



BELLONA

OECD Guidelines for Multinational Enterprises

Specific Instance

Regarding Nordea'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
and
The Bellona Foundation, Norway**

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Submitted to:

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Summary of Specific Instance:

The Center for Human Rights and Environment (CEDHA) and the Bellona Foundation is submitting a Specific Instance against Nordea 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. Considering that Botnia is already the subject of an OECD Specific Instance for breaches to the Guidelines which has been admitted and opened for consideration on June 20, 2006 by the Finland National Contact Point under the Advisory Committee on International Investment and Multinational Enterprises of Finland (MONIKA), operating under the auspices of the Ministry of Trade and Industry (1), and considering that Nordea has been made aware of the Botnia project's violations to human rights law and breaches to its own corporate social responsibility obligations (2) and considering the alleged violations to international law such as the River Uruguay Treaty, national law and international environmental standards and Argentine and Uruguayan law currently under consideration by various jurisdictions, including a recently filed case before the International Court of Justice (3), the applicants ask the Swedish National Contact Point and the Norwegian National Contact Point to take active participation in the matter concerning Nordea's role as financier of Botnia, and offer its good offices to help resolve the international conflict that has been caused by this project and the role taken on by its key financial supporters such as Nordea.

Botnia has publicly confirmed that Nordea will act as one of two main arranging banks to secure external finance for Botnia's project in Uruguay. (4) Previously ING bank of the Netherlands was named as global coordinator of project finance for the project but have since pulled out of it's role following almost identical allegations and sustaining evidence presented in this complaint, and growing concerns from the World Bank, local stakeholders environmental authorities, and other concerned actors, and about the social, economic and environmental harm caused by Botnia and associated violations to international law and standards. (5) Shortly after, Nordea's role as main arranger for external finance was announced by Botnia the multinational enterprises that still requires 40% of total project finance or approximately US\$480 million to enable the construction of the Orion mill near the town of Fray Bentos, Uruguay.(6) Nordea has been made aware on several occasions by CEDHA of breaches to the Guidelines, project breaches for human rights, and breaches to its own corporate social responsibility obligations, specifically on the 6th of February 2006 (7) and in subsequent documented communications, including a physical meeting held recently in Oslo on June 14th between CEDHA representatives and Nordea, but has so far refused to provide **any** information regarding the issues presented here.

In written communication with CEDHA, Nordea has responded to the issues concerning non-compliance with the bank's own legal and ethical obligations, indicating that '(t)here is no evidence to date that a potential Nordea involvement in the project you mention in your letter would violate these commitments'.(8) Nordea has not provide to date any evidence of having assessed the environmental and social risks provided by the project and stated that confidentiality of business actions prevented the bank from revealing any more details about its own responsibilities. After further pressing Nordea for an appropriate response (9) prompting further communication from Nordea which states that 'various treaties governing bodies must handle such complaints' and that 'Nordea will of course offer full and constructive cooperation with these governing bodies'.(10) The OECD is one such governing body and the applicants hope that the Swedish National Contact Point and/or the Norway National Contact Point will adequately address the applicants' and stakeholders' concerns.

When CEDHA met with Nordea in Norway on June 14th to discuss the implications for the bank for arranging Botnia's finance Nordea refused to disclose **any** information about its role in the project, or if it had taken any measures to assess allegations to human rights and environmental law, and also refused to comment about its accountability to local stakeholders and victims affected by expected emissions and contamination from the pulp factory. Nodea also refused to provide any information regarding its position respective of World Bank findings that environmental, social, and economic impact studies of the mills are yet incomplete and do not satisfy conditions of best available technologies for the pulp and paper industries. Nordea did claim that they would 'would follow laws and procedures of order of society' and that they were looking closely at the International Court of Justice (ICJ) trial at the Hague and that Nordea would comply with international

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

2 Nordea Human Rights and Corporate Social Responsibility Compliance Complaint:
http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/denuncia-nordea-csr-eng.pdf

3 See generally http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/

4 Nordea ja (sic) Calyon are the main arranging banks for Botnia's pulp mill project in Uruguay, Botnia Press Release, 28-04-06,
<http://www.metsabotnia.com/en/default.asp?path=204,208,210,211,1097,1261>

5 http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/ing-pullout-letter-april-12-2006.pdf

6 Nordea ja (sic) Calyon are the main arranging banks for Botnia's pulp mill project in Uruguay, Botnia Press Release, 28-04-06,
<http://www.metsabotnia.com/en/default.asp?path=204,208,210,211,1097,1261>

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

8 http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/nordea-reply.doc

9 http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/nordea-letter-cedha-april-10-2006.pdf and

http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/nordea-letter-cedha-april-17-2006.pdf

10 http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/letter-to-cedha-10-may-06.pdf

law. It was brought to Nordea's attention that a decision on the violations of international law could take several years, which did not seem to be known by Nordea. Nevertheless, Nordea did not respond to the question on whether or not it would wait for the ICJ's final decision before committing to finance.(11) Given the urgency of the matter to local stakeholders, and the serious impacts and influence that the presence of Nordea as financial arranger to Botnia's mill in Uruguay (by the mere statement of its interest in financing this project), the applicants consider that action on behalf of the NCPs or Norway and/or Sweden is of the utmost urgency and importance to avoid future social and environmental adversities.

Nordea's interest in the Botnia's project and its awareness of alleged breaches to human rights norms, international law, national law and the Guidelines make Nordea complicit in the same breaches attributable to Botnia. Nordea's refusal to furnish the legal representatives of stakeholders with information regarding the project, refusal to acknowledge responsibility for its role as financial arranger, the serious breaches to the Guidelines listed in this Specific Instance and the slow pace of legal mechanisms assessing compliance of international law impel the Swedish and/or Norwegian National Contact Point to intervene.

By supporting Botnia, or showing any intention to do so, and by virtue of the nature of its role as financial arranger, Nordea is complicit to the accusations made against Botnia, including the conclusions offered by the World Bank-hired consultants which have provide critical information about incomplete impact studies, and the conclusions of the Compliance Advisory Ombudsman (CAO) which have found serious procedural violations of the Botnia project, by the IFC which has had to admit project incompleteness and uncertainty about the magnitude of social, environmental and economic impacts, and by the World Bank President who has explicitly stated that the World Bank is not ready at this stage to support these investments, due to lack of certainty on social and environmental impacts. Nordea'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, Nordea 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. The expressed interest in supporting Botnia has extremely important implications on ability of Botnia to attract other investors, or the eventual confirmation of Nordea's direct support to Botnia.

The Botnia Orion Project, which is to be supported by Nordea, 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 week before the filing of this Specific Instance, presented 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.

Sweden and Norway, as a members of the OECD, and Nordea as a multinational enterprise based in Sweden and Norway and one that is partially owned by the Swedish State(12), must fulfill its duties to adhere to, uphold and promote the Guidelines, which includes in this case, take action to address Nordea's support of the the irresponsible and illegal behavior of 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, three Equator Principle Compliance Complaints (directed to ING Group, BBVA of Spain, and to Calyon of France, eventual financial supporters of the Botnia project) and a Human Rights and a OECD Specific Instance directed at Finnvera plc, the official export credit agency of Finland 100% owned by the Finnish State also planning to support the Botnia project, surely due to Nordea's commitment to act as main arranger.

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

11 CEDHA Press Release: http://www.cedha.org.ar/en/more_information/nordea-CEDHA-meeting.php

12 The Swedish State is the largest shareholder in Nordea accounting for 19% ownership.
<http://www.nordea.com/sitemod/default/index.aspx?pid=830672>

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 US 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 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. Nordea'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 Nordea, 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 Swedish and Norwegian Companies

As a signatory to the Guidelines, the government of Sweden (and subsequently its agencies) and the government of Norway, have committed to adhere, uphold, promote Guideline compliance (13) and encourage their widest possible observance.(14) The Guidelines apply to multinational companies headquartered in OECD countries operating in OECD or non-OECD countries.(15) Nordea has headquarters in both Sweden and Norway and since Botnia's pulp plant in Uruguay is supported by Nordea and is operating in Uruguay a country that is not an OECD member, the Specific Instance is submitted to Sweden and Norway's National Contact Points.

Guidelines Applicability to Nordea

Nordea is a multinational company publicly listed on the Stockholm, Helsinki and Copenhagen stock exchanges who's major shareholder is the State of Sweden (19%). The OECD does not provide a specific definition of multinational enterprises however the Guidelines state that 'ownership (of multinational enterprises) may be private, state or mixed.'(16) The Nordea Specific Instance is based upon, yet independent to a Specific Instance filed against Botnia to the Finnish NCP, which has accepted the complaint and is currently investigating Guideline breaches.(17)

On the Higher Degree of Responsibility and Complicity of Financial Arrangers to Overall Investment Viability.

Nordea'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 Nordea (or for that matter, any financial institution arranging finance) 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 arranging bank in such an investment, is a *sine qua non* to bring other financial supporters into the investment scheme.** Without the support of Nordea 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 investment institutions' 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 any form of loan structure. Nordea was named as co-lead arranger for project finance in a Botnia press conference on 7th March 2005 (18), has been made aware of human rights and Guideline breaches on the 6th of February 2006.(19) Even if Nordea 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 Swedish and Norwegian National Contact Points are asked to intervene to raise these concerns to Nordea, in order that Nordea publicly and distinctly withdraw consideration of support to the Botnia Orion project. The applicants also consider that the Swedish and Norwegian NCPs can provide a critical role to help the public, stakeholders, and the general communities affected by the Botnia project, gain basic yet unavailable information from Nordea as to its ongoing regarding this project, as the high level of secrecy maintained by Nordea regarding this investment, remains counter to the basic principles of participation, transparency and access to information, which must necessarily govern investment projects in high environmental risk industries (Category A projects as categorized by the World Bank) such as this one.

Relevant to Conflict of Interest: Sweden National Contact Point

Stakeholders and interested parties are made aware that of the significant **conflict of interest** faced by the Sweden National Contact Point as a result of this Specific Instance. Nordea's largest shareholder is the State of Sweden and the Swedish National Contact Point is also an organ of the State of Sweden, sitting in the Department for International Trade Policy, Ministry of Foreign Affairs.

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

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

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

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

17 <http://www.ktm.fi/?i=1687&l=en&s=222>

18 <http://www.metsabotnia.com/en/default.asp?path=204,208,517,842>

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

Relevant to International Treaties

International Covenant on Economic Social and Social Rights (ICESCR)

Nordea is a partly state-owned enterprise, and as an organ of the Swedish state Nordea must carry out Sweden's responsibilities under applicable international law. Article 2 of the ICESCR has an extraterritorial provision that requires operations in Sweden to promote the observance of the treaty in foreign countries. Sweden and organs of the Swedish State must 'respect, protect and fulfill' these obligations (20) including the following ICESCR that the Botnia project may breach.

- 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 Sweden's reporting obligations

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,(21) and translate into the above breaches of ICESCR:

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 direct violations of the Guidelines. The commentary of the Guidelines (22) 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".

Nordea as an organ of society, and more concretely, and even more specifically so as an agency of the State of Sweden, 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. Both Swedish and Norwegian National Contact Points, as organs of the state are explicitly bound by international customary and must seriously consider their legal obligations to embark on progressive international measures by which universal human rights are to be effectively recognized and observed.(23)

Applicants' Interest

The submitting institutions of this Specific Instance are the Center for Human Rights and Environment (CEDHA) of Argentina and the Bellona Foundation of Norway.

CEDHA is 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 the Orion project, in addition to several Uruguayan non-profit organizations which have also signed the CAO Complaint.

The Bellona Foundation, established in 1986, is an independent, non-profit and science-based environmental organization. Its main objectives are to fight pollution and put forward solutions to prevent environmental degradation, pollution-induced dangers to human health and ecological impacts of economic development. Bellona promotes clean and renewable energy, sustainable industrial production and waste management. The Bellona Foundation is an international environmental organization with headquarters in Oslo, Norway and offices in Brussels, St. Petersburg, Murmansk and Washington D.C. Bellona is well known and respected in Norway for taking a constructive role focusing on viable solutions in many environmental conflicts. The foundation has a tradition of assisting and cooperating with grassroots movements nationally as well as other NGOs abroad. Pollution knows no borders and the Bellona Foundation strongly opposes the export of polluting industries to countries with lower environmental standards.

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

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

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

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

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.

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 Orion mill combined with the CMD project by ENCE would outsize any one of Botnia's mills in Finland by nearly 300%. 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) (24)

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 Gualaguaychú, 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(25) 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 merely a few pages 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.(26) In other words, the site choice does not take into account environmental, social, or economic risks. 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 identity 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.(27) The site was selected

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

25 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)

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[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)

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

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, a site prized by the BBC for its beauty), 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 Commission.(28) 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 (29), 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, including many of the allegations made in this Specific Instance.

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 (30), 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.(31) 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'.(32)

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

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

29 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

30 CAO Complaint to the Compliance Advisor Ombudsman

www.cedha.org.ar/en/initiatives/paper_pulp_mills/cao-complaint-letter.doc

31 CAO Preliminary Assessment Report

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

32 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>

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 Gualeguaychú 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 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, including, specifically and prominently, Nordea.(33)

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.

In an even more recent communication, dated May 9th, 2006, President Wolfowitz communicated to the European Commissioner for Trade, Peter Mandelson, that "experts [hired by the World Bank] have identified a clear need for additional information and analysis to accurately determine and substantiate the environmental impacts for the CMB and Orion projects and that ... the IFC will finance the projects only if we are certain they can be operated in an environmentally and socially responsible manner. And in the meantime, we continue to hope that Argentina and Uruguay can resolve their dispute". 34

Clearly, until Uruguay and Argentina sort out this conflict, it is very unlikely that the World Bank will support this investment.

Meanwhile international press attention to this case is also growing. The Financial Times, a respected and renowned international financial newspaper has devoted several recent articles (see June 10th, and 12th), and focusing on the Orion and ENCE mills dispute indicating that the case is a "test case" for responsible investment banking, as serious accusations have been made and verified in project violations of the Equator Principles.

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. (35) 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.

33 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>

34 Letter from Nina Shapiro (on behalf of Wolfowitz) to Peter Mandelson, dated May 9, 2006, submitted to ICJ as evidence in Hague dispute.

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

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(36), which Uruguay, via the Stockholm Convention on Persistent Organic Pollutants (POPs) has committed to reduce overall annual emissions.(37)

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 (38), 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, but information was withheld and continues to be withheld from Argentina in the process(39). 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.(40)

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 complaint filed to the Inter-American Commission on Human Rights (41) as well as complaints filed to ING Group of Netherlands and Nordea (42). Specific Human Rights violations include but are not limited to:

- violation of the UN Declaration on Human Rights; (43)
- Articles 1(1), 2, 4, 5, 19, 25, 26 of the *American Convention on Human Rights*; (44)
- 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"*; (45) and
- Articles I, VII, XI of the *American Declaration of Rights and Duties of Man* (46)

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

36 *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

37 Stockholm Convention on Persistent Organic Pollutants, Article 5, Annex C Part 1, www.pops.int/documents/convtext/convtext_en.pdf

38 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>

39 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-english/documents/preliminary_assessmentFINAL.pdf

40 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>

41 Submission to the Inter American Commission on Human Rights http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/peticion-cidh-final.doc

42 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

43 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;

44 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.

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

46 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

instruments and does not involve any action against the companies themselves. In contrast, the Guidelines apply to multinational 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'. (47) Chapter II Commentary refers to Universal Declaration of Human Rights (UDHR), and it is asserted that the project promotes fundamental breaches (48) 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

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 (49). 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.(50) 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.(51)

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

47 Chapter II, comment 4

49 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

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

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

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 (52), 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.(53) 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.

The US EPA establishes limits for DQO (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 DQO emissions, thereby placing the local population at great risk due to such emissions. (54)

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 (55), but the fact remains that the EIA does not include adverse environmental impacts created by emergency situations in its Environment Action Plans (56), nor Project Specific Major Hazard Assessment in the case for

52 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)

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

54 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.

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

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

use and for storing, handling and processing of dangerous chemicals (57), 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. (58)

Turning to the consideration of stakeholders in Botnia's operations (59), the People's Assembly of Gualeguaychú, the largest and most important stakeholder group (60) 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. (61) Even in the case where self regulatory practices exist for social and environmental assessment, they have not been complied with. (62)

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.(63) 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. (64)

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." (65)

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.' (66) 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,

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

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

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

60 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

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

62 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-ci-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

63 OECD Guidelines, Chapter V, paragraph 2b

64 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

65 IFC Operational Policy 4.01

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

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 Gualeguaychú. 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:

- **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)*
- **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.(67) 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.(68) 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.

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.(69) 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.(70) They are known to have effects on the nervous system as well as on immunological and reproductive functions, and are carcinogenic.(71)

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.(72) 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

67 . 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)

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

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

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

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

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

further verified as stated in the North American Plan of Action on Dioxins and Furans,(73) 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. (74)

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 (75) 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. (76)

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.(77) 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".(78)

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. (79) Project sponsor Botnia S.A. promotes double standards with its

73 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

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

75 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)

76 Botnia Environmental Impact Assessment http://www.ifc.org/ifcext/lac.nsf/Content/Uruguay_PulpMills_Background_Docs

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

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

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

decision to use Elemental Chlorine Free (ECF) technology in the Orion mill. ECF is a cheaper(80), second-tier (81) form of technology that results in greater contaminant discharges and more severe environmental and health effects. (82)

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 (83) recommended by the World Bank's Pollution Prevention and Control Handbook. It is important to point out that Botnia's Orion Project in Uruguay is nearly three times larger than its largest mill in Finland. 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. (84) 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. (85) 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 (86), the respected environmental economist Sejenovich (87), Cordoba National University (88), and the High Level Technical Group of the Binational Commission (89), 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 (90), neurological deficits (91), depression or suicide (92) caused by Kraft pulp mills.

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

80 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

81 As above, p26

82 As above, p26

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

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

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

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

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

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

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

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

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

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

decisions to mitigate environmental damage. (93) 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. (94)

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. (95) 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 applicants 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. (96)

Parallel Legal Proceedings

The applicants have stated the reasons why the submission before the Inter American Commission on Human Rights and the case before the International Court of Justice at the Hague are outside the scope of the Guidelines and their purposes. Furthermore, the Swedish and Norwegian NCP should be aware of the Dutch NCP's stance whereby parallel legal proceedings will not be a reason to reject a specific instance.(97)

Conclusion

It is clear from the available evidence, from reports of the World Bank's CAO, from the World Banks and IFC's own hired consultants, 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, we call not only for a review by the Swedish/Norwegian OECD NCP of Nordea'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. We hope that the NCPs will accept this complaint, and be able to use their good offices to help advance dialogue in this case, towards an amicable solution to this conflict. The urgency of this matter cannot be

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

94 IFC Environment Assessment Policy 4.01, paragraph 6

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

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

97 Communication with OECD Watch

understated as Botnia has recently initiated construction of the Orion plant. The National Contact Points are in an advantageous position to influence Nordea and Botnia in this project to ensure the full respect for human rights and international environmental law, and the protection of local stakeholder communities.

On the particular issue and relevance of the role played by financial arrangers it is clear that the place of a main arranger in international development finance, makes Nordea 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 Nordea make it an especially sensitive issue and extremely pertinent for NCP involvement in the affair.

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 NCP intends to proceed. Please address this correspondence to the Center for Human Rights and Environment and the Bellona Foundation.

Sincerely,

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