

Increased Investment Risk For Uruguay Pulp Projects Investor Brief

Analysis of events from July 2006 to mid November 2006



**Center for Human Rights and Environment (CEDHA)
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Investor Brief forwarded to:

World Bank Board of Executive Directors
International Finance Corporation - IFC
Multilateral Investment Guarantee Agency - MIGA
Nordea Bank AB (Sweden/Norway)
Calyon - Credite Agricole (France)
Finnvera plc (Finland)
Nordic Investment Bank – NIB (Northern European Multilateral)
Sovereign Risk Insurance (Bermuda)
Foreign Affairs and Finance Departments of Finland, Norway, and Sweden

Introduction

This is an up-to-date summary document of the key factors increasing investment risk for investors, lead arrangers, insurers and re-insurers of the Botnia and ENCE proposed paper mills in Uruguay. It contains an analysis of recent international/regional legal, procedural and political events and assesses the impact to the investment's political and financial risks.

Its purpose is to provide a complete overview of issues surrounding Botnia's pulpmill investment, and is made available to the IFC's Board of Executive Directors prior to the scheduled meeting to discuss the loan proposal, now moved to 21 November 2006. IFC Executive Directors are asked to take note of the increased investment risks that are described in this document, and utilise this knowledge to shed light on the contents IFC commissioned environmental impact statement, greatly restricted in terms of the scope of the bilateral conflict. This document should not be taken as a supplement to the final environmental impact assessment report by Ecometrix, rather a background in which critical errors and omissions can be recognised and the proper risk assessment made.

The viability of the project is of utmost importance, and as executive organs of financial institutions, the proper assessment of financial risk must be undertaken. Such a risk cannot be determined by a study of environmental impacts, nor an interpretation of this documentation, no matter what foundations it is based upon. Rather, project risk should be assessed in the light of all influencing factors, be they political, diplomatic, legal and financial. In this case, these factors are many and of a serious nature.

Executive Summary

Pulp production is a contaminating industry. Environmental procedures and regulations set standards by which environmental impact assessment procedure and the industrial processes must follow in order to ensure the best possible environmental, social and economic outcome. Initially the environmental impact studies (EIA) were submitted individually by both ENCE and Botnia in the middle of 2005, and since then have attracted harsh criticism for failure to adhere to International Finance Corporation (IFC) Operational Policies and International Law.

The project approval process has been delayed for 15 months as a result of legal and procedural action stemming from community outrage which has precipitated the largest environmental protest in history, with 120 000 people marching to the International Bridge uniting Argentina at Fray Bentos (an identical march of 50,000 took place exactly one year earlier, indicating that opposition is clearly mounting). Residents are concerned that livelihoods based on tourism and fisheries will be destroyed by the environmental impacts caused the contaminating industry.

Significant events taking place since July 2006 up until the present will be analysed in this report, and include the likes of the King of Spain's offer to mediate the diplomatic conflict, threat to civil security by outbreaks of violence, the International Court of Justice's (ICJ) ruling on provisional measures, the decision by ENCE to relocate its proposed mill from a site immediately upstream, in addition to the risks posed by other continuing legal and procedural actions to the viability of the Botnia project. Notably the Swedish OECD representative has just accepted a complaint against Nordea Bank for violations against the OECD Guidelines for Multinational Enterprises regarding its intentions to finance Botnia's pulp mill. With 19% ownership by the Swedish State, its public ownership places it in a similar position to the IFC. Further attention will be given to the government of Finland concession that Botnia has not acted appropriately and has offered to facilitate discussion between stakeholders and Botnia, and the growing sense of unease as more community protests unfold before various embassies (France, Norway, Finland) in Buenos Aires.

The analysis of relevant regional and national events concludes potential investors are exposed to a substantial increase in risk associated with the Botnia pulp projects and are advised to stall on any proposed financial or other support until the diplomatic conflict is resolved and tribunals such as the International Court of Justice have determined issues of international law.

King of Spain to Mediate Dialogue to untie Gordian Pulp Mill Knot: IFC Called Upon by President Kirchner to Suspend Decision

Key Points:

- Both countries warm to facilitation of dialogue by the King of Spain
- Slated to occur after Executive director meeting
- Decision by IFC to finance Botnia would effectively lancet any chance of productive dialogue
- King of Spain's offer increasing current risk of financing project
- President Kirchner of Argentina writes to World Bank asking IFC not to interfere in diplomatic conflict

November 6th, 2006- Argentina/Uruguay - Following a brief meeting in Montevideo this weekend with the Argentine and Uruguayan Presidents, the King of Spain, has offered to facilitate dialogue between Argentina and Uruguay, in search for a solution to the mounting dispute over the installation of a World Bank/IFC-Sponsored pulp mill on the Argentine/Uruguayan border.

Affected stakeholders that have been fervently calling for a bilateral Presidential intervention to the matter, received the news in a torrential downpour during the weekend-long international roadblock they installed last Friday, in parallel to the inauguration of the Ibero-American Summit, held this year in Montevideo, and attended by the Spanish King. The King, is especially concerned to see the Summit, a forum created over a decade ago by him personally, debilitated by the regional conflict and decided to intervene to help find a solution.

Uruguay and Argentina hope the royal facilitation will help ease tensions. Each spoke cautiously about the Spanish intervention. Stakeholders, in a gesture to the presidents, and content with the announcement, voted yesterday (Sunday evening) to remove the roadblock, and offer a symbolic olive branch by dismantling the Brick Wall they had constructed over the weekend on International Highway 135, to represent the conflict caused by the international investment.

Romina Picolotti, the Argentine Environment Minister, travels today to Washington, to meet with World Bank Executive Directors to dissuade the Bank from investing in the conflictive project until an open case at the International Court of Justice can be resolved. A group of Argentine and Uruguayan Stakeholders will travel the following week with a similar objective.

In response to announcement of Spanish facilitation, Argentina will refrain from filing a new complaint to the ICJ following Uruguay's unilateral announcement to allow Botnia to double its water use in its production, an act that once again violates the Uruguay River Treaty and the ICJ order to refrain from actions that could amplify the dispute. Bank Directors are scheduled to vote November 16th, on whether to provide financing to Botnia, the sponsor of the most controversial pulp mill investment ever.

With the Royal Announcement to intervene, and with bilateral dialogue commencing in just 15 days, it seems reasonable that the Bank's Executive Directors would suspend a Board vote, to avoid further polarization of the conflict, and allow, as President Paul Wolfowitz has repeatedly stated, for Uruguay and Argentina to seek a bilateral sustainable solution to the controversy.

The President of Argentina, Nestor Kirchner, sent a letter to the Paul Wolfowitz, the Head of the World Bank, requesting that the Bank remain impartial in the conflict, and that it must suspend its decision to decide on financing Botnia. In the letter, Kirchner declared the bank would be unnecessarily taking sides with Uruguay in an international conflict between the two sovereign nations.

Diplomatic Tensions Between Argentina and Uruguay Mount as World Bank Board Vote Approaches

Key Points:

- Escalation of already tense conflict between Argentina and Uruguay
- Directly linked to the IFC's upcoming decision on Botnia finance
- IFC will be seen as exacerbating international conflict if finance is given
- Heating up of conflict increases investment and potential viability of project

- Creates internal conflict within the World Bank after Paul Wolfowitz' comments regarding inappropriateness of the Bank's finance whilst the dispute continues

November 1st– Argentina/Uruguay - Uruguayan and Argentine media picked up a long list of official quotes expressing mounting tension relative to the cross border pulp mill conflict recently fuelled by IFC's decision to recommend financial support to, Botnia, one of the pulp mills which may apparently be treated on November 16th, by the World Bank's Board of Directors.

Uruguay's vice president, Rodolfo Nin Novoa, declared that the brick wall that stakeholders are planning to construct over the weekend to block the road at the entry of the international bridge, during their weekend long roadblock was equivalent to "the Berlin Wall".

Raul Estrada Oyuela, Environmental attaché to the Argentine Foreign Ministry, stated that Uruguay had committed "far worse" acts than the road blocks that they now criticize.

The Uruguayan Minister of Environment, Mariano Arana stated that Assembly attitude was "irrational".

The Uruguayan Foreign Minister, Reinaldo Gargano, announced that the Uruguayan government would send a second letter of protest over the anticipated "belligerent" roadblocks by local stakeholders over the weekend.

One Uruguayan source indicated that, if there was any hope the Presidents would meet over the weekend or next week on this conflict at the Ibero-American Summit, the recent statements indicate that this possibility has nearly vanished.

Uruguayan Pulp Mill Stakeholder Communities March in Buenos Aires to Protest before IFC, World Bank and Finnish Embassy Against Loan to Botnia

Key Points:

- Increasing community opposition to project
- Stakeholders are blaming political and financial bodies
- IFC recognized as major cause of unrest.
- Investment risk increases with public opposition, and World Bank is singled out as contributor to unrest

October 27th – Buenos Aires. Large flags and signs of repudiations were unveiled yesterday by hundreds of community stakeholders of Gualeguaychú, Uruguay, Colon, and other communities who marched through the Argentine capital to oppose the installation of the Botnia's Pulp mill on the Uruguay River.

The protest before the Bank and IFC, the Finnish Embassy, European Union, and the Embassy of Uruguay, focused on making mill supporters responsible for any future social outbreak or violence that might ensue from the Botnia investment. Assembly members met with the second in charge at the Finnish Embassy in Buenos Aires, indicating that should Botnia insist, Finland should not be surprised to see serious physical violence from what is already an entire community on the verge of social hysteria over this unwanted project. "Gualeguaychú is red hot gun powder waiting to explode, claimed José Gomez, one of the Assembly members to the Finnish government representative (Petra) who received stakeholders in her office. The Finnish diplomat made reference to the recent Canadian consulting firm report indicating that there would not be contamination to Gualeguaychú. "This is no longer question of reaching agreement on a consultant environmental impact assessment, retorted Jorge Fritzler, one of the more active Assembly members; we don't believe your studies and IFC has shown us that they don't care much about legitimate stakeholder opinion. Don't you understand that Botnia has no social license to operate in our community? We built our livelihoods on tourism and don't want a papermill on our beaches, no matter what your studies say! This project is causing the worst conflict in our diplomatic history with Uruguay and is bringing us to an irremediable social and cultural conflict with our neighbors! Botnia must go!"

Finland, despite its persistent negation of involvement in the venture, insisting that it is a private affair, and to be resolved between Argentina and Uruguay, is a 49% stakeholder of one of the adjacent firms

to supply Botnia with 100% of its chemical inputs, and as a guarantor through Finnvera, the state owned Export Credit Agency, would provide a critical guarantee loan which would make the entire investment viable.

The Assembly of Gualeguaychú chose last week, but only for the moment, not to resort to the highly controversial roadblocks which are emblematic of their struggle and whose continuity, if secured over the summer months, are placing the Argentine government in serious contention with neighboring Uruguay. Assembly members spoke out against the pulp mills, against the IFC for sponsoring the project despite its lack of social license, and despite severe irregularities in project preparation (including an adverse CAO audit), and against the World Bank for even considering supporting Botnia with US\$370 million.

Gualeguaychú Assembly members, and stakeholders from other communities traveled to Buenos Aires, some over 300 kilometers, to express their repudiation of an imminent Board of Directors vote by the World Bank to consider financing Botnia despite the high financial risk environment caused by the controversy which surrounds the investment project. The Assembly will reconvene in the upcoming days to vote on whether or not they return to roadblocks. They have already blocked traffic once for an un-interrupted 45-day span. They intend to stretch the summer roadblock for at least 3 full months, during the peak of Uruguayan tourist season, which according to Uruguayan officials, will launch yet another international claim against Argentina.

Stakeholders also met with the European Community and left a letter of opposition at the Uruguayan Embassy in Buenos Aires, which have always refused to meet with them.

IFC To Subvert International Legal Norms and Violate own Operational Policies if Finance approved for Uruguayan Pulp Mills

Key Points:

- Legal opinion reveals that IFC will violate international legal norms, its own policies and inflame an already intense international conflict if it were to finance Botnia under current conditions
- IFC advised not to finance project
- Legal troubles independent of environmental impact assessment
- Implications for other financiers, especially the risk of litigation against State or quasi-state organisations

25 October 2006 – Córdoba, Argentina – A legal brief released earlier this month by the Center for Human Rights and Environment (CEDHA) analyzing the International Financial Corporation's duties and obligations under its Operational Policies, concludes the IFC will subvert international legal norms if loans are approved by the Board of Directors for the controversial Uruguayan Pulp Mill projects. The IFC operational policies are based on international legal norms and are in-step with international law, to the extent that the Board cannot approve the loans whilst disputes continue in international and national courts and tribunals, such as at the International Court of Justice (ICJ), the Inter-American Commission on Human Rights (IACHR) and in Uruguayan national courts.

In order to approve projects facing ongoing conflict regarding international waterway law, the legal brief states the IFC must assess the doctrine of 'appreciable harm', a doctrine based in international legal theory that must take into account the conflicting parties wishes to resolve issues at the ICJ as stipulated by the River Uruguay Treaty.

The brief calls the attention to the fact that Paul Wolfowitz, the President of the World Bank, has made three separate declarations to the Uruguayan Government, the Argentinean Government and to the European Union Trade Commissioner that the World Bank would not finance the projects whilst the bilateral dispute between Argentina and Uruguay continues. As recently as September this year, the Government of Argentina has communicated to the Uruguayan Government, the people of Argentina and the World Bank that it will not back down. Further, the brief notes that the strong opposition by the vast majority of residents in the zone of impact and complete lack of social license flies in the face of the IFC's new Performance Standards which depend heavily on social concerns.

Following ENCE's recent announcement that it would relocate its mega-pulp mill from Fray Bentos rumors persist that the decision was fueled by inside information from the IFC that it has already decided not to finance the mill. No official statement has been made by the IFC regarding the status of ENCE project.

Irrespective the outcomes of the environmental impact assessments conducted by the IFC, the Bank will risk subverting international legal norms by approving the loans since the conflict remains unresolved in a slew of international and national jurisdictions. Other potential financiers, including the state or quasi-government entities, Finnvera, NIB and Nordea, that attract stronger obligations under international law and are slated to provide finance to Botnia, are advised to take heed of the technical aspects of the brief to avoid violations to legal norms, and refrain from usurping the role of international tribunals thereby exacerbating the international conflict between Argentina and Uruguay.

Fears of Violence Grow due to Pulp Mill Conflict in Uruguay

Key Points:

- Threats of violence as a result of potential IFC involvement in project
- Intruders threaten security personnel at Botnia mill site
- IFC decision seen as approval for project, and stakeholder elements are responding in a corresponding manner
- Violence and civil unrest increase investment risk, and this is likely to be noted by MIGA and Finnvera, institutions set to provide political risk to projects.

October 23, 2006 – Gualeguaychú and Fray Bentos. Despite the very vociferous and multitudinous nature of the vast protests from Uruguayan and Argentine stakeholders against the IFC-sponsored ORION pulp mill project in Uruguay, opposition has thus far been peaceful and never gone beyond peaceful conveyance of opinion. Growing concerns however, from across the river, over a potential and mounting violent out-lash are surfacing as a possible board vote by World Bank Board of Directors nears.

The Chief of Police Juan Daniel Balbis, of Rio Negro Province-Uruguay, in which Botnia is to locate its pulp production if IFC financing is made available, informed today that three unidentified but armed individuals were seen circumventing the Botnia site, and that a Botnia security guard was apparently "threatened" by the unidentified intruders, from outside the site perimeter. Fearing that intruders might be Argentines seeking to sabotage the Botnia plant, Uruguayan Police indicated that they "have increased surveillance notably" and reinforced security "both inside the Botnia precinct", in the area immediately surrounding the mill and at the international bridge.

The communiqué released today in "La República", an Uruguayan daily, reports that the Fray Bentos population and local police fear a terrorist attack to the Botnia plant, "as insistent threats continue to resonate from citizens in Gualeguaychú". Several Assembly members have mentioned to the press the risks of possible violence as local stakeholders feel cornered and defenseless with the irrational advancement of Botnia's construction, and what they see as the World Bank indifference as they move towards financial support to Botnia.

Rumors have spread that anti-mill protesters could sabotage the Uruguay River, and complicate cargo ship passage through the narrow and shallow straight (purportedly, protestors have already tested possible sabotage techniques), or that there might be a direct attack on the Botnia Smoke Chimney-the most visible (and according to people of Gualeguaychú) an insulting reminder that Botnia has ignored all protests and intends to build and produce at all costs. Other rumors suggest indirect sabotage to the Uruguayan economy, like cutting cross-border natural gas provisions, or severing telephone and internet communications which pass through Argentine territory. One rumor claims that an old woman suffering of cancer offered herself to the Assembly as a human explosive devise, to detonate herself on the Botnia site. These rumors are probably and most likely hearsay and/or complete unfounded, but have set the tone of the local conflict, and are raising the risk bar for the escalating conflict that could explode if the World Bank Board of Directors approves IFC's request for financing to the Orion project.

The Uruguayan army has already, on several occasions and in face of the mounting of cross border tension at specific moments of the conflict, put guards on alert for possible outbreaks of violence related to the mills conflict, particularly during road blocks and public marches to the international bridge, and particularly as a potential Board Date approaches.

Throughout the conflict, small incidents and fist fights have occurred on the international bridge, and at the road block sites, however, none has merited more than minimal press coverage in local dailies. In February of 2006, however, more serious concerns were raised when gunshots were reported purportedly aimed at Argentine fisherman, fishing on the international border, possibly within Uruguayan waters, near the Botnia plant site. During the CAO visit, local environmentalist in Uruguay complained of menacing persecution against their private property, including sporadic gunshots against their homes and vehicles. The CAO also asked local government officials to remove unidentified photographers from local meetings with stakeholders, as local stakeholders in Uruguay opposed to the mills, feared they were being photographed by Uruguayan secrete police.

Local Communities March to Express Repudiation of IFC over Pulp Mills: Roadblocks End Peacefully but with Clear Warning Message to World Bank

Key Points:

- Another example of peaceful, organized protests where spokespeople lay blame upon investors such as the IFC
- Roadblocks slated to continue if IFC provide finance to Botnia

October 17, 2006- Gualeguaychú. Outraged by the recent publication of a report favoring the installation of two mega pulp mills on the Argentine-Uruguayan border, over 2,500 local residents took to the highway, despite Argentine President Kirchner's discouragement, in an international roadblock, effectively cutting traffic between Argentina and Uruguay over the long Mother's Day weekend. The roadblock, reminiscent of recent roadblocks that continued for up to 45 days on end, was sustained for 48 hours and ended promptly as planned at 6 pm Sunday but only after local communities sent a clear warning to the World Bank President Paul Wolfowitz: "If IFC decides to provide financing to Botnia, "we will return and stay over the summer months or until the Bank finally decides to leave!", said Juan Veronesi, a member of the Citizen's Environmental Assembly.

Veronesi, despite his aggressive position against the Bank investment, is a moderate voice in the Assembly, and helped convince more radical members of the group that this roadblock should end Sunday, and not stay on indefinitely, as many members had preferred. Uruguayan officials, in reaction to Argentina's permissive response to the roadblocks, announced yesterday they will file actions against these roadblocks to the Mercosur tribunal, and to the International Court of Justice, further complicating the heated international dispute.

Signs could be seen everywhere, depicting Paul Wolfowitz and Lars Thunnel, the heads of the World Bank Group and the International Finance Corporation, respectively, with captions claiming Wolfowitz is accountable for social peace in the region, that he is destroying the Uruguay River and causing genocide of its inhabitants, while IFC has hired illegitimate consulting firms (previously hired by Botnia) to retrofit environmental studies to benefit the massive pulp mill industry. It is known that the Bank's legal team is divided on whether or not to give the loans to the pulp mills, given the outstanding conflict. The Argentine government, meanwhile, prepared a rebuttal to the controversial report.

The Financial Times reported this week that Uruguay has lost US\$400 million to previous roadblocks, and that blockades are likely to worsen already strained Argentine-Uruguayan relations.

Romina Picolotti, Argentina's Environment Secretary sent a letter to Wolfowitz requesting a Bank pull-out and holding him personally accountable for any repercussions a loan approval may cause. Stakeholders are pressing Argentine President Kirchner, who discouraged the roadblocks, to do more for their cause; another letter is expected from President Kirchner to Wolfowitz soon.

The Citizen's Environmental Assembly of Gualeguaychú, which can muster upwards of 50,000 signatures on a moment's notice against the mills, and who already took boxes of such signatures to Washington (to the CAO) and Finland (to Paula Letomaki, Finland's Trade Minister), will meet this

evening(October 15th) to discuss next steps in their long-standing and relentless opposition to the pulp mill investment. ENCE, the Spanish mill, both in response to local opposition and to financial starvation caused by the Bank's hesitance to provide finance any sooner to the controversial investment, has already left the area and is now considering alternative, more sustainable locations.

Botnia's plant, if inaugurated next year, would be one of the world's largest producers of Kraft Pulp. It is projected right in the heart of a well known tourist center.

Increased investment risk relative to International Court of Justice Ruling on Provisional Measures

Key Points

- Exposes amplified investment to higher uncertainty
- Opens door for Argentina to reapply for provisional measures
- Legality of factories under international law remains unresolved
- Argentina strengthens political resolve to return to the International Court of Justice

13th of July, 2006 – The Hague, Netherlands – In the ongoing papermill conflict between Argentina and Uruguay, the International Court of Justice (ICJ) ruled 14 votes to 1 that “the circumstances of the case are not such as to require the indication of a provisional measure ordering the suspension by Uruguay of the authorization to construct the pulp mills or the suspension of the actual construction work”. The Court argued in its 21 page verdict published today, that Argentina failed to offer substantial evidence to prove that *during construction* of the papermills, contamination and danger to local citizens was imminent and irreversible. With the two mega pulp mill not yet completed (the Finnish, Botnia-Orion at only 25% and ENCECMB, the Spanish mill, not yet initiated), the Court stated: “the threat of any pollution is not imminent as the mills are not expected to be operational before August 2007 (Orion) and June 2008 (CMB).”

Argentine argued that the mere fact of beginning construction, would eventually and unequivocally lead to irreversible environmental, social and economic damage, due to which, preliminary measures were needed immediately. The one dissenting judge of the ICJ understood supported this argument, stating, “I strongly disagree with the Court's finding that the construction of the plants constitutes a neutral or innocent step with legal consequences that shall not affect the future preservation of the environment ... the uncertainty of a risk of an imminent threat of irreparable harm is inexorably linked to the present and continuing construction of the mills.”

Independent of when imminent danger might begin, the Court however, provided Argentina with substantial grounds and opportunities on which to present future actions should eventual contamination show harmful and irreversible damage ruling that “in proceeding with the authorization and construction of the mills, Uruguay necessarily bears all risks relating to any finding on the merits that the Court might later make ... [and that] if it is established that the construction of the works involves an infringement of a legal right, the possibility cannot and should not be excluded *a priori* of a judicial finding that such works must not be continued or must be modified or dismantled”.

This clear ICJ statement was held up as a victory by the Argentine legal team and amongst advocacy actors in Argentina and Uruguay who oppose the mills, including CEDHA and its founder, the new National Environmental Secretary, Romina Picolotti, who assumed office a few days before the ICJ ruling. Picolotti traveled to Gualeguaychú to receive the ICJ verdict (the community that mobilized the largest environmental march ever anywhere for an environmental cause).

“The Court leaves to the merits [upon which it will rule later] the question of whether Uruguay may have failed to adhere fully to the provisions of [the Uruguay River Treaty]”. A key reason for not granting the emergency measures at this stage to stop construction is that the Court felt that its decision could reverse harm or damage at some future time.

The ruling was received soberly by Argentines, who expected an unfavorable judgment, but which had hoped the ICJ would make new inroads for application of the precautionary principle in international law, and at least call for further impact studies, and conditions necessary in order to advance with construction”, but also by Uruguayans, who far from chanting victory, looked carefully at the fine text,

and who immediately made overtures at the diplomatic levels, to Argentine counterparts, seeking a diplomatic solution to the bilateral conflict, an objectives stated several times in the ICJ verdict.

President Paul Wolfowitz of the World Bank has stated on numerous occasions that the possibility of project finance would depend on two factors: 1) IFC conclusions as to the social, environmental and economic sustainability of the investment (full compliance with IFC social and environmental safeguards); and more importantly 2) that Argentina and Uruguay reach an agreement to move forward-which is critical so that a unified and consensual World Bank board vote is possible. This point is especially important in the risk assessment at this stage, since it does not appear that Argentina and Uruguay will reach an agreement any time soon, and in fact, conflict over the investment, protests, and future actions at the international court of justice are only mounting. To this we can further add that we have received information that the World Bank's legal council has advised against investment in this project given the current international dispute. With much of this project still in great instability, with lack of clarity as to safeguard compliance, with two countries disputing the project at board level and with the Bank's own legal council showing signs of disagreement with an eventual decision to support the investment, it is highly unlikely that World Bank would take a decision against the prevailing current, given the high profile and risk involved.

The World Bank (IFC), Export Credit Agencies (the ECAs of Finland and Spain) as well as private banks, will have to look closely at the increased risk factor stemming from the ICJ verdict, particularly the explicit open-door the ICJ has left Argentina to submit subsequent provisional measures claims, as well as the responsibility clearly burdened on Uruguay to ensure project safety and soundness or face eventual factory modifications, shutdown or even dismantling. The ICJ also stated that "the present case highlights the importance of the need to ensure environmental protection of shared natural resources while allowing for sustainable economic development; ... and that "notwithstanding the fact the Court has not been able to accede to the request by Argentina for the indication of provisional measures ordering the suspension of the construction of the mills, the Parties are required to fulfill their obligations under international law; whereas the Court wishes to stress the necessity for Argentina and Uruguay to implement in good faith the consultation and co-operation procedures provided for by the 1975 Statute ... and whereas the Court further encourages both Parties to refrain from any actions which might render more difficult the resolution of the present dispute;" more reasons to raise eyebrows and the concern of weary investors in the growing papermill conflict.

8th of August, 2006 – Buenos Aires - Argentina officially rejected Uruguay's offer to monitor the water quality of the Rio Uruguay, to be ecologically altered by the contamination by the ENCE and nearby Botnia pulp mills. Officials from Argentina were upset by the public promises of Uruguay to additionally ensure joint monitoring of the construction phase, although the official text of the proposal failed to follow up on the stated intentions. Overall, the proposal was denounced by Argentina due to the dubious legality of the existence of the mills, yet to be determined by the International Court of Justice at the Hague, reiterating the country's intention to follow the procedural requirements in their entirety as laid out by international law embedded in the River Uruguay Treaty.¹ The solidarity between the People's Assembly and the National Government shows a strengthened resolve for that places the investments at risk of ongoing and renewed legal efforts, highlighting the potential liability for investing and supporting institutions.

28th July, 2006 - Gualeguaychú, Argentina – Chancellor Jorge Taiana traveled to Gualeguaychú in July to reaffirm Argentina's stance in the escalating pulp mill dispute, stating unequivocally that Argentina 'will not accept' the pulp mills. Declaring that the mills 'will cause irreparable damage', Mr Taiana revealed Argentina's solid resolve to pursue further opportunities working with International Court of Justice (ICJ) mechanisms in front of the People's Assembly of Gualeguaychú.

In contrast, Uruguay maintains that the initial ICJ judgment, which denies provisional measures requested on the basis of irreversible environmental damage caused by the construction phase, is a confirmation that the mills will not contaminate the River Uruguay in operational phase. Whereas the Court, when considering the incomplete environmental impact studies, explicitly refers to Argentina's options to reapply for provisional measures in the advent of new evidence concerning serious and irreversible environmental impacts in both the construction and operational stages. Further, Uruguay is affronted by Argentina's decision to not discuss options for the monitoring of mill effluent in by the

¹ La Nacion, 9 de Agosto 2006, http://buscador.lanacion.com.ar/Nota.asp?nota_id=830051&high=ENCE

Binational Commission, yet Uruguayan spokespeople are silent on the latent question of their own compliance with international law, still under deliberation at the Hague. Nor does Uruguay fully address Argentina's reasoning that it is impossible to enter into discussions concerning environmental monitoring when the future of the mills remains uncertain.

Growing Public Participation and Stakeholder Influence in the Case

The insertion of the People's Assembly into positions of influence within the sphere of actors driving the politics of this case is also noticeable. The newly named National Secretary of the Environment, Romina Picolotti, CEDHA's founder and former president, and lawyer and representative to the Assembly and Governor Busti, ensures that the Environment Secretariat, hitherto, largely absent from the pulp mill debate, now has a full team operating from the Secretariat on the pulp mill issue, and is poised to continue this struggle for the months to come. The Assembly members are also not letting up their struggle against the mills. Clear from the 100,000 strong turnout to the April bridge-taking, this is the largest environmental movement in global history, and is the backdrop which follows each step of Botnia and ENCE's projected investment. Recent development have wedged a participatory space for the Assembly at the various embassies, (such as the Finnish Embassy in Buenos Aires) which had been formerly closed to the Assembly. At the time of the writing of this brief, a representative of the Assembly was traveling to Finland to meet with the Finnish National Contact Point overseeing Finnish company compliance with the OECD Guidelines for Multinational Corporations, based on a complaint filed by CEDHA in April of 2006. Far from dying out, this movement is gaining force and have become in Gualeguaychú, a city of nearly 100,000 people, and in the Province of Entre Rios, part of the local identity and lore of the populations, which holds steadfastly to its commitment to protect the environment and its natural resources, which are an intricate part of their daily life and culture. The SOCIAL LICENSE necessary to facilitate this investment is CLEARLY ABSENT.

Increased investment risk relative to the relocation of the ENCE plant

Key Points

- New EIA process will be required by ENCE to determine impacts in new location
- Will create increased pressure on Botnia plant (2x size of ENCE) to relocate
- Shaky financing due to doubts over IFC loans contributes to relocation
- Illustrates key role played by IFC funding to act as green light for remaining finance

Uruguay. September 21, 2006. Rumors were confirmed that ENCE, one of the controversial pulp mills being constructed in Fray Bentos Uruguay, on the Argentine border, will abandon its pulp mill investments at the present location.

Alluding to the open conflict between Argentina and Uruguay, as its principle source of concern over its future operations in Uruguay, ENCE announced it is still uncertain where it will site its mill, but it will not continue its venture in the border town.

The local mayor of Rio Negro Uruguay, Omar Lafluf claimed that ENCE cited as its principle concerns, pressures from the Argentine population of Gualeguaychú and its fear that international banks, including the IFC would not give needed loans to the investment under current conditions and site locations.

31st of July, 2006 – Montevideo, Uruguay – A spate of reports surfaced concerning information leaked from inside the multinational company ENCE and the likely relocation of the giant pulp factory to be located within the zone of influence of the Argentina's tourist driven region of Gualeguaychú. At the time of an unprecedented visit by ENCE's president, Juan Luis Arregui, to speak with Argentine President Nestor Kirchner, about the ongoing dispute, the Spanish pulp producer has indicated that construction of the large-scale cellulose factory will continue to be suspended until December of this year.²

Following the persistent rumors of relocation, the continued suspension of works and the reunion of Kirchner and Arregui, representatives from ENCE met with Uruguayan officials to placate the country's fears of losing the investment, stating that the cellulose plant was a substantial part of

² La Nacion, 1 de Agosto 2006, http://buscador.lanacion.com.ar/Nota.asp?nota_id=827871&high=ENCE

the company strategy, with government officials relaying their confidence that the plant would indeed be constructed in Fray Bentos.³

ENCE's potential relocation from its port north-east of Fray Bentos would require the reinitiation of the EIA process, increasing project costs and decreasing investment return. Meanwhile, Botnia's factory, twice the size of the ENCE plant, located closer to Gualeguaychu and immediately above the potable water intake of Fray Bentos will come under increased pressure to follow suit, jeopardizing the equity already placed into the construction of the plant, which continues unabated despite the lack of final approval. The government of Finland has stated on several occasions to be unhappy about the way Botnia handled public opposition, consultation, and access to information to local stakeholders, and recognized that the local stakeholders have a right to be concerned.

Increased investment risk concerning other Legal Actions

Key Points

- Sweden accepts OECD complaint against Nordea, mandated lead-arranger for external finance of the Botnia project
- Finland's initial assessment of complaint against Botnia deemed to require further investigation as to merits of complaint
- MERCOSUR jurisdiction rules in favour of road blockades and reveals poor inter-governmental relations between Uruguay and Argentina to blame for non-resolution of the conflict
- Finnish government concerned over reputational risks posed by companies such as Botnia operating irresponsibly abroad
- Increased investment risk due to parallel proceedings and unfavourable tribunal decisions

Swedish OECD National Contact Point Accepts Complaint Against Nordea for Possible Financing of Controversial Botnia Pulp Mill Project in Uruguay

November 17, 2006 – On the day before the World Bank suspended an imminent vote on a controversial multi-million dollar loan to Botnia (the Finnish company constructing a pulp mill on the Argentine-Uruguayan border), the Swedish National Contact Point (answering also on behalf of the Norwegian National Contact Point) of the OECD accepted a complaint filed by CEDHA (of Argentina) and Bellona (of Norway) against Nordea, a leading financial services group of the Nordic and Baltic Sea area, who were set to provide Botnia with a multi-million dollar package to finance the controversial investment in Uruguay.^{4[1]} This is sends yet another bad signal for the financial package constructed by Botnia, which already suffered a US\$480 million pullout by ING Group, earlier this year following a similar Equator Principles Compliance Complaint.

In a letter dated November 15th, received by CEDHA's President who is presently in Washington DC meeting Executive Directors of the World Bank to insist on an indefinite suspension of a imminent board vote of the Bank on whether to provide Botnia US\$370 million, the Swedish Ministry of Foreign Affairs informed CEDHA and Belona, that "The Swedish NCP (National Contact Point), with the support of the Norwegian NCP, has decided to take up the report and consequently it is now formally a Specific Instance". The letter makes reference to CEDHA and Belona's allegations that "as possible financier of the Finnish company Botnia's construction of a pulp mill in Uruguay, [Nordea] is not following the OECD Guidelines for Multination Enterprises".

The original complaint^{5[2]} was filed jointly by CEDHA and Bellona on June 28th, and submitted simultaneously to the Norwegian and Swedish NCPs, and requests that the NCPs "take active participation in the matter concerning Nordea's role as financier of Botnia, and offer their good offices

³ La Nacion, 8 de Agosto 2006, http://buscador.lanacion.com.ar/Nota.asp?nota_id=827870&high=ENCE

to help resolve the international conflict that has been caused by this project and the role taken by its key financial supporters such as Nordea.”

Botnia confirmed that Nordea would act as one of the main arranging banks to secure external finance for Botnia’s project in Uruguay. The complaint filed by CEDHA and Bellona calls attention to a CAO Audit from the World Bank which discovered the project was violating the IFC’s Social and Environmental Safeguard Policies. CEDHA has systematically informed Nordea of the many outstanding legal claims, human rights violations, violations of corporate responsibility codes, and alleged violations of national and international law by the pulp mill company and by the World Bank’s International Finance Corporation (IFC). Nordea, has however, refused to provide any information to CEDHA or to Bellona, about their actions to verify project information and ensure non-complicity in such violations.

This complaint and the reception of the complaint by the two NCPs, is especially significant, as it sets an important precedent regarding the applicability of the OECD Guidelines for Multinational Enterprises for future complaints involving ‘financers’ of private enterprise investments, an applicability issue of great debate amongst OECD Member Countries, civil society organizations, businesses and of NCP Offices.

The complainants state that “by supporting Botnia, or showing any intention to do so, and by virtue of the nature of its role as financial arranger, Nordea is complicit to the accusations made against Botnia. ... By supporting Botnia, Nordea is directly involved in the Botnia Orion Project supply chain, as contemplated by the Guidelines ... [and that] the expressed interest in supporting Botnia has extremely important implications on the ability of Botnia to attract other investors.”

Sweden and Norway, as members of the OECD, and Nordea as a multinational enterprise based in Sweden and Norway and one that is partially owned by the Swedish State, must fulfill its duties to adhere to, uphold and promote the guidelines, which includes in this case, to take action to address Nordea’s support of the irresponsible and illegal behavior of Botnia which results in: the violations of national, regional, and international law, violations of international organization regulations regarding social and environmental protection, diplomatic tension, destabilization of diplomatic, business and social environments in Argentina and Uruguay, and giving rise to economic and diplomatic and social conflict caused by this project”.

The complaint alleges violations of Chapter II on General Policies including detrimental contribution to sustainable development and social and economic progress, violations of human rights, and the promotion of lax environmental controls; Chapter III on Disclosure with no timely information and no information about environmental and social impacts; and Chapter V on Environment ignoring international obligations of the host government (Uruguay), failure to collect and evaluate environmental information; failure to communicate in adequate information and communication with stakeholders; among others.

Finnish government opens the door to the Pulpmill Case

30 August – Helsinki – The Argentine delegation lead by CEDHA, with participation by the Assembly of Guleguaychú, was received today by the Minister for Foreign Trade and Development Paula Lehtomaki, who offered, in a notable change to the external politics of Finland, their good offices to attempt to bring together the parties in order to resolve the evermore complicated conflict for the installation of the Botnia pulpmill on the shores of the River Uruguay.

Daniel Taillant of CEDHA, Oscar Bargas of the Citizens Assembly of Guleguaychú and Yann Queinnec of Sherpa, France (NGO that assisted in the case), were received today by the Finnish National Contact Point, Botnia, Finnvera and diverse representatives of the national government, in order to initiate a round of discussions regarding the complaint presented by CEDHA in April of this year against Botnia for violations of the OECD Guidelines for Multinational Enterprises.

The meeting offered both the Assembly and CEDHA the opportunity to present key arguments to the opposition of the mills, arguments which are still thriving today in Argentina and Uruguay (although far less visible), against the installation of the Botnia pulp facility in Fray Bentos, Uruguay. Argentina’s

delegates were first to present arguments, stating that the question of whether the mills will contaminate was yet to be resolved before the World Bank, recounting evidence pointing to Botnia's deliberate violation to norms established by the IFC governing environmental and social protection, and that declaring that Botnia had not, nor will ever, obtain the social license necessary in Gualaguaychú, and more generally in Argentina, to be able to operate the plant. Furthermore, the delegation firmly stated the solution to the problem was the relocation of the plants.

Botnia attempted to defend its stance, arguing that its reputation assures that there will be no contamination and that they have done everything possible to communicate to the Argentines all the information produced regarding the status of the project, but unfortunately they had not achieved adequate communication and that the company was making a grand effort to rectify this problem. CEDHA and the Assembly's delegate responded by stating that it is too late to fix this problem, and that for Botnia to reconcile its actions, it should consider the benefits that site relocation would provide to all parties. This same sentiment was transmitted by Lehtomaki, the Finnish Minister who had to cancel a recent visit to Argentina due to the complicated environment generated by Botnia in the Latin American country. The Minister was unable to offer the State's official position, but commented that the subject would be investigated further.

Amongst the most notable outcomes from today was the prevalence of local media coverage that told Argentina's point of view that there existed no possibility of obtaining the requisite social license in Argentina for the project, also commenting on the strength shown by the Finnish Government to open a space for discussion incorporating the voice of the opposition by offering its own offices to mediate the process between all parties concerned.

MERCOSUR Tribunal Recognizes Gualaguaychú Assembly Legitimacy in Struggle Against Papermill Investments

September 7th, 2006. Montevideo. The Ad Hoc Tribunal created to address Uruguay's claim that Argentina was to blame for violations to the Mercosur Trade Agreement as well as Uruguay's request for over US\$400 million in losses due to recent road blocks by citizens of Gualaguaychú in Argentina who oppose the installation of two controversial papermills, ruled yesterday that Argentina acted in good faith to dissuade road blocks, that while Argentina's failure to remove the roadblocks is not compatible with its obligations under the MERCOSUR trade agreement, Argentina is not liable for reparations to Uruguay, and that the tribunal would not take special measures to oblige Argentina to dissuade future roadblocks.

The last point leaves further uncertainty for investors over future risks and security of the investments, as the International Court of Justice has already left the door open for Argentina to file future complaints against Uruguay for contamination caused by the mills, and even the possibility of forcing mill dismantling.

The ruling also remarks that the protests and roadblocks by citizens of Gualaguaychú against the Botnia and ENCE mills were the "understandable and organized response defend their legitimate rights" to "an imminent threat ... [and due to the] failure of both governments to tend to the claims of the local citizens ..." (paragraph 157 of the verdict). This statement echoes claims by local citizens that Botnia and ENCE, the companies involved in the pulpmills, have failed to consult local stakeholders in Argentina, and have failed to gain the social license they need to operate in the area. The tribunal further added its "understanding as to the sentiment and alarm and the consequent protests of the citizens on the Argentine riverside, who are calling attention to the potentially harmful construction [of the mills], that have not produced proper responses from either government". (paragraph 173).

The ruling is a setback to the Uruguayan government, and to the two pulp mill companies, who had hoped to buttress their legitimacy in the venture, and instead referenced stakeholder legitimacy in the protest. The local community affected by the investment has recently reiterated their call for a non negotiable a relocation of the plants to a more suitable site.

11th of August, 2006 – Helsinki, Finland – The good offices of the Finnish National Contact Point, the government body that assesses Specific Instances, the complaint procedure created by the OECD to respond to breaches to the Guidelines for Multinational Enterprises, have made an initial

assessment on the complaint submitted by CEDHA against Oy Metsae Botnia and will mediate a reunion that sees the Center for Human Rights and Environment, the People's Assembly of Gualeguaychú and OECDWatch members discussing alleged breaches by Botnia and export credit agency Finnvera. The meeting will take place on the 30th of August, and observed by the National Contact Points of Sweden and Norway who are set to deal with a similar complaint concerning the involvement of the mandated lead arranger, Nordea Bank. The legal team representing the interests of the people affected by the pulp mills will embark on a series of press interviews, public presentations and other discussions, for the first time in the history of the dispute bringing an alternative point of view to Finland who's press has been previously dominated by the Finnish parties set to profit from the installation of the mega-pulp factory.

9th of August, 2006 – MERCOSUR Jurisdiction– Uruguay pursues Argentina in the MERCOSUR judicial forum, seeking pecuniary damages caused to the local economy by international road blockages on the Argentina side of the river, blockages that were aimed at preventing the supply of construction material to the Botnia plant. Argentina has thrown its weight behind the people's concerns about contamination discharged by the mills, and has responded to these accusations maintaining that the right to free expression of the people is more important than the right to freedom of movement. Legal action in the MERCOSUR jurisdiction highlights the heights of the diplomatic dispute between two otherwise friendly countries with opposing parties distancing themselves from the possibility of negotiation on friendly terms to resolve the dispute.

Increased investment risk relevant to Environmental Impact Assessment by IFC hired Consultants

Key Points

- Insensitive cultural mistakes by IFC report criticised by stakeholders
- Mismanagement of report release
- Continuation of EIA by IFC appointed consultants with public consultation not held for terms of reference in defiance with IFC policy,
- Heightened risk for EIA legitimacy, paving the way to further legal action

Yet Another Unbelievable IFC Disclosure Error on Environmental Report of Uruguay Mills Reaction: Local Communities Plan New Roadblocks to Oppose Mills

October 10, 2006 – The IFC committed yet another unbelievable error in the handling and processing of information relative to the controversial pulp mills in Uruguay. The IFC admitted erroneously posting a draft version of the long-awaited Ecometrix report on the impact of the two pulp mills. The webpage that sited the document went up over the weekend for less than 24 hours, and came down when IFC realized that the document had been discovered by the public. Inexplicably, the document can still be downloaded three days later despite the mix-up. This IFC blooper, is just one more link in the IFC's chain of systematic mishandlings, insensitivities to local concerns, and violations of disclosure procedures. The unofficial and erroneous publication of the draft report sent rumors flying yesterday throughout Argentina and Uruguay and generated widespread speculation about the future of the investment.

Text of the report was reproduced in numerous dailies. Local residents in Gualeguaychú feel insulted by the IFC-sponsored report and discredit its conclusions, based on text such as: "the change to the landscape is a permanent change, however the public's response to these new industrial features is subjective and may change over time as the public becomes accustomed to the new landscape". Members of the Citizens Environmental Assembly of Gualeguaychú are now considering returning to block the international bridge linking Argentina and Uruguay. As the IFC comes to the wire on its decision or not to elevate the project to board vote, local stakeholders are launching a campaign to discourage Argentine vacations to Uruguay this coming summer, raising further the risk factor in the investment and further fueling the international conflict.

Insensitive and insulting comments like the ones made by Ecometrix make the report sound like a lobby document by the cellulose industry, which is already accustomed to public outcry against cellulose industry investments in residential areas, but like Botnia, take such opposition lightly. On technical issues, however, the report also fails local communities as it ignores key issues of concern,

such as impacts to tourism, and to the Guaraní Aquifer, one of the world's largest supplies of freshwater, sitting dangerously beneath the pulp mill site. Ecometrix was supposed to fill gaps of information on matters highlighted as missing by the previous consulting group, Hatfield, but instead, leaves the public unsure about impacts grounded on cellulose industry rhetoric defending Botnia as comparing "favorably with pulp mills around the world ... [and] that the mills are implementing BAT". Local residents have claimed from the beginning, that the cellulose industry is a contaminating industry (the World Bank categorizes the industry as Category A-the most contaminating) and that naturally, it is incompatible with the tourist industry that they have embraced to sustain local livelihoods. On impacts to the Guaraní Aquifer, the report fails to meet Ecometrix's responsibility to complete missing information, leaving doubts for concerned stakeholders with comments such as "individual and cumulative impacts of potential significance may relate to water management issues – both surface water and groundwater ... [recommending further] studies pertaining to impacts on soils, surface water, and groundwater."

ENCE, the Spanish pulp mill already withdrew considerations to invest in the region following growing local concerns and opposition to the mills, and to the mounting diplomatic conflict between Argentina and Uruguay which has no resolution in sight. Many are speculating that ENCE's decision to withdraw is really based on their first hand knowledge that the IFC has already taken the decision NOT to elevate the projects to board vote, based on the impossibility of reverting the conflict and diplomatic crisis caused by the projects, as well as inside opposition from the Bank's Legal Council, which is purportedly against the investments. ENCE hence, cut its losses short and pulled out only weeks away from what was expected by most to be a favorable environmental report. IFC, if this were true, are delaying their response (at the expense of further fueling the conflict between the friendly countries) speculating that Argentina and Uruguay may come to the table to negotiate an agreement, and thus save the investment. This strategy is destined to fail, as the Argentine government opposition remains solidly against keeping the mills at the site.

Botnia meanwhile, needs a clean bill of environmental health (which is provided by the Ecometrix Report) to convince other banks to go in on the investment, despite what seems to be clearly an eventual IFC pull-out from the investment. Botnia has confided to CEDHA that it is convinced, that even if the World Bank withdraws from the investment, other banks will decide to invest. CEDHA has other information however, having met with all of the key financial actors who unanimously indicated they will follow the IFC lead on the project proposal, which places Botnia in a difficult position, perhaps having to look elsewhere for controversial support to their unsustainable mega-project.

21st of July, 2006 – Washington, USA – The International Finance Corporation (IFC) has given the go ahead to Ecometrix, a Canadian environmental consulting firm, to conduct further environmental studies to augment the current environmental impact assessment documentation, considered inadequate by the IFC commissioned Hatfield report released in April.⁶ Technical environmental studies continue despite the World Bank's reluctance to finance the mills whilst they remain the cause of high-level diplomatic conflict between the two neighbouring Latin American countries.

Previous environmental impact assessment, which both the Compliance Advisor Ombudsman and the IFC itself has recognized as deficient, and that were boycotted by the Assembly of Gualeguaychú for being in violation of the IFC's own disclosure policy (no prior consultation was done before drafting of Terms of Reference). The IFC does not provide commentary on the terms of reference for Ecometrix with regarding to public participation, only referring to the Hatfield report which addresses public comments on the Draft Cumulative Impact Study. In discussions CEDHA had with Ecometrix we were told that no public consultation was planned, and that the only terms of reference for their work was to complete the already deficient, incomplete, and illegitimate Hatfield Report.

The revised CIS must cross reference the expert panel report issue by issue (i.e., A1 through C12) with specific reference to the page(s) in the revised CIS where each of the expert panel's recommendations is addressed.⁷

⁶ http://www.ifc.org/ifcext/lac.nsf/Content/Uruguay_PR_EcoMetrix

⁷ IFC, Terms of Reference, Uruguay Pulp Mill Projects, Updated Cumulative Impact Study, July 1, 2006:
http://www.ifc.org/ifcext/lac.nsf/Content/Uruguay_PulpMills_Ecometrix_TOR

The IFC does not set terms of reference for the continuing studies, ignoring issues concerning due diligence and establishing terms of reference required by the IFC's own operational policies. Despite the contention from the IFC that the private consultants from Canada will operate independently and with an unlimited scope, residents affected by the construction and operation of the pulp mills are concerned that once again, the CIS will not hold adequate consultations nor sufficiently take local interests into account. World Bank Executive Directors, responsible for the final decision on the approval (or otherwise) of the provision of IFC finance and MIGA risk insurance, will closely scrutinize the current investment climate, with the World Bank President indicating that it is unlikely to finance the projects whilst the dispute between the two countries remains unresolved. Ongoing legal and procedural actions and the cooling diplomatic relations between Argentina and Uruguay suggest the dispute will not be resolved without pro-active conciliatory moves by either the proponents or Uruguay increasing the peril of political risk.

Increased investment risk relevant to other environmental notices

Key Points

- Internationally protected RAMSAR wetland site located near ENCE site
- Evidence of further pulp mill contamination in Uruguay

9th of August, 2006 – Colonia, Uruguay - Reports were released about pollution caused by the Fanapel pulp and paper plant located downstream from the ENCE facility in Juan Lacaze, Uruguay near the city of Colonia, which declared nearby beaches were not fit for swimming and that surviving sabalo fish were not fit for human consumption. Uruguayan officials were angered by the timing of the report's release in light of the plants plans to employ new environmental controls which have been suspended since 2002 following the Argentine economic crisis. The Fanapel plant produces around one third of the pulp per annum expected by the ENCE plant or around 12% of the total pulp produced by the two proposed mills which together would form the single largest pulp facility in the world.⁸ Communities in both Argentina and Uruguay are becoming more critical of the environmental performance of the pulp industry leading to greater scrutiny on the environmental performance and compliance with the framework regulating environmental decisions.

20th of July, 2006 – Geneva, Switzerland – The Secretary General of Ramsar, the body governing the administration of wetlands declared to be of international significance and governed by the Ramsar Convention, was notified of the potential threat to the Esteros de Farrapos wetland region on the River Uruguay by contamination from the Botnia and ENCE pulp mills. The wetland area, to which Uruguay has obligations under international law to protect, is located ten kilometres upstream from the location of the ENCE facility. The Draft Cumulative Impact Statement acknowledges that under certain tidal and climatic conditions the River Uruguay can reflux, with waters flowing upstream towards the Ramsar site, but does not address the possibility of aquatic or airborne contamination impacting the important wetland. Additional studies cited by prominent academics confirm the occurrence of large-scale reflux of the Uruguay River indicating that persistent organic pollutants emitted by the chlorine bleaching process may affect the site once mills are operational. The Celco Valdivia pulp mill, which was promoted as one of the most environmentally friendly pulp mills ever constructed, uses the same ECF bleaching technology as the Uruguayan Mills, is the same size as the Botnia plant. Scientific studies and CONAMA, the Chilean Environmental Authority, blame the deaths of thousands of black necked swans that inhabit the Rio Cruces Ramsar wetland 30 kilometres downstream from the Valdivia mill.⁹ As a result the mill was decommissioned following calls for further environmental impact assessments. CEDHA has been informed that the Ramsar General Secretary will write to the Uruguayan Administrative Authority about the potential threat to the internationally protected wetlands.

Increased Investment Risk As Other Investors Approached Regarding Pulp Mill Case

Key Points:

- Nordic Investment Bank identified as potential financier for Botnia

⁸ La Nacion, 9 de Agosto 2006, http://buscador.lanacion.com.ar/Nota.asp?nota_id=830052&high=fanapel

⁹ <http://www.medcore.unifi.it/conference/PDFComunicazConvegno/2-JARAMILLO.pdf>

- Banks states that it will watch closely the IFC decision on investment
- Uneasiness of other investors

Nordic Investment Bank Receives Argentinean Delegation

31 August 2006, Helsinki - The Argentinean delegation lead by CEDHA with the participation of the Assembly of Gualaguaychú and Association Sherpa of France, was received yesterday by the Finnish high representatives of the Nordic Investment Bank (NIB), a Scandinavian/Nordic multinational public holding that is looking to provide an unknown amount of finance to Botnia's enterprise in Uruguay.

CEDHA, at the beginning of August, sent a formal information request falling under the ambit of the Aarhus Convention, to access to information about the participation of the Nordic Investment Bank and the eight countries that from its collective owners.

Daniel Taillant, director of CEDHA, transmitted to NIB his concerns for the banks eventual public support for the Orion project. Lars-Ake Olsson, the Vice-president of International Loans, and Tarja Kylanpaa, Vicepresident of Private Sector Finance (both of NIB) listened attentively to the arguments given by Oscar Bargas (Assembly of Gualaguaychú) and Taillant about the multiple violations that project Orion had committed against the environmental and social safeguards of the International Finance Corporation (IFC) and sustained by the World Bank Ombudsman.

The directors of NIB regretted that in Argentina, Botnia failed in its mission to convince the local community of the innocuousness of the project and despite many opportunities, were unable to reverse the situation. Yann Queinnec, international lawyer accompanying the Argentine mission, remarked that the World Bank itself had put the brakes on its loans to Botnia stemming from concerns about non-compliance with bank regulations, and that it would be difficult to advance finance for the project without support of the international finance community.

Taillant explained that locally, and principally on the Argentine side, Botnia had committed multiple errors and shown a worrying ineptitude, and that these failures could principally be attributed to Botnia's Director in Uruguay, Carlos Faropa. Bargas highlighted that in Gualaguaychú, due to the bad faith shown by Botnia and Faropa, and the intentional errors and omissions in the Environmental Impact Study, Botnia had lost the Social License needed to operate in the region. Taillant informed NIB that due to the communication failure between Botnia and Argentina (that had resulted in the largest peaceful environmental march in world history), Botnia announced the appointment of the new communications representative for the Orion project, Mr Marko Janhunen, who was present yesterday's meeting featuring CEDHA and the National Contact Point.

NIB indicated that it would be observing closely the conclusions of the IFC studies, and that it would thoroughly analyse project Orion's risk profile prior to entering into investment agreements.