaration, is obliged to promote respect for these rights and freedoms, and can only do so by refraining from providing export credit guarantees to Botnia S.A.. The National Contact Point, as an organ of the Finnish state explicitly bound by international customary law also must seriously consider its legal obligations to embark on progressive international measures by which universal human rights are to be effectively recognized and observed.(29)

Applicant's Interest

The submitting institution of this Specific Instance is the Center for Human Rights and Environment (CEDHA), a non-government organization based in Argentina, which aims to promote greater harmony between people and the environment, providing legal support for victims of environmental degradation. CEDHA has represented the 39,633 members of the Citizen's Environmental Assembly of Gualeguaychú, Argentina, a non-profit, non-politically aligned organization formed in 2003 with the specific purpose of giving a coordinated voice to Argentine victims affected by Orion, as well as the Governor and Vice Governor of the Province of Entre Ríos, Argentina, the Argentine province affected by Orion, in addition to several Uruguayan non-profit organizations which have also signed the CAO Complaint.

Project Nature, Location and General Background Policy and Legal Violations

Background of Projects

The Orion project (as it is commonly referred to) by Botnia is located in the town of Fray Bentos, Uruguay, on the Uruguay River which forms the international waterway border between Argentina and Uruguay. This town's location is in the heart of one of Argentina's and Uruguay's most prominent tourist regions, surrounded by pristine riverside beaches, natural environment and one of the cleanest rivers in Argentina and Uruguay as well as being situated on one of the world's most important freshwater resources, the Guaraní Aquifer.

27 The judgment can be found at www1.umn.edu/humanrts/undocs/779-1997.html.

28 Chapter II Commentary, paragraph 4: 'The Universal Declaration of Human Rights and other human rights obligations are particular relevance in this regard.'

29 The manner and extent of human rights abuses are detailed below

Botnia's Orion project, a mega-sized cellulose production scheme, comes on the heels of another, nearly equally large investment by ENCE of Spain, which has chosen to build a similar mill just upstream from Orion, making a combined investment of nearly US\$2 billion of foreign direct investment (FDI), the largest in Uruguayan history, while Botnia's portion of the investment amounting to US\$1.2 billion, is the largest single FDI investment ever of a Finnish company abroad. The combined production of Botnia and ENCE would be one of the world's largest production of Kraft System paper pulp, utilizing Elemental Chlorine Free technology, a second-rate technology which both European Union and World Bank best practice policy recommend should be replaced by the best technology available, which is a Total Chlorine Free process (TCF). Claims by Botnia and ENCE that their ECF technology meets the highest standard existing for ECF (which is preferred for the type of pulp desired by Botnia), have been questioned by recent reports by IFC-hired consultants, indicating that neither Botnia nor ENCE have provided any evidence that they have incorporated latest industry standards, cited in IPPC (accepted European standards on cellulose production), which call for recuperating up to 50% of waste emissions, as well as using less chlorine-based elements, such as ozone bleaching. (see Hatfield Report) (30)

The Botnia and ENCE industries have indicated that they will produce 1.5 million tons of pulp (newer reports suggest this would grow to 2 million tons), utilizing 4 million tons of wood per year. The plants are sited in Uruguay across the river from Gualaquaychú, a tourist driven city and region (Entre Rios province) of Argentina. The plants are expected to employ 3,000 short-term workers during construction and 300 low-paying long-term wage workers in a region that is extremely rich in natural resources and heavily reliant on tourism and fisheries for local livelihoods.

The site choice and location was unfortunate and does **not respond** to a site study for the best location of a contaminating industry(31) as is mandated by Uruguayan law and by the IFC's Environmental Safeguard Policies for Category A projects (the highest environmental risk category). Botnia offers only **one half page** to the analysis of site location, offering **no** information about the very severe social, economic and environmental risks to local stakeholders related to site choice.(32) Botnia's site choice corresponded rather to Botnia's previous history and economic investments in the region, as Botnia *already* owned land and had invested in a portside facility where Botnia was already chopping eucalyptus trees into woodchips and loading product onto freight ships in Fray Bentos for shipment and processing into cellulose in Europe. Site was selected due to proximity to trees, to waterways, and to international roads, while environmental and social impacts WERE NOT considered in the siting choice. It is clear to stakeholders, that cellulose production is entirely incompatible with the region's identify and lifestyles, in addition to presenting a serious risk to the health of local communities.

With industry trends favoring Total Chlorine Free technology, ozone treatment, as well as new standards (post 2001) in ECF to reduce environmental impacts of the pulp and paper industry, and with plants in Finland reaching their lifelong utility particularly with the exhaustion of natural resources in Europe as well as growing intolerance with contaminating industries, companies like Botnia and ENCE are starting to look south to continue operations where natural resources are still in stock, labor is cheaper, environmental controls are less strict and contamination more tolerated. To this end, they are closing plant sites in Europe, laying off expensive European workers, and heading south, where for the mentioned reasons, investment climates are, in the word's of one of the Project Sponsors CEO's, more environmentally flexible.(33) The site was selected by Botnia despite the fact that the location was *not* suitable for cellulose production, given its location **immediately** above the potable water intake for the local community of Fray Bentos, and that its very close proximity to important tourist locations such as popular tourist beaches (Nandubaysal beach, for example), would negatively impact the local tourism industry.

Botnia approached the International Finance Corporation (IFC), the branch of the World Bank that provides loans to multinational enterprises, which deemed the project a Category A Project, indicating the highest level of environmental risk. As such, Botnia had to produce an Environmental Impact Assessment (EIA) for the Orion project, which it did, but which left out critical elements (such as an adequate site study-since it had already chosen its site-confirmed by a recent IFC report), stakeholder consultations which it did not properly conduct in Argentina (the CAO confirms this shortfall), and which failed altogether to consider host government obligations under international bilateral law (as pertains to the Uruguay River Treaty-which has now resulted in a complaint at the International Court of Justice), as well as obligations under its environmental and human rights obligations for which now Uruguay is facing a complaint to the Inter-American Human Rights

30 http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/uruguay-experts-report-eng.pdf

31 Information available on the IFC's website from Botnia's own Assessment documents suggest in ONE PAGE that Botnia considered four sites and found Fray Bentos to be the most suitable taking into account factors such as conflicting uses and problems with residential areas. Located less than 5 kilometres from the residential town of Fray Bentos and in the sphere of influence of a major Argentine tourist destination conflicts with this assessment. Uruguay EIA, Capitulo 3, Ubicación y descripción, p2
[www.ifc.org/ifcext/lac.nsf/AttachmentsByTitle/Uruguay_EIA_chapter3_Spanish/\\$FILE/Uruguay_EIA_chapter3_Spanish.pdf](http://www.ifc.org/ifcext/lac.nsf/AttachmentsByTitle/Uruguay_EIA_chapter3_Spanish/$FILE/Uruguay_EIA_chapter3_Spanish.pdf)

32 see page 2 of

[http://www.ifc.org/ifcext/lac.nsf/AttachmentsByTitle/Uruguay_EIA_chapter3_Spanish/\\$FILE/Uruguay_EIA_chapter3_Spanish.pdf](http://www.ifc.org/ifcext/lac.nsf/AttachmentsByTitle/Uruguay_EIA_chapter3_Spanish/$FILE/Uruguay_EIA_chapter3_Spanish.pdf)

33 see: http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/denuncia-uruguay-viana.pdf

Commission.(34) Further, the study was riddled with errors and shortsights, which the IFC later needed to correct and update, and which have to date, NOT been resolved.

The IFC and both company sponsors grossly omitted comprehensive impact studies, which are crucially important since a second massive cellulose production scheme sponsored by ENCE (35), the Spanish cellulose-producing company that has received fines and whose top executives have received jail sentences for violating Spanish and European laws protecting the environment and human rights, in Pontevedra a short time ago, is only six kilometers away. Despite that the combined effect of the Botnia and ENCE ventures would make this one of the largest cellulose production sites in the world, neither company offered comprehensive cumulative impact studies for their environmental and social impacts nor have they considered existing toxic elements in currently in the river or the environment. The IFC failed to request cumulative impact studies until well after it had considered elevating the project to the Board for approval, but eventually had to delay the Board vote to look closer into the cumulative impacts of the mills. The World Bank, which has not yet approved the pending loan to Botnia, and has recently, and after a long period of silence waiting for IFC results, expressed doubts about financing this project, due to massive social mobilization (including the largest known environmental march bringing together over 100,000 people) and protest against the investments, and mounting diplomatic conflict between Argentina and Uruguay (including a complaint filed by Argentina at the International Court of Justice), has recognized the many faults of the EIAs, and has on several occasions, suspended board vote on the project, commissioning a Cumulative Impact Study, which has yet to be concluded and which an IFC-hired consultant has already indicated, is inconclusive on many of the concerns expressed by Argentine and Uruguayan stakeholders opposing the Botnia and ENCE cellulose projects.

Botnia's EIA not only failed to take into account cumulative impacts, but since the project was formally located in Uruguay (literally on the border), Botnia failed to consider and consult stakeholders or take into account serious concerns of local industries (particularly tourism) on the Argentine side of the river, which are clearly within the projects sphere of influence and that will be equally impacted by the industry's water, air and land contamination. Following a complaint to the IFC's CAO Ombudsman submitted by nearly 40,000 Argentine stakeholders in communities across the river, as well as concerned environmental and agricultural organizations in Uruguay (36), the CAO found that the project not only breached the World Bank's Environmental and Social Safeguards as well as its Disclosure Policy, but that it also ignored Uruguay's obligations under bilateral international law governing the border use of the Uruguay River.(37) The CAO Compliance Audit found that Botnia's original EIA was 'based on obsolete data' and 'the IFC's due diligence to satisfy itself that the EAs were complete in all material respects ... was inadequate and not in compliance with the organization's Disclosure Policy'.(38)

Since the CAO complaint, Argentina has repeatedly approached Uruguay to discuss its serious concerns over the installation of these mills and the urgent need to conduct further studies to assess impact and guarantee the human rights of local communities and ensure the protection of the natural resources at risk. Uruguay and Argentina had agreed to a tentative plan to address such concerns, however, due to Botnia's refusal to collaborate with the Argentine and Uruguayan presidents request to cease construction for a 90-day period (a request agreed to by ENCE in this case), diplomatic negotiations completely collapsed, and Argentina chose to elevate a complaint against Uruguay (the first ever between two Latin American countries over an environmental dispute) at the International Court of Justice, grounded on this project's violations of the Uruguay River Treaty. Uruguay, meanwhile has already initiated its own complaint process both before MERCOSUR and before the International Court of Justice against Argentina for the economic instability and presumably nearly US\$400 million in economic losses due to international roadblocks by concerned Argentine citizens against the Botnia project.

Public opposition to the mills has precipitated into numerous protests and road blockages preventing construction supplies reaching the mills. The latest international road block to traffic between Argentina and Uruguay by concerned citizens, ran for over 40 consecutive days and culminated on April 30, 2006 at the one-year anniversary of public opposition to the pulp mills, with over 100,000 people peacefully marching from Gualaguaychú to the international bridge that unites Argentina and Uruguay, a few kilometers from the Botnia construction site. Protesters agreed to remove themselves from the international roadblock on the condition that Argentina submit the complaint to the ICJ, however they remain on the side of the road, awaiting developments of the case, and will take to the bridge again if they feel their concerns have not been justly

34 see: http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/peticion-cidh-final.doc

35 CAO Preliminary Assessment Report p7, states that 'At some point – after the release of the Orion EIA but before the release of the CMB EIA – the IFC recognized its requirement to conduct a cumulative impact study (CIS) that would take into account the possible additional impact of having two projects operate in close proximity', www.cao-ombudsman.org/html-english/documents/preliminary_assessmentFINAL.pdf

36 CAO Complaint to the Compliance Advisor Ombudsman
www.cedha.org.ar/en/initiatives/paper_pulp_mills/cao-complaint-letter.doc

37 CAO Preliminary Assessment Report
www.cao-ombudsman.org/html-english/documents/preliminary_assessmentFINAL.pdf

38 CAO Audit of IFC's and MIGA's Due Diligence for two Pulp Mills in Uruguay Final Report, p22 and 1
<http://www.cao-ombudsman.org/html-english/documents/CAOInformeFinaldeAuditoriadeladiligenciaDebidaCFIOMGISPANISH.pdf>

addressed. To our knowledge, the 100,000 person march this is the world's largest known march for an "environmental" cause, a sad record for Botnia and its financial backers.(39)

In latest developments in the case, the President of Uruguay visited with Paul Wolfowitz, the World Bank President, requesting acceleration of the Bank's approval process of the loans to both Botnia and ENCE, however, following new reports by the IFC suggesting that not enough information is available yet to determine the true environmental and social impacts of these projects, and in fact showing that the concerns and many of the claims presented in the original CAO complaint were in fact true, the World Bank President stated that no loan monies would be considered until a full study had been completed, and suggested furthermore, that Uruguay and Argentina should try to resolve their conflict to create a proper investment climate. Clearly, until Uruguay and Argentina sort out this conflict, it is very unlikely that the World Bank will support this investment.

39 For example, see local newspaper article: EL CONFLICTO CON URUGUAY: SE EXTIENDE LA PROTESTA EN ENTRE RIOS, <http://www.clarin.com/diario/2006/02/17/elpais/p-00401.htm>

Specific Instance relative to Guideline Violations

Violations of Guidelines' General Policies respective to Chapter II :

- **Project not contributing to social and environmental progress with a view to achieving sustainable development (paragraph 1);**
- **Project violation of Human Rights of affected communities (paragraph 2);**
- **Project promotion of lax control of environmental, social and health, control and protection (paragraph 5);**
- **Failure to incorporate self-regulatory practices and management systems (Chapter 2, commentary 8)**

Relative to Legal Obligations

The first obligation of business is to obey the domestic laws of the host country. (40) As such there are two filings in local courts, both in Uruguay and in Argentina, due to violations by these projects of local and regional laws established to protect the environment and health of local communities.

A major environmental concern raised by the *Informe de la Delegación Argentina al Grupo de Trabajo de Alto Nivel* concerns the production of dioxins and furans(41), which Uruguay, via the Stockholm Convention on Persistent Organic Pollutants (POPs) has committed to reduce overall annual emissions.(42)

Perhaps most worrisome is the project's ignorance of Uruguay's international obligations relative to the management and protect of the Uruguay River. Under pertinent and applicable international bilateral law (43), Argentine authorities must not only be informed of projected projects of this sort, but must receive relevant information regarding contamination so as to contribute to critical decisions about the installation of potentially harmful industries such as a pulp and papermill industry of this magnitude (the largest in the world). Not only was Argentina never contacted by project sponsors or by Uruguayan authorities, but information was withheld and continues to be withheld from Argentina in the process(44). This grave violation of the Uruguay River Treaty has led to Argentina taking steps to bring Uruguay to the International Court of Justice in the Hague, due to this investment, the first time ever a Latin American country takes a friendly neighbor to the ICJ for a dispute over imminent environmental contamination, not only setting an unfortunate and entirely avoidable precedent in the region, but pitting two otherwise friendly states against one another over an investment by a foreign company escaping more stringent environmental controls in its home soil.(45)

It is important to note, relative to parallel legal proceeding that the procedure contemplated by Argentina at the Hague is outside of the scope of the Guidelines and deals with a dispute between two countries, not the acts of multinational enterprises as enveloped by the Guidelines. For this reason this action is considered a parallel legal proceeding.

Relative to Human Rights

Human Rights violations by this project are essentially rights violated by Botnia of local communities which stand to be impacted by water, soil and air contamination of the Botnia's emissions. These violations have been documented in the

40 OECD Guidelines for Multinational Enterprises, Chapter II, Comment 2

41 *Ministerio de Relaciones Exteriores, Comercio Internacional y Culto*, Informe de la Delegación Argentina al Grupo de Trabajo de Alto Nivel Buenos Aires - 3 de febrero de 2006, p15

www.cedha.org.ar/en/initiatives/paper_pulp_mills/informe-comision-binacional-argentina-spa.pdf

42 Stockholm Convention on Persistent Organic Pollutants, Article 5, Annex C Part 1,

www.pops.int/documents/convtext/convtext_en.pdf

43 Treaty Between Uruguay and Argentina concerning the boundary constituted by the River Uruguay,

<http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/URY-ARG1973MB.PDF>

44 An independent assessment of failure to follow permitting procedures under the River Uruguay Treaty appears in the

CAO Preliminary Assessment Report p8, 10 [www.cao-ombudsman.org/html-](http://www.cao-ombudsman.org/html-english/documents/preliminary_assessmentFINAL.pdf)

[english/documents/preliminary_assessmentFINAL.pdf](http://www.cao-ombudsman.org/html-english/documents/preliminary_assessmentFINAL.pdf)

45 For example see local press: CONFLICTO CON URUGUAY: LUEGO DE LA DECISION ARGENTINA DE RECURRIR AL TRIBUNAL DE LA HAYA El canciller de Uruguay afirma que "el diálogo con la Argentina está roto"<http://www.clarin.com/diario/2006/01/29/elpais/p-01101.htm>

complaint filed to the Inter-American Commission on Human Rights (46) as well as complaints filed to ING Group of Netherlands and Nordea of Sweden (47). Specific Human Rights violations include but are not limited to:

- violation of the UN Declaration on Human Rights; (48)
- Articles 1(1), 2, 4, 5, 19, 25, 26 of the *American Convention on Human Rights*; (49)
- Articles 1, 10, 11 of the *Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights* “*Protocol of San Salvador*”; (50) and
- Articles I, VII, XI of the *American Declaration of Rights and Duties of Man* (51)

It should be noted that the proceeding before the Inter American Commission on Human Rights is outside the scope of the Guidelines, as it deals with the responsibilities of the Government of Uruguay to prevent breaches of human rights instruments and does not involve any action against the companies themselves. In contrast, the Guidelines apply to multi-national enterprises and maintain that companies have an obligation to respect the human rights. It is for this reason that this action cannot be considered a parallel legal proceeding.

The violations listed refer to breaches of conventions, declarations and additional protocols taking the form of ‘other human rights obligations of the government concerned’. (52) Chapter II Commentary refers to Universal Declaration of Human Rights (UDHR), and it is asserted that the project promotes fundamental breaches (53) to the following: Articles 1, 2, 3 and 25 (1). Other conventions that bind Uruguay and are contemplated by the Guidelines are the International Covenant on Economic, Social and Cultural Rights, of which the evidence suggests violations of Article 7 (b) ‘safe and healthy working conditions, and Article 12(1) ‘right to physical and mental health’. Uruguay is also a state party to the Convention on the Rights of the Child, of which Article 24, ‘right to health’ will be breached by Orion’s operation.

Given that the Commentary to Chapter V illustrates the environmental standards contained within the Guidelines are underpinned by the principles and objectives contained in the Rio Declaration on Environment and Development in Agenda 21, including:

- protection of the atmosphere;
- conservation of biological diversity;
- protection of the quality and supply of freshwater resources;
- environmentally sound management of toxic chemicals;
- environmentally sound management of hazardous wastes; and
- environmentally sound management of sewerage-related issues.

Orion’s operation, at the heart of pristine environmental surroundings, and over the Guaraní Aquifer, the third largest freshwater supply of the planet, is a wholesale contradiction of the spirit of Rio Convention which promotes sustainable development in an era of global climatic and ecological uncertainty.

It must also be kept in mind that the project, as its location (particularly relative to water intake, and considering its highly contaminating nature in the heart of a local community), as it will affect the health of workers, residents, and local communities, contradicts the norms established by the Uruguay Constitution intending to protect the rights of the population.

Relative to Economic Progress

46 Submission to the Inter American Commission on Human Rights

http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/peticion-cidh-final.doc

47 Equator Principle Compliance Complaint, available at

http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/complaint-letter-to-ing-eng.pdf

Nordea Human Rights and Corporate Social Responsibility Compliance Complaint, available at

http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/denuncia-nordea-csr-eng.pdf

48 Art. 3 Right to Life; Art.17 Right to Property; Art. 19 Right to Freedom of Opinion and Expression; Art. 23 Right to Work; Art. 25 Right Standard of Living;

49 Art. 1 – Obligation to Respect Rights; Art.2 – Obligation to Adopt Internal Measures; Art. 4 – Right to Life; Art. 5 – Right to Physical Integrity; Article 19 – Rights of the Child; Art.25 – Right to Judicial Protection; Art. 26 – Progressive Realization of Economic, Social and Cultural Rights.

50 Art. 1 – Obligation to Adopt Measures, Art. 10 – Right to Health, and Art. 11 – Right to a Healthy Environment

51 Art. I – Right to Life, Liberty and Security of Person; Art. VII – Right to Protection of Mothers and Children; Art. XI – Right to Preservation of Health and Well Being

52 Chapter II, comment 4

The paper mills promise economic growth and development for the locality of Fray Bentos and for Uruguay. Nonetheless the projects' own economists suggest to the contrary – that the majority of the investment will be spent on the purchase of equipment in Europe and that the pulp production will not produce significant profits for local populations or for government revenues, since they sell most of their product abroad, purchase a great portion of their capital in Europe and that they have also negotiated a 25-year tax-free zone to avoid paying local Uruguayan taxes (54). All that will remain in the country of the supposed vast investment will be small revenues for the purchase of locally purchased administrative supplies, the local expenses for construction of the plant, 300 low-wage laborers that will operate the plant, the expected losses to the local economy in the tourism and fishing industries, the illnesses of the local population following exposure to the contaminated air and water, and the strong stench of rotten eggs.

Studies done by the well known Environmental Economist, Sejenovich, suggest that the project will entail economic, social and environmental losses estimated at 1.3 billion dollars in a 25-year period.(55) Furthermore, it should be noted that ALL technological and machinery supplies for the construction of the mills come from European sources, so that a large portion of the 1.8 billion dollar total investment in these mills (1.2 billion of which is Botnia's portion) will be spent in Europe, NOT in Uruguay. For example Botnia has contracted a Finnish chemicals group Kemira, for €60 million to produce the required chemicals and will source 60% of raw materials from plantations owned by Botnia.(56)

Long term worker supply suggest that only 300 or less low paid jobs will be created for permanent operation of the mills. No information has been provided on the job loss that will occur to the many more tens of thousands of local residents of Fray Bentos and Gualaguaychú that depend on the tourism sector for employment, or on other industries, such as agro-industrial sectors (meat, poultry, fish, bees, etc.) and small scale agriculture production that will LOSE employment due to the installation of these mills, generating a net job loss for the region over the long term.

Testimony of other communities around the world and in the region that have previously been affected by similar paper mill industries (57), has alerted the community as to the false promises of these companies which suggest that the paper mills will bring sustainable and progressive economic development, but which in fact bring little in the way of cash injections into the local economy.

Relative to Non-sustainable Development and lax control of environmental, social and health, control and protection.

One of the most broadly accepted definitions of sustainable development is in the 1987 World Commission on Environment and Development (the Brundtland Commission): "Development that meets the needs of the present without compromising the ability of future generations to meet their own needs."

It is worth noting that the project does NOT satisfy the needs of the present since it is working against the interests of the vast majority of the local economy which thrives off of local tourism, let alone abstaining from compromising the ability of future generations to meet their own needs. The project will cause serious economic, social and environmental damage whilst providing few permanent jobs, no tax-income for the state of Uruguay, permanent and accumulating damage to the region's river system and local fish stock among other agro-industrial sectors which stand to be affected by acid rain that will be caused by atmospheric contamination. The project does not meet the paper product needs of affected victims since Botnia will export pulp to make paper solely for European and Chinese markets.(58) The ability of future generations to sustainably meet their own needs is absolutely dependent on the economic, social and environmental qualities of current generations, which the project will significantly degrade.

The *Sección Química Marina del Servicio de Hidrografía Naval* and the *Instituto Nacional del Agua, el Centro de Investigación y Desarrollo de Ingeniería Ambiental del INTI*, and *INIDEP* prepared a joint report providing information on the anticipated contamination of the mills, states that:

The treatment system proposed involves merely the movement of organic and biodegradable matter, permitting refractory and cumulative spillage of organic material of nutrients including nitrogen and phosphorus...

The liquid effluents by Botnia are a mix of industrial and sewage water. There is no indication or measure proposed to disinfect this spillage.

54 Ville Jaakonsalo, PROJECT ORION: Funding a Pulp Mill Investment in Uruguay, Metsä Group Financial Services Oy, [www.finpro.fi/NR/rdonlyres/ C41FF27B-1081-42C6-AC35-17818C8F36B2/1337/VilleJaakonsalo1.ppt](http://www.finpro.fi/NR/rdonlyres/C41FF27B-1081-42C6-AC35-17818C8F36B2/1337/VilleJaakonsalo1.ppt)

55 Available from www.cedha.org.ar/en/initiatives/paper_pulp_mills/

56 Botnia Echo: The Customer magazine of Botnia, 1 : 2005, p16, available at www.metsa-botnia.com

57 For example see the case of pollution and illegality for the pulp mill in Pontevedra Spain (www.apdr.info/Denresiduosence.htm) and the deaths of black necked swans from pulp mill effluent in Chile (http://www.biologynews.net/archives/2005/11/21/pulp_mill_devastates_swans_sanctuary_in_chile.html)

58 Botnia Echo: The Customer magazine of Botnia, 1 : 2005, available at www.metsa-botnia.com

The US EPA establishes limits for DCO (Chemical Oxygen Demand) to ensure minimization of effluent discharge, including toxic organics that are not rapidly biodegradable. Yet, no such limits exist or are stipulated by Uruguayan law, while the control authority has not established any standard on DCO emissions, thereby placing the local population at great risk due to such emissions. (59)

See also Chapter V breaches for evidence concerning lax controls of environmental, social and health control and protection.

Failure to incorporate self-regulatory practices and management systems

Self regulatory practices and management systems for the project are almost non-existent. Orion lacks fully developed environmental action plans and emergency response plans in the event of industrial mishaps, not uncommon in KRAFT mills, and as such, a relationship of confidence in the societies in which the project operates has not been established. Botnia's Environmental Impact Statement suggests safety procedures and emergency plans will be in effect by the operational date (60), but the fact remains that the EIA does not include adverse environmental impacts created by emergency situations in its Environment Action Plans (61), nor Project Specific Major Hazard Assessment in the case for use and for storing, handling and processing of dangerous chemicals (62), both of which are 'fundamental' for decision makers for decision makers to evaluate an enterprises ability to respond to emergency situations when considering project approval. (63)

Turning to the consideration of stakeholders in Botnia's operations (64), the People's Assembly of Gualeguaychú, the largest and most important stakeholder group (65) who have had their faith and trust in the EIA procedure shattered on the more than one occasion after continually denied meeting with the IFC. The IFC failed to show even after the IFC themselves had organized consultation. (66) Even in the case where self regulatory practices exist for social and environmental assessment, they have not been complied with. (67)

Violations of Guidelines' Chapter III Disclosure Policy:

- **No timely, regular or reliable information about the projects, specifically relative to environmental concerns of local community (paragraph 1); and**
- **Poor or no information about project's non-financial information including on environment and social impacts (paragraph 2);**

Project sponsors have not undertaken adequate nor timely communication and consultation with the communities directly affected by environmental policies.(68) An obvious example is the failure to consult and adequately address the concerns the People's Assembly of Gualeguaychú, thus excluding input to terms of reference of all EIA documents and failure to take into account stakeholder concerns. (69)

59 GTAN/DA/17/3-11-05 *Grupo Técnico Alto Nivel – Delegación Argentina*

Consideraciones sobre propuestas de emisiones de efluentes líquidos a descargar al Río Uruguay y afectación a la calidad del recurso - Fuente: Lic. Lucio Janiot, Jefe de la Sección Química Marina del Servicio de Hidrografía Naval; Ing. José Lobos, Instituto Nacional del Agua; Ing. Luis de Tullio, Centro de Investigación y Desarrollo de Ingeniería Ambiental del INTI; Lic. Alberto Espinach, INIDEP - 23 páginas.

60 Botnia Environmental Impact Assessment Summary, 2004/14001/1/01177, p80 referring to safety procedures

61 IFC Environmental and Social Review Procedure, December 1998, Guidance note C

62 IFC Environmental and Social Review Procedure, December 1998, Guidance note E

63 IFC Environmental and Social Review Procedure, December 1998, Guidance note C, paragraph (1e)

64 OECD Guidelines for Multinational Enterprises, Chapter II, Comment 3

65 The people's assembly of Gualeguaychú is a non-profit, non-political organization specifically created from concern about the effects of the projects. The group officially represents 39 633 residents, not to mention the countless who were unable to sign due to incapacity, or other reasons. Website: www.noalapelera.com.ar

66 Letter from CEDHA on behalf of the Asamblea to the IFC

67 IFC Operational Policy 4.01 and IFC Operational Policy 7.5 have been repeatedly violated: see CEDHA Comment to the CIS (www.cedha.org.ar/en/initiatives/paper_pulp_mills/denuncia-cis-violaciones-procesos-cfi-eng.pdf) which relies heavily on findings of the CAO Preliminary Assessment Report . Botnia's environmental policy has also been violated, such as the commitment to use of best available technology and to handle environmental issues openly in cooperation with ... the general public and the authorities.' See: www.metsabotnia.com/en/default.asp?path=204,215,263

68 OECD Guidelines, Chapter V, paragraph 2b

69 Letter to World Bank President: Comments to Consultation Process and Cumulative Impact Study; Follow-up to Failed IFC Meeting with the Assembly of Gualeguaychú on Cellulose Case (Botnia/ENCE-Uruguay) http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/letter-cedha-ifc-feb-2006-final.pdf

The IFC, which is considering financing to Botnia, albeit which has now suspended its financing decision pending new findings that are showing that the previously commissioned cumulative impact studies are still insufficient. Stakeholder in Argentina have lost confidence in the failed, incomplete, biased and non-transparent consultation process, which has from the beginning and with Botnia's involvement failed to respect the IFC's own disclosure policy. This was also the opinion of the CAO, which strongly criticized project sponsors and the IFC for not complying with this policy. .

Paragraph 12 of IFC Environmental Assessment Policy 4.01 expands on sound environmental practices that project sponsor are obliged to undertake when engaging stakeholders in the consultation process.

One of the most blaring violations of consultation policy was the failure of project sponsors to consult with affected communities before designing EIAs, which is mandated by IFC's policy regarding Category A Projects (the most contaminating projects). According to IFC policy,

“For Category A projects, the project sponsor consults these groups at least twice: (a) shortly after environmental screening and before the terms of reference for the EA are finalized, and (b) once a draft EA report is prepared.” (70)

As is clear from the IFC Environmental Assessment Operation Policy, EAs are to be conducted, **prior to** investment to establish project 'soundness', which is arrived at by 'focusing on economic, financial, technical, legal, environmental and social issues during the project appraisal process.' (71) Naturally, IFC environmental and social policies are **fundamental** to project appraisal, supervision and approval process'. Stakeholder consultation **prior to the execution of impact studies**, is also, by nature and logical order, *critical* to ensure that assessment, appraisal, and project preparation are informed, focused and pertinent to the nature of local concerns that may exist regarding project impact to local livelihood, health, and the environment of impacted communities. These fundamentals as well as order and logic of procedure are key dimensions of IFC procedure on EAs and are protected by international norms and by IFC environmental and social safeguard policies. Finally, since these are Category A projects, special attention and extra rigor is needed to ensure that these highly sensitive projects that “are likely to have significant adverse environmental impacts” are properly designed to minimize adverse affects.

Violations to the Guidelines stakeholder consultation requirements are some of the most glaring concerning violations, as they have limited and hindered the freedom of expression and critical participation of the most concerned stakeholders, many of the groups, communities, institutions, and individuals which are now actively opposing these projects. These violations included withholding of information that should have been made available to interested parties; misrepresenting the opinions and concerns of stakeholder communities in reports to the IFC and Board of Directors (Botnia suggested that there was “wide public support”, when in fact there is wide public **opposition** to the paper mills); the blatant failure to consult with stakeholders in project-affected areas of Argentina; and a glaring omission of consultations with the Assembly of Gualaguaychú. Formed in 2003, the Assembly is a 40,000 strong organization formed with the specific, non-political goal of preventing damage to the region's tourist driven economy, maintaining a pristine environment and ensuring the health and safety of the locale's residents. It is a legitimate stakeholder group with genuine concerns about victims affected within the projects' area of influence. The assembly was not consulted before the EA terms of reference were finalized, and as yet have not been consulted since the draft CIS has been prepared. Finally the project has shown no adherence to the rules of group consultation 12(a), (b) of the IFC Policy above.

Violations of Guidelines' Chapter V Environment recommendations:

Botnia's Violations: Finnvera's responsibility as member of the supply chain

- **No consideration for host government's obligations under relevant international agreements, principles, objectives and standards (introduction);** *(already cited under General Policy violations above)*
- **No effort to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development (introduction);** *(already cited under General Policy violations above)*
- **Failure to collect and adequately evaluate information regarding project impact on environment, health, and safety dimensions (paragraph 1a);**
- **Failure to take into account, the legitimate concerns of the public regarding environment, health, and economic livelihoods to be impacted by project (paragraph 3);**
- **Failure to engage in adequate communication and consultation with affected communities (paragraph 2b);** *(already cited under Disclosure Policy violations above)*

70 IFC Operational Policy 4.01

71 IFC Environmental & Social Review Procedure, para 3, p1

- **Failure to prepare an appropriate environmental impact assessment that considers preventative measures (paragraph 3).**
- **Failure to base investment decisions on full scientific certainty regarding environmental and social impacts of project investment (paragraph 4);**
- **Failure to develop a contingency plan to prevent and control serious environmental and health damage for project operations including relative to accidents and emergencies (paragraph 5);**
- **Failure to utilize best available technology (paragraph 6);**
- **Failure to prevent double standards pertaining to international operations (paragraph 6a, commentary 40);**
- **Failure to consider foreseeable environmental, health and safety impacts paragraph 3); and**
- **Failure to embark on sound environmental management (introduction, commentary 31).**

Relative to failure to collect and adequately evaluate information regarding project impact on environment, health, and safety dimensions

It is clear from the project history and evolution in design and implementation, that Botnia took advantage of lands and woodchip processing facilities and its existing port at the preexisting plant location, to transfer contaminating technologies south, where environmental controls are less strict and where they are more able to utilize ECF technology, as opposed to Total Chlorine Free technology. It is also clear that in doing so, site location would be a critical issue, especially considering that highly contaminating industries must be placed far from communities and in places where existing local industries will not be adversely affected.

One page is devoted to siting issues in Chapter 3 of the Orion EIA which fails to discuss the siting issues relative to the expected impacts of the mill on tourism and local communities.⁽⁷²⁾ The insufficient analysis only considers the benefits to Botnia of locating the plants at the present site. It can be said that Botnia knowingly ignored difficult siting questions in its EIAs, and knowingly left many local stakeholders outside of its consultation process. Additionally, Botnia failed to consider the impacts its contamination would have on the most important and most obvious industry in the region, which is tourism. This has been one of the main criticisms of the CAO.⁽⁷³⁾ For this reason, Botnia failed to conduct necessary impact studies, failed to consider issues such as the growing adverse impact Eucalyptus tree plantations are having on subterranean water resources, leaving small farmers without water for local crops-such as in the community of Mercedes Uruguay, where due to growing eucalyptus tree farming already existing smaller-scale pulp and paper mills, local farmers have been left without subterranean waters. Additionally air quality and water impacts to the Uruguay River will also directly affect local tourism by contaminating beaches, creating awful rotten egg smell, polluting river waters, washing up algae on the beaches, and offering a terrible skyline of industrial smoke to tourist visitors to the pristine beaches of Gualaguaychú and Fray Bentos, all hardly conducive to promote tourism. The arrival of Botnia, and the combined production with ENCE, would make this initiative the largest pulp paper production scheme in the world. If water, land and air quality problems already exist with much smaller scale production, in places like Mercedes, only 40 kilometers away from Fray Bentos, we can only expect much worse with the added production of the Botnia plant.

Finally, relative to public potable water supply, which is taken less than 5 kilometers away “downstream” from the Botnia plant site as well as worker safety considerations are also knowingly and willfully ignored by Botnia in its project design, preparation and implementation.

Relative to taking into account the legitimate concerns of the public regarding environment, health, and economic livelihoods to be impacted by project.

The World Bank’s CAO recognizes the “legitimate voice” of local stakeholders, and although Botnia knew of growing and massive opposition to its investment immediately across the river in the Argentine community of Gualaguaychú, it knowingly and willfully chose to ignore the voice of an entire community and region, legitimately concerned with the potential environmental and health impacts of what is already globally recognized to be a contaminating industry to the health and livelihoods of local communities. Public concern centered not only around health and environmental impacts of what will be the world’s largest cellulose production, but also expressed concern over the economic livelihood of local residents who are dependent on the region’s pristine environmental conditions (air, land and water) to attract the large number of tourists that visit the region each year to swim in the river, fish, rest on the riverside and utilize local environmental resources.

72 . Uruguay EIA, Capitulo 3, Ubicación y descripción, p2
[www.ifcext/lac.nsf/AttachmentsByTitle/Uruguay_EIA_chapter3_Spanish/\\$FILE/Uruguay_EIA_chapter3_Spanish.pdf](http://www.ifcext/lac.nsf/AttachmentsByTitle/Uruguay_EIA_chapter3_Spanish/$FILE/Uruguay_EIA_chapter3_Spanish.pdf)

73 CAO Preliminary Assessment Report p9, http://www.cao-ombudsman.org/html-english/documents/preliminary_assessmentFINAL.pdf

One example of the enormous extent of stakeholder opposition was clearly illustrated when over 50 000 concerned residents blocked the international bridge between Uruguay and Argentina protesting against the installation of the projects.(74) These residents legitimately concerned about the adverse affects of the projects have been marginalized and ignored by the environmental impact process.

The high temperatures of the paper production processes will cause the **production of dioxins. Dioxins are extremely toxic**, persistent and carcinogenic and exposure to minute quantities can have the effects set out below. The known effects of dioxins on fish and mammals are wide-ranging and they are suspected of causing miscarriages, birth defects, liver damage, skin complaints and behavioral and neurological problems in humans. Certain of the substances to be discharged in waste water, are soluble so that they accumulate in the tissues of living creatures and pass through the food chain including through bioconcentration in fish.(75) They are known to have effects on the nervous system as well as on immunological and reproductive functions, and are carcinogenic.(76)

It should be further noted that as stated by the Environmental Cooperation Commission, dioxins and furans, present and emitted in pulp paper production, increase the likelihood and have been shown to cause cancer.(77) The report concludes that: (a) ... prenatal exposure to dioxins, furans and BPC have been associated to a variety of immunological complications, and in the neurological development of newborns, increasing chances of adverse health problems (diabetes, cancer) as well as impacts to workers exposed to high levels of TCCD [dioxins] and other chemical industrial substances...". This has been further verified as stated in the North American Plan of Action on Dioxins and Furans,(78) and by the Report of the Commission of Environmental Cooperation (CCAAN).

Pulp Mill bi-products also have a negative effect on the endocrine system of local fish populations. (79)

Relative to failure to base investment decisions on full scientific certainty regarding environmental and social impacts of project investment and to consider appropriate and available evidence.

Botnia's EIA was observed by the Uruguayan Environmental Ministry as not having resolved basic questions of excess contamination limits on many fronts, yet no adequate response was ever given by Botnia as to how these excesses would be addressed. Further, on issues such as subterranean water supplies, already mentioned above, Botnia is aware that eucalyptus tree plantations place undue pressure and risk on subterranean waters, something recognized by the Draft IFC Cumulative Impact Study (CIS) Annex B on Plantations. The CIS concludes that not enough information is available to know for certain if such impacts will exist (80) and hence, writes off this risk as uncertain. This oversight of Botnia might not be so severe if no information were available on present conditions, however, Botnia is aware, as is the IFC, and the general public, that the growing eucalyptus industry is already showing strains on subterranean aquifers in the immediate area, as local farmers in Mercedes Uruguay have already run out of water for local crops due to Eucalyptus plantations nearby. Botnia will aggravate this situation.

Relative to the Failure to develop a contingency plan to prevent and control serious environmental and health damage for project operations including relative to accidents and emergencies

The World Bank as well as the appropriate Uruguayan state agency has pointed out the failure of the project sponsor (Botnia) to develop a contingency plan to prevent serious environmental harm. The project has also ignored security risks relative to potential accidents (which are common in the cellulose industry). Nor has the project sponsor provided for an environmental fund to offset expected harms. (81)

74 www.uruguay.indymedia.org/news/2005/05/34367.php

75 www.foe.co.uk/resource/briefings/consequence_pulp_paper.html

76 Medio Ambiente Y Calidad De Vida, Volume 2 No. 13, Jan-April 2005, Biblioteca Del Congreso Nacional, Departamento De Estudios, Extensión Y Publicaciones, Unidad De Extensión Y Publicaciones

77 Expediente de nominación sobre dioxinas y furanos Presentado por Canadá al Grupo de Trabajo sobre Manejo Adecuado de Sustancias Químicas

78 Publicado por la Commission for Environmental Cooperation of North America 393, rue St-Jacques Ouest, bureau 200, Montréal (Québec) Canada H2Y 1N9. http://www.cec.org/files/pdf/POLLUTANTS/dioxins_es.pdf

79 Environment Canada Study, www.ec.gc.ca/eds/fact/broch_e.htm#title3

80 Annex B Plantations. Pg. 12. of IFC Cumulative Impact Study;

[http://www.ifc.org/ifcext/lac.nsf/AttachmentsByTitle/Uruguay_PulpMills_AnnexB/\\$FILE/CIS_AnnexB_plantations.pdf](http://www.ifc.org/ifcext/lac.nsf/AttachmentsByTitle/Uruguay_PulpMills_AnnexB/$FILE/CIS_AnnexB_plantations.pdf)

81 Botnia Environmental Impact Assessment

http://www.ifc.org/ifcext/lac.nsf/Content/Uruguay_PulpMills_Background_Docs

Relative to failure to utilize best available technology.

Despite Botnia's claim to the contrary, the project is NOT designed with best available technology, since it is using Element Chlorine Free (ECF) technology, which is a "second-tier technology" which is not the best available technology with regards to the use of chlorine and persistent organic pollutants, and goes against the World Bank's recommend use of Total Chlorine Free (TCF) technology in closed circuit systems and the use of ozone in processing, instead of chlorine.(82) Further, the IFC's own hired Canadian consultant concluded in his report presented on March 27th, 2006, to the IFC on the Cumulative Impact Studies that "there is a lack of supporting information in their documents to show that the mills would actually use BAT in all aspects of their designs and operations".(83)

Failure to Prevent Double Standards

Chapter V of the Guidelines requires world-wide environmental standards for multinational enterprises to prevent the incorporation of double standards, resulting in the exportation of polluting manufacturing process to nations with lower environmental standards, motivated primarily by cost. (84) Project sponsor Botnia S.A. promotes double standards with its decision to use Elemental Chlorine Free (ECF) technology in the Orion mill. ECF is a cheaper(85), second-tier (86) form of technology that results in greater contaminant discharges and more severe environmental and health effects. (87)

Operational since 1996, Oy-Metsa Botnia's Rauma pulp mill in Finland is the only mill commissioned by Oy-Metsa Botnia in the last 20 years. Unlike the Orion project, Oy-Metsa Botnia's newest pulp mill uses the higher standard TCF technology (88) recommended by the World Bank's Pollution Prevention and Control Handbook. Chapter V Commentary stipulates that where host countries do not have the regulatory framework established to ensure an equal level of environmental performance, the multinational enterprise must still adhere to the highest operating environmental standard within the company. (89) In this sense double standards refer to the transboundary operations of the enterprise, not to the difference in standards imposed by host countries. Subsequently, Oy-Metsa Botnia, as a self-proclaimed leader in environmentally friendly pulp mill technology is obliged by the Guidelines to raise overall performance, applying the best available technology it uses in its Rauma Mill in Uruguay.

Failure to consider foreseeable environmental, health and safety impacts

The decision-making process, largely connected with environmental assessment, has categorically failed to appropriately and adequately address foreseeable environmental, health and safety impacts associated with the processes of the enterprise. (90) An EIA has been prepared for Orion, yet it fails to take into account legitimate evidence which exists in the form of studies undertaken by the Argentine Foreign Ministry (91), the respected environmental economist Sejenovich (92), Cordoba National University (93), and the High Level Technical Group of the Binational Commission (94), which all depict alternative conclusions, suggesting acute damage to the factors that form the triple bottom line for EIA.

Despite the recognition of prestigious institutions such as the EPA, BC Cancer Agency etc, as regards health implications of Kraft technology used in the paper industry, which will be employed by these mills, the CIS does not examine the impact on human health and safety' such as cancer (95), neurological deficits (96), depression or suicide (97)caused by Kraft pulp mills.

82 World Bank Pollution Prevention and Abatement Handbook, Pulp and Paper Mills

83 see: http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/uruguay-experts-report-eng.pdf, page 2

84 OECD Guidelines for Multinational Enterprises, Chapter V, Paragraph 6a

85 McGinn, AP, *Why Poison Ourselves? A Precautionary Approach*

to *Synthetic Chemicals*, World Watch Paper 153, November 2000, p27,

www.usgbc.org/Docs/LEED_tsac/PVC/CMPBS%20Rebuttal%20Attach%20%20Worldwatch.pdf

86 As above, p26

87 As above, p26

88 www.metsabotnia.com/en/default.asp?path=204,208,234

89 OECD Guidelines for Multinational Enterprises, Chapter V, Commentary 40

90 OECD Guidelines for Multinational Enterprises, Chapter V, Point 3

91 http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/analisis-ministerio-exterio-spa.pdf

92 see: http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/sejenovich-report-spa.zip

93 http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/informe-papelera-unc-cordoba-spa.doc

94 http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/informe-comision-binacional-argentina-spa.pdf

95 BC Cancer Agency, Study Shows High Cancer Risk for Pulp Mill Workers, www.bcen.bc.ca/bcerart/Vol7/studysho.htm

96 Negative Health Effects of Malodours in the Environment, A Brief Review from the Journal of Neurology, Orthopaedic Medicine and Surgery (1998).

97 www.medicalnewstoday.com/medicalnews.php?newsid=33330

Failure to embark on sound environmental management

It follows that sound environmental management has not taken place. Instead of improving environmental performance, Botnia S.A. is reverting to less-than-advisable, outdated, second-tier technology to help enhance profits in a developing country with less stringent environmental safeguards. Botnia S.A.'s environmental management system has not ensured that appropriate attention is given to important environmental issues.

Commentary to Chapter V stipulates that 'sound environmental management' be interpreted in its broadest sense, and applying this sentiment, it is clear project sponsors fails its environment management obligations with respect to its direct and indirect environmental impacts over the long-term.

Failure to consider preventative measures

In light of the obvious threat of serious damage to the environment and human health and safety, project sponsors have failed to investigate cost-effective measures to prevent or minimize damage. Furthermore, the Guidelines espouse that the lack of full scientific certainty (as is propagated by the flawed and policy non-compliant CIS) is not a reason for postponing decisions to mitigate environmental damage. (98) Additionally, in complete contravention of IFC policy the CIS does not take into account the no-project situation nor adequately consider effects on competing industries. (99)

Other Considerations

Relative to Bribery Allegations

While a final judicial verdict has not been reached on allegations of bribes taken to approve installation permits to the project sponsors, it should be brought to the attention of the National Contact Point that an Argentine prosecutor handling the criminal complaint brought against Botnia executives, suggests that an Uruguayan official may be involved in illicit handling of project permits. An open Uruguayan civil suit filing now being handled by a Uruguayan Prosecutor, is also grounded on such claims. (100) If so, the project may eventually be implicated in Guideline violations pertaining to the offering of improper financial incentives and it will be open to the applicant to submit an addendum to the specific instance.

Further, a recent national television broadcast was offered by Channel 9 in Argentina, showing Botnia's Director in Uruguay, Carlos Faroppa in a conversation, allegedly with an Uruguayan environmentalist Marcel Cayrus, from Fray Bentos, who brought the claim to Channel 9, discussing an alleged payment of 60,000 pesos each to two environmentalists (including himself) by Faroppa of Botnia to subdue protests against the installation of the plants in Fray Bentos. Botnia has rejected these allegations

Relative to the Uruguay Constitution

Taking into account all available evidence, the project is at serious risk of violate norms incorporated the Uruguayan Constitution, namely Article 44 'right to health', Article 47 1(b) that establishes the necessity of sustainable development especially pertaining to the waterways, whilst guaranteeing the involvement of civil society and the public in decision-making processes; and Article 47 1(d) prioritizing the supply of potable water over other factors such as economic development. (101)

Relative to Project Funding

Oy-Metsa Botnia will receive 60% of its funding for the entire project from shareholders within the Botnia S.A. conglomerate, and as a result Guideline compliance is one of the few ways to affect directly affect corporate behaviour of Finnish Companies in the global south. Other financiers, such as ING Group, BBVA and Nordea have been made aware of IFC Policy Breaches and violations to international law. ING have withdrawn from the position of lead-arranger for Botnia's external finance, worth US\$480million to the project.

Parallel Legal Proceedings

98 OECD Guidelines for Multinational Enterprises, Chapter V, Point 4

99 IFC Environment Assessment Policy 4.01, paragraph 6

100 see: http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/denuncia-uruguay-viana.pdf

101 Available at <http://www.georgetown.edu/pdba/Constitutions/Uruguay/uruguay04.html>

The applicants have stated the reasons why the submission before the Inter American Commission on Human Rights and the planned case before the International Court of Justice at the Hague are outside the scope of the Guidelines and their purposes. Furthermore, the Finnish NCP should be aware of the Dutch NCP's stance whereby parallel legal proceedings will not be a reason to reject a specific instance.(102)

Obligations of Administrative Bodies

The National Contact Point is an administrative body and part of the Finnish government and has responsibility to protect its citizens and the wider global community from actions that violate Finnish National Law. CEDHA requests that the Public Prosecutor is made aware of the potential breaches of the Finnish law referring the *Act on the State's Export Credit Guarantees* (422/2001) and the national implementation of the *International Covenant on Economic Cultural and Social Rights*.

Relative to the Aarhus Convention

According to Commentary 30 of the Guidelines, Chapter V of the Guidelines 'take into account' the Aarhus Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters (Aarhus Convention). Finland is a ratified party to the Aarhus Convention and Finnvera is a wholly owned Finnish company and therefore falls within the scope of the Aarhus Convention. The principles of Aarhus include public participation and access to information such that information supplied by Finnvera and the project sponsors, and public participation surrounding environmental decision making process, must be complied with by Finnvera. The Finnish Ministry of Environment and Finnvera have only partially responded to an information request by CEDHA about the consideration of the project including Environmental Impact Assessment documents and internal procedural guidelines on their own assessment and until a full response is received, neither has fully complied with the Aarhus Convention. (103)

Conclusion

It is clear from the available evidence, from reports of the World Bank's CAO, from diplomatic complaint action by Argentina against Uruguay for violations to the Uruguay River Treaty as well as from the massive public uprising that have resulted from Botnia's investment, that Botnia's project is riddled with problems, inconsistencies, violations of IFC policy, World Bank best practice and international law. It is the source of large public concern and opposition and is resulting in worrisome and escalating social, economic, and diplomatic tension. The project's illegitimate design has also been used as an example during the last EU-Latin American President's Summit in Vienna, to show how the industrialized world, is systematically exporting its contaminating industries to the developing world.

Given that the IFC has not yet concluded its decision on whether or not to finance this project, and that the project consideration has halted due to these evident problems, and the failure of negotiations between Argentina and Uruguay and the presentation of the complaint by Argentina due precisely to this project to the International Court of Justice (at the time of this filing), we call not only for a review by the Finnish OECD NCP of Finnvera's role in this project, but also for the NCP to intervene in order to call attention to the many problems and inconsistencies that this project posits in relation to the OECD Guidelines for Multinational Enterprises. The urgency of this matter cannot be understated as Botnia has recently initiated construction of the Orion plant. The National Contact Point in an advantageous position to influence Finnvera and Botnia in this project to ensure the full respect for human rights and international environmental law, and the protection of local stakeholder communities.

It has come to our attention that Finnvera is awaiting a decision by the IFC to decide to finance Botnia, however the gross violations of IFC policy which have been recognized by the CAO and which continue to surface as identified by the IFC itself and by the consulting groups they have hired suggest to us that Finnvera can do no other than to withdraw its consideration of its support to Botnia, since Finnvera must not publicly appear to be considering supporting a project with such clear violations of environmental and social policy.

On the particular issue and relevance of the role played by Export Credit Agencies (ECAs), it is clear that the place of an ECA in international development finance, makes the ECA a key actor, lowering investment risk and making viable projects that might otherwise not receive support solely on their own merit. In this regard, and considering the widespread disputes caused by this project, the role played by Finnvera make it an especially sensitive issue and extremely pertinent for NCP involvement in the affair.

102 Communication with OECD Watch

103 Ministry of Environment Finland Reply to CEDHA information request:

http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/reply-finland-ministry-of-environment.pdf and

Finnvera reply to CEDHA information request: http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/finnvera-reply.pdf

Following the Procedural Guidance on Implementation of Specific Instances, which requires an initial assessment by the National Contact Point of whether the issues raised merit further examination and respond to the party or parties raising them in an efficient and timely manner, we request a written response indicating how the National Contact Point (NCP) intends to proceed. Please address this correspondence to the Center for Human Rights and Environment, Av General Paz 186 – 10 A, Córdoba 5000, Argentina.

Sincerely,

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