

The Center for Human Rights and Environment (CEDHA)
12 January 2007



Manfred Schekulin
Chair, OECD Investment Committee
Director, Export and Investment Policy
Bundesministerium für Wirtschaft und Arbeit
Federal Ministry for Economic Affairs and Labour
A-1011 Wien, Stubenring 1

Dear Mr Schekulin,

cc: Finland NCP, Sweden NCP, Botnia CEO

We are communicating with your office referent to the notice sent to the Center for Human Rights and Environment (CEDHA) by the Finnish National Contact Point on the December 21, 2006 regarding its decision to close the Specific Instance CEDHA filed against S.A/Metsä-Botnia Oy on April 18th, 2006.

We consider that the closing of the Specific Instance filed against Oy Metsa Botnia for alleged breaches of the OECD Guidelines for Multinational Enterprises with respect to the Orion pulp mill project on the Argentine-Uruguayan border, and the implications of this closure are counter to the expectations and obligations set out by the OECD for National Contact Points, which clearly indicates that the NCP's should help resolve issues relative to concerns over business behavior and implementations of the Guidelines.

As you may already be aware, the subject of this complaint is referent to a highly controversial pulp mill investment currently in construction on the Argentine-Uruguayan border. This investment project has been the subject of great local strife, the birth of a massive environmental social movement, an intense international border dispute, numerous legal claim filings in national and international courts and various forums such as this one, a critical audit and conclusions by the World Bank's Compliance Advisory Ombudsman (CAO) which supported local stakeholders (and CEDHA's) claims of project violations to the IFC's Social and Environmental Safeguards, and an escalating bilateral conflict between Argentina and Uruguay, that has not only resulted in at least three international complaints filed at the International Court of Justice and at the MERCOSUR Regional Trade Block, but has even resulted in the mobilization of military troops by the Government of Uruguay (an unheralded decision) to guard the construction site, for fear that opponents to the project might carry out violent activity against Botnia. Local community stakeholders have been blocking the international bridge that links Uruguay and Argentina since November 20th, the eve of the World Bank Board of Directors vote to authorize a loan to Botnia and expected to stay on the bridge through the upcoming summer months. Shortly after the World Bank board vote, and largely grounded on the supposed economic and environmental soundness of the project (as well the International Finance Corporation-IFC decision to approve the Botnia loan), the Finnish NCP closed the Specific Instance filed by CEDHA against the Botnia project.

The Finnish NCP claims in its seven page notice to CEDHA dated December 21st, that there is insufficient evidence to prove "that Botnia S.A. has failed to comply with the OECD Guidelines" and resolves to close the Specific Instance. CEDHA can rebut the various arguments set out by the NCP, many of which cite CEDHA's original complaint erroneously – (we offer some rebuttal in an annex to this note). One can also refer to the World Bank's own Compliance Ombudsman, which sustain many of CEDHA's arguments above and beyond the conclusions reached by the IFC, by its own hired consultants, and by the Finnish NCP. The environmental reports offered by these consultants are now the subject of review by independent

consultants that have been hired by the Argentine Environmental Authority, to look into key assumptions and issues that have been overlooked by the IFC studies. But an environmental review of the case against Botnia is not our main point.

As you will note from the notice sent by the Finnish NCP, attention has only been given by Botnia to select local stakeholders in Fray Bentos (an Uruguayan city), and has not been equally extended to the border community, which is entirely in their right to demand participation in the evolution of their own social, environmental and economic future. This community has been ignored by the project sponsors, by the World Bank (a fact confirmed by the CAO), and now by the Finnish NCP who refuses to work with the community towards dialogue and resolution. The Finnish NCP notice recognizes that “Botnia S.A could have handled the communication better, especially with regard to Argentina”. We feel that the Finnish NCP could also have handled its efforts better, especially with regards to company-stakeholder dialogue, something it never attempted to do.

The Finnish NCP only offered a single meeting between CEDHA and Botnia and only to hear positions in August of 2006. Both CEDHA and Botnia left the meeting in Helsinki offering to advance dialogue under the dialogue space offered by the NCP. A first and important step was made that day. It was the first time that Botnia and the Finnish government agreed to meet head to head with the Citizens Environmental Assembly of Gualaguaychú, the citizen’s group driving the opposition to the Botnia project. This was the big success of the meeting and we expected that the Finnish NCP would help provide the framework for that discussion and create further opportunities for dialogue. At one point, not long after that meeting, CEDHA made an attempt to meet with Erkki Varis, Botnia’s CEO on one of his visits to the region. Varis refused to meet with CEDHA claiming his agenda did not permit it; we informed the NCP of this refusal, however, no action came, no recommendations, and no efforts to help advance dialogue. The NCP never showed any visible effort to encourage dialogue, and never even contacted CEDHA about any issues whatsoever, which it could have done in the months following the first and only meeting. In its last and only subsequent notice to CEDHA, to inform of the closure of the Specific Instance, the Finnish NCP claims that as early as September 22, it had already discarded the effort to help resolve the dispute.

We wish to contest the Finnish NCP arguments which form the basis of the closure of the Specific Instance. The role of the Finnish NCP should not have been to pass judgment on the environmental and economic or human rights soundness of Botnia’s investment project. Because of the great notoriety of the conflict, many serious institutions are carrying out such studies and evaluations, making the Finnish NCP focus on such issues, at the very best, irrelevant. However, the Finnish NCP attempt to pass judgment on the environmental soundness (with very light and unqualified analysis) of the project and its explicit defense of Botnia (which is entirely out of line in its supposedly independent role), reflects poorly on the OECD Guidelines and on the independent role of the NCP. Comments such as these made by the Finnish NCP in its notice to CEDHA, undermine the Guideline’s credibility and seriousness:

“Botnia S.A has also stated that it adheres to the principles of the UN Global Compact ... [and that] This, for its part, ensures that Botnia S.A will use acceptable methods and adhere to internationally acceptable practices.”

[in reference to Botnia’s human rights obligations towards local citizens]: “In this context it must be also noted that aspects related to human rights are to be discussed primarily from the viewpoint of the State of Uruguay.”

“Botnia S.A has also organised several public hearings in Fray Bentos, to which various parties from Argentina have been invited as well.” [Fray Bentos is in ANOTHER country!]

We would like to draw attention to concerns about the NCP’s ability to handle the case in a manner which is independent and objective. We note that the National Contact Point operates under the auspices of the Ministry of Trade and Industry, the same Ministry that chairs the MONIKA Advisory Committee, which provides advice to the National Contact Point. It is a Ministry that sits in the Finnish Government, one that is closely linked to the Botnia project. Of the 13 enterprises owned or partially owned by the Government of Finland, two are business partners to the Botnia project. Kemira Oyj, the chemical company contracted

to produce and supply chemicals to Botnia, is 48.6% owned by Finland, and Metso Corporation, contracted to supply an order of valves to Botnia, in which Finland is a major shareholder. The Finnish Government is 100% owner and guarantor of export credit agency Finnvera, which is to provide export guarantees for the Botnia project. Finland is also one of eight country owners of the Nordic Investment Bank, which is set to establish a crucial part of the financial architecture for the project.

The Finnish NCP should have focused its efforts on building dialogue and creating the environment necessary to bring Botnia to speak with stakeholders (which it has failed to do) and work towards a solution to the conflict. It is to this that we entrusted the Finnish NCP with the Specific Instance filed. The Finnish NCP, as well as the Finnish government, could have, *and could still*, provide a constructive space for dialogue with the company, and its project, which is the origin of the dispute.

We consider that the opportunities for dialogue should never be stifled, and certainly not ignored or go unexplored. The great value added provided by the OECD Guidelines and the NCPs is precisely in this realm. To ignore this potential and to refuse to attempt to work through a solution sends a clear message to the international community that sustaining commitment and implementing the OECD Guidelines for Multinational Enterprises is impossible when corporate interests conflict with local communities.

At the same time that the Finnish NCP decides that the Specific Instance requires no further treatment, the international conflict caused Botnia and its insistence to move forward at all costs with its project – grounded their belief that their project is environmentally sound and respects the law, however without the consent and approval of the vast majority of the affected stakeholders, continues to worsen, continues to become more tense, and continues to destroy not only the friendly investment climate that once existed in the locality, but more importantly the brotherly relations that have always existed between Argentina and Uruguay and between the two riverside communities of Fray Bentos and Gualeguaychú. This misinterpretation of the Guidelines goes counter to the very spirit of the OECD Guidelines for Multinational Enterprises.

In consideration of the lack of review mechanism available to CEDHA and the Investment Committee's role in supervising implementation of the Guidelines, we respectfully ask the Investment Committee to reflect upon the NCP Statement and the Finnish NCP's role in facilitating a constructive outcome to the dispute, and consider:

1. that the Specific Instance be reopened and that the focus of the Specific Instance be dialogue between the parties,
2. that the Investment Committee undertake a review of the Finnish NCP's interpretation of the Guidelines, and
3. that the Investment Committee review the possible conflict of interest of the NCP in light of the NCP Statement, and whether another NCP may deal with the Specific Instance.

Respectfully,

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ANNEX Analysis of Finnish NCP's Notice of closure of Specific Instance against Oy Metsa - Botnia

Relative to the Inclusion of Argentinean Stakeholders

In the context of considering Argentine stakeholders, the Finnish NCP states “ ... with regard to Botnia’s pulp mill project, the corresponding general policies are to be assessed primarily in terms of their realisation in Uruguay, which is the host country in this case.”

This is a gross violation of the rights of local stakeholders affected by Botnia’s investment. While the investment is formally and legally constituted in Uruguay, it is on the border with Argentina, and its zone of influence and impact, as defined by the World Bank, extends for a radius of up to 300 kilometers around the project zone. To assume that the voice of over 300,000 concerned community stakeholders which live within that zone are not applicable, merely because they reside beyond a political intangible border, is not only a violation of their human rights, but is an atrocity to the very essence of human rights and environmental principles. If the OECD Guidelines are not to consider the zone of impact of corporate behaviour, we are before a tremendously risky decision to exclude and limit protection and responsibility, to the dangerous benefit of corporate profit instead of ensuring real protection and human rights responsibility.

As early as 2003, Argentinean stakeholders have wished to be included in consultations, the setting of scope and terms of reference for the Environmental Impact Assessment (EIA) process for both Botnia and the proposed ENCE mill. On this issue, the Compliance Advisor Ombudsman (CAO) in its Preliminary Assessment Report states that the ‘Assembly in Gualaguaychu has become a powerful and coherent voice which has raised legitimate questions...’. However the Assembly and the 300,000 Argentinean stakeholders in the zone of impact have been continually ignored and marginalised by project proponents and the International Finance Corporation (IFC). The Finnish NCP in its notice also denies the Assembly of Gualaguaychú legitimacy, stating effectively that the General Policies of the Guidelines are to be read to exclude stakeholders outside the host country. The interpretation on Argentine stakeholders the parallel NCP consideration that CEDHA, an Argentinean NGO was entitled to bring a specific instance under the Guidelines since ‘the effects of the pulp mill also extend across the Argentine border.’¹ The Finnish NCP while correctly recognizing the legitimacy of the complaint filed by Argentine stakeholders, has failed to correctly interpret the Guidelines in its closure notice.

II 1 International Law

The NCP considers international legal obligations relative to the Guidelines primarily in the context of host country compliance. The NCP states “the enterprise must be able to trust that the Uruguayan Government has taken into account all its international contractual obligations in permit proceedings”.

That Botnia is to ‘trust’ Uruguay to fulfill its obligations under international law defies Guideline Commentary 37 which, referring to international instruments, states ‘enterprise contributions are implicit in all of them’. Similarly, the Guidelines explicitly reference the Universal Declaration of Human Rights which bestows obligations on ‘all organs of society’, undoubtedly including enterprises.

Where no doubts exist over compliance with international law and no cases are underway in international forums, it is our opinion that an enterprise may be satisfied the host country is in compliance with international law. The NCP cannot be satisfied that by granting construction and operational permits and mere verbal and signatory commitment by Uruguay to international obligations that Uruguay is in compliance with international law. Experience has shown that ratification of a treaty does not ensure its compliance, it is in fact the reason why international tribunals exist. It is dangerous for an NCP to *prima facie* assume compliance with international, particularly whilst cases are open at international tribunals (ICJ, IACHR).

¹ Finland National Contact Point, *Statement on Botnia Specific Instance*, page 1

Argentina alleges Uruguay has not complied with the River Uruguay Treaty, a treaty which governs permitting procedures for projects on the River Uruguay, and elects the International Court of Justice (ICJ) as the appropriate mechanism to settle disputes between the countries. Therefore to promote and implement the Guidelines, the NCP must ensure that enterprises respect international law. The Finnish National Contact Point, under the auspices of the Ministry of Trade and Industry and the Government of Finland, has obligations to promote and respect international law. To this end, the NCP should consider that pending complaints both at national and international tribunals that directly related to Botnia or that have forced Uruguay into court because of Botnia's corporate investment decisions, present merit and sufficient risk to be assessed and await final tribunal decisions to evaluate compliance of the investment project with international law. The NCP has ignored this more than evident risk, and has failed to make any effort to clarify the situation.

II 2. Human Rights

The NCP states the responsibility is on Uruguay to ensure compliance with Human Rights obligations, but fails to take into account the existence of a complaint at the Inter American Commission on Human Rights. The NCP relies on company faith in country to ensure compliance with human rights law, but ignores doubts over the country's fulfillment of such obligations.

In contradiction to the NCP's denial of company responsibility, the NCP refers to Botnia's acceptance of company duties with regard to Human Rights in accordance with host country international obligations. Similar to the erroneous assumption of host country compliance with human rights norms, the NCP cannot rely on the existence of a company statement which promises adherence to international standards when no compliance mechanism exists. Under the ambit of the Guidelines, the NCP can deal with the issue of enterprise behaviour in circumstances where there are outstanding issues at international law, but instead has delivered a confused and contradictory statement.

To encourage enterprises to rely on the self-evaluation of compliance with human rights or international law by a host country, or to substitute international tribunals with statements of voluntary adherence usurps the international legal framework. Commentary 4 states:

'... while promoting and upholding human rights is primarily the responsibility of governments, where corporate conduct and human rights intersect enterprises do play a role, and thus MNEs are encouraged to respect human rights ... with respect to others affected by their activities, in a manner that is consistent with host governments' international obligations and commitments.'

This is a clear case where corporate conduct intersects human rights allegations. The NCP cannot rely on enterprises and host countries when complaints on human rights and other international law are still at large.

In other Guideline decisions, the Norwegian NCP states that 'companies can, through their actions or their lack of actions, be accessories to or profit from the fact that States commit violations of human rights'. The Norwegian NCP identifies the relevant question for companies relative to Guideline compliance is 'whether the company through its activities has or has not "respected the human rights of those that are affected by their activities in agreement with the international commitments of the host government"'.² The NCP considers that Botnia 'has not appeared to violate human rights'. To arrive at this conclusion the NCP reasons that 'Botnia is committed to human rights'. It is troublesome that the NCP makes such a light evaluation or supposition of a company's compliance with human rights, where so far, an international tribunal has not done so.³

² Statement from the Norwegian Contact Point for OECD's Guidelines for Multinational Enterprises: Complaint from the Forum for Environment and Development on the activities of Aker Kværner in Guantanamo Bay, p2 available at http://www.oecdwatch.org/docs/ForUM_vs._Aker_Kvaerner_NCP_final_statement.pdf

³ This situation is distinct from circumstances which do not permit evaluation of the State by appropriate institutions such as in the Aker Kværner case, where an NCP is not in danger of second-guessing international tribunals and hindering the rule of law.

By overlooking relevant international legal mechanisms, the NCP is prejudging compliance with human rights and international law, usurping the role of the IACHR and undermining the role of international tribunals and the entire international legal framework. The Finnish NCP's interpretation of the Guidelines is erroneous and sets a lamentable standard by which enterprises are given the green light to act without regard to compliance of international law.

II 5. Exemptions not contemplated by the statutory framework

The NCP points out the short term benefits of mill construction, but did not address the economic report conducted by Sejenovich which takes into account all economic variables, estimating overall regional losses at US\$1.3 billion. The NCP would do well to factor in US\$400m losses to the Uruguayan economy due to roadblocks prior to June 2006, and also mounting damages sustained due to seven weeks (and counting) of continual route blockages following the 21 November 2006 IFC/MIGA decision to lend financial support to the project. These economic externalities to both economies are a consequence of Botnia's corporate decisions and behaviour, and at the very least, the company should act more responsibly in trying to work with actors to mitigate the problems the company's decisions are causing. Botnia has failed to make any such efforts and the NCP decision is upholding this attitude by closing the Specific Instance.

The complainants acknowledge the NCP's comments on Uruguay's provisions allowing tax free investment and its inapplicability to the Guidelines. However the Specific Instance serves to highlight the weakness in the international investment structure that provides scenarios which do little to benefit local communities and would not exist in enterprises' home country. This double standard of tax evasion is to the detriment of the host government, its people and is ethically flawed, even if it is legitimized by a legally acceptable investment framework.

Additionally, the NCP fails to acknowledge the bilateral investment treaty between Finland and Uruguay that prevents Uruguay from acting in any way that may be beneficial for its people or its environment at risk of being liable for payment for extra expenses incurred by the company. Many large investment agreements also prevent legislation that may improve socio-environmental standards if the company were to suffer financially.

III Disclosure

The Finnish NCP fails to address the lack of information in environmental assessment documents that caused the project to be delayed for 14 months. The NCP ignores Botnia's failure to adhere to disclosure and consultation rules established by the IFC as established by the Compliance Advisor Ombudsman, key evidence which the specific instance was founded and completely ignored by the NCP.

Whilst the Finnish NCP is ready to dismiss Argentinean stakeholders relative to consideration of Guideline violations, however it does consider that road blocks have prevented Argentineans from participating in meetings on the Uruguayan side. Roadblocks have NEVER occurred during Botnia's supposed consultation meetings, certainly not anyone ever intended for Argentine stakeholders. The NCP considers Argentinean stakeholders only in the context of an invitation to meetings in a different country, a completely impracticable solution given the location, financial condition and concerns of the majority of stakeholders. Even if Botnia had actually planned consultations in Fray Bentos to accommodate 300,000 stakeholders from Argentina, the limited infrastructure available could never handle the masses that would want to attend. It is clear that consultations much occur in Gualaguaychú, which is the affected community, not in Fray Bentos.

The Finnish NCP aspires to 'take into account local circumstances', but does so in a restrictive manner which serves to promote the interests of a Finnish enterprise in a way that excludes Argentinean stakeholder opinion, ignores immense social opposition, and shuns responsibilities of a Finnish enterprise under the Guidelines.

V Environment

In response to the 12 items of alleged violations to the environmental recommendations the NCP devotes two paragraphs. To determine compliance, the NCP requested a statement on environmental impacts of the project from the Finnish Ministry of the Environment, stating that the project satisfies European best available techniques (IPPC-BAT2001) and USA requirements. Debate has raged over the project's satisfaction of best available techniques, (a major factor why so many environmental studies were done) yet more important is the issue of intra-company behaviour. The Finnish NCP ignores its role to encourage enterprises to improve corporate environmental performance by encouraging the 'adoption of technologies and operating procedures in all parts of the enterprise that reflect the standards concerning environmental performance in the best performing part of the enterprise'. Here the NCP is reminded of the Specific Instance which draws attention to less polluting total chlorine free (TCF) technology utilized by Botnia in Finland. The NCP (and the Finnish Ministry for Environment) would do well to follow and acknowledge Latvia's example of prohibiting ECF pulp production in another Botnia investment in favour of cleaner TCF methods. In this respect the NCP has failed to adhere to its obligations relative to Commentary 40, 41 and 42 of the Guidelines.

The several extensive environmental impact assessments mentioned by the NCP are a result of continual failures to adhere to recognised environmental norms of the IFC, and all have been produced under a framework which, like the NCP in its statement, de-legitimises the vast majority of stakeholders in the zone of impact. To devote two paragraphs to dismiss the 12 violations to environmental recommendations shows an innate unwillingness to fully investigate circumstances encompassing violations to OECD Guidelines. That a statement from the Finnish Ministry for Environment is sufficient to dismiss CAO findings and continued criticism of the final EIA from independent environmental consultants⁴ indicates a lack of thorough consideration by the NCP. All the more worrying is that it is released by the Finnish Government, the same administration that supports Botnia through a previous negotiation a bilateral investment treaty with Uruguay, provision of export guarantees through Finnvera, the 48% ownership participation of chemical company Kemira (Botnia's principle chemical supplier), and the funding via the Nordic Investment Bank.

Approval of financing by the IFC is cited by the NCP as proof that no violations to the environmental recommendations exist. It is noteworthy that the Finnish NCP makes no mention of the CAO compliance audit nor the Ombudsman's *Preliminary Assessment* which provide ample evidence of violations to the IFC operation safeguards. All environmental studies are based on flawed methodology excluding the majority stakeholders (which the Finnish NCP has also done) and relied on industry standards which have continued to allow the installation of substandard mills which are prone to environmental disasters with examples given in the Specific Instance.

Utilising the IFC decision to prove adherence to the Guidelines in environmental matters is also erroneous and unacceptable. The NCP does not take into account the non-reviewable nature of CAO findings and the persistence of grave violations to IFC Guidelines, which are grounded on lack of consultation during when terms of reference and scope of the EIA were established. The NCP also fails to understand that the composite amalgamation of acts and actions, which build on a series of irregularities, distrust, erred judgment by the company, and construction of illegitimacy in stakeholder communities, has built an impenetrable wall between local stakeholders and the company. Botnia continues to refuse to deconstruct that wall, and in so doing is adding further fuel to the fire it created. This Specific Instance complaint is about corporate behaviour and its consequences, and that is precisely with the Finnish NCP has failed to recognize. The NCP fails to take into account the complete lack of social license for the project (one of the most glaring violations of the Guidelines). The Finnish NCP fails to take into account evidence by the CAO which, referring to conducting more EIAs, that 'more fact, without efforts to build trust and address question of integrity of process, will not be helpful'.⁵ The Finnish NCP turns a blind eye to the fact that the decision of IFC/MIGA to support Botnia has destabilized the investment climate and worsened the scenario

⁴ La Nación, *Uniforme objeto al Banco Mundial: La Cancillería lo presentará en la Haya.*, 12 December 2006, which states that final EIA was criticised for mailing to include studies of risk factors, lack of data on long-term impacts on populations and biodiversity.

⁵ CAO Preliminary Assessment Report: Complaint Regarding IFC's Proposed Investment in Celulosas de M'Bopicuá and Orion Projects, Uruguay, November 2005, p11

on diplomatic, social and international legal planes. Following the November 21 decision, road blocks have continued unabated disrupting international trade and creating million dollar losses to the Uruguayan tourism economy, an additional complaint was filed to the International Court of Justice and tariffs were placed on Argentinean commerce in Uruguay. Above all, Uruguay militarized the conflict, to which Botnia eventually responded by requesting the retirement of troops from the factory site. Botnia, in recognition of the conflict it has caused, has also warned its workers against traveling to Argentina citing safety concerns.

The complete disregard the Finnish NCP in failing to regulate Botnia in context of international law mirrors the arrogance of the IFC which has ignored the stated preference of both countries to have the International Court of Justice resolve issues of this nature. The dismissal of country wishes by the NCP undermines all references to international standards, international frameworks, international obligations made by the Guidelines.

It is notable that the NCP is ready to align IFC approval of a project with Guideline compliance, yet undetermined issues at international law and issues relating to enterprise complicity are not sufficient to establish doubts over Guideline compliance.

Bribery Considerations

The NCP Statement takes into account bribery considerations. Information regarding ongoing court cases in Uruguay and Argentina in addition to investigative journalism was included under the title of 'Other Considerations' which informed the NCP of issues which may not be apparent in Finland in order to be fully informed of all issues that touched the ambit of the Guidelines. After briefly summarizing factors concerning bribery, the specific instance states:

'... the project may eventually be implicated in Guideline violations pertaining to the offering of improper financial incentives and it will be open to the applicant to submit an addendum to the specific instance.'

It is clear that CEDHA did not request the NCP to consider breaches relative to bribery such that its inclusion is informative and a caveat for further action, however the NCPs reaction implies otherwise profoundly skewing CEDHA's intentions and denunciations. Firstly, the NCP erroneously states that there are no ongoing proceedings related to bribery, when in fact the two cases cited in the specific instance are continuing to this day in Argentina and Uruguay. Secondly, the NCP states that 'on the basis of the information available, the bribery claims made by the CEDHA have not been proved to be true'. This statement wrongly implies that CEDHA has made bribery claims against Botnia and wrongly points out the lack of evidence available whereas the specific instance points to the existence of evidence without making any allegations of breaches to the Guidelines.

The NCP Statement

The NCP recognises that the mill will have a 'variety of effects' on the surrounding society but dismisses all harmful social effects of the project. The NCP highlights that most economic benefits are 'reaped' on the Uruguayan side, but fails to ignore related losses such as the US\$400 million claimed by Uruguay against Argentina at MERCOSUR courts for losses resulting from protests prior to the summer of 2006-2007. This figure does not take into account the likely economic damage caused by the current roadblock which has continued since the IFC/MIGA decision in November 2006. These losses are a consequence of Botnia's actions, decisions, and silence on their role as provocateur of the situation. Again, the issue here is corporate about behaviour.

The fourth paragraph of *Part 3. Statement of Finland's National Contact Point* reads like a Botnia marketing statement, stating that Botnia's promise to adhere to the weaker and more general UN Global Compact 'ensures that Botnia S.A. will use acceptable methods and adhere to internationally acceptable practices also in the future work on the project'. The NCP is blind to the fact that having a more detailed the OECD Guidelines for Multinational Enterprises with an evaluation mechanism is to ensure compliance with international norms without relying on company 'promises' to adhere to vague and non-enforceable standards. The NCP has failed its duty to promote corporate behaviour consistent with the Guidelines.

The NCP states that enterprises have to be ‘especially careful’ regarding politics and international law, but fails to provide Botnia with guidance on how to do this. The NCP states ‘it is always the task of the host country of the investment, in this case that of Uruguay, to pay attention to political viewpoints.’ The NCP ignores that enterprises must also pay attention to political viewpoints. When the Uruguayan and Argentine presidents requested Botnia stop construction for 90 days to conduct a bilateral EIA, Botnia refused, effectively breaking the ONLY chance of resolution to the conflict. In reaching the conclusion that an enterprise has no obligation to pay attention to political viewpoints, the NCP has misinterpreted the Guidelines.

The NCP’s only criticism of Botnia regards its communication strategy (note that this was the only excuse put forth by Botnia regarding allegations to Guideline violations), and even this is mitigated by the NCP referring to the actions of Argentina and its authorities. It is worth noting that IFC/Botnia stated to the IFC Ombudsman that ‘Argentine residents were not consulted because they are not likely to be impacted’.⁶ No consultation with 300,000 stakeholders in the zone of impact is a poor communication strategy, and reiterates that this is in itself a violation of the Guidelines.

In its critique of Botnia’s communication strategy, the NCP notes ‘Argentina and its authorities have hampered Botnia’s communication in Argentina’. Whereas the NCP ignores all evidence concerning a vast range of Guideline violations, it is unable to provide evidence of actions of Argentina and its authorities which have hampered Botnia’s communication.

NCP Procedural Failure

The Guidelines charge NCPs with the duty of contributing to the resolution of issues relating to the implementation of the Guidelines. The NCP provided a 90 minute space in Helsinki Finland by which Botnia and representatives of persons affected could present and discuss their viewpoints. There was no follow up by the NCP to assist in dialogue attempts. When the CEO of Botnia, Mr Erkki Varis was invited to meet with CEDHA and stakeholders whilst he visited Uruguay, in a location of his choosing, the invitation was flatly refused by Botnia’s new communication officer. The Finnish NCP was copied on all communications between CEDHA and Botnia during that exchange, but offered no incentive or encouragement so that Botnia’s chief, attend to the community request.

As little a one month ago, representatives of the Finnish Government in the Buenos Aires insisted that Botnia wishes to engage in dialogue with parties, embassy sources saying ‘direct contact cannot be replaced and Botnia has always been disposed (to talk)’.⁷ It is troublesome that the arm of the Finnish Government charged with facilitating dialogue between the parties, the NCP, has offered little to help in the way of dialogue, whilst in Argentina the Finnish Government assures the public of Botnia’s willingness to take part in dialogue.

The Guidelines state that the NCP will contribute to the resolution of issues ‘in an efficient and timely manner and in accordance with applicable law’⁸. However the non-constructive role played by the NCP, the one-off attempt to facilitate dialogue at the MONIKA Advisory Committee meeting, the months silence towards the complainants following and the eventual NCP Statement released on the eve of the holiday season, makes the NCP contribution inadequate, ineffective and non-constructive. It has been undertaken in a manner which undermines international law, marginalizes stakeholders, and ultimately in an untimely manner in the face of an urgent and complex situation. It is also clear from the notice sent by the NCP to CEDHA that the NCP had already decided as early as September 22 (only three weeks after the Helsinki meeting) to abandon efforts at promoting dialogue.

⁶ CAO Preliminary Assessment Report: Complaint Regarding IFC’s Proposed Investment in Celulosas de M’Bopicuá and Orion Projects, Uruguay, November 2005, p9

⁷ La Nacion, ‘Finlandia insiste que Botnia quiere dialogar’, 12 December 2006, www.lanacion.com.ar

⁸ The NCP will contribute to the resolution of issues that arise relating to implementation of the Guidelines in specific instances. The NCP will offer a forum for discussion and assist the business community, employee organisations and other parties concerned to deal with the issues raised in an efficient and timely manner and in accordance with applicable law. (The Guidelines: Procedural Guidelines, National Contact Points, C Implementation in Specific Instance)

Final Analysis

The NCP failed to promote the Guidelines, both with respect to dialogue facilitation, but also to encourage the precautionary approach, and enterprise behaviour consistent with the Guidelines. The NCP's interpretation of the Guidelines so as to exclude stakeholders outside the host country, debunk considerations of international law, and excuse all inflammatory corporate actions in a delicate political situation contribute to the Guidelines growing reputation as a flimsy tool for NCPs in many OECD countries, existing only to pay lip service to serious ethical and legal issues raised by stakeholders.

In light of the Finnish NCP Statement which conforms to the perspective of the enterprise, the ability of the Finnish NCP to act independently is of special concern. The NCP operates under the auspices of the Ministry of Trade and Industry, and was asked to assess Guideline violations relative to Botnia. Botnia is an enterprise which Finland is actively supporting through various channels, namely by export credit agency Finnvera (100% owned by Finland), multilateral Nordic Investment Bank (Finland is one of eight country owners to the bank which provides critical financial architecture for the project), chemical manufacturer Kemira (48% owned by Finland) contracted by Botnia to supply process chemicals⁹, Metso Corporation¹⁰ (11% owned by Finland) contracted by Botnia to supply industrial equipment, and also through Government diplomatic actions such as the creation of a bi-lateral investment treaty between Finland and Uruguay. To ensure transparency it is recommended all communication between the parties (MONIKA, the NCP, Botnia) should be made public, likewise internal documents such as minutes of all meetings which have dealt with the specific instance should be publicly available.

It is troublesome that an arm of the Finnish Government is prejudging outcomes of international tribunals, and de-legitimising the role played by international law with respect to the behaviour of multinational enterprises. The NCP statement clashes with the spirit of the Guidelines, which are founded in the observance of international law and responsible behaviour of multinational enterprises. The role of the NCP should be to make enterprises aware of any breaches of international law and advise on proper precautionary behaviour such as suspending operations until issues are resolved. The NCP must acknowledge the rule of law and cannot act in a way that usurps the function of international tribunals. Of additional concern is the manner by which Finland's NCP discharges the Finland's international legal obligations to promote and respect international law.

The NCP has erroneously interpreted the Guidelines and ignored legitimate evidence upon which the specific instance was based. The NCP has failed to fully deal with all allegations, failed to operate objectively, failed to discharge its duties with respect to the Guidelines, failed to recognise obligations of enterprises relative to international law, failed to discharge Finland's international obligations to promote and respect international law, failed to facilitate dialogue, de-legitimised 300,000 Argentinean stakeholders and falsely accused complainants of alleging violations to Guidelines relating to bribery. The NCP statement has undermined the value of the Guidelines and presented information in a manner which does not promote a resolution of the situation. The NCP has failed to promote the Guidelines, it has failed to strengthen mutual confidence between enterprises and the societies in which they operate, failed to improve foreign investment climate and failed to enhance the contribution to sustainable development made by multinational enterprises. Most importantly, the NCP has made no visible effort to create dialogue and a space to advance communications between the company and the local stakeholders which filed the Specific Instance, which was entirely in its capacity to do.

⁹ <http://www.ktm.fi/index.phtml?l=en&s=209>

¹⁰ <http://reports.metso.com/default.aspx?PageId=493&site=1>