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FINLAND'S NATIONAL CONTACT POINT'S STATEMENT ON THE SPECIFIC INSTANCE SUBMITTED BY CEDHA, AN ARGENTINIAN NON-GOVERNMENTAL ORGANISATION, REGARDING BOTNIA S.A/METSÄ-BOTNIA OY'S PULP MILL PROJECT IN URUGUAY

1. Background

1.1. Specific Instance and the decision on its examination

On 18 April 2006, the Center for Human Rights and Environment (CEDHA), an Argentinian non-governmental organisation, submitted to Finland's National Contact Point applying the OECD Guidelines for Multinational Enterprises a Specific Instance regarding the possible non-compliance of an enterprise called Botnia S.A/Metsä-Botnia Oy with the Guidelines for Multinational Enterprises when building a pulp mill in Uruguay.

On 19 June 2006, Finland's National Contact Point (the Ministry of Trade and Industry) decided to deal with the Specific Instance submitted by the CEDHA. In the decision it was considered that even though the building project is implemented in Uruguay, Finland's National Contact Point has the authority to deal with the Specific Instance, due to the fact that Uruguay does not have a corresponding National Contact Point, and because Botnia S.A/Metsä-Botnia Oy can be regarded as having a connection to Finland, e.g. through ownership. Furthermore, it was considered that an Argentinian non-governmental organisation has the authority to submit the Specific Instance, since it was considered that the effects of the pulp mill also extend across the Argentine border. On the other hand, on 8 November 2006, Finland's National Contact Point decided to dismiss the corresponding Specific Instance regarding Finnvera Oyj, which was submitted by the CEDHA.

1.2. Procedure in Finland's National Contact Point

The Specific Instance has been dealt with on many occasions by the Advisory Committee on International Investment and Multinational Enterprises of Finland (MONIKA), which operates under the auspices of the Ministry of Trade and Industry, and which has an advisory role in dealing with corresponding Specific Instances. In co-operation with the Ministry of Trade and Industry, this Advisory Committee also organised a hearing on 30 Au-

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gust 2006, which included representatives from both the CEDHA and Botnia S.A/Metsä-Botnia Oy. An English memorandum of the hearing was submitted to different parties. In connection with the hearing, the CEDHA distributed a memorandum dated 27 August 2006 to provide additional viewpoints in support of the Specific Instance. Accordingly, Botnia S.A/Metsä-Botnia Oy set forth its views in the hearing and provided, in the form of a letter dated 15 September 2006, the Advisory Committee with its written responses to the arguments made in the Specific Instance by the CEDHA. The hearing was also attended by representatives from Sweden's and Norway's National Contact Points, due to their involvement in the pending Specific Instance regarding Nordea Bank, submitted by the CEDHA.

During the procedure, Finland's National Contact Point has been in contact with the authorities of Uruguay. Among others, the representatives from the Ministry of Trade and Industry have met with Uruguay's Deputy Foreign Minister Belela Herrera in Helsinki on 28 September 2006. Furthermore, a representative from the ministry has met with representatives from Argentina's National Contact Point and Spain's National Contact Point in Paris.

On 22 September 2006, after hearing the MONIKA Advisory Committee, Finland's National Contact Point came to the conclusion that the hearing organised on 30 August 2006 proved that the parties involved do not reach agreement on the issues raised, in spite of the fact that the National Contact Point has aimed to offer good offices to help the parties involved resolve the issues, in accordance with the Procedural Guidance related the OECD Guidelines for Multinational Enterprises. This is why Finland's National Contact Point decided to start preparing a statement on the Specific Instance submitted by the CEDHA.

1.3. Other forums

On 4 May 2006, the Argentine Government submitted to the Hague International Court of Justice a Specific Instance regarding Uruguay's possible non-compliance with the Uruguay River Treaty when it authorised Botnia S.A/Metsä-Botnia Oy to build a pulp mill. In July 2006, the International Court of Justice found, contrary to the request of the Argentine Government, that Uruguay does not need to halt construction work pending a final decision by the Court. It will take probably two-three years for the Hague court to grant the final decision.

As member institutions of the World Bank Group, IFC and MIGA have considered their involvement in the financing of Botnia S.A's pulp mill. IFC commissioned an independent Canadian consult to prepare a study on the environmental impacts of the pulp mill. The results of this IFC consult study, dated 12 October 2006, are favourable to Botnia S.A. According to this study, the pulp mill project is environmentally sound and meets the other World Bank Group guidelines as well. On 21 November 2006, IFC and MIGA decided to provide the project with a \$170 million loan and guarantees worth up to \$350 million.

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2. Issues addressed in the Specific Instance submitted by the CEDHA

What follows is an account of the issues relating to the possible non-compliance with the OECD Guidelines, as addressed in the Specific Instance submitted by the CEDHA. According to the CEDHA, Botnia has violated the guidelines especially with respect to Chapter II 'General Policies', Chapter III 'Disclosure', Chapter V 'Environment' and Chapter VI 'Bribery'. Together with other relevant viewpoints, Botnia's comments submitted to the National Contact Point on 15 September 2006 have been taken into account when dealing with these issues.

II General Policies

The starting point of the general policies is the principle that multinational enterprises should take fully into account established policies in the country of investment and consider the views of other stakeholders. Thus, with regard to Botnia's pulp mill project, the corresponding general policies are to be assessed primarily in terms of their realisation in Uruguay, which is the host country in this case.

What follows is an account of the arguments relating to general policies as set forth by the CEDHA, primarily from Argentina's viewpoint:

- II.1. Enterprises should contribute to economic, social and environmental progress with a view to achieving sustainable development.

In this context the CEDHA particularly refers to the Uruguay River Treaty between Argentina and Uruguay. With regard to Botnia's pulp mill project, however, it must be considered that it is the Uruguayan Government and not Botnia S.A that has the primary responsibility to comply with the obligations of the Uruguay River Treaty. Botnia S.A has been granted all the needed permits for the project by the Uruguayan Government, and it is committed to comply with all the related obligations. The enterprise must be able to trust that the Uruguayan Government has taken into account all its international contractual obligations in permit proceedings. This is also proved by the fact that it is the Uruguayan Government that is the defendant in the case brought in the Hague International Court of Justice, instead of Botnia S.A.

- II.2. Enterprises should respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments.

The CEDHA considers that Botnia's pulp mill project violates the human rights of the Argentinians living close to the mill by harming their quality of life, environment and livelihood. In this context it must be also noted that aspects related to human rights are to be discussed primarily from the viewpoint of the State of Uruguay. With regard to its own operations, Botnia is committed to respecting human

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rights in all of its operations, in accordance with the international obligations and contracts of the host states. Botnia S.A has not appeared to violate human rights as specified in the OECD Guidelines, neither in Uruguay nor in Argentina.

- II.5. Enterprises should refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to environmental, health, safety, labour, taxation, financial incentives, or other issues.

In the Specific Instance submitted by the CEDHA it is considered that Botnia's pulp mill project will cause serious economic, social and environmental damage to Uruguay whilst providing few permanent jobs and no tax income for the State of Uruguay. In this context the CEDHA refers e.g. to the negotiated 25-year tax-free zone. However, the exemption from income tax granted to Botnia is in accordance with Uruguayan legislation. This legislation on free trade zones originally came into effect as early as in 1923, and it has been applied to a number of different projects. Furthermore, it must be considered that the value of other types of tax income and benefits to Uruguay related to the pulp mill investment are many times higher than the value of exemption.

In accordance with the principles of free movement of capital, an enterprise has the right to invest in a country attracting investments with tax incentives, and also otherwise providing strong government support to the investment in question. Possible unhealthy competition caused by taxation and state support can be tackled by means of mutual arrangements between countries and international agreements. Neither can differences in wage levels serve as an obstacle to investing. According to various studies, international investments have usually raised the local wage level. The Botnia construction site currently employs 4 000 workers, 90 percent of whom are local Uruguayans. The positive impact of the mill project on Uruguay's gross domestic product has been estimated to be about 2 percent. Finland's National Contact Point regards the positive economic effects of the mill project on Uruguay as significant.

III Disclosure

- III.1. Enterprises should ensure that timely, regular, reliable and relevant information is disclosed regarding their activities, structure, financial situation and performance.

The CEDHA considers that Botnia S.A has failed to provide sufficient information especially for communities and persons subject to the possible harmful effects of the mill project on the Argentine side of the border. Botnia S.A, on the other hand, states that since October of 2003, it has been implementing open and proactive communication policies reaching Argentina as well. Botnia S.A has provided the National Contact Point with a list of its communication projects. Botnia S.A has also organised several public hearings in Fray Bentos, to which various parties from Argentina have been invited as well.

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When assessing the operations of Botnia S.A, local circumstances and their changes need to be taken into account. On the basis of the information available, it seems that the public has been informed of the project on an extensive and regular basis. Of course, it is always possible to increase and improve communication to ensure the best possible result. The development of the dispute into a conflict between two states has made communication more difficult. Certain measures taken on the Argentine side of border, such as the blockade of the bridge over the boundary river, have in many cases prevented Argentinians from participating in the informative meetings organised on the Uruguayan side and also prevented unbiased coverage in the Argentine media.

V Environment

In the Specific Instance the CEDHA considers that Botnia's project has significantly violated the environmental recommendations of Chapter V of the OECD Guidelines. With regard to environmental aspects, the 12 items listed in the Specific Instance by the CEDHA refer to Botnia's alleged failures to comply with the recommendations. The National Contact Point has asked for a statement on environmental impacts of the project from the Finnish Ministry of the Environment (9 November 2006). According to this statement, several environmental impact assessments on the project indicate that it is based on the use of the best technology available (IPPC-BAT2001) in accordance with the European Directive on Integrated Pollution Prevention and Control (Directive 96/61/EC). The pulp mill project also meets the requirements of USEPA (United States Environmental Protection Agency).

The project has involved several extensive environmental impact assessments that have not revealed anything significant to criticise Botnia S.A for. It must be considered that Botnia S.A has been operating in accordance with the principles of sound environmental management as well as the OECD Guidelines with regard to environmental viewpoints. This is also proved by the fact that IFC and MIGA have decided to provide financing for the project. On the other hand, in projects like this openness and, success in project communication, in utilisation of impact assessments and in co-operation with interest groups in the target area during the project, are also significant. Furthermore, it is worth mentioning that Finnish environmental authorities have provided Uruguayan environmental authorities with education in the supervision and control of pulp mills.

VI Bribery

In its Specific Instance the CEDHA has also suggested that a person connected to Botnia S.A has been involved in the bribery of local parties in relation to issues concerning the enterprise. Correspondingly, it has been argued that a Uruguayan official is about to be charged in Argentina with illicit handling of project permits. However, the CEDHA has failed to provide any evidence on the alleged bribery,

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and there are no ongoing official proceedings related to either of the cases. On the basis of the information available, the bribery claims made by the CEDHA have not been proved to be true.

3. Statement of Finland's National Contact Point

The Specific Instance submitted by the CEDHA refers extensively to the principles and recommendations of the OECD Guidelines, concluding that Botnia S.A has violated a number of principles and recommendations. To support this, the Specific Instance contains references to several complaints drafted by the CEDHA, the legal process in the Hague International Court of Justice and the World Bank's requests for additional assessments. Finland's National Contact Point considers that the evidence presented does not prove that Botnia S.A has failed to comply with the OECD Guidelines. The OECD Guidelines do not aim to create obstacles for international investments but to ensure that the operations of multinational enterprises are in harmony with government policies, to strengthen the basis of mutual confidence between enterprises and the societies in which they operate, to help improve the foreign investment climate and to enhance the contribution to sustainable development made by multinational enterprises.

Enterprises have to be especially careful when involved in investment projects subject to risks related to politics and international law. However, it is always the task of the host country of the investment, in this case that of Uruguay, to pay attention to political viewpoints. With regard to Botnia's pulp mill project, the Uruguayan Government has by no means questioned the investment. On the contrary, it has supported the implementation of the investment and seen the economic and other benefits.

Due to its big size, the pulp mill project is bound to have a variety of effects on the surrounding society. The project is committed to strict international criteria in environmental impact management. Accordingly, the harmful social effects of the project are minimal, whereas its economic benefits are extensive. Even though most of the benefits in this case are reaped on the Uruguayan side of the border, a significant part of the benefits might be realised in Argentina as well, if Argentinian persons and companies had access to the benefits created by the pulp mill project.

Botnia S.A/Metsä-Botnia Oy is committed to enhancing sustainable development in all of its business operations, improving its operations on a continuous basis, and doing business in a responsible manner. Botnia S.A has also stated that it adheres to the principles of the UN Global Compact. Even though the principles followed by Botnia S.A on social responsibility are more general in nature than the OECD Guidelines, they are equally comprehensive in scope. This, for its part, ensures that Botnia S.A will use acceptable methods and adhere to internationally acceptable practices also in the future work on the project.

On the basis of the received evidence, Finland's National Contact Point considers that Botnia S.A/Metsä-Botnia Oy has not been proved to violate the OECD Guidelines in

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the pulp mill project in Uruguay. In hindsight, Botnia S.A could have handled the communication better, especially with regard to Argentina, but it must be noted that the actions of Argentina and its authorities have hampered Botnia's communication in Argentina. Thus, the Specific Instance submitted to Finland's National Contact Point by the CEDHA on 18 April 2006 requires no further action in Finland.

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For information: - Botnia S.A/Metsä-Botnia Oy
- Members of MONIKA Advisory Committee
- Uruguayan Government / Embassy in Stockholm
- Argentina's National Contact Point
- OECD / Investment Committee
- Sweden's National Contact Point
- Norway's National Contact Point
- Finnish Embassy / Argentina
- The Ministry for Foreign Affairs of Finland