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March 10, 2006 Córdoba, Argentina

Members of the Board of Directors President, World Bank Group 1818 H St., NW - Washington, DC 20433

# RE: Briefing for Executive Directors on Uruguayan Papermills CASE

**Cc:** Karl Jackson (World Bank), Meg Taylor (CAO), O. Bordón (Argentine Embassy), Santiago Cantón (Inter-American Commission on Human Rights), Jorge Busti (Governor of Entre Ríos, Argentina); Jorge Taiana (Foreign Minister, Argentina), Assembly of Gualeguaychú, Keith Kozloff, Rachel Bayley (US Treasury), ING Group, BBVA, Nordea.

#### Dear Members of the Board of Directors, World Bank Group

As legal representatives of the nearly 40,000 local stakeholders of affected communities of Fray Bentos, Uruguay and Gualeguaychú Argentina, and as authors of numerous complaints that have been filed against the Orion (IFC project number 23817) and M'Bopicua (IFC project number 23681) paper mill projects pending Board submission by the IFC (see below section Other Legal Action taken), and cognoscente that you may be requested to offer your opinion on possible World Bank financing to these projects, we would like to brief you on the evolution of these projects and the conflict they are causing, how the IFC is handling reaction to these projects, as well as inform you of an imminent complaint submission by Argentina against Uruguay at the International Court of Justice for violations to international law (because of these projects), as well as on the evolution of ongoing and ever-escalating diplomatic, public and civil society opposition to these investments.

It is clear to us and we think that you will agree after reviewing the evidence, that the World Bank **should not and could not** consider financing these projects before the diplomatic and public opposition as well as the numerous problems and inconsistencies cited in this brief and the many outstanding complaints against these projects, are resolved. Below is a brief summary of the critical and still outstanding issues the Board of Directors must consider regarding these mills.

We are at your disposal to provide you with ANY and all further evidence you made need to clarify the points presented in this brief. We take the opportunity to send you a full brief and additional relevant information regarding these projects vía electronic mail.

Sincerely,
Jorge Daniel Taillant
Executive Director
Center for Human Rights and Environment
Legal Representative to 39,366 CAO Complaint Stakeholders from Uruguay and Argentina

#### Project Background

The IFC and MIGA in 2005 prepared two separate projects to be submitted to the Board of Directors for consideration of financing. Before these projects went to the Board towards the middle of 2005, mounting public opposition in Argentina and Uruguay and diplomatic opposition from the government of Argentina directed to the World Bank President and to the government of Uruguay, resulted in a freezing of IFC's presentation of the projects to the Board, grounded on the incompleteness of the environmental impact studies as well as a pending Compliance Advisory Ombudsman (CAO) complaint that was lodged in September and later a Full Compliance Audit initiated by the CAO on the project sponsor's and IFC's procedural compliance in the preparation of these projects. The CAO found in its Preliminary Assessment Report<sup>1</sup>, grounds to believe that the IFC and MIGA had failed to comply with their own Social, Environmental and Disclosure Safeguard Policies. We expect that the full Compliance Audit, which you will surely receive shortly, will confirm these findings.

The projects in question are Greenfield eucalyptus kraft pulp mills which will use Elemental Chlorine Free technology, a technology that is second-rate behind Total Chlorine Free technology, which is recommended by the World Bank. One of the mills (M'Bopicua) run by ENCE of Spain, will produce 500,000 tons of air-dried pulp per year, however, recent statements by ENCE suggest this will grow to approximately double, or 1,000,000 tons per year, at a total project cost of US\$600 million, with a proposed US\$ 250 million from IFC in type A and B loans. The other project, Orion, run by Botnia of Finland, will produce 1,000,000 tons of pulp per year at a total cost of US\$1.2 billion, with proposed IFC investments at US\$200 million, also through type A and B loans, whilst requesting MIGA to address US\$300m of guarantees. The combined single production of these two mills, only a few kilometers apart on the border of the Uruguay River, would make these mills the largest production of cellulose in the world. It is important to note that neither company will use "best available technology" (Total Chlorine Free, in a closed circuit system) as is recommended by both the World Bank and by the European Union.

The projects came to the attention of the general public and of the World Bank President, shortly before they were to be submitted to the Board for approval in mid 2005. At that time, many local stakeholders, particularly in Argentina, complained that they were not informed and not consulted about the project's installation although they were clearly within its sphere of influence, and as their main livelihoods, dependent on tourism, were at great risk due to among other things the fowl rotten egg smell that these industries produce (according to page 396 the World Bank Industry Sector Guidelines for Pulp Paper suggest that the Kraft Pulping Process emits "highly malodorous emissions"). Furthermore, many blatant errors existed in the company environmental impact assessments, including the gross omission by the IFC to require a cumulative impact study, showing the combined contamination of the plants which at a mere 6 kilometer apart amount effectively to a single production site. This eventually led stakeholders to file a procedural complaint on both projects to the CAO ombudsman.

## **Policy Violations**

The complaint originally submitted to the CAO enumerates among others:<sup>3</sup>

- the violation of IFC policy, particularly with regards to:
  - IFC Operational Policy OP7.50 *Projects on International Waterways* including violations to paragraphs 3, 4, 5, 8 of this policy;
  - IFC Operational Policy OP4.01 *Environmental Assessment*, including violations to paragraphs 2, 3, 4, 6, 7, 8a, 11, 12, 14, 15; Annex B paragraphs b, c, d, e, f, g of this policy;
  - IFC Disclosure Policy
- specific environmental, social and disclosure policy considerations for Category A projects;
- the violation of international, bilateral, and national laws in the assessment, planning, and implementation
  of the projects;
- the failure to adopt the least environmentally damaging technology mandated by the World Bank Pollution Prevention and Abatement Handbook (Pulp and Paper mills),
- the likely grave social, economic, and environmental harm that the projects will have on local residents in both Uruguay and Argentina.

# **Cumulative Impact Study**

The IFC attempted to correct its path by commissioning a *Cumulative Impact Study (CIS)*, to measure the combined impact of the mills, **which would never** have been made available to the Board of Directors if stakeholders hand not complained. At present, the IFC has completed a first draft of this CIS, and has taken in comments through its website and through a unilaterally presented schedule of local meetings. However, the consultation process established by the IFC failed to create stakeholder credence and/or involvement in the process, as it was hurriedly carried out in the middle of holiday season. Furthermore, the terms of reference of the

<sup>&</sup>lt;sup>1</sup> http://www<u>.cao-ombudsman.org/html-english/documents/preliminary\_assessmentFINAL.pdf</u>

<sup>&</sup>lt;sup>2</sup> http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/gui\_pulp\_WB/\$FILE/pulp\_PPAH.pdf; see page 396 of Project Guidelines: Industry Sector Guidelines for Pulp and Paper Mills. Pollution Prevention and Abatement Handbook. World Bank Group. July 1998.

http://www.cedha.org.ar/en/initiatives/paper\_pulp\_mills/cao-complaint-letter.doc

CIS were never shared with stakeholders before the study was designed, as is mandated by IFC's Environmental Safeguard Policy (Paragraph 12 OP 4.01). Further, the CIS consultation was fixed on inflexible time tables set out by the IFC, unilaterally designed by the IFC with no stakeholder participation, and failed, despite repeated requests by the CAO and by stakeholders, to establish clear, transparent and agreed-upon rules of engagement. This is a basic request and condition for ANY consultation process to occur in a fair and transparent manner. Even this was ignored by the IFC.

For this reason, the conclusions of the CIS that you will receive at some stage in this process are fundamentally flawed, do not have stakeholder legitimacy and have not succeeded in holding real consultation meetings with affected and concerned stakeholders. It is critical to stress that the CIS at present DOES NOT address the concerns of the **vast majority** of stakeholders of these projects that to this date, were NEVER consulted. You will find for example, that in the CIS, there is only extremely superficial information about the impacts to tourism which is the driving industry and a critical concern for the region.

#### **Public Opposition**

These projects ran into problems when nearly 50,000 people took to an international bridge uniting Argentina and Uruguay in the site vicinity, in early 2005, in opposition to the installation of these mills in the heart of a thriving and environmentally pristine tourist region and on the waters of one of the cleanest river systems in the southern cone region. A Citizen's Environmental Assembly was born from this movement that has not only signed the complaint filed to the CAO (with 39,366 hand written signatures) on these projects in September, but which today is still and ever-more fervently actively protesting against the installation of these mills. Neither the project sponsors (Botnia or ENCE) nor the IFC have appropriately taken into account the opinion of Argentine stakeholders who live immediately within the projects sphere of influence or of the Assembly of Gualeguaychú which in the words of the CAO is a "powerful and coherent voice which has raised legitimate questions about how to promote development on the Rio Uruguay".4 Several other assemblies in other cities both in Argentina and Uruguay, have since joined the Assembly of Gualeguaychú to opposed these mills. Recently, in an IFC-summoned meeting with the Assembly of Gualeguaychú, the IFC delegation refused to attend the meeting on the grounds that too many stakeholders were present (see letter to Paul Wolfovitz regarding this incident). Eight hundred common citizens, including, elderly, women, and children stakeholders awaited eagerly to talk to the IFC but the delegation never showed up. The IFC did meet that day, and all that week, however, with pro-mill actors lending further legitimate belief to stakeholders that the IFC is biased in favor of investors in these projects. The IFC team gave illegitimate and ridiculous excuses for not showing up to the meeting, such as that their translator could not be present at the meeting at the time agreed. As representatives of the Assembly and other stakeholders, we reiterated on numerous occasions, to the IFC and to the World Bank President, that the IFC's negligent behavior was not only generating mistrust, but also causing desperation and social unrest due to the imminent installation of these mills, without any local say in the matter. It should be stressed, that the IFC not only has done nothing to avoid this unfortunate conflict, but on the contrary, its disrespectful conduct towards the local citizenry and the violations of its own Operational Safeguard Policy have served to further aggravate the conflict.

#### Diplomatic Conflict

These mills are being constructed on the border of the Uruguay River, dividing Argentina and Uruguay. Both countries signed a bilateral treaty in 1975 called the Uruguay River Treaty, which established a collaborative framework for management and protection of these very sensitive waters. The IFC and World Bank Group, it is important to note, has an International Waterways Safeguard Policy, established precisely so that World Bank projects do not harm border waters, and that they comply with international law established to protect such waters. The project sponsors and the IFC ignored the stipulations of the River Uruguay Treaty, and the government of Uruguay ignored its responsibilities to inform Argentina of its intentions to locate two contaminating industries on the river. As a result, Argentina has complained on numerous occasions to Uruguay and to the World Bank President, that it does not agree with the decision to locate these mills at that precise site on the Uruguay River, and that its technical experts have sufficient evidence available to indicate that the river and outlying areas will be contaminated beyond repair. This evidence includes thousands of pages of technical analysis from worldly recognized environmental experts. With no response from Uruguay, and the IFC and World Bank's refusal to address this issue, Argentina has chosen to take Uruguay to the International Court of Justice at the Hague, the maximum diplomatic tribunal and established by the Uruguay River Treaty as the recourse for conflict resolution for violations to the treaty. In this process, the Argentine President, Nestor Kirchner has already sought and obtained Senate and Congressional support to take the case to the Hague. Because of a World Bank project and the negligent actions of project sponsors and IFC project staff, two otherwise friendly nations are about to enter a maximum dispute settlement process at the international level. By supporting these projects, the World Bank would

<sup>&</sup>lt;sup>4</sup> see CAO Preliminary Assessment p10 at: http://www.cao-ombudsman.org/html-english/documents/preliminary assessmentFINAL.pdf

<sup>&</sup>lt;sup>5</sup> http://www.cedha.org.ar/en/initiatives/paper\_pulp\_mills/carta-wb-ene-2006.pdf

<sup>&</sup>lt;sup>6</sup> See for example: the abbreviated version (180pp) of the Sejenovich Report at: http://www.cedha.org.ar/en/initiatives/paper\_pulp\_mills/sejenovich-report-spa.zip; or the Cordoba University Report at: http://www.cedha.org.ar/en/initiatives/paper\_pulp\_mills/informe-papelera-unc-cordoba-spa.doc.

be erroneously and unwisely taking sides in an unprecedented international legal dispute between two nation states members of the Bank's Board of Directors.

#### Media Attention

Since tensions over these projects escalated over the past several months, due to the international complaints filed, due to more and extended public protest (local and regional press have covered the issues permanently, making headlines, appearing in ALL local and major newspapers, everyday, and raising the degree of tension and conflict over these projects). We have also begun to see these projects appear in international press, including the New York Times, BBC, Univisión, CNN, and other major media channels. Newer press coverage point not only to ongoing concerns the companies are raising in other investments internationally, but also to alleged videotaped bribes given by one of the company's executives to local civil society organizations to avoid local protest. Another article which recently appears reveals a draconian host government agreement signed between Botnia and the Uruguayan government exempting Botnia from any losses due to public protest stemming from eventual environmental impacts of the firms, and a specific clause in this agreement exempting Botnia from appearing in local courts in the case of any future disputes regarding environmental contamination. The press is also reporting that ENCE, the Spanish company, fearing backlash, is now suggesting that Botnia's last minute appearance with its mega investment, and increased strain on the environment, is accountable for problems the investments have produced locally and internationally.

## Official Argentine Government Opposition

The Argentine government has responded officially both to Uruguay, through the Binational Commission established to have bilateral discussion and agreement on the use of the Uruguay River, as well as to the IFC, with a 41 page document with 15 annexes citing innumerable reasons why the projects fail to abide by IFC policy and present risk to the environment and local populations. These reasons include violations to IFC policy, deficiencies of the project to provide precautionary and mitigation measures on contamination, the rapid nature of the IFC consultation, unclear and non-transparent methodology as well as insufficient experience on the selection of the consulting group hired to do the CIS study, failure of the CIS to cite existing international legal frameworks governing the projects, no reference to citing alternatives, serious public opposition, absence of emergency contingency plans, no remediation plans, no conflict/claims mechanism, as well as a number of other technical issues cited in the CIS of dubious or erroneous origin.

# Other Legal Action taken due to these projects

The CAO complaint was only the first complaint filed against these projects. Many others have followed including:

- Criminal complaint against company executives of Botnia and ENCE in Argentina for which a Federal Circuit Judge has order an investigation;<sup>8</sup>
- Civil suit by an Uruguayan Prosecutor for dubious permit granting in Uruguay;
- Complaint to the Inter-American Commission on Human Rights against Uruguay for which the Commission has initiated investigations; it should be noted that due to this case, a World Bank Project is FOR THE FIRST TIME EVER, subject of a complaint filed to an international human rights tribunal;<sup>9</sup>
- Two Equator Principle Compliance Complaints filed against BBVA of Spain<sup>10</sup> and ING Group of Netherlands<sup>11</sup> for project failure to meet up to IFC Environmental and Social Safeguards;
- Human Rights and Corporate Social Responsibility violations against Nordea,<sup>12</sup> a Swedish-based financial services group financing Botnia;
- Four imminent OECD Guidelines complaints to be filed in Finland, Netherlands, Sweden and Spain;
- And finally, in preparation is the filing of Argentina against Uruguay in the International Court of Justice, the Hague.

#### Essential Problems with these Projects

1. First and foremost, it must be stressed that these projects fail to comply with numerous of the IFC's own Environmental and Social Safeguard Policies. This opinion is not only our own, but is also supported by the CAO in its Preliminary Assessment Report,<sup>13</sup> and will surely be confirmed by the CAO's full Compliance Audit, which has already been made available to the World Bank President and to which you as EDs may already have access. In the midst of reforms and global discussion on the importance of the

<sup>&</sup>lt;sup>7</sup> for the full report see: http://www.cedha.org.ar/en/initiatives/paper\_pulp\_mills/analisis-ministerio-exterior-spa.pdf

<sup>&</sup>lt;sup>8</sup> http://www.cedha.org.ar/en/initiatives/paper\_pulp\_mills/denuncia-penal-botnia-ence-spa.pdf

http://www.cedha.org.ar/en/initiatives/paper\_pulp\_mills/peticion-cidh-final.doc

http://www.cedha.org.ar/en/initiatives/paper\_pulp\_mills/complaint-letter-to-bbva-eng.doc
 http://www.cedha.org.ar/en/initiatives/paper\_pulp\_mills/complaint-letter-to-ing-eng.pdf

http://www.cedha.org.ar/en/initiatives/paper\_pulp\_mills/denuncia-nordea-csr-eng.pdf

http://www.cao-ombudsman.org/html-english/documents/preliminary\_assessmentFINAL.pdf

World Bank's Social and Environmental Safeguards, the World Bank cannot tolerate projects that are not even in compliance with its own policy. In fact, it is the negligence with which IFC staff and project sponsors have addressed policy requirements that have resulted in this project being the focus of international scrutiny and disgrace;

- 2. It is clear from the evidence presented by the project sponsors and by the IFC, that there was no project site assessment done in the Environmental Assessment process. This has a very clear reason. Both Botnia and ENCE already had lands in use for woodchip production and loading onto piers. As the trend in Europe and the developing world is to move to cleaner technologies (specifically TCF), both companies saw opportunities to move south to Uruguay, where there would be less environmental control and where they already had lands. This fact is confirmed by Fernando García, Director General de Celulosas MBOPICUA-ENCE which has publicly recognized that fast growing eucalyptus trees, cheap labor, and "environmental flexibility" were key to ENCE's decision to move to Uruguay. Garcia also admits to paying incentives to Uruguayan political parties in order to obtain Uruguayan favor for these investments. The lands chosen, however, are not appropriate for cellulose production since they are in the heart of a local community and risk derailing the economic livelihoods of local tourism based jobs, which are the main source of income for local residents. These plants would never have been located at the present site if the companies did not have operable lands there;
- 3. These plants are located on an international waterway, making this project of extremely sensitive nature. This requires full bi-national participation and agreement as well as respect for international bilateral law, as established in the IFC's own environmental safeguards, under its international waterways policy. The fact that Argentina is taking Uruguay to the International Court of Justice, is grounds enough for the World Bank to back down from supporting these projects until this international dispute can be resolved. The Bank should not fuel a project that is subject of an international judicial and diplomatic dispute between nations; it is especially important, hence, that since no monies have yet been granted, that the Bank refrain from initiating any such support which would further fuel this significant diplomatic conflict between friendly states;
- 4. These projects are not designed using best available technology which would be total chlorine free and closed circuit systems nor do they respect limits of eucalyptus tree harvest and use in a given area, as established by World Bank and European Union Standards, clearly stipulated in the Bank's Industry Sector Guidelines on Pulp and Paper Mills. Once again, we have the unfortunate example of a northern industry faced with tightening of industry standards and conditions at home, deciding to export its contaminating production to less environmentally strict developing countries;
- The projects are causing escalating diplomatic tensions and legal complications for project sponsors, not only the World Bank and the companies themselves (Botina and ENCE) but also for the host government (Uruguay) and for financial supporting companies like ING Group of Holland, BBVA of Spain, and Nordea of Sweden, which will have to face growing scrutiny and possible increased risk exposure, not to mention, ethical dilemmas to their shareholders and to the public for their involvement with these projects. This is caused solely by the negligent and irresponsible acts of the project sponsors and IFC staff who failed to pay attention to basic policy compliance issues;
- 6. These projects are also the lamentable precedent setters for the first time ever that a World Bank project is the object of a complaint filed to an international human rights tribunal;<sup>15</sup>
- 7. Finally, these projects have caused a unique precedent-setting conflict between two otherwise friendly nations and Board Members. It is the first time that we know of, that a President of one country and Board Member, has personally taken it upon himself to approach the World Bank President to intervene to stop investment until a mutual agreement can be reached.

In closing, we would like to call on you, the EDs, to seriously and closely consider the issues at stake if the World Bank were to proceed to financing these mills, given the great degree of project failure to comply with World Bank Environmental and Social Safeguards, the public disgrace and bad example that these projects will create for World Bank projection of responsible private sector investment, given the growing and widespread public opposition that exists to these projects by local stakeholders, given outstanding litigation that exists on numerous fronts (locally, regionally and internationally), and given that the IFC has caused enormous damage to bilateral relations between Argentina and Uruguay. Under such conditions, the World Bank should categorically refuse to provide any financing to these projects.

MORE INFORMATION IS AVAILABLE REGARDING THE PAPERMILL INVESTMENTS AT: http://www.cedha.org.ar/en/initiatives/paper\_pulp\_mills/

15 http://www.cedha.org.ar/en/initiatives/paper\_pulp\_mills/peticion-cidh-final.doc

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<sup>&</sup>lt;sup>14</sup> Quotes taken from Uruguayan Prosecutor's filing against the Government of Uruguay; See CEDHA's website: <a href="http://www.cedha.org.ar/en/initiatives/paper\_pulp\_mills/denuncia-uruguay-viana.pdf">http://www.cedha.org.ar/en/initiatives/paper\_pulp\_mills/denuncia-uruguay-viana.pdf</a>