



INDEPENDENT CONSULTATION
AND INVESTIGATION MECHANISM

MEMORANDUM

CONSULTATION PHASE ELIGIBILITY DETERMINATION

FROM: Isabel Lavadenz-Paccieri, Project Ombudsperson
TO: Executive Secretary
CC: MICI
REFERENCE: Case Loofah SA
RELATED PROJECT: PES - SP/SF-04-35-PR and Technical Cooperation ATN/SF-8984-PR "Program Development of Industry of Products from Vegetal Sponge"
COUNTRY: Paraguay
TODAY'S DATE: December 16, 2010

Summary of Request and Determination:

Ms. Brigitte Fuzellier (the "Requester") president and owner of Loofah S.A. submitted on February 10, 2009 a request to the Independent Investigation Mechanism ("IIM", or the "Prior Mechanism") of the Inter-American Development Bank ("IADB") stating that her company Loofah S.A. had received a Loan and a Non Reimbursable Technical Cooperation in 2005. She states that subsequently, IADB unjustly cancelled part of the Technical Cooperation and that her company suffered a "tremendous damaged". The operations linked to this request are SP/SF-04-35-PR and Technical Cooperation ATN/SF-8984-PR "Program Development of Industry of Products from Vegetal Sponge". The Board approved both operations on December 7, 2004.

The request was received before the approval of the ICIM Policy (February 17, 2010) and prior to ICIM effectiveness (September 9, 2010) ("ICIM", the "New Mechanism")¹ thus, it was reviewed and processed under some rules of the IIM Policy, as explained in section II of this Memorandum.

After reviewing the request and providing Management and the Requester with a reasonable opportunity to clarify, complete or correct the issues raised in the request and ongoing actions (i.e. collection and amendment), this Project Ombudsperson hereby determines that **the Request is eligible** for the Consultation Phase under the ICIM for the reasons described below.

¹ The terms: Mechanism, Management, Executive Secretariat, Project Ombudsperson, Panel, Mechanism Policy, Eligibility, Consultation Phase, Assessment and any other relevant term in this memorandum shall have the meaning assigned to them in the Independent Consultation and Investigation Mechanism (ICIM) Policy approved on February 17, 2010 and available at www.iadb.org/mici

I. Background

1. On February 8, 2005, the IDB and Loofah S.A signed a Refundable Financing Agreement for US\$ 250,000 and a Technical Cooperation grant for US\$ 210,000.
2. The project was designed to consolidate the industrial production of the loofah² sponge by increasing the ability of the company to produce high-quality products, and generate income and employment. The main project objective was to diversify the income of small loofah producers, among peasant farmers and indigenous groups, and low-income families³.
3. The total loan amount of funding was disbursed through two withdrawals made on April 13 and November 18, 2005, respectively, while the Technical Cooperation grant disbursed a total of US\$ 102,497 leaving an undisbursed balance of U.S. \$ 107,502.77 of Technical Cooperation. On March 31, 2008, the Bank cancelled the disbursement of the remaining funds of the Technical Cooperation arguing that Loofah S.A failed to meet the objectives set forth in the Grant Agreement, and did not demonstrate compliance with many fiduciary requirements.⁴
4. The Requester stated that IADB set objectives and goals that were too high and expanded ("unrealistic") and did not consider the small company's response capacity. The Requester argued that Loofah S.A. met all basic requirements demanded by the Bank to disburse the Technical Cooperation funds. Yet, despite having complied with the request and adhered to such ambitious requirements, the IADB did not acknowledge the company's efforts and, to the contrary, IADB apparently had "breached its obligations".
5. The Requester fell into arrears in 2007. During most of 2009 and beginning of 2010, the Multilateral Investment Fund (MIF) pursued collecting the debt and restructuring the operation. In 2010, the Requester agreed with the terms and conditions of the Amendment, and visited the IADB/MIF office in Washington DC to discuss her case and reiterate her commitment towards finding an amicable solution. She also visited the Ombudsperson at that time.

I. Eligibility Analysis

6. The consultation process starts with the Eligibility Determination to then move to the Assessment phase, and finally to the Consultation and Mediation phases, if so agreed by all parties. According to the ICIM Policy, specifically Article 38, the purpose of the Consultation Phase is to provide an opportunity for applying consensual and flexible approaches to address the concerns of a party that believes it has been adversely affected by an IDB funded operational Loan.
7. As noted above, this Request was submitted prior to the approval of the ICIM. The ICIM Policy states that "it supersedes the Prior Policy". Section 100 however, notes that requests received during the transition period referred to above, would not be processed until the Mechanism became effective. The Policy however provides that such requests presented prior to final Board approval of the ICIM Policy, which is the case for this Request, would be processed under the

² Loofah is a vegetable sponge with curative and relaxing properties.

³ See Annex, page 1 of the Program Development of Industry of Products from the Vegetable Sponge document SP/SF-04-35-PR

⁴ The said cancellation was also based on the fact that advances for financing the investment needs of producers were not used in accordance with the design of the program.

rules and procedures of the Prior Mechanism⁵. At present, not all rules of the Prior Mechanism are materially applicable today for a variety of reasons. Hence, the Project Ombudsperson determined that the old rules and/or procedures of the Prior Mechanism would be called to the extent that they could reasonably be applied to the determination of eligibility of the request and to the extent such prior rules and/or procedures were more beneficial for the Requesters⁶. The Project Ombudsperson believes that the application of the prior rules and those applicable to the ICIM had no impact on the eligibility outcome in this case.

A summary of the results of this analysis is presented in the table below.

⁵ See documents GN-1830-8; 1830-9; 1830-10 and 1830-11. Last modified on August 22, 2000.

⁶ This is a general legal principle that allows for a more extensive interpretation by which the operator will choose the norms or rule, which for the case results in more favorable outcome, for the requester and his/her rights.

ELIGIBILITY CRITERIA	OMBUDS DETERMINATION	COMMENTS
Names and contact information for the Requester are available	YES	Brigitte Fuzellier (the "Requester") President and owner of Loofah S.A.
Bank-financed operation has been identified	YES	SP/SF-04-35-PR and Technical Cooperation ATN/SF-8984-PR "Program Development of Industry of Products from Vegetable Sponge"
Requesters reside in Project Area	YES	Paraguay
None of the exclusions set forth in Art 37 of the ICIM Policy applies	NO	
Requesters have reasonably asserted that they have been or could be directly, materially adversely affected by an action or omission of IDB, in violation of a Relevant Operational Policy in a Bank-financed operation, and they have described, in at least general terms, the direct and material harm caused or likely to be caused by such action or omission by the Bank-financed operation.	YES	According to art. 26 of ICIM Policy "...the Relevant Operational Policies that shall be applicable shall be the version in effect at the time of Board approval of the operation" and OP 706 Social Entrepreneurship Program (April 1999) were the Ops in effect that can be applied to this case.
Parties are amenable to a Consultation Phase and dialogue	YES	MIF/COF /LOOFAH SA
Requesters have taken steps to bring the issue to the attention of Management and/or project team	YES	A number of interactions with the Project teams.

II. Contacting the Requester and Management

8. The Project Ombudsperson has met with the Requester and Management. Management has benefited from the period stipulated in section h. of Art 40 of the ICIM Policy⁷ and has satisfactorily pursued the Amendment of the Loan in arrears. The Requester has also expressed her commitment to repay the loan and reiterated her concerns and plea to obtain the undisbursed balance of the TC grant.

III. Conclusions

9. Based on the above analysis and in order to provide an opportunity to the Requester and the Bank to continue a dialogue on this topic, and bring any pending issue to definitive closure, and in line with the ICIM Policy, the Project Ombudsperson has determined that the Request described herein presented by the Requester **is eligible for the Consultation Phase**.
10. The Consultation Phase starts with an Assessment by the Ombudsperson. The purpose of the Assessment is to work with the Requester, management and interested stakeholders to identify, clarify, and confirm- on the ground- the issues raised by the Requester; gather information on the various points of view and help stakeholders determine whether and how they may be able to find solutions. The Assessment period is limited to a maximum of 120 days, but may be completed more quickly.
11. Although this complaint may meet the IIM and ICIM's eligibility criteria for the Consultation Phase, **this determination does not imply any judgment** on the part of the ICIM of the merit of the issues raised in the request.
12. Within the next two (2) business days, the Executive Secretariat will post the notice of registration on the Registry and notify the Requester, the Board, the President, Management and the Project Executing Agency of this determination.

Isabel Lavadenz Paccieri

Project Ombudsperson

Independent Consultation and Investigation Mechanism

IADB

⁷ Art 40, h in ICIM Policy: "the requester has taken steps to bring the issue to the attention of management. The project Ombudsperson shall consult with management as to its response and if management is involved in addressing the concerns raised, the project Ombudsperson shall allow forty-five (45) calendar days from the date of acknowledgment by the Executive secretary of the request before it its registered pursuant to section 39"

