



Comment on the Cumulative Impact Study (CIS)

IFC's Environmental Assessment of
Celulosas de M'Bopicuá and Orion Projects, Uruguay

**Review of Violations to IFC Operational Policy, CAO Recommendations
and Other Considerations of and during the CIS Process**

(includes excepts from independent assessment of the project economic impacts)

by
the Center for Human Rights and Environment (CEDHA)

Argentina

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Abbreviations

BAT	Best Available Techniques
CAO	Compliance Advisor/Ombudsman
CBI	Consensus Building Institute
CEDHA	Center for Human Rights and Environment
CIS	Cumulative Impact Statement
CMB	Celulosas de M'Bopicuá
EA	Environment Assessment
ECF	Elemental Chlorine Free
EIA	Environment Impact Assessment
IFC	International Finance Corporation
IPPC	European Union's Directive on Integrated Pollution Prevention and Control
MIGA	Multi-lateral Investment Guarantee Agency
OP	Operational Policy
PCI	Pacific Consulting International
TCF	Total Chlorine Free

Introduction

This “Comment” on the IFC Draft Cumulative Impact Study (CIS) and Environmental Assessment (EA) process, is submitted by the Center for Human Rights and Environment (CEDHA), on its own right as an Argentine public interest non-profit organization which by mandate strives to protect the human rights of victims of environmental degradation. It pertains to the *Orion* and *Celulosas de M'Bopicuá* (CMB) projects (two papermills in construction in Uruguay on the Uruguay-Argentine border) subject to funding review considerations by the IFC and MIGA.

The Comment centers on CIS violations to IFC Environmental and Social Safeguards as well as violations to IFC Disclosure Policy and IFC failure to adhere to recommendations of the Compliance Advisory Ombudsman (CAO) as cited in the CAO's Preliminary Assessment Report, which offers independent opinion regarding many of the allegations made by CEDHA and contained in this Comment, as well as constructive solutions to rectify IFC violations to safeguard policies in previous stages of project preparation.

The Comment also highlights general technical, design and information inconsistency or insufficiency with the original EAs published by independent experts as well as the assessment of cumulative impacts (the CIS) of these mills.¹ Keeping in mind the significant importance of widespread concern about the incompleteness of information, countering evidence that is widely available from independent experts, and the implications of these and considering systematic project non-conformity with IFC policy in its appraisal and design, we have incorporated these factors into our compliance analysis in this Comment, classifying violations either as *prima facie* or resulting from faulty EA, or as still unresolved.

Given that the public consultation period terminates at the same time as the period for public comment, the views of CEDHA are not limited by this Comment, and further comments on compliance may be submitted.

¹ Informe de la Delegación Argentina - al Grupo de Trabajo de Alto Nivel, Buenos Aires - 3 de febrero de 2006, and the Análisis y Observaciones al Borrador de Estudio de Impacto Acumulado de la Corporación Financiera Internacional, 16 de Enero de 2006

Reflection on the Nature of Pre-established Policy of IFC Review Processes and Specific Overarching Concerns Pertaining to these Projects

It is useful to first recall some important points of the IFC Environmental Assessment Operation Policy, 4.01.

IFC requires environmental assessment (EA) of projects proposed for IFC financing, to help ensure that they are environmentally sound and sustainable, and thus to improve decision making.² EA evaluates a project's potential environmental risks and impacts in its area of influence³, examines project alternatives; identifies ways of improving project selection, siting, planning, design, and implementation by preventing, minimizing, mitigating or compensating for adverse environmental impacts⁴ ... EA takes into account the natural environment (air, water, and land); human health and safety; and social aspects; and transboundary and global⁵ environmental aspects. ... [EA] also takes into account the findings of country environmental studies; and obligations of the country, pertaining to project activities, under relevant international environmental treaties and agreements. IFC does not finance project activities that would contravene such country obligations, as identified during the EA. EA is initiated as early as possible.⁶ Further, paragraph 4 states that the project sponsors must retain independent EA experts not affiliated with the projects to carry out the EAs.

Further, Category A projects (which is the category assigned to these paper mills) refer to projects that are likely to have significant adverse environmental impacts that are sensitive, diverse, or unprecedented. These impacts may affect an area broader than the sites or facilities subject to physical works. EAs ... examine the projects' potential negative and positive environmental impacts, and compares them with those of feasible alternatives (including the "without project" situation).⁷

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'.⁸ Naturally, IFC environmental and social policies are '**fundamental** to project appraisal, supervision and approval process'. Stakeholder consultation **prior to the execution of impact studies**, is also, by nature and logical order, **critical** to ensure that assessment, appraisal, and project preparation are informed, focused and pertinent to the nature of local concerns that may exist regarding project impact to local livelihood, health, and the environment of impacted communities. These fundamentals as well as order and logic of procedure are key dimensions of IFC procedure on EAs and are protected by international norms and by IFC environmental and social safeguard policies. Finally, since these are Category A projects, special attention and extra rigor is needed to ensure that these highly sensitive projects that "are likely to have significant adverse environmental impacts" are properly designed to minimize adverse affects.

In these proposed projects, ***the prevalence of violations*** to the above mentioned (and many other) IFC Environmental and Social Safeguards, World Bank Policy and CAO recommendations, not to mention internationally protected human rights and environmental law ***is so extensive***, as are the illegitimate methods, poor criteria, and irresponsible and negligent oversight (violating IFC policy) used to conduct stakeholder consultation, that stakeholder communities, environmental and human rights activists, as well as ***for the first time ever, an affected government***, have stepped in to do everything in their power to stop this ill-conceived and poorly designed World Bank Group investment. This particular investment is taking place in a highly contaminating industry, and is likely to cause irreversible harm, not only to the environment and to the health of communities, but to the economic livelihoods of an entire region, dependent on tourism and its characteristic as a pristine environmental area of human leisure and relaxation.

² This is quoted from OP 4.01 – Environmental Assessment paragraph 1.

³ According to IFC's OP 4.01 Annex A, paragraph 5, "area of influence" is the area likely to be affected by the project, including ... disposal areas, construction camps, ... watershed within which the project is located, ... any affected estuary and coastal zone, ... the airshed (where airborne pollution such as smoke or dust may enter or leave the area of influence), ... migratory routes of humans, wildlife, or fish, particularly where they relate to public health, economic activities, or environmental conservation, ... and areas used for livelihood activities (hunting, fishing, grazing, gathering, agriculture, etc.)

⁴ from OP 4.01 paragraph 2.

⁵ "Global environmental aspects", according to OP 4.01 paragraph 3 include, "pollution of international waters, and adverse impacts on biodiversity".

⁶ From OP 4.01 paragraph 3.

⁷ From OP 4.01 paragraph 8b.

⁸ IFC Environmental & Social Review Procedure, para 3, p1

The installation of two contaminating papermills, which will produce 1.5 million tons per year- the world's largest production of paper pulp-, emitting highly visible smoke and noticeable ill odors into the atmosphere, as well as contaminating the river's water and biodiversity, will radically transform the region and its identity.

While surely NONE of the opposition groups presently opposing these projects would categorically oppose the development of the Uruguayan economy and its industries, be it pulp mill production or otherwise, the choice of location (siting) of these mills on an internationally protected waterway, due solely to the economic interests and convenience of the project sponsors (who had previously purchased lands on these sites), without the approval and with the outright opposition of hundreds of thousands of common citizens, makes absolutely NO business, economic, environmental, social or other sense worthy of consideration.

The Cumulative Impact Study (CIS) analyzed here, as the previous EAs from project sponsors, suffers from *systematic failures* to respect consultation policy and rules, including IFC Social and Environmental Safeguards, and disclosure and consultation rules. The CIS is incomplete and insufficient, an opinion offered not only here in this Comment, but also by the technical experts of the Argentine-Uruguayan Binational Commission governing the usage of the Uruguay River, by the Argentine Government, by respected local universities and academics which have submitted evidence to the IFC and to the World Bank Group regarding many of the same claims and allegations made in this Comment.

The CIS, as it stands, thus, **cannot** be considered an accurate, adequate or sufficient document upon which to base a decision on project approval or otherwise. We would like to direct IFC and MIGA Board of Director attention to the grave, substantial and deliberate violations of IFC Environmental and Social Safeguard Policies and willful ignorance of the recommendations of the CAO, as well as the opinion of alternative independent EAs that illustrate widespread negative environmental and social impacts caused by the projects, issues that have not been assessed by the CIS. Finally, it is most important to note the massive and mounting public opposition that exist both in Argentina and Uruguay, to these mills.

CEDHA recommends that the IFC and MIGA Board of Directors **REJECT** all proposals of financing and/or guarantees for both Orion and CMB projects in Uruguay under such conditions.

Summary of Violations to IFC Policy

The Comment highlights violations to the following IFC Operational Policy, CAO Recommendations and associated handbooks and guidelines:

- **IFC Operational Policy OP4.01 Environmental Assessment**, including violations to paragraphs 2, 3, 4, 6, 7, 8a, 11, 12, 14, 15; Annex A paragraphs 4, 5 and 6 and Annex B paragraphs 1 and 2 b, c, d, e, f, g, and Annex C paragraphs 1,2,3,4,5, 6 of the policy and the
- **IFC Operational Policy OP7.50 Projects on International Waterways** including violations to paragraphs 3, 4, 8 of the policy;
- **IFC's Policy on Disclosure of Information (September 1998)** referred to in page 5 of OP 4.01
- **IFC Environmental and Social Review Procedure**, including Guidance Note A; B (2) paragraphs b, e f and g; C and E
- **Compliance Advisor/Ombudsman Recommendations** including violations to recommendations 1; 2 'specific steps' a, b, c and 'factual requirements' 2 a, b(i), b(ii), b(iii), c, d; 3 and 4 which appear in the **CAO Preliminary Assessment Report: Complaint Regarding IFC's Proposed Investment in Celulosas de M'Bopicuá and Orion Projects, Uruguay**
- **World Bank Pollution and Prevention Handbook (Pulp and Paper Mills)** paragraph 6, as incorporated by OP4.01 and the CAO Preliminary Assessment Report

Background of EIA and CIS Process and Present State of Conflict

The IFC's early efforts to quickly push through the loan consideration and Executive Directors vote on the two projects to receive IFC financing (the CAO, in its Preliminary Assessment Report, referred to the IFC project approval process as "rushed"), with poor and negligent attention to its own safeguard policies, early failure to consider combined impacts of the mills, and including a gross omission of consulting Argentine stakeholders clearly within the projects immediate area of influence, began falling apart quickly with the complaint filed to the CAO in September of 2005, and the CAO's quick response and unfavorable findings (with respect to the project) in its Preliminary Assessment Report.⁹

The IFC realized its gross violations of policy and began an effort to correct these errors with a cumulative study (referred to as "the CIS")¹⁰ and a new consultation process, however, unfortunately and to the great surprise and regret of stakeholders, rehiring the same environmental consultants (Pacific Consulting International (PCI), who had done the company assessments (in violation to 4.01 paragraph 4, which requires retaining independent experts "not affiliated with the project") and which had provided the IFC with impact analysis, incredibly ignoring combined impacts of the two plants)¹¹ as well as making gross statistical and informational errors quickly noted by local populations and which generated massive suspicion from local stakeholders. Stakeholders requested that the IFC change this consulting group to conduct the CIS, preferring a legitimate and non-partial consulting group as mandated by IFC policy. IFC's refusal to change PCI, not only violated its own policy, but naturally deepened stakeholder suspicion and opposition to this new proposed CIS and consultation process.

IFC unfortunately continued to commit errors and violate policy in its handling of the case, failing to correct the previous consultative procedural errors, ignoring its own policy which states that consultation **must occur before** the terms of reference of the impact study are drafted (OP 4.01 para.12). As it stands, the CIS is completed in its first draft yet the IFC has NEVER consulted the most concerned stakeholders. Naturally, the CIS leaves out critical issues of great local importance to stakeholders, such as measuring real impacts to tourism, credible wind flow studies, changing river flow directions, impacts of acid rains to small and industrial farming, cattle raising, property and other key local activities and livelihoods. The *design* of the CIS, is clearly a key factor in this conflict, as it is presently an unacceptable baseline study upon which IFC intends to generate debate and construct analysis. Its flawed design, however, lends not only to its own unacceptable content as a starting document to analyze project impact, but it also lends to the illegitimacy of

⁹ see: http://www.cao-ombudsman.org/html-english/documents/preliminary_assessmentFINAL.pdf

¹⁰ Project sponsor EIAs and IFC's treatment of these ignored the fact that the mills were to be constructed on an international waterway and border, and that they would impact Argentine natural resources, and also ignored project impacts on the Argentine population living in the projects' area of influence.

¹¹ This is both unethical as the consultants are already biased, as they were hired by the companies, in addition to the fact that they have been entirely rejected by local communities for the poor quality of their assessment reports, which contained gross errors and misrepresentation of data.

the subsequent process of consultation and information gathering, which rushes stakeholders through a 60-day consultation period designed to meet the convenience of IFC and project sponsors (which have slowed construction due to lack of funds), but does not cater to the concerns of local citizens. The 60 days began on December 15th and ran straight through the vacation (down months) in both Argentina and Uruguay, which for obvious cultural reasons and summer vacation for many families, most people leave their homes for holidays. This is a culturally insensitive oversight of the IFC and its hired consultants, to carry out a consultation period in the middle of the highest and most common holiday season.

Furthermore, and referent to the CIS itself, the failure of the IFC to inform the CIS by holding consultations prior to the CIS design, essentially means that stakeholders must begin this short consultation period attacking the scope of the CIS, which naturally fails to sufficiently address aspects of stakeholder impacts such as tourism, local small scale agriculture, public opposition, etc. which would have come up had the IFC held the consultation before designing the CIS. The IFC defends its unilaterally imposed CIS and process, and in-doing so, has generated massive stakeholders refusal to accept the terms and methodology of analysis, impact analysis and measurement, which is also the position of the Argentine state as well as of many internationally recognized environmental experts.

Realizing that mounting opposition to its projects risked derailing the investment altogether, and also facing a critical Preliminary Report from the CAO which sustained many of the accusations made by concerned stakeholders, the IFC attempted to address its failure to include Argentine stakeholders in the analytical process, and redesigned the consultation process under an unacceptable, tight and unrealistic schedule, in an effort to quickly obtain stakeholder input into an already illegitimate and flawed consultation process. IFC hired a consulting group called Consensus Building Institute (CBI), which further complicated relations with local stakeholders when they arrived on-site ignoring CEDHA and CAO recommendations to seek neutrality and gain legitimacy with stakeholders before beginning their interviews. Instead they arrived with a letter to present to stakeholders showing their direct contractual relationship with the IFC, which at that point, and considering local stakeholders' distrust of the IFC, further fueled the illegitimacy of the consultation. CBI made NO effort to previously engage or contact stakeholders to explain process and **never** established or even discussed **any** rules of engagement as had been discussed and agreed to previously between CEDHA and IFC.

Concerned groups and stakeholders were hesitant to meet with CBI, skeptical and with little faith in the IFC-imposed unrealistic and rushed consultative process,⁽¹²⁾ which still had no rules of engagement. CBI further complicated the process by **forcing** interviews and **threatening** stakeholders who refused to meet under such terms and until rules of engagement were established. This situation and grave risks of the ill-conceived procedures being used to consult, was conveyed to the IFC numerous times by CEDHA, which represented 40,000 stakeholders convened under the Environmental Citizen's Assembly of Gualeguaychú, and by the CAO, however, IFC decided to ignore these recommendations, and did not produce rules of engagement. They were a few days away from the publishing of the CIS (mid December) and needed to have CBI's stakeholder consultation annex for the report ready by December 15th, as they eventually did. Rushed to have something ready by the 15th, and desperate because most local stakeholders opposing the mills refused to meet with CBI without rules of engagement from IFC, CBI began threatening stakeholders that they would be marginalized in the process if they did not answer questions. Eventually, CBI had to leave the region **without** consulting with the Assembly (which represents 40,000 stakeholders) or with local residents in Argentina who massively opposed the mills and refused to meet with CBI under the circumstances imposed by IFC, as well as unable to meet with many of the most prominent organizations that oppose the mills in Uruguay. The stakeholder annex for the CIS, however, was completed, at least for formality's sake.

IFC finished discrediting their own consultation process when they convened the Assembly of Gualeguaychú in late January of 2006, already in the midst of the IFC's stakeholder comment period to the CIS, to finally discuss engagement and then ironically failed to arrive to the town meeting leaving over 800 people from all sectors and of all ages that had arrived to the municipal theater to hear IFC present their process and supposedly, the rules of engagement. The excuse from the IFC for not showing up was ridiculous and unacceptable, stating that they did not have a translator available at the hour of the meeting. Conversations with the facilitating team (once again, CBI), however, revealed that the IFC delegation was merely a few kilometers away from the site, afraid to meet with such a large assembly of concerned stakeholders. They had, however, met throughout the previous days, with pro-mills actors in Uruguay and in Fray Bentos, adding further fuel to the fire to stakeholders who believe that the IFC is favoring pro-mill interests against

¹² The CAO and Stakeholders had made very explicit to the IFC that clear rules of engagement were necessary in order to carry forth a legitimate and binding consultation process. The IFC ignored this recommendation as did CBI.

local communities and have no intention of hearing or incorporating local views in Argentina or opposition views in Uruguay.

The consultation period for the new CIS, closes February 17th, having failed to legitimately harness the opinion of local Argentine stakeholders, comprising **the majority** of stakeholders affected by these mills, and the IFC will likely elevate the projects to the World Bank's Board of Director for vote, claiming as they always have, the innocuousness of these mills, but ignoring the massive upheaval and protest of the entire region that expresses grave concern over the projects' eventual impacts to air, water, soil and visual contamination that are likely to occur due to this highly contaminating industry. The collective community simply **do not want the mills** in their vicinity. This CIS also ignores diplomatic and legal complications, as well as regional instability these projects have caused between Argentina and Uruguay, two otherwise friendly states.

This problem and massive policy non-compliance comes at a time when the IFC is reviewing its Environmental and Social Safeguard Policies, and when many questions have arisen from civil society groups worldwide, and from the CAO, for example, concerned that the IFC is attempting to water-down its safeguard policies so as to facilitate easier and less strict conditionalities for lending in sensitive industries such as the extractive industries, or in this case, the papermill industry, which is also categorized by the World Bank as Category A, for its high environmental impacts.

The IFC and the World Bank Group more generally should sustain and uphold their commitment to protect environmental and social safeguards above their economic investment priorities especially for sensitive investments such as this one. This is a case about in-house policy violations, about violations to law, about irresponsible oversight, about failure to listen to legitimate stakeholders, about loose commitment and failure to respect the very basic rules established by an institution that is setting the international standard for corporate investment, and whose actions are minutely reviewed by the corporate sector as "best practice"; this project is an embarrassment for the World Bank Group on how banks should act and proceed with respect to environmental and social risk.

The critiques offered here are not only those of stakeholders and of environmental groups, which are generally viewed by the World Bank to be radical in their opposition to environmentally sensitive investments. Many of the views and allegations made here are sustained and upheld by the World Bank's own Compliance Advisory Ombudsman, who for example, stated and warned the IFC early on in the consultation process of violations to critical consultation requirements. Stakeholder groups echoed many times to the IFC and to the World Bank President directly, the outright and inexplicable insistence of the IFC to continue to violate its own policy by not informing the CIS process by conducting stakeholder consultations **prior to** its implementation, as mandated by its own policy (OP 4.01 para.12), and ignoring recommendation by the CAO to instill legitimacy in this process by engaging constructively with local stakeholders (who the CAO labeled "legitimate" and "rational voices"), and sharing terms of reference of the CIS (which the IFC never did).

The IFC instead, negligently and irresponsibly ignored and violated its own policy, and ignored the recommendations of the CAO and choose a closed-door, unilateral "rushed" path towards project board submission (and continues to do so with the CIS process), and now finds itself in the middle of, and is the cause of a rabid international dispute, pitting Argentina against Uruguay in the International Court of Justice, and before the Inter-American Commission on Human Rights, and pitting Uruguayans against Argentines in an unending social dispute which now not only obstructs the free flow of commerce and traffic between the countries but risks destabilizing regional politics and good diplomatic relations. This is hardly a desirable impact the IFC and World Bank Group should have in the region, where its role should be to promote harmonious, desirable, and sustainable development.

IFC Operational Policy Violations

EA and Draft CIS Violations in terms of Specific IFC Environmental Assessment policy (OP 4.01) Prima facie violations

Paragraph 2 of policy, stated hence forth in the format of "P. 2" provides that:

"EA is a process whose breadth, depth, and type of analysis depend on the nature, scale, and potential environmental impact of the proposed project. EA evaluates a project's potential environmental risks and impacts in its area of influence; examines project alternatives; identifies ways of improving project selection, siting, planning, design, and implementation by preventing, minimizing, mitigating, or compensating for adverse environmental impacts and enhancing positive impacts; and includes the process of mitigating and managing adverse environmental impacts throughout project implementation. IFC favors preventive measures over mitigatory or compensatory measures, whenever feasible."

Considering that this investment represents the world's largest production of pulp, the CIS should be conducted through in-depth, comprehensive and exhaustive analysis. However, the CIS fails to consider potential environmental risks on the Argentine side, simply and unfoundedly stating that water and air pollution will not affect the Argentine territory while many studies¹³ have shown that due to the proximity of the projects, the winds of the area, and the river conditions, Argentina will clearly be affected by direct environmental impacts.¹⁴ The CIS also fails to examine project alternatives, and to identify alternative siting locations; it does not include a mitigation plan, does not include an Environmental Action Plan (as per annex C of Policy), does not provide an appropriate risk assessment (as per Annex A6), or a Hazard Assessment (as per Annex A4) and does not contemplate compensation for environmental degradation to Argentine resources and population.

P.3

"EA takes into account the human health and safety; and social aspects... transboundary and global environmental aspects... the country's overall policy framework and national legislation ... and obligations of the country... under relevant international environmental treaties and agreements. **IFC does not finance project activities that would contravene such country obligations...."**

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' including: No consideration of the health and safety of residents due to discharged air emissions, contaminants discharged into the water, and health effects due unplanned emergency situations; No consideration of emergency situations of any type, such as accidents not uncommon such as contaminant discharge, black liquor discharge¹⁵, chemical spills, fires¹⁶ which are not uncommon in Kraft Mills; No consideration of the dangerous process of on-site chlorine production;¹⁷ No consideration of management plans for human health and safety; No consideration of health effects as a result of contaminated discharges entering the municipal water intake of Fray Bentos, located three kilometers downstream from Orion; and No consideration of physical and mental health effects

¹³ Final Report: Informe Final de la Delgación Argentina del GTAN, "Consideraciones sobre propuestas de emisiones de efluentes líquidos a descargar al Río Uruguay y afectación a la calidad del recurso" - Source: 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 pages; "Consideraciones técnicas sobre los aspectos de contaminación del aire del Estudio de Impacto Ambiental para el proyecto de planta de la empresa BOTNIA S.A". Source: Lic. Norberto P. Vidal, Dirección de Prevención y Gestión de la Contaminación - Secretaría de Ambiente y Desarrollo Sustentable, 3 pages; "Consideraciones preliminares sobre disposición de residuos sólidos - proyecto de planta de la empresa BOTNIA " Source: licenciada Gómez & Ing. Jorge Meira -dirección calidad ambiental de la secretaría de medio ambiente desarrollo sustentable, 4 pages; Informe de la Universidad Nacional de Córdoba sobre el Impacto de los Proyectos de Botnia y ENCE en el Acuífero Guaraní.

¹⁴ The area of direct environmental impact, resulting from the behaviour of the project responsables, can be measured pursuing international standards identifying the geographical area within a triangle, which vértice is located in the city of Fray Bentos and its base is in the city of Gualeguaychú; with an extension of 50 km. This model of measurement has used: the specificity of pollutants, pulp production estimated quantity, the flow of "dirty waters " and winds of the area.

¹⁵ Pasanen Jarmo, Sudden UPM-Kymmene mill discharge causes concern,
www.suomenluontolehti.fi/artikkeli.php3?a=185

¹⁶ www.saunalahti.fi/lility/PI0548.htm

¹⁷ It is illegal to transport chlorine to the project sites, but this is a necessary element for the Elemental Chlorine Free (ECF) Kraft process

on workers and local residents such as cancer¹⁸, neurological deficits¹⁹, depression or suicide²⁰ caused by Kraft pulp mills. Also in violation of P. 3, the CIS does not consider:

- ‘transboundary and global international aspects’ which refers to the pollution of international waters;
- An integrated approach including social, environmental, and economic impacts, as observed by the DINAMA (Uruguay’s environmental ministry);
- Country environmental studies such as the Argentine Foreign Ministry Report;
- International state treaty obligations such as the Statutes of the River Uruguay, River Uruguay Treaty, The Argentine-Uruguayan Declaration on the Water Resources, Basic Directives on Environmental Policy of Working Group 6 on Environment of the MERCOSUR, , The International Waterways Treaty, the Framework Accord on Environment, Stockholm Convention on Reduction of Persistent Organic Pollutants.

It is worth noting that the flagrant violations by Uruguay of its treaty obligations concerning the protection of the Uruguay River have resulted in the decision of Argentina to bring this case before the International Court of Justice whose jurisdiction is provided for in the Uruguay Treaty as regards dispute resolution. This fact and dispute is grounds enough, under the IFC’s own International Waterways Policy (as well as under EA 4.01 para. 3) policy for the IFC to stop all consideration of financing these projects until such disputes are resolved.

P.4

The project sponsor is responsible for carrying out the EA. For Category A projects the project sponsor retains independent EA experts not affiliated with the project to carry out the EA.⁶ For Category A projects that are highly risky or contentious or that involve serious and multidimensional environmental concerns, the project sponsor should normally also engage an advisory panel of independent, internationally recognized environmental specialists to advise on all aspects of the project relevant to the EA.⁷ The role of the advisory panel depends on the degree to which project preparation has progressed, and on the extent and quality of any EA work completed, at the time IFC begins to consider the project.

The supposed “independent” expert conducting EIA (Pacific Consulting International) has on numerous occasions and before stakeholders, defended these projects in the first person, and has spoken throughout its involvement as if it were the project owner, ignoring or lightly dismissing concerns and serious negative externalities presented by local stakeholders as key issues for local livelihoods;

Given the controversial nature of the project, that it is a Category A that is highly risky or contentious and that it involves serious and multidimensional environmental concerns, the IFC also fails to consider the establishment of an international advisory panel as per OP 4.01 para.4. No such international advisory panel exists to advise on all aspects of the project relevant to the EA. Aspects that have not be addressed by an international advisory panel include among others:

- (a) the terms of reference for the EA,
- (b) key issues and methods for preparing the EA,
- (c) recommendations and findings of the EA,
- (d) implementation of the EA's recommendations, and
- (e) development of environmental management capacity.

P.6

The *Pollution Prevention and Abatement Handbook* describes pollution prevention and abatement measures and emission levels that are normally acceptable to IFC ... The EA report must provide full and detailed justification for the levels and approaches chosen for the particular project or site.

¹⁸ For example see: BC Cancer Agency, Study Shows High Cancer Risk for Pulp Mill Workers, www.bcen.bc.ca/bcerart/Vol7/studysho.htm

¹⁹ For example see: Negative Health Effects of Malodours in the Environment, A Brief Review from the Journal of Neurology, Orthopaedic Medicine and Surgery (1998).

²⁰ For example see: www.medicalnewstoday.com/medicalnews.php?newsid=33330

The CIS violates the World Bank Group Pollution Prevention and Abatement Handbook, with respect to type of technology selected, nor does the Environmental Assessments provide “full and detailed justification” for the divergence from this standard as required by the EA Policy. This is particularly egregious given that the project has been identified as falling within the most environmentally sensitive category.

Justification has not been made by the CIS as to why the mills do not use environmentally friendly TCF technology instead of ECF, indirect contravention of the World Bank Pollution Prevention and Abatement Handbook, which explicitly states ‘(t)he use of elemental chlorine for bleaching is not recommended.’

The CIS does not include a detailed justification of the site chosen nor examines site alternatives. This is particularly important considering the proximity of the project site to densely populated areas and to farming and cattle raising areas, the conditions of the Uruguay River, which is considered to be a fragile environment due to high levels of phosphorus, due to systematic use of the river for water human consumption down stream from the mill sites, and the substantial use of the river for recreation and fishing activities. Over a 90% of the fishing industry, 4,500 tons per year, relies on the part of the river that will be directly affected.

P.7

“Depending on the project, a range of instruments can be used to satisfy IFC’s EA requirement: environmental impact assessment (EIA), environmental audit, hazard or risk assessment, and environmental action plan (EAP). EA applies one or more of these instruments, or elements of them, as appropriate.”

In the case of these projects, no environmental action plan was provided, nor were serious or founded assessments made of environmental risks.

P.8a

IFC undertakes environmental screening of each proposed operation to determine the appropriate extent and type of EA. IFC classifies the proposed project into one of four categories, depending on the type, location, sensitivity, and scale of the project and the nature and magnitude of its potential environmental impacts.

a) **Category A:** A proposed project is classified as Category A if it is likely to have significant adverse environmental impacts that are sensitive,⁹ diverse, or unprecedented. These impacts may affect an area broader than the sites or facilities subject to physical works. EA for a Category A project examines the project's potential negative and positive environmental impacts, compares them with those of feasible alternatives (including, the “without project” situation), and recommends any measures needed to prevent, minimize, mitigate, or compensate for adverse impacts and improve environmental performance. For a Category A project, the project sponsor is responsible for preparing a report, normally an EIA that includes, as necessary, elements of the other instruments referred to in para 7.

The CIS does not contemplate feasible alternatives (including the no-project alternative) and proposes an unrealistic period for the mills first stage of operation. The evidence shows that this first stage takes much longer than stated in the CIS. It is worth noting that Stora Enso/Aracruz celebrates as a worldwide record that their mill Veracel completed this period in 176 days.²¹

P.11

When the project sponsor has inadequate environmental capacity to carry out key EA -related functions (such as review of EA, environmental monitoring, inspections, or management of mitigation measures) for a proposed project, IFC requires the project sponsor to strengthen internal staff capacity or retain qualified outside expertise.

Project sponsors have shown poor capacity, irresponsibility, confusing and incomplete portrayal of environmental impact information, as well as criminal liability (resulting in criminal convictions in its home country for the implementation of a similar project).

P.12

For all Category A projects and as appropriate for Category B projects during the EA process, the project sponsor consults project-affected groups and local nongovernmental organizations (NGOs) about the project's environmental aspects and takes their views into account. The project sponsor initiates such consultations as early as possible. 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

²¹ Pulp and paper Int., “Veracel sets new standards” Vol. 18, 1

EA report is prepared. In addition, the project sponsor consults with such groups throughout project implementation, as necessary to address EA related issues that affect them.

Violations to paragraph 12 of the EA are some of the most glaring and 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 (suggesting “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).

P.14

For meaningful consultations between the project sponsor and project-affected groups and local NGOs on all Category A and as appropriate for Category B projects, the project sponsor provides relevant material in a timely manner prior to consultation and in a form and language that are understandable and accessible to the groups being consulted.

Consultations have NOT been meaningful, they have taken concerns lightly, written off stakeholder concerns as negligible, or they have been entirely ignored while no significant consultations have been organized with Argentine stakeholders.

P.15

For a Category A project, the project sponsor provides for the initial consultation a summary of the proposed project’s objectives, description, and potential impacts; for consultation after the draft EA report is prepared, the project sponsor provides a summary of the EA’s conclusions. In addition, for a Category A project, the project sponsor makes the draft EA report available at a public place accessible to project-affected groups and local NGOs. For FI operations, the FI ensures that EA reports for Category A subprojects are made available in a public place accessible to affected groups and local NGOs.

No presentation of information has occurred with Argentine stakeholders, while Annex B-Content of an Environmental Assessment Report for Category A Projects has been ignored, particularly referent to:

- o b) policy, legal and administrative framework, explaining the environmental requirements, relevant international agreements, etc.;
- o e) assessments to ascertain “uncertainties associated with predictions”, particularly as relate to the assessments own conclusions showing systematic excess in environmental contamination as per model used to predict impacts;
- o f) failure of the project to calculate no-project alternatives especially considering the existing grave environmental impact, siting risks, long-term and sustained environmental degradation, and other aspects of the project which clearly represent hindrances to local social, environmental and economic sustainability;
- o g) failure to produce an environmental action plan covering real and meaningful mitigation, measures, monitoring and institutional strengthening.

Violations resulting from faulty EA

P.2

- Failure to properly consider its “area of influence” ignoring impacts on Argentine territory;
- Failure to consider the breadth of impact of pouring contaminated water into river at point where local communities downstream source water;

- Failure to consider effects on tourist industry that will be affected by foul odors; of fishing industries that will be affected by reduction of fish stock; or rare native species in the area;

P.3

- Failure to consider trans-boundary aspects of environmental contamination.

P.6

- Pollution levels exceed systematically those stipulated by national laws and industry standards in pulp and paper industry;

Annex B-Content of an Environmental Assessment Report for Category A Projects

- c) Failure to include Argentine relevance in area of influence; focus only on Uruguayan side;

EA and Draft CIS Violations in terms of Specific IFC Projects on Natural Habitats policy (OP 4.04) Prima facie violations

P.3

IFC does not support projects that, in IFC's opinion, involve the significant conversion or degradation of critical natural habitats.

P.4

Wherever feasible, IFC financed projects are sited on lands already converted (excluding any lands that in IFC's opinion were converted in anticipation of the project). IFC does not support projects involving the significant conversion of natural habitats unless there are no feasible alternatives for the project and its siting, and comprehensive analysis demonstrates that overall benefits from the project substantially outweigh the environmental costs. If the environmental assessment⁴ indicates that a project would significantly convert or degrade natural habitats, the project includes mitigation measures acceptable to IFC. Such mitigation measures include, as appropriate, minimizing habitat loss (e.g., strategic habitat retention and post-development restoration) and establishing and maintaining an ecologically similar protected area. IFC accepts other forms of mitigation measures only when they are technically justified.

It is worth mentioning that Argentina and Uruguay committed bilaterally to preserve the Uruguay River to the highest environmental level. The Binational Commission that manages the river (CARU) has stated that the river constitutes a critical natural habitat. It is worth noting the magnitude of the contamination that will be generated by these projects. Taking only one of the project sponsors, Botnia will spill 109.600.000 m³ of contaminated effluents into the Uruguay River in its 40 years of production. Emissions to land air and water will include numerous substances listed under Argentina's list of dangerous and toxic substances (as per law 24051) including, mercury, phosphorus, furans, dioxins, and other wastes such as cyanide, PCB, PCT y PBB,²² as well as substances including metals carbon, copper and chromium wastes, acids, asbestos, explosive and inflammable waste materials, toxic and corrosive gases

The mills will be located, for the convenience and financial benefit of the project sponsors, in the immediate vicinity of local urban populations, including the city of Fray Bentos which has a population of 23,000 and Gualeguaychú at only 33 kilometers away with 86,000 people having to face the severe economic and health risks and impacts of these mills, including effects of chlorine contamination which results in irritations to skin, eyes, and possibly malformations at birth, respiratory complications and disease, inhibition to the immune system, allergies, complications to the endocrine system, diabetes, low weight at birth, locomotion deficiencies, cancer and death.²³

²² Law 24.051

²³ The Kraft Process is one of the processes utilized with chlorine to produce pulp. Three types exist:
1-using element chlorine (along with the Kraft process is one of the more contaminating processes as the gases emitted are some of the more detrimental releasing dioxins and furans, which are carcinogenic compounds which are slated for elimination by the Stockholm Convention.

2- Element Chlorine Free ECF or Kraft (which utilizes a derivative of elemental chlorine denominated chlorine dioxide, due to which this also produces dioxins, furans and other composites).

Botnia alone will spill 68,500 daily m³ of liquid effluents into the river, at an abnormally high temperature between 35 y 37 degrees when the maximum permitted temperature is 30 degrees. Botnia alone will discharge nearly 1,000 tons of suspended solids into the waters, causing direct impact to the fish stock and biodiversity and ecological balance of the river.

The industrial activity of the two plants will consume (in water) in one day, what the entire population of Fray Bentos consumes in one month, however returning the water to the river contaminated form. 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.²⁴ This report 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.

Further, the accumulation of sediments on the Argentine side of the river is of great concern to local communities, particularly the likely deposits of fine sediment resulting from suspended solids.

Also, according to Canadian studies (Environment Canada) it has been shown that Kraft method production produces substances in waterways that affect fish stock due to its impact on their metabolism, affecting their reproductive capacity, which will be particularly important to stocks of "Sábalo" who feed from suspended solids in the river. This impact has been proven to impact human health (for people who eat fish), especially women lactating, for example,

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.²⁵ The report concludes that:

(a) ... prenatal exposure to dioxins, furans and BPC have been associated to a variety of immunological complications, and in the neurological development of newborns, increasing chances of adverse health problems (diabetes, cancer) as well as impacts to workers exposed to high levels of TCCD [dioxins] and other chemical industrial substances...".

This has been further verified as stated in the North American Plan of Action on Dioxins and Furans²⁶ and by the Report of the Commission of Environmental Cooperation (CCAAN).

3- The TCF or Total Chlorine Free process does not use chlorine, but rather hydrogen or ozone. This is the process chosen by the EU, home to the Project sponsors. This process rarely used due to its higher costs.

Proceses which use the Kraft method (which includes elemental chlorine (ECF) have important environmental consequences a result of the process.

²⁴ 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.

²⁵ Expediente de nominación sobre dioxinas y furanos Presentado por Canadá al Grupo de Trabajo sobre Manejo Adecuado de Sustancias Químicas

²⁶ 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

EA and Draft CIS Violations in terms of Specific IFC Projects on International Waterways policy (OP 7.50)

Prima facie violations

P.8

- Failure of the IFC to prepare a IFC Board Report dealing with the international aspects of the project.

P.3

- The projects have clearly demonstrated that they violate this policy in their failure to foster "collaboration and goodwill" between "riparian states" as well as violating agreements between these states;
- There is no cooperation and goodwill amongst riparian groups, and the states of Uruguay and Argentina;
- '(A)ppropriate agreements or arranges' were not made; and
- No 'urging' by IFC to induce 'beneficiary state to offer to negotiate in good faith with other riparians to reach appropriate agreements or arrangements.'

P.4

- Failure to address riparian agreements at an early stage of the project;
- Failure of beneficiary state to notify other riparian state of the project and its potential social, environmental and water quality impacts;
- Failure of the project sponsor to notify impacted riparian state when they realized that the beneficiary state had not done so;
- 'International aspects of a project on an international waterway' were not dealt with at the 'earliest possible opportunity' which today remain unresolved;
- Failure of the IFC to identify riparian state agreements and their significance respective to the anticipated environmental (and specifically, water quality) impacts of the proposed projects; and
- Failure of the IFC to appoint independent expert once the objection of the impacted riparian state (Argentina) was made clear; instead, the World Bank Group responded to the Argentine complaint that the environmental impact assessment showed no violations of the CARU commission, and that the project would not have any adverse effects on the quality of water of the Uruguay River, nor to Argentina, and requested that the Argentine Republic respond to the enormous task of conducting its own EIA, in only 30 days, or it would be assumed they had no objections to the project;

P.8

- No 'appropriate agreement or arrangement' exist between Uruguay and other riparians, and the IFC Board report must state this fact; and
- 'Appreciable harm' will be caused to other riparians, which the IFC Board Report must take into account.

EA and Draft CIS Violations in terms of IFC's Policy on Disclosure of Information
Prima Facie Violations

Page 3

- The IFC Draft CIS is not a 'satisfactory' Environmental Assessment due to the quantity of serious violations of policy and CAO recommendations.
- No Environmental Action Plan (EAP) exists in the CIS, 'containing the environmental and social measures designed to manage, mitigate and monitor impacts identified earlier in the environmental assessment process.' The CIS contains only a table of possibilities for significant cumulative impacts; and
- Affected people have not been consulted 'in a meaningful manner'. This must occur prior to the release of the EA report and 60-day disclosure period.

EA and Draft CIS Violations in terms of Specific IFC Environmental and Social Review Procedure
Prima Facie Violations

Guidance Note A: Checklist of Potential Issues for an EA

- Failure to adhere to the guidelines has occurred with respect to the following:
 - Environmental Guidelines;
 - Hazardous and Toxic Materials;
 - International Treaties and Agreements on the Environment and Natural Resources; and
 - International Waterways.

Guidance Note B: Content of an Environmental Impact Assessment Report

- Failure to include the following in the Draft CIS
 - 2(b) Policy, legal and administrative framework
 - 2(f) Analysis of alternatives
 - 2(g) Environmental Action Plan
- Failure to adequately include the following in the Draft CIS
 - 2(e) Environmental and Social Impacts

Guidance Note C: Outline of an Environmental Action Plan (EAP)

- Failure to include an EAP
- The IFC cannot decide to support a project without an EAP since the decision to support a project is 'predicated in part on the expectation that the EAP will be executed effectively.'²⁷

Guidance Note E: Outline of a Project Specific Major Hazard Assessment

- Failure to produce a major hazard assessment with respect to on-site Chlorine Dioxide production (a necessary component of ECF bleaching) cannot be transported to the site. Chlorine dioxide is an unstable gas that dissociates into Chlorine which is classified a toxic gas²⁸ by the World Bank. World Bank regulations state the 'storing, handling and processing' of toxic materials requires a major hazard assessment.²⁹

Guidance Note E Outline of Project Specific Major Hazard Assessment

- Violation of Guidance Note E in its entirety has occurred.

EA and Draft CIS Violations in terms of World Bank Pollution Prevention and Abatement Handbook (Pulp and Paper Mills)

Prima Facie Violations

Page 396

- Failure to follow World Bank recommendations that explicitly state in italics: '*(t)he use of elemental chlorine for bleaching is not recommended.*'

²⁷ Paragraph 1(e)

²⁸ World Bank Technical Paper, Techniques for Assessing Industrial Hazards, table D2p168.

²⁹ Guidance Note E (1)

EA and Draft CIS Violations of CAO Recommendations

The CAO is the independent advisor and controller of IFC compliance with their own policies and guidelines. Previously it conducted independent investigations into IFC EA, confirmed a range of violations to the IFC's own policy and provided recommendations by which to achieve compliance. These recommendations now form an integral part of IFC policy framework compliance and cannot be ignored. Subsequently, by violating CAO recommendations, the IFC continues to contravene its own policies which are fundamental for project evaluation by IFC and MIGA boards.

The CAO recommendations are based on evidence gathered by the CAO whilst responding to a complaint filed on behalf of almost 40 000 residents of Gualeguaychú,³⁰ located in Argentina on the opposite side of the River Uruguay to the projects. The complaint asserted IFC Operational Policy violations, which were confirmed by the CAO, who then produced the recommendations. The following recommendations are violated by the CIS.

EA and Draft CIS Violations in terms of General CAO Recommendations

Prima Facie Violations

- Failure to act decisively and failure to assure the citizens of Argentina and Uruguay that the IFC has embarked on a credible process as a result of:
 - Failure to substitute the discredited environmental consultants responsible for both Botnia and ENCE EIAs;
 - Failure to ensure that the consultants communicated with stakeholders and used this input to establish terms of reference for the CIS; and
 - Failure to include social and environment impact assessment performed by universities and independent bodies.
- Failure to demonstrate due *diligence* as a result of:
 - Failure to adhere to the IFC's own policies; and
 - Failure to comply with CAO recommendations.
- Failure to demonstrate it will appropriate information to make a decision whether it will or will not support the project:
 - A simple example is that the Draft CIS grossly overstates the distance between the city of Guayleguaychú and the Orion plant as 40 kilometers,³¹ when it is actually 22 kilometers.

EA and Draft CIS Violations in terms of CAO Recommendation 1

Prima Facie Violations

- Failure to define and keep separate the consultation and disclosure periods;
- Failure to prevent the marginalization of impacted people;
- Failure to set of terms of reference that would adequately include all concerns of those affected by the projects; and
- Failure to identify the consultation period;

Violations as a result of faulty environmental assessment

- Failure to recognize people impacted and their concerns; and
- Failure to identify the nature and extent of the impacts

EA and Draft CIS Violations in terms of CAO Recommendation 2

Prima Facie Violations

- Failure to provide answers to questions raised by the complainants about social and environmental costs in a credible way as none of the 39 633 affected victims or civil society groups who brought the initial complaint before the CAO participated in consultations
- Failure to provide answers to questions about environmental risks in a credible way;
- Failure to build trust; and
- Failure to address questions of process integrity.

³⁰ www.cao-ombudsman.org/html-english/complaint_cmb.htm

³¹ Draft CIS, point 3.2, p21

EA and Draft CIS Violations in terms of CAO Recommendation 2a

Prima Facie Violations

- Failure to consult many affected victims and stakeholder groups about the design and implementation of the CIS; and
- Failure to define Terms of Reference

EA and Draft CIS Violations in terms of CAO Recommendation 2b

Prima Facie Violations

- Failure to ensure the highest caliber of independent, external expertise; and
- Failure to promote participation by people who have the trust of the complainant communities since
 - the same discredited consultant used for previous faulty EIAs was once again utilized by the IFC.

EA and Draft CIS Violations in terms of CAO Recommendation 2c

Prima Facie Violations

- Failure to employ joint problem solving approaches with regard to the design of appropriate mitigation measures;
- Failure to include action plans. Only possibilities mentioned in the Draft. An example is 'consult with stakeholders to understand issues (such as negative effects on tourism) and respond further;
- Failure to address concerns about enforcement of regulations;
- Failure to address whether or not to invoke an international regulatory panel; and
- Failure to address concerns about the IFC's pre-disposition to fund the projects.

EA and Draft CIS Violations in terms of CAO Recommendation 'factually based concerns' 2a

Prima Facie Violations

- Failure to evaluate ECF technology with Best Available Technology provisions of the Pollution Prevention and Abatement Handbook;
- Failure to include details on specific engineering mechanism demonstrating use of Best Available Technology; and
- Failure to comply with the European Union's Directive on Integrated Pollution Prevention and Control.

EA and Draft CIS Violations in terms of CAO Recommendation 'factually based concerns' 2b

Violations as a result of faulty EA

- Failure to assess potential receptors in both Argentina and Uruguay;
- Failure to address potential impacts of water emissions on water quality on local and tourist fishing communities;
- Failure to assess potential impacts of air emissions on agricultural productivity; and
- Failure to assess potential impacts of eucalyptus plantations on landholder equity as well as water availability;

EA and Draft CIS Violations in terms of CAO Recommendation 'factually based concerns' 2c

Violations as a result of faulty EA

- Failure to definitively address the question of whether or not tourism and the pulp mills are compatible given the current proposals;
- Failure to assess whether or not it is possible to devise appropriate mitigation measures, bearing in mind the adequacy of the existing regulatory processes for managing potential trans-boundary impacts; and

- Failure to assess whether or not it is possible to devise appropriate mitigation measures, bearing in mind the adequacy of the existing regulatory processes for managing potential trans-boundary impacts.

EA and Draft CIS Violations in terms of CAO Recommendation 'factually based concerns' 2c
Prima Facie Violations

- Failure to provide guidance and clarify to affected people its interpretation of OP 4.01 paragraph 3 which requires that the IFC's Environmental Assessment 'takes into account... the country's overall policy framework and national legislation... and obligations of the country pertaining to project activities, under relevant international environmental treaties and agreements.'

EA and Draft CIS Violations in terms of CAO Recommendation 3
Prima Facie Violations

- Failure to provide guidance and clarify to affected people its interpretation of OP 4.01 paragraph 3 which requires that the IFC's Environmental Assessment '*takes into account... the country's overall policy framework and national legislation... and obligations of the country pertaining to project activities, under relevant international environmental treaties and agreements.*'

Comments on CAO Recommendation 4 and IFC Compliance Audit

In its Preliminary Assessment Report³², the CAO illustrated its concern about the application of social and environment appraisal procedures by both IFC and MIGA and the question of dual policy application by both MIGA and IFC to a single project. Subsequently, the CAO decided to undertake a compliance audit which would address these matters by, amongst other things, evaluating 'the adequacy of IFC's procedures to the point of public disclosures.' The compliance audit was completed February 17th, and has subsequently been circulated within the IFC and World Bank.

CAO recommendation 4 identifies 'greater clarity in relation to the application of social and environmental appraisal procedures' as a necessary constituent to assist the dispute resolution process. However, the Compliance Audit has not been publicly released by the World Bank, denying stakeholders a legitimate reference and source of clarification regarding IFC compliance to applicable social and environmental appraisal procedures. The undersigned contest that the non-release of the Compliance Audit represents a failure of transparency and accountability on behalf of the World Bank, preventing an informed assessment of EA and Draft CIS adequacy by IFC and MIGA Board members.

³² http://www.cao-ombudsman.org/html-english/documents/preliminary_assessmentFINAL.pdf

Comments and Contradictory Opinion Specific to Content of the CIS

Page (v): "Each company has prepared comprehensive Environmental Impact Assessments (EIA) for their projects in accordance with both Uruguay and World Bank requirements."

[Comment: Both companies have systematically violated both Uruguayan and World Bank regulations and policies established to ensure avoiding serious environmental and social impacts for Category A projects; these violations are especially concerning regarding siting assessment which were entirely ignored and are in non-compliance, combined impact studies, which only occurred later and merely add incomplete and insufficient data –no new studies were conducted to address the concerns of Argentine stakeholders, primarily because Argentine stakeholders WERE NEVER consulted prior to the design of the terms of reference of the CIS (as mandated by OP 4.01 para 12, regarding Category A projects). It is important to note that TO THIS DAY, there has been NO CONSULTATION for the CIS, before or afterwards with the public of Gualeguaychu or with the Citizens Environmental Assembly of Gualeguaychú, which represents nearly 40,000 signatories to the CAO complaint filed in September of 2005 regarding these projects. No studies have been presented for alternative sites or for NO-PROJECT alternatives (which are especially important to consider alternative uses of finances which could be invested in tourism, which is the driving force of the region's economy); NO studies have been offered by the industries or by the CIS regarding impacts to alternative industries that currently operate (fisheries, bees, dairy, beef, rabbit, berries, poultry, agro-industry, etc.), which stand to be affected by acid rain in the area. In these studies, the argentine half of the sphere of influence of the mills was ENTIRELY ignored in calculations and written off with insufficient written paragraphs suggesting minimal or no impact, yet offering no material evidence that such considerations have been calculated based on substantive studies.

Page (v): "Both plants will utilize best available technology in the making of wood pulp as defined by the European Union's Directive on Integrated Pollution Prevention and Control and both plants will meet Uruguayan emissions regulations and World Bank Group guidelines as well as European Union Standards."

[Comment: The CIS does NOT provide any evidence that is utilizes best available technology in compliance with European, World Bank and Uruguayan law, rather it feebly provides a vacuous assertion aimed at pacifying the Board. Both projects fail to comply with the *European Union's Directive on Integrated Pollution Prevention and Control, World Bank Group guidelines and European Union Standards*, which refers to best available techniques, not best available technology as stated by the CIS. Botnia and ENCE EIAs do not provide information regarding the industrial engineering processes that will be employed to achieve projected goals, resulting in no credibility for the technical compliance. A fault further elaborated by the Argentine Foreign Ministry Report, that also highlights current best available techniques published by the European Union are five years old without incorporating the latest technology. European Union BAT will be updated this year and incorporated into European Union law in 2007, around the exact same time of the proposed commissioning of the two mills.³³

The IPPC heavily emphasis that utilizing BAT cannot be addressed solely in technical terms referring to emissions standards, but relies heavily on local environmental and social considerations. Article 9, paragraph 4 states that permits can only be given when:

'(maximum emission values) shall be based on the best available techniques ... taking into account the technical characteristics of the installation concerned, its geographical location and the local environmental conditions.'

The CIS's faulty assessment of local environment conditions such as not assessing reverse and stationary river flow. Neither are technical characteristics of the projects taken into account such as planned stoppages or abnormal operating conditions that will occur in the first two years.³⁴ Therefore the maximum emission values calculated to satisfy permit requirements are not calculated correctly to comply with best available techniques.

³³ Observaciones al Borrador de Estudio de Impacto Acumulado de la Corporación Financiera Internacional, 16 de Enero de 2006, p11 and 12

³⁴ Note 17, p9

Keeping in mind the substantial violations of international law, IFC policy, CAO recommendations with respect to transboundary affects, the CIS violates Article 9, paragraph 4 which posits that::

'all circumstances, the conditions of the permit shall contain provisions on the minimization of long-distance or transboundary pollution and ensure a high level of protection for the environment as a whole.'

High level protection of the environment 'as a whole' requires a proper assessment of the physical geographical location of affected residents, however the CIS puts forth the notion that Guayleguaychú is 40 kilometers away instead of the actual 22 kilometers, and does not take into account the location of Fray Bentos' municipal water intake. Furthermore, the CIS does not satisfy the IPPC, failing to contemplate Article 9 paragraph 5 that requires 'suitable release monitoring requirements, specifying measurement methodology and frequency, evaluation procedure and an obligation to supply the competent authority with data required for checking compliance with the permit.'

The CIS violates paragraph 6, Article 9 of the IPPC which requires that the procedural application of BAT include 'measures relating to conditions other than normal operating conditions.' The CIS negligently does not evaluate risks outside of normal operating conditions. The IPPC is specific on this important point and goes on to list circumstances that must be contemplated, stating that 'where there is a risk that the environment may be affected, appropriate provision shall be made for start-up, leaks malfunctions, momentary stoppages and definitive cessation of operations.' The CIS does NOT consider any of these important points in its assessment of environmental risk.

The CIS violates paragraph 1, 2, and 3 of Article 17 of the IPPC which requires notified of the trans-boundary effects such that this information is made available for an appropriate duration enabling representatives of neighboring states to comment. Additionally these comments MUST be taken into account by the CIS. Argentina was not notified of the transboundary affects, neither given time to respond. The CIS does not take into account comments, official or otherwise, by representatives of Argentina.

The CIS violates World Bank Group guidelines. Both projects utilize elemental chlorine free pulp producing process, referred to on page 396 of the *World Bank Pollution Prevention and Abatement Handbook (Pulp and Paper Mills)* which italics to explicitly highlight: '(t)he use of elemental chlorine for bleaching is not recommended.'

Page (v-vi): "Both projects are expected to require 4,000 or more workers during their peak construction periods ...".

[comment: While short term construction phases may include such numbers, long term worker supply suggest that only 300 or less low paid jobs will be created for permanent operation of the mills. These jobs pertain to HIGHLY dangerous working environment that have shown in the past and at a great number of papermills using precisely the same technology, that workers suffer from chronic illness, respiratory problems, and even cancer and death. 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 Gualeguaychú that depend on the tourism sector for employment, or on other industries, such as agro-industrial and small scale agriculture production that will LOOSE employment due to the installation of these mills, generating a net job loss for the region over the long term].

Page (vi): "The economic benefits of the two projects will accrue from direct and indirect employment, value generation from wood processing and from tax revenue for local, regional, and national governments."

[Comment: Studies done by the well known Environmental Economist, Sejenovich, that have been made available to the IFC by the Argentine national government, suggest that the project will entail economic, social and environmental losses estimated at 1.3 billion dollars in a 25-year period. Furthermore, it should be noted that the companies have negotiated a 25 YEAR TAX FREE HAVEN, due to which THERE WILL BE NO TAX BENEFIT OR REVENUES accruing to the Uruguayan government from the production of the mills. The ONLY tax revenues to benefit the local population are small revenues for local supplies that the companies may purchase in local markets. 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 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 chemicals³⁵ and will source 60% of raw materials from plantations owned by Botnia.^{36]}

Page (vii) "... odor may be occasionally detected at up to 10 kilometers from the plants".

[Comment: the studies provided by the CIS on wind patterns remain highly contentious. It is well accepted and known to most persons that live near or in the vicinity of pulp paper mills, that odor is not only permanently present in the atmosphere, but can be identified at up to 50 kilometers from project sites. Considering that these mills are located in a highly windy area, with NO MOUNTAINS anywhere in sight, and with a river immediately in front of the mills, the likelihood that the 50 kilometer radius will be affected seems clearly evident].

Page (vii) "the Government of Uruguay has been supporting the development of plantation forestry for nearly twenty years ... both plants require wood supplies that are harvested from sustainably managed plantations certified as such according to the internationally recognized standards established by the Forest Stewardship Council."

[Comment: The CIS fail to provide conclusive evidence and information regarding sustainability of eucalyptus planting for these projects. While much information is provided in Annex B of the CIS, about the sustainability of Eucalyptus harvesting with respect to land use, it fails to cover water table sustainability concerns. This is ESPECIALLY important since the IFC HAS EVIDENCE from nearby small scale agricultural producers in Uruguay, that the rapidly growing eucalyptus grove planting that is already taking place to feed these industries, are causing freshwater shortages in a number of localities and causing SEVERE problems for local agriculture production, ruining the livelihoods of small producers, who now have problems tapping into subterranean aquifers that have since dried up due failure of these plantations to consider underground water resources. The CIS offers evidence suggesting that "the main environmental effect of Eucalyptus is known to be its heavy use of ground water... in Uruguay this is not of immediate concern ... however the international experience is such that proactive research and management of its potential impacts needs to be investigated"³⁷ The studies offered by the CIS are inconclusive on this issue and suggest that further studies are need to understand the impacts of massive Eucalyptus tree plantations on local water supply. The CIS can only conclude that relative to soil use, eucalyptus harvest are sustainable because they are using soil not apt for agriculture, however NO information is given on the water problem caused by the harvesting. If no concerns were voiced from local stakeholders on water, this might not be a hindrance to advancing with these projects, and as the CIS suggests, the companies could monitor water table supplies as the projects advanced. HOWEVER, given the SERIOUS and ALREADY EXPRESSED concerns of local stakeholders that THERE are ALREADY problems with water table supplies, these projects CANNOT advance until this issue has been fully studied and understood. The information provided by the CIS is INSUFFICIENT ON THIS COUNT. Approximately 210,000 hectares of plantations will be needed to feed into production of these plants, including 65,000 new hectares of new eucalyptus plantations. This is one of the VERY significant concerns raised by Uruguayan small scale agriculturalists (for example, residents of Mercedes) to the CAO and to the IFC, yet NO RESPONSE has been given by project sponsors, by the CIS or by the IFC to these concerns.]

Page (vii) "Tourism is well established in and around the area of the mills on both sides of the Rio Uruguay. Detrimental impacts have been raised as a major public concern regarding the development of the pulp mills".

[Comment: Tourism is an issue that has been of GRAVE concern to stakeholders in Argentina, especially. Considering that the CIS, the project sponsors and the IFC more specifically, have failed to consult Argentine stakeholders, or take their concerns into consideration in the design of the CIS, it is not surprising that the CIS fails to sufficiently study this issue and devotes minimal statistical coverage on the matter. This is especially problematic considering that the region depends on tourism revenues for much of its income. The Argentine government, and Dr. Sejenovich have provided extensive information about the impacts to

³⁵ Botnia Echo: The Customer magazine of Botnia, 1 : 2005, p16

³⁶ Ville Jaakonsalo, PROJECT ORION: Funding a Pulp Mill Investment in Uruguay, Metsä Group Financial Services Oy

³⁷ From ANNEX B of CIS: Plantations, taken from Forest Management Certification Report, SGS Qualifor (July 31, 2003)
p. 29

tourism well worth reviewing. The CIS suggest that the visual impact of the mills from key spots on Argentine beaches are minimal, and offers pictures showing simulated depictions of the mill at a distance, however, these pictures leave out the critical element of the permanently visible smokestacks that will emanate from the chimneys for *at least 350 days* (according to their own estimates) per year. This visual contamination of smoke is far greater than the visual contamination of only the physical construction, which is what the CIS displays. ENCE, the Spanish sponsor, has for example, made the preposterous claim that the construction of their factory actually "attracts" tourism from curious visitors who travel to visit papermill factory sites!

The report goes on to say that "if the protest over the plants subsides, there may be no long term effect", respective to negative press deterring from tourism. In fact, press coverage of the conflict is escalating, as are road blocks and other mass protest. Gualeguaychusenses, the people of Gualeguaychú, are a determined and highly environmentally conscious community, and it is to their credit, that this international conflict is today installed at the heart of the World Banks Group and solidly in local and international press. Their opposition is not about to go away, nor is press coverage to this international incident fueled by Uruguay's and the IFC's obstinate position to continue with the projects.]

Page (77) Bi-national Commission "The commission will issue a first report [after 180 days of deliberation] by January 31, 2006" [regarding the bilateral negotiations over the installation of the mills]. The Bi-national commission presented its report on January 30th, not only concluding its 180 bilateral session with a deadlock in the ongoing an unresolvable conflict between Argentina and Uruguay over the installation of the papermills, but essentially ended with Uruguay's unilateral decision to continue the construction of the mills, and Argentina's decision to take Uruguay to the International Court of Justice, the arbitration body established by the River Uruguay Treaty to review conflicts resulting in management questions over the use of the this international waterway. The IFC's International Waterway Policy OP 7.50 states that it attaches great importance to riparians making appropriate agreements or between the beneficiary state and the other riparians, prior to financing the project IFC normally would urge the beneficiary state to offer to negotiate in good faith with the other riparian to reach appropriate agreements or arrangements." It is clear from this policy, that if Argentina has taken Uruguay to an international tribunal due to conflicts over these mills, that the IFC could not accept this circumstance as grounds of "good faith" negotiations, and would have to sustain from providing financing.

Page (vii)"The CIS reviewed the capacity of the companies, government agencies and other concerned bodies to manage the expected impacts of the mills and found that there is adequate capacity to do so. ... there is clear opportunity among the companies, government agencies at the national, regional, and local levels, and other stakeholders, including civil society organizations for collaboration ... to minimize any adverse effects of the projects and to maximize their development benefits".

[Comment: The conclusions of the CIS on mitigation are clearly incorrect and fail to reflect the TRUE nature of project circumstance and relations between the various actors at present. It is critical to point out that: not only are the companies (such as ENCE which has been criminally convicted of irreversible environmental damage in Spain) but also government agencies (corruption charges against the Uruguayan environmental agency, DINAMA for illegal operations permit issuance to the companies) NOT capable of managing such risk, but there is presently ENORMOUS DISAGREEMENT and NO OPPORTUNITY at present between civil society organizations, regional bodies (the Binational Commission that manages the Uruguay River is locked in unresolvable dispute over these mills), to work on mitigating conflict, adverse impacts or maximizing development benefits, which if fact are understood by most of these actors as development hurdles.]

Page (1) "Both companies are leading producers in their sector, both technologically and in terms of their corporate and social values, policies and approaches".

[Comment: At least one of the major companies involved, ENCE, not only has not shown "corporate and social values" but has criminal convictions, fines, and jail sentences due to exactly the same type of pulp paper production scheme in its home country. ENCE's failure to address these problems in their home country, their failure to assume responsibility of their own volition, only reacting to public outcry and lawsuits, and the documented reaction of local populations and decision by local courts in Spain suggest that they cannot be expected to act in a better manner in a country like Uruguay, with less stringent environmental codes, less strict environmental enforcement, and with less capacity to react in the face of the severe

environmental risk these companies pose for local populations, for the local environment and for the livelihoods of local producers.]

Page (3) "Both Botnia and ENCE carried out site selection processes to choose the location of their plants."

[Comment: From the studies provided by the companies, there appear NO indication or statistics to prove that studies were carried out for other locations. The companies merely suggest in a few paragraphs that they did so, however provide NO documentation to sustain any real site analysis. It is clear from the evidence available and history of the companies in the region, and how the decision to transfer production aspects of the industry to Uruguay, that both companies, originally had no intention of producing pulp in Uruguay. Originally, these plant sites, already owned by Botnia and ENCE were to be used for processing eucalyptus trees into woodchips, and loading woodchips at the ports located immediately adjacent to the plants. Production of pulp, the most contaminating part of the paper production process, was to be done in Europe. As legislation and legal suits in Europe against paper mills began to complicate production, both ENCE and Botnia surely viewed Uruguay as an ideal destination for their production processes. Since they already had lands and woodchip production plants on their land, and the ports for loading were already constructed (with international development finance) it was economically more viable for these companies to install production at the same sites, without having to consider expensive land acquisition. The problem posed by this decision was that siting questions could or should not be addressed, since an analysis would surely indicate that placing a contaminating industry in the heart of an urban population, immediately upstream from the city's drinking water intake, and in the heart of a region dependent on tourism, was not a wise decision, nor was it economically profitable for the greater region. For this reason, surely, both companies have IGNORED their responsibility, Uruguayan legislation requirements, and IFC Environmental Safeguard Policy regarding Category A projects, to do a citing study and analysis. The few paragraphs of textual explanation that the companies offer to suggest that they have done a citing analysis, are certainly not sufficient nor do they cover the very severe issues related to their citing decision, merely due to their own economic interests in using already available and convenient lands.]

Page (3) "Both JICA and IBRD studies identified the vicinity of the town of Fray Bentos as a prime location for a pulp mill and port development due to its ..."

[Comment: The studies cited as evidence of cite location studies are studies that are more than 20 years old, long before plans were made to actually produce pulp at these sites. Original intentions were to produce woodchips for production in Europe. Furthermore, twenty years ago, the industry standard was FAR below the present standard, and no advancement existed on the elimination of chlorine intensive production, which would suggest that any such studies did not consider the environmental externalities caused by chlorine intensive processes. These studies are not sufficient to substantiate cite choice decisions.]

Page 3) 'The choice of the sites for both projects appears to be consistent with the plans and priorities established by earlier studies for the development of the forestry sector in Uruguay'

[Comment: This statement can only be considered in a context of production of woodchip only, since at the time of the plans mentioned, there was no indication that either of these two plants would produce pulp.]

Page (5) "Based on approval of the project-specific EIA, the country's responsible agency the Dirección Nacional de Medio Ambiente (DINAMA) issues environmental authorization"

[Comment: Not only did the DINAMA make many of the same concerned observations regarding both projects, including citing issues, contingency plants, and concerns over waste disposal and hazardous materials, but under suspicious circumstances, the DINAMA finally authorized permits without clarity on how these issues have been resolved; subsequently, a Federal Prosecutor in Uruguay has brought charges against the government precisely for irregularities regarding the issuance of such permits, leaving great doubt in the public mind as to the real reasons behind the authorization of construction and production permits].

Page (5) "The consultant selected to lead the work [on the CIS] was PCI Americas ..."

[Comment: PCI was the same consulting group hired by the companies to do the EIAs. This group not only communicated information to the public as if they themselves were the companies (speaking in the first person when referring to the projects) but made gross errors in their assessments, falsely representing data, making references to fish stocks in the Uruguay River that do not exist, and other such gross errors of fact. The IFC hired this same BIASED consulting group for what should be a NON-BIASED second opinion in the consultation and study process (as mandates by OP 4.01 para.4), despite LARGE and WIDESPREAD opposition from community groups BEFORE THE CIS was conducted, that there was NO FAITH and ABSOLUTE OPPOSITION to PCI to do these studies, as they were completely illegitimate from a moral, ethical, professional and public perception perspective. IFC chose to ignore recommendations and stakeholder opposition regarding PCI and rehired this group for the conduction of the CIS. See letter transmitting these concerns to IFC addressed to Dimitri Tsitsiragos of OCT 10 2005. This obstinate position with respect to PCI results in present day disbelief in the quality and content of the CIS and its methodology, process and real motives behind how it was undertaken.]

Page (30) on CIS Process:

[Comment: The IFC's Environmental Assessment Policy, OP 4.01, paragraph 12 states that ... "For Category A projects, the project sponsor consults [project-affected groups and local nongovernmental organizations] at least twice: (a) shortly after environmental screening and before the terms of reference of the EA are finalized." This is a critical safeguard policy and fundamental to the quality and content of this CIS, since, the IFC MUST BE sufficiently informed from stakeholders BEFORE they terms of reference of the study are finalized. This allows for the CIS, in this case, to be properly designed, so as to include ALL of the potentially controversial or critical concerns of stakeholders. THE IFC NEVER CONSULTED WITH STAKEHOLDERS PRIOR TO THE DRAFTING OF THE CIS OR DURING ITS IMPLEMENTATION. Nor did it offer the stakeholders a version of the Terms of Reference of the CIS, as was suggested by the CAO in its Preliminary Assessment Report, so that stakeholders could inform the IFC of where the key issues were. By not violating by this policy and ignoring the CAO's recommendations to share the TORs, the IFC's CIS now is INSUFFICIENTLY DESIGNED document, it is INCOMPLETE, and fails to consider some of the key and critical issues Argentine and Uruguayan stakeholders are making public over their concerns to the installment of these mills. Instead now, of reviewing the CIS for its content and coverage of such points as tourism, water table supplies and impacts to local livelihoods, which the CIS did not cover, stakeholders are asked and forced to participate in a 60-day consultation period on a CIS that does not even begin to address their concerns.

The key issue here is the faulty design of the CIS, and the IFC's obstinate position to withhold the TORs and to NOT consult with stakeholders regarding the design of the CIS BEFORE it was launched (in violation to its own policy). This undermines the ENTIRE consultation process, and serves ONLY to buttress the opinion of stakeholders that the IFC has made no effort to incorporate and address the serious concerns of local residents, something that the CAO points out in their preliminary assessment report. Stakeholders who are opposing these projects, are in fact, first and foremost, opposing the process itself, and have reiterated their position to the IFC, to the World Bank President and to the CAO, that the process LACKS a fair and transparent basis upon which to reach any workable understanding and solution to this problem. The opposition, as the CAO has claimed in its report, is NOT an irrational voice opposed to the installation of the mills. It is a perfectly legitimate voice that is merely requesting that the IFC respect its own policy and ensure a level, transparent and fair playing field, which it has failed to do in the way it has handled and trampled its own policy in this process. What is left is the impression that the IFC merely want to push this project forward as quickly as possible, writing off stakeholder concerns as irrelevant, or insignificant, while many real and legitimate actors, including the CAO have clearly and rationally expressed their concerns over this failed and unfair process.

Page (31). Regarding Public Consultation and Engagement

[Comment: It is revealing that in the midst of massive protest from Gualeguaychú, repeated roadblocks, cutting of international traffic, impediment to over 200 supply trucks en route from Chile to Uruguay to deliver

construction materials to the plants, numerous communications of the Assembly of Gualeguaychú to the IFC and to the World Bank president, protests in Uruguay, a criminal legal complaint filed and admitted to an Argentine federal court, a complaint filed in an Uruguayan federal court, an international complaint by 40,000 people filed to the Inter-American Commission on Human Rights, a complaint filed by 40,000 people to the CAO, two Equator Principle Compliance Complaints filed to ING Group (supporting Botnia) and BBVA (supporting ENCE), conflict from the Binational Commission governing the River Uruguay Treaty, constant front page press coverage in EVERY major newspaper of Argentina and Uruguay, evidence of the diplomatic dispute generated by these projects and preparations of a filing of the government of Argentina against the government of Uruguay to the International Court of Justice, and countless other actions too numerous to mention here; **that the IFC's make no mention of these actions against the mills** suggesting only that, "public engagement assisted in the scoping and focusing of the content of the draft CIS ... [and that] both Botnia and ENCE carried out consultation activities in support of their EIA activities."

The installation of these mills has resulted in the largest and most comprehensive and sustained public opposition to an environmentally risky investment in the HISTORY OF ARGENTINA. This is by far the case that has mobilized the MOST public attention ever regarding an environmental issue. It has resulted in UNPRECEDENTED massive protest by Argentines against Uruguayans, between two otherwise friendly countries, and a strong unbreakable brotherhood between two peoples. These projects have pitted Uruguayans against Argentines, in an unheralded and never before seen display of public opinion about how our communities should protect our natural resources, and the fears and risks of bringing contaminating industries to our countries, particularly sensitive when they are coming from the global north. It is important to clarify, however, that the issue centers not opposing the papermill industry, which is important to both countries, but rather on the SITING issues regarding the choice of location of the plants, which have been placed in the middle of two communities, on the coast of a pristine river protected by international bilateral law, and in the heart of one of the most significant tourist driven regions in Argentina and Uruguay. The CIS miserably fails to take into account the many legal, extra-judicial, and other actions taken against these mills, ignoring altogether all of this public outcry, offering the eventual reader (the public, and the eventual decision makers at the IFC's Board of Directors) a skewed, incomplete and false representation of the true nature of public engagement and opinion.

Page (35) "Several stakeholders who oppose the mills declined interview requests, citing concerns that IFC had not established clear terms of engagement for stakeholder consultation."

[Comment: This statement is false, since "several" would suggest a relatively small number, the Assembly of Gualeguaychú amounting to over 40,000 people, as well dozens of stakeholder organizations and individuals in Uruguay, declined to participate in the CBI-led consultation, not because there were no "clear" terms of engagement, but because there were NO terms of engagement. Establishing clear, fair, and transparent terms of engagement was central to the consultation process, and was an issue discussed extensively between CEDHA (in representation of the Assembly) and the IFC. This was also recommended explicitly by the CAO for this process to move forward. It was clear from conversations with the IFC that clear terms of engagement were central to securing stakeholder confidence and will to participate in this process. However, CBI, following the insistence of the IFC, arrived at the site, without forewarning, with NO TERMS OF ENGAGEMENT, and began cold-calling interest groups with no prior opportunity to discuss engagement. CEDHA was contacted immediately by a number of groups from all over the region, in Uruguay and in Argentina, informing us of CBI's contact and wish to meet, and in some cases, threatening stakeholders that refused to meet that they would be penalized in the process if they did not offer their input into the CBI/IFC designed survey, which had not been previously consulted, nor rules established. It was this imposing, top-down, attitude and aggressive tactic of the CBI/IFC team that scared off stakeholders and resulted in the on-the-spot decision of the Assembly and all of its stakeholders as well as concerned stakeholders in Uruguay, to refuse to meet with the CBI team until rules were established.

Page (47) "The two pulp mills lie on an East-West axis, so that if there were to be a cumulative impact of the two plumes, it would only be at those times when the winds are from the east or west. The wind rose shows that these times are not very common."

[Comment: The CIS dismisses impact on the Argentine side from predominant N to NE winds, yet ignores data indicating the common S and SE wind direction. From the wind rose published in the CIS, overall, winds are from an easterly direction, blowing straight into Argentina.]

Concerns for the tourist destination of Balneario Nandubaysal, located slightly over 10km to the west of the Orion site, susceptible to easterly winds and prevailing local wind patterns are not addressed. Despite that:

On a meso scale... it is not unusual for local wind patterns to blow up and down wide rivers³⁸

Meso scale refers to a mid range analysis of the physical properties of the River Uruguay. On a macro scale, the river has an North-South directional axis, however on a meso scale, Botnia and ENCE and Nandubaysul are on a direct East-West axis. Since it is 'not unusual for local wind patterns to blow up and down wide rivers', breezes following the East-West trajectory can be frequent. It is in this scenario that cumulative impacts will be apparent, blowing higher concentration of odors and contaminants straight to the tourist driven town of Nandubaysul, and to Guayleguaychú.

Page (48) "The 500 m³/sec flow condition is considered to be the worst case steady state flow condition for determining the potential cumulative impacts from the two projects."

[Comment: The worst case scenario modeling was a 500m3/second Dilution Analysis. This represents a decreased flow rate of the Uruguay River. The dispersion of particles and hence the measure of contaminants is dependent upon the flow rate. Annex D acknowledges that a change in flow *direction* as resulting from combination of flow rates and wind direction is possible, and leaves open the situation in between, which is a zero flow rate. Why the modeling scenario does not address this is unexplained. The CIS simply puts data from both plants into previous modeling program (RMA 2, RMA 11), ignoring the most extreme scenario of reverse flow, and what is realistically the worst case scenario for non-cumulative impacts; that of zero flow. These were deficiencies from the initial EIAs which were not redressed by the CIS.]

Zero flow will cause a build up of discharged contaminants in the local area, creating high concentration of discharged material near the outlet pipes. No dilution will occur due to river flow and the impacts on fisheries and the nearby municipal water intake of Frey Bentos is not taken into account.

Further Comments Regarding Public Consultation and Engagement

[A]

The report offered by the CIS and the Annex provided by CBI, fails to show a properly balanced representation between stakeholder as interviewed by CBI. While the CIS report suggests that consultation took place with 37 civil society representatives, the General Assembly alone represents over 40,000 individuals that have physically signed their expression of opposition to these mills, adhering to the CAO complaint and to the complaint filed before the Inter-American Commission on Human Rights. This number DOES NOT include persons opposed to the mills that have not been able to sign because of material impediments to do so. A recent public poll shows nearly 90% opposition in Entre Ríos Province to the mills, this would include many hundreds of thousands of residents of the province, and nearly 100,000 residents of Gualeguaychú alone. One need only to walk through the city of Gualeguaychú and see the ubiquitous signs on storefronts and homes indicating opposition to the mills. This is a universally and massive movement of an entire community unified in its opposition to the papermills.

[B]

CBI makes reference on page 3 of their Stakeholder Assessment Annex that: they "used the Table of Contents of the draft Cumulative Impact Study to help shape the discussions with stakeholders about potential impacts". This fact is of extreme concern to this process, since if we consider that as mentioned above, the IFC violated OP 4.01 para. 12 policy stating that the Term of Reference of the CIS need to be informed by prior stakeholder consultation BEFORE the CIS terms of reference are drafted, then we must conclude that the CBI consultation, which is "shaped by" the CIS, is therefore flawed. The design of the CBI consultation, without the benefit of **prior consultation**, and grounded on an incomplete and insufficient CIS

³⁸ Cumulative Impact Statement, p 21

lack the necessary insight to properly design a complete and effective consultation process. This is precisely the risk that the IFC ran by ignoring its own consultation policy and the CAO recommendations to share the TORs with stakeholders BEFORE the CIS design was completed. As can be expected, the CBI team concludes, relative to this point, that "Most stakeholders said that the CIS ... listed issues at a level of generality that made it difficult to assess whether and how the CIS would address their particular concerns".

[C]

While CBI included stakeholder comments on economic impacts (p. 4 of the Stakeholder Annex), ABOSOLUTELY NO ARGENTINE stakeholders are cited regarding expected economic impacts.