



**August 27, 2006**

**To Finland National Contact Point**

**Re: MONIKA Advisory Committee Meeting, 30 August, 2006 Helsinki.**

**Representatives for CEDHA participating in the MONIKA Advisory Committee Meeting**

Jorge Daniel Taillant, Executive Director, CEDHA

Oscar Bargas, representing CEDHA on behalf of the Citizen's Assembly of Gualeguaychú

Yann Queinnec, legal counsel to CEDHA, Association Sherpa

William Bourdon, legal counsel to CEDHA, Association Sherpa (not confirmed)

**Commentary to the Case (subject to revision by presentation date):**

The Specific Instance Complaint regarding violations to the OECD Guidelines for Multinational Enterprises filed by CEDHA against Botnia SA/Oy Metsä-Botnia Orion pulp mill project in Uruguay is grounded on the *irresponsible business conduct and attitude* demonstrated by Botnia which has resulted not only in severe and unnecessary environmental, social and economic risks; in infringements of disclosure and access to information obligations; in human rights violations; and in violations to national and international human rights and environmental law; but also in clear violations of the OECD Guidelines for Multinational Enterprises, which we have enumerated in our formal complaint and which we will deal with only briefly in this commentary.

As you are aware, this proposed multimillion dollar investment project by Botnia in the production of Kraft cellulose on the border between Argentina and Uruguay, and which is currently under construction in Uruguay has become one of the worst development investment-related conflicts in global history. It has already generated the largest-ever public protest peacefully gathering 100,000 and 50,000 people in 2006 and 2005, respectively displaying their opposition to the project. The case is also rapidly becoming a globally recognized **test case**, putting to test a series of recently created voluntary as well as binding regulations for international business practice. The entire international development finance community, including business, private banks, international development banks, non governmental organizations, academics, governments, and export credit agencies, among others, are all following this case very closely, as it lays out a number of critical and highly debated compliance issues, many of which we have stated in our Specific Instance Complaint.

I will begin by clarifying that this IS NOT only a case about the cellulose industry, or a case against the cellulose industry, but rather, it is about Corporate Social Responsibility at a global scale. It is about how one company operates when it sees a profitable business opportunity in a developing country and it is about the various governing frameworks (some obligatory and some voluntary) that have been set up to ensure that business invest responsibly wherever they go. Our global society has recognized the importance of adherence to CSR standards, and that companies must follow such standards. We are in the process of building the necessary frameworks to control corporate behavior so that we can ensure the safety, health and will of local citizens before large scale industrial investments.

The outcomes of this case will be of critical importance and already are for a number of growing corporate social responsibility norms, such as the OECD Guidelines, but also the Equator Principles, the UN Global Compact and many other commitments made by large industry to invest responsibly which have been criticized by civil society and even by business as being weak, or unenforceable. This is a case about local people and local communities calling for corporate compliance with basic principles of environmental and social protection. The world is watching through this case how business and business actors are responding to these principles and commitments and how you will answer to the concerns of local communities which

frankly have little trust that such commitments are more than mere words on documents signed between powerful actors.

This is a story and case, where a company, an important company, with a good reputation and strong track record in its own country, failed to adhere to the rules when it went abroad, and is now paying the global consequences of its negligent behavior. If the actors involved in supporting Botnia's investment ignore the obvious, ignore that their business partner has made a critical mistake, and that these actors, collectively fail to make a difficult but necessary decision to cease their support of this illegitimate and faulty investment, then we will all, as a global society, stand to lose an important opportunity from this occasion to sustain the commitments and systems we are constructing to promote responsible business investment.

The decision of ING Group of the Netherlands to pull US\$480million of its support to Botnia based on violations to the Equator Principles (which it was unable to say publicly because it would have surely faced legal action by Botnia) is an excellent example of CSR at work.

Unfortunately for Botnia, and for the many associated actors involved in this investment scheme, as well as for the Finnish government, the conscious choice to ignore World Bank safeguard policies, and to take lightly the obligations that Botnia has under national and international law, has placed all of its associates in this venture in a very uncomfortable position, now having to decide to invest or divest from a VERY controversial project, that has placed two friendly nations and people against each other.

This unfortunate investment project, which suffered from its very onset serious flaws in design, failure to consult local stakeholders before conducting their environmental impact studies, failing to do a proper site impact study, failing to do a cumulative impact study measuring the combined contamination of both ENCE and Botnia (which are operating practically at the same locality) failing to seek the SOCIAL LICENSE necessary to operate in what we all know is a highly contaminating and environmentally risky industry has resulted in the de-stabilization of diplomatic relations between two otherwise friendly nations (Argentina and Uruguay) which are now in dispute in an unprecedented trial at the International Court of Justice.

To make matters worse, and this is an issue that is clear to us now, the Finnish national reputation as a responsible country is at stake. Finland as a nation is also now sitting at the court of global public opinion. Finland has surely achieved its good reputation through concrete actions and by showing a higher quality of commitment to the environment and to its society. You have earned the reputation of being an environmentally conscious nation, and promoter of sustainable development. Yet this delicately constructed reputation has been placed at risk by the negligent behavior of this enterprise who ironically is about to make what would be Finland's largest foreign direct investment ever. Precisely for this reason, this investment should have been carefully reviewed, and compliance with basic standards on pulp and paper ensured. And because it is an investment in a controversial sector, that is known to be contaminating, it should above all, have had the proper SOCIAL LICENSE guaranteed before initiating works. Clearly, these requirements HAVE NOT been met. In this regard, and considering the Finnish state's financial participation in Botnia, and in Kemira, the chemical plant that will provide Botnia with chemical inputs necessary for its production, as well as Finnvera's involvement in the case as guarantor, the Finnish government is also complicit in these violations. The case of Finnvera is handled separately in a parallel complaint also filed to the Finnish NCP and will not be dealt with here.

The blame of this situation is not solely on Botnia, but also on the IFC, which did not comply with its due diligence, in ensuring that the two project sponsors of these mill, Botnia and ENCE (of Spain), comply with the minimum expected social and environmental safeguards obliged in an investment in a Category A project, which in the World Bank's own terminology, is the highest risk category. A high official at the IFC of this particular investment in a phone conversation with me, admitted that he was not all that familiar with the environmental and social technical environmental safeguards, but that he was trying to do the best he could because this was an important investment for Uruguay. We understand that for Uruguay and for Finland, this is an important investment. The last thing that we want to do is work against development, and we have no opposition to promoting solid, sustainable, and equitable development. However, this confession that this IFC project officer "did not know much about environmental standards", is the unfortunate backdrop of the problem with which we are now faced and has led necessarily to the NON VIABILITY of this project. Botnia's negligence to properly design and prepare its investment was further worsened by the IFC's own failure to comply with its due diligence. Together, these oversights by Botnia, by ENCE and by the IFC, resulted in a severely weakened product, which could only lead to, in a society aware of its rights, and conscious of its future, a massive social uprising against this unwanted contaminating industry.

Botnia in particular in this case, has shown to be especially hard to recognize its wrongs, and offer alternatives, engage in discussions about the problem that it has caused, and when the conflict had nearly a path of light towards a solution, at the time of the Presidential Summit between Argentina and Uruguay from which a 90 day cease of construction period was called, Botnia refused to obey, preferring to protect its falling stock price value, instead of showing concern for the local dispute it has caused in Latin America and between the fraternal peoples of Argentina and Uruguay.

ENCE's President and CEO has also remarked recently his surprise and distaste for Botnia's decision to muscle into this investment in Fray Bentos, which after ENCE's decision to do so, decided to build a plant twice as large just down stream from ENCE and much closer to the urban population and dangerously close (only 3 kms) to the drinking water intake of the local population. ENCE however, chose a different path from Botnia, showing concern and sympathy to public concern, and postponed its construction so as to allow Argentina and Uruguay to find a path towards the resolution of this dispute. Botnia meanwhile, ignored its host country's strife, ignored the concerns of Argentine citizens, and maintains its fast-paced construction timetable, and hopes to be up and running as soon as possible, ignoring altogether the severity of the international conflict it is causing for these two neighboring nations. Its profits shine high above any problems their investments might have for local communities and even for international and regional relations. This attitude hardly coincides with the Finnish reputation of being an environmentally aware nation, promoting sustainable development through its actions.

This OECD Specific Instance is not the only complaint filed against the Botnia project (Botnia and its partners); numerous other complaints are open including:

- a) a complaint against the government of Uruguay by stakeholder victims before the Inter American Commission on Human Rights-which has opened investigations (we should remark that this is the first time in history that a World Bank financed project is being addressed by an international human rights tribunal);
- b) a complaint before the IFC's Compliance Advisor/Ombudsman (CAO)-which has resulted in a highly critical Assessment Report and full Compliance Audit by the CAO;
- c) a criminal complaint against company executives of Botnia (admitted by Argentine Federal Prosecutors)-which is presently also under investigation;
- d) an Equator Principle Compliance Complaint (directed to ING Group, financial supporter of the Botnia project who has since withdrawn consideration of its support to Botnia);
- e) two Equator Principle Complaints to CALYON (France) and BBVA (Spain);
- f) a Human Rights and Corporate Social Responsibility Complaint to Nordea, a Swedish based financial group supporting the Botnia project;
- g) an OECD Specific Instance Complaint filed against Finnvera in Finland for consideration of providing export credit guarantees to project, in contravention of its own environment policy;
- h) two OECD Specific Instance Complaints filed against Nordea in Norway and in Sweden (for lack of information regarding its participation in the Botnia investment and complicity in guideline violations);
- i) Argentina's complaint against Uruguay to the International Court of Justice at the Hague;
- j) Uruguay has already initiated action against Argentina for social unrest caused by opposition to construction of the Botnia pulp papermill.

Particularly following the CAO (ombudsman) audit, given grounds for further investigation and discovering project irregularities, the fast paced IFC loan approval process to grant funds to Botnia and ENCE, came to a grinding halt, as the World Bank recognized project flaws, further studies began to be commissioned by the IFC to make up for shortfalls in the original project studies presented by Botnia and ENCE to the World Bank. If you look closely at these new studies, you will find that many of the issues being studied (such as wind patterns, watertable impacts, tourism impacts, site study, etc.) are precisely the issues we made apparent in our original filing to the CAO in September of 2005. Botnia's refusal to engage local stakeholders in serious discussions providing information about its impacts on Argentina, about impacts to tourism, and about decisions as to why it had chosen this particular site for construction, resulted in a break in communications with stakeholders. It would have been very clear from a proper stakeholder consultation, that the local community in the impact zone in Argentina, would never have given Botnia or ENCE the social license they would need to operate. Botnia claimed that project had "wide public support", when in fact, the world's largest environmental protest ever was building just across the river. This was an enormous miscalculation, attributable clearly to absent consultations. Had such a consultation taken place, the site chosen by both companies would have likely shifted some kilometers north or south, and this whole conflict would have been entirely avoided.

However, both Botnia and ENCE already had lands at these sites. They had purchased these lands many years earlier and had a plant at the site to process trees into woodchips. The companies then built with international development assistance port facilities to dock ships to load the woodchips to be sent to Europe for processing. When legislation hardened in Europe, and as they saw the need to expand production, and obtain faster and greater input of trees, they began to look at countries like Uruguay for their land quality where they could grow a full sized harvestable Eucalyptus trees in under 15 years, as opposed to the near 40 years it would take in Europe. Because Botnia already had land in Uruguay (at the present site location), because it already had its investment at this site, and because of the economic benefits that it would have building its processing plant at this site (namely its vicinity to international roads, to waterways and ports, and to the natural resources used as inputs), it would not conduct a site study. Botnia DID NOT evaluate its site relative to minimizing environmental impacts, social costs, and social approval. This study was NEVER done; and this is a GROSS violation of the IFC safeguard policies, and in fact, of common sense! It does show however, where Botnia puts its concern over environmental and social impact, which is far below its concern for economic profit.

It would be a mistake to consider that this case is merely about whether we believe that the Cellulose industry using ECF technology is harmful or not to human health. We know that the cellulose industry is a contaminating industry. We have strict laws and industry standards that have been developed because of this. We all consume paper and need evermore of it in our daily lives, so we must accept that pulp mills are necessary and that they will be built. If they can be built and bring prosperity, this is surely a good thing for society. However, as in the case of any contaminating industry, there are tradeoffs that must be made. Societies must decide where they want their contaminating industry. Societies must make difficult decisions about *where* they chose to contaminate, at what benefit and at what cost. Every country is free to make such development decisions, as long as it does not place in danger the lives of its citizens, or of the citizens of a neighboring country, as in this case. However, it is not the free choice of a company, especially a foreign owned company, to step over the will of stakeholder communities and take these decisions unilaterally, ignoring the local will. For this reason, complying with established guidelines, policy and norms, which include proper consultation and acquiring social license, are key to achieving harmonious public relations for sensitive investments. Botnia failed to do any of this. If they once might have convinced the citizens of Gualaguaychú, that their production would not contaminate their environment, the likelihood today that they will succeed is next to NONE. Their arrogant and unilateral profit driven character, disrespectful of local culture, local populations and local tradition, has made them *persona non grata* amongst stakeholder communities in Gualaguaychú, amongst environmental groups in Uruguay, amongst small farmers in Uruguay, and in Argentina more generally.

This case is about negligence of a company of its international obligations. It is about a company seeing profit for itself, while ignoring the necessary steps it needs to take to ensure proper project design to ensure the protection of the natural environment and of local stakeholder interests. We realize that for you, the Finnish government and the Finnish people, it must be difficult to believe that one of your companies, one of your best companies, and an industry which is close to your core industrial strengths, could be in such grave fault, and causing such great harm. You might even think that our organization or that the people of Gualaguaychú are environmental extremists which oppose development with no legitimacy. We challenge you to see through this opinion, and understand that this case is about local people voicing their legitimate local concerns about what they want for themselves as a community, what they hope to preserve for the children and for their grandchildren. They do not want their pristine environmentally rich communities transformed into an industrial waste site, smelling of rotten egg, and contaminating their river, for the benefit of an international investor who will in the end only create 300 low paying jobs to export cellulose for sale abroad, and who will ironically have a 30 year tax free export zone, leaving no profit for the local community. To make matters even worse, we know that the contract signed by Botnia with Uruguay to protect its investment is a draconian example of multinational business protecting their investments at the expense of complying with local law and protecting local communities.

Whether or not we can agree on the innocuousness of cellulose production with Best Available Technologies will not resolve this dispute. We are not here to discuss whether ECF technology contaminates more or less than TCF, or any other process. We are here to speak of rights and responsibilities, ethical obligations, moral obligations, cultural and social license, community interests, and double standards which allow companies like Botnia, to set up contaminating industries with less control, and with less guarantees. Botnia's negligent behavior in the design and execution of this investment is causing enormous strife between two nations, and between two peoples. This is already known and inescapable. This will not disappear simply if the World Bank and the IFC decide to give Botnia a seal of approval. The conflict will continue, the struggle will not go away, the communities will not return to their homes and abandon their will. They will continue to oppose Botnia until they pack their bags and leave.

We are pleased to see that through this invitation to CEDHA to participate in a frank and open dialogue, and the fact that you have welcomed Mr. Oscar Bargas who is a member of the Assembly of Gualeguaychú, you realize the magnitude of this problem and are willing to sit at the table of discussion. The Finnish government has maintained a non-partisan position in this dispute. We believe this an error since Finland has stake in this investment and since Finnish investments in the future will also be scrutinized based on the comportment of Botnia in this investment.

The Citizen's Assembly of Gualeguaychú, to which Mr. Bargas belongs and which we represent is one of the most thriving examples of a social movement in action and of direct democracy which I have ever seen. In fact, for him to be here, over 800 people gathered in a public auditorium as they have done so for over a year at least once a week, sometimes more, each voting for *which* Assembly member should come. He was chosen third in ranking. The first two could not attend because they are concurrently presenting their case before two other international forums. His presence here, or that of ANY other member of the Assembly that might have been here today, and that will be at other forums in the future, is testimony of the force and energy created around this case, where thousands and thousands of people have mobilized, have written, have manifested, have protested, have blocked international roadways for weeks on end, and are claiming their rights, and asking Botnia to leave. They do not want this papermill in their vicinity as they see it incompatible with their way of life. I will let Mr. Bargas speak for himself after my presentation to transmit to you the position and feeling of the people of Gualeguaychú.

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This meeting is convened under the auspices and good offices offered by the Finnish National Contact Point, which oversees compliance of Finnish companies with the OECD Guidelines for Multinational Enterprise.

The Guidelines suggest **that multinational enterprises have an important opportunity to implement best practice policies for sustainable development that seek to ensure coherence between social, economic and environmental objectives.** It is clear to us, and this is the reason we have arrived at Helsinki today, that Botnia has done all to the contrary, leaving only conflict and mounting social opposition in the wake of its actions in Uruguay.

By violating IFC environmental and social safeguards and the OECD Guidelines and plowing forth with its investment plan irrespective and ignoring local opposition and evident shortcomings of its impact studies, Botnia is offering other companies around the world a lamentable example, of how moving to a developing country can offer enormous tax benefits, less stringent and more flexible environmental law compliance and enforcement, and enormous profit.

The investments and project sponsored by Botnia and the way in which the company has handled public concern and environmental and social risk, as well as the obstinate position of Botnia to ignore the Uruguayan President's request to halt construction for 90 days while a solution is reached to this problem with the Argentine president (according to Botnia's President, due to the impacts this halt would have on Botnia's stock prices in the New York and Helsinki stock exchanges), is clearly working against the basic principles and conditions for the promotion of equitable and sustainable development and is counter to the very essential and elemental principles of the OECD Guidelines for Multinational Enterprises. Placing profit over people and over the environment, can in no way be accepted or tolerated. This act alone has won Botnia a terrible image worldwide, and underlies the very essence of this company's fledgling and very weak commitments to environmental sustainability and social progress which are sustained by the OECD Guidelines. Profit is clearly Botnia's only priority.

This Specific Instance offers evidence, sustained largely by the World Bank's independent Compliance Advisory Ombudsman, consultants hired by the IFC, the Argentine government and independent experts, Uruguayan experts and legal actors, that Botnia and as a consequence, its partners, have breached the Guidelines in the following manner:

- **Violations of Guidelines' Chapter II - General Policies respective to:**
  - Project's detrimental contribution to sustainable development, social and economic progress (paragraph 1), not only due to expected environmental degradation of land, soil and water which are substantiated in numerous technical documents mentioned in this Specific Instance, but also due to impacts on the livelihoods of local communities dependent on the rich environment for its tourism based industry;

- Project violation of Human Rights of affected communities, including right to health, right to life, right of access to information, right to participation, right to economic development, right to property, among others; (paragraph 2);
  - Project promotion of lax control of environmental, social and health, control and protection (paragraph 5);
  - Failure to incorporate self-regulatory practices and management systems (Chapter 2, commentary 8);
- **Violations of Guidelines' Chapter III – Disclosure Policy**
- No timely, regular or reliable information about the projects, specifically relative to environmental concerns of local community (paragraph 1), this violation was confirmed by the CAO in its Assessment Report;
  - Poor or no information about project's non-financial information including on environment and social impacts (paragraph 1);
- **Violations of Guidelines' Chapter V - Environment recommendations:**
- No consideration for host government's obligations under relevant international agreements, principles, objectives and standards (introduction); such was the consequence of this violation that today Argentina is taking Uruguay to the International Court of Justice precisely due to violations of international bilateral law;
  - No effort to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development (introduction); company objectives of developing one industry are at the expense of another, greater local industry;
  - Failure to collect and adequately evaluate information regarding project impact on environment, health, and safety dimensions (paragraph 1a);
  - Failure to consider foreseeable environmental, health and safety impacts (paragraph 1a, paragraph 3);
  - Failure to engage in adequate communication and consultation with affected communities (paragraph 2b), particularly with communities on the Argentine side of the sphere of influence;
  - Failure to prepare an appropriate environmental impact assessment that considers preventative measures (paragraph 3);
  - Failure to take into account the legitimate concerns of the public regarding environment, health, and economic livelihoods to be impacted by project (paragraph 3), particularly with regards to impacts to the tourism and agro-industry sectors;
  - Failure to base investment decisions on full scientific certainty regarding environmental and social impacts of project investment (paragraph 4), particularly with respect to water and air impacts;
  - Failure to develop a contingency plan to prevent and control serious environmental and health damage for project operations including relative to accidents and emergencies (paragraph 5);
  - Failure to utilize best available technology (paragraph 6);
  - Failure to prevent internal company double standards across Botnia's international operations (paragraph 6a); and
  - Failure to embark on sound environmental management (introduction, commentary 31).

Sincerely,  
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