

# The Inspection Panel

## Report and Recommendation on Request for Inspection

### Re: Request for Inspection - ARGENTINA: Special Structural Adjustment Loan (Loan 4405-AR)

1. On July 28, 1999, the Inspection Panel (the "Panel") received a Request for Inspection (the "Request") related to the Argentina: Special Structural Adjustment Loan ("SSAL"). On August 11, 1999, the Panel received some clarifications associated with the Request for Inspection (both the Request for Inspection and subsequent clarifications hereinafter referred to as the "Request") (Annex 1). On August 12, 1999 the Panel notified the Executive Directors and Bank President of receipt of the Request (meaning "Registration" under the Panel's *Operating Procedures*).<sup>1</sup>

#### A. THE LOAN

2. The SSAL for an amount equal to US\$2,525,250,000 was approved by the Board of Executive Directors on November 11, 1998. As approved by the Board, this assistance aims to help Argentina reduce its vulnerability to external financial shocks and, at the same time, increase its capacity for sustainable and equitable growth. The assistance also seeks to help the Argentine Republic (the "GOA") carry its reform agenda forward by supporting measures to improve social protection and the quality of social services as well as strengthen the financial sector, improve effectiveness of the regulatory framework, and restructure and refocus federal-provincial fiscal relations.
3. As in any adjustment loan, the loan agreement for the SSAL (the "Loan Agreement") sets out certain conditions which have to be met by the GOA prior to the release of funds. The SSAL was to be released in three tranches. The first in the amount of US\$1,025,250,000, was disbursed on November 13, 1998. The second tranche could only be released after February 28, 1999 and the third tranche after June 30, 1999. In fact, Management released the second tranche only on September 9, 1999, informing the Executive Directors that it was satisfied that all required conditions had been met. In other words, when the Request was filed in July 1999, Management had not disbursed either the second or third tranches. Indeed, the third tranche is yet to be released. The closing date of the SSAL is December 31, 1999, or such later date as the Bank may establish.
4. Aside from the GOA's commitment to the execution of the program described in the Letter of Development Policy dated November 2, 1998 (see par. 16 below), the conditions for release of the second and third tranches are detailed in Section 2.02 and in the related Schedules 3 and 4 to the Loan Agreement. There are 22

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<sup>1</sup> See The Inspection Panel, *Operating Procedures* (August 1994) at paragraph 36.

separate conditions for the release of the second tranche and 26 for the third tranche. They relate to a wide number of objectives, actions and policies designed to achieve reforms in the GOA's fiscal, financial, regulatory and human development sectors.

5. The Requesters are concerned with only one of these conditions, namely the budgetary allocation for social programs, which the Management Response refers to as the "Social Budget Condition". This condition pertains to both the second and third tranches. It requires that the GOA's 1999 budget for the social programs listed in the Annex to Schedule 3 to the Loan Agreement be maintained at an aggregate level equivalent to at least US\$680,000,000. The 24 programs listed in the Annex are targeted at providing for the needs of the poorest segments of Argentine society and they include programs in the areas of food and nutrition, disease control, emergency employment, education and social funds as well as programs for vulnerable groups. Among the listed programs is the Pro Huerta Program. It aims to provide nutritional support to those poor who are classified statistically as having unsatisfied basic needs by assisting them to maintain small vegetable gardens to produce food for their own consumption. The Request focuses specifically on this program.

## **B. THE REQUEST**

6. The Request was submitted by a group of attorneys from the Centro de Estudios Legales y Sociales – CELS (the Center for Legal and Social Studies) -- an Argentine non-governmental organization representing about 418 beneficiaries of the Pro Huerta program ("the Requesters"). CELS submitted powers of attorney to the Panel authorizing it to act on behalf of the Requesters. The Requesters have asked that the Panel keep their names confidential.
7. The Requesters claim that budget cuts to the Pro Huerta program have harmed and will harm the intended beneficiaries who are the absolute poor. This program is providing food and nutrition assistance to the absolute poor. According to the Request, 2,744,000 had benefited from Pro Huerta assistance but the program was still far from reaching the estimated 6,247,000 individuals with unsatisfied basic needs. In parallel with the number of beneficiaries assisted, the Pro Huerta's budgetary allocations were also increased over the years, with US\$11,200,000 equivalent earmarked for the 1998 fiscal year. However, as of the date of filing the Request, only US\$4,000,000 equivalent had been allocated in the 1999 budget for Pro Huerta. While recognizing that the Government needed to restructure its services and programs in late 1998, the Requesters maintain it should not have resulted in a drastic reduction of budgetary allocations for the continuation of social programs for the most needy social sectors.

Because of the cuts the Pro Huerta program was forced to reduce the number of beneficiaries to 1,700,000 and, eventually, was going to be forced to terminate its activities.

8. The Requesters acknowledge that the Loan Agreement condition does not stipulate how the required Social Budget Condition (the aggregate allocation level of US\$680,000,000) should be specifically allocated between the various social programs listed. However, the Requesters claim that, at a minimum, the viability of each of the social protection programs listed in the Loan Agreement must be

- ensured before the Bank can regard this condition as satisfactorily met. They also argue that funds from the budget for social programs cannot be used as a budgetary constraint variable. They claim that Bank Management's intention to approve (by permitting the tranche release) a reduction in portions of the budget allocations for social programs would be in violation of the terms of the SSAL as approved by the Executive Directors. In their view, Pro Huerta's then current budgetary allocation of US\$4.0 million equivalent should result in its effective termination.
9. In addition, the Requesters feel that, in conformity with the Bank's policy on poverty reduction, Pro Huerta was specifically included in the Loan Agreement as one of the programs the Bank considers must be protected under the social and economic program supported by the SSAL. Therefore, if the Bank were to allow the program to terminate, it would be a violation of OD 4.15 on Poverty Alleviation.
  10. The Requesters also claim that Management has not made available to them relevant information on the execution of the Program. (BP 17.50 on Disclosure of Operational Information).
  11. It should be noted that the Request refers only to release of the third tranche. This is because, in the absence of information from Bank Management, the Requesters assumed in June/July 1999 that the second tranche had already been released. As a preventative measure, the Requesters want the Bank to withhold release of the third tranche until the anticipated full budget allocation is made for the Pro Huerta Program. Otherwise, they allege, the GOA and the Bank will be in violation of the Social Budget Condition of the SSAL. In addition, they allege that any potential harm to beneficiaries would be a result of the Bank's failures and omissions in monitoring and supervising the budgetary allocations for the Pro Huerta Program.
  12. In sum, they allege violation of the following Bank policies:
    - OD 13.05 on Project Supervision
    - OD 4.15 on Poverty Reduction
    - OP/BP 10.70 on Project Monitoring and Evaluation
    - OP/BP 13.40 on Suspension of Disbursements
    - BP 17.50 on Disclosure of Operational Information

### **C. THE MANAGEMENT RESPONSE**

13. On September 13, 1999, the Panel received Management's Response to the Request (Annex 2). Four days prior to this, Management had informed the Executive Directors that it had released the second tranche of the SSAL. As noted above the Social Budget Condition is identical for the second and third tranches.
14. Management's Response defends the release of the second tranche claiming that it occurred upon compliance by GOA of, *inter alia*, with the Social Budget Condition. The Response states that Bank Management intends eventually to release the third tranche on the same basis if compliance is continued (paras. 10-11 and 14).
15. Management agrees that approximately US\$3.8 million equivalent of the reduced US\$4.0 million equivalent allocated to the Pro Huerta Program was spent in the first

semester of 1999, thus threatening, as correctly pointed out by CELS, the continuation of the Program for the rest of the fiscal year. Management claims that it is impossible for them to comment on “critical aspects” of the eligibility of the Request such as “whether or not any harm was indeed suffered by those whom CELS represents” because the Requesters’ identity is to be kept confidential by the Panel, and Management cannot ascertain whether the Requesters’ are beneficiaries of the program or are in fact benefiting from other social programs.<sup>2</sup> Management also claims that beginning on July 6, 1999, as a result of its supervision efforts, the Bank persuaded the GOA to revisit the Pro Huerta budget.<sup>3</sup> The authorities responded by indicating that the US\$4 million equivalent originally allocated would be supplemented by an additional allocation of US\$3 million equivalent.<sup>4</sup> The Response notes that the Requesters might not be aware of this.<sup>5</sup> In Management’s view, this will keep the Pro Huerta Program going to the end of 1999 albeit at a reduced level from 1998. This, Management explains, was the basis for its release of the second SSAL tranche for disbursement as legally obligated by the terms of the Loan Agreement.

16. Management explains that all the tranche release conditions have to be met “in form and substance satisfactory to the Bank” and “based on evidence satisfactory to the Bank” prior to release for disbursement of the pertinent tranche.<sup>6</sup> They add that, as in any adjustment loan, an additional general tranche release condition for the SSAL is that the Bank be satisfied “with the progress achieved by the Borrower in the carrying out of the “Program” set forth in the Borrower’s November 2, 1998 *Letter of Development Policy addressed to the Bank*. This letter describes a program of actions, objectives and policies designed to achieve reforms in the GOA’s fiscal, financial, human development and regulatory sectors (the Program). It declares the GOA’s commitment to the execution of the Program and it requests assistance from the Bank in support of the Program during the execution of it. Specific adjustment efforts are more explicitly detailed in the separate tranche release conditions of the Loan Agreement.<sup>7</sup>
17. An opinion issued by the Acting General Counsel of the Bank made it clear that in the case of adjustment loans the Bank has legal remedies beyond the mere withholding of tranche disbursements in certain situations. However, it also points out that any responsibility for exercise of these remedies—as in investment operations—lies with Management and is a matter of judgment that must take into account all the circumstances of each case. According to the same opinion, continued non-compliance may result in the Bank’s canceling of the loan.<sup>8</sup>
18. Bank Management is of the view that it has complied with all relevant Bank operational policies and procedures applicable to the matters raised by the Request. Management also claims that it released the second tranche for disbursement as

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<sup>2</sup> See Footnote 2 of the Response.

<sup>3</sup> However, the supervision efforts referred to took place after July 6, 1999. The Bank’s action appears to follow on and be in response to the Requesters’ letter of June 11, 1999.

<sup>4</sup> See August 27, 1999 Administrative Decision of the Office of the Chief of Cabinet Ministers.

<sup>5</sup> The Requesters found out in September that the second tranche had been released.

<sup>6</sup> Loan Agreement, Section 2.02 (d) (ii) and (e) (ii).

<sup>7</sup> Loan Agreement, Section 2.02 (d) (ii) (A) and (e) (ii) (A) and Schedules 3 and 4.

<sup>8</sup> See Memorandum of the Acting Vice President and General Counsel to the Chairman of the Inspection Panel dated January 29, 1997, referred to in footnote 4 of the Response.

legally required since GOA was in strict compliance with the terms of the disbursement conditions set forth in the Loan Agreement.

#### **D. ELIGIBILITY**

19. For purposes of determining the eligibility of the Request and Requesters, the Panel reviewed project files and the evidence submitted by the Requesters and Management. It also interviewed Bank Management and staff both at Headquarters and in Buenos Aires. It also exchanged views with the GOA officials and the Requesters during a field visit<sup>9</sup> led by the Chairman of the Panel, Mr. Jim MacNeill, accompanied by Panel member Mrs. Maartje van Putten.<sup>10</sup>
20. Paragraph 9 of the 1999 Clarifications<sup>11</sup> mentions certain “technical eligibility criteria” that must be met, and the Panel concludes as follows:
  - Based on its field visit, the Panel is satisfied that the affected party consists of two or more persons who are beneficiaries of the Pro Huerta program. They have common interests or concerns and are in the borrower’s territory.
  - The Request does assert in substance that a serious violation by the Bank of its operational policies and procedures has or is likely to have a material adverse effect on the Requesters.
  - The Request does assert that its subject matter has been brought to Management’s attention and that, in the Requesters’ view, Management has failed to respond adequately to it, thus demonstrating that it has followed or is taking steps to follow the Bank’s policies and procedures.
  - The matter is not related to procurement.
  - The second and third tranches of the SSAL had not been released at the time the Request was filed.
21. The Panel is satisfied that the Requesters and the Request meet the eligibility criteria set forth in paragraph 12 of the Resolution.
22. In its Response, Management asserts that the Panel “has granted anonymity” to the Requesters and states that, because of this action on the part of the Panel, Management is unable to comment on critical aspects regarding the eligibility of the Requesters.<sup>12</sup> In light of this assertion, the Panel must make two observations. First, the Panel does not “grant anonymity” to Requesters. Rather, under the Panel’s process, Requesters may ask that their identity be kept confidential. When they do so, the Panel invariably takes steps to ensure the confidentiality not only of

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<sup>9</sup> The Panel wishes to express its appreciation to the Bank Executive Director Argentina for his guidance and for assisting in arranging meetings with government officials in Buenos Aires. It wishes to thank the GOA officials for the information they provided, and INTA for the logistical support received during the field visits. It also wishes to thank the World Bank Office in Buenos Aires for providing support during the field visit. Finally, the Panel wishes to thank the Requesters for their comments, information and assistance during the field visits.

<sup>10</sup> The Panel members were assisted during the field visit by Mr. Eduardo Abbott, Executive Secretary of the Inspection Panel.

<sup>11</sup> The 1999 Clarifications to the Resolution are contained in the “Conclusions of the Board’s Second Review of the Inspection Panel” dated April 20, 1999.

<sup>12</sup> See Management Response, Page 1, Footnote 2.

their names, but also the contents of their letters. This is absolutely essential to ensure that there is no possible breach of their identity. The Board has so far trusted the Panel's discretion and judgement in this matter. To imply that the Panel should divulge their names to Management to enable it to comment on eligibility reveals a surprising and worrying level of understanding about this part of the Panel's process. The Panel's second observation is that, under the Resolution, it determines whether a request is eligible -- subject, of course, to the approval of the Board. In this case, the Panel is satisfied that the Requesters are beneficiaries of the Pro Huerta program and that they would sustain harm if the program were to be terminated and they were left without any other forms of nutrition assistance.

## **F. CONCLUSIONS**

23. The Bank's supervision and monitoring of compliance with the Social Budget Condition appears to have been limited almost exclusively to the review of the amounts allocated in the federal budget to the social programs listed in the Loan Agreement. In the case of Pro Huerta, no attempt was made to contact the executing agency or program beneficiaries to ascertain whether the proposed budgetary allocations were sufficient to sustain the program throughout the fiscal year.<sup>13</sup> Indeed, both Management and GOA officials acknowledged the fact that the Bank "urged the Argentine authorities to revisit the PH's program budget"<sup>14</sup> only after CELS brought this matter to their attention on behalf of the Requesters.
24. In addition to the original US\$4.0 million equivalent budgetary allocation, the Panel was able to verify that Pro Huerta received not only the additional US\$3.0 million equivalent mentioned in the Management Response but also an additional US\$1.5 million equivalent from the lottery revenues available to the Secretariat for Social Development. Although Management was not even aware of it, this latter funding was essential to the continued existence of the program since it was necessary for Pro Huerta to buy seeds before the start of the planting season.
25. The Panel was informed by all concerned that the Pro Huerta program now has adequate funding to ensure its operations during this year. In addition, the Panel was informed that there seems to be every intention to maintain Pro Huerta during the time period covered by the SSAL, and that the protection of social programs would be covered in any agreements related to the extension of the closing date of the SSAL.
26. In view of the foregoing, the potential harm rightly feared by the Requesters when they submitted the Request for Inspection--which was based on the information available to them at that time--seems to have been avoided both by their own actions in submitting the Request, and by the subsequent favorable reaction of both the Argentine authorities and Bank Management.
27. Although a strict interpretation of BP 17.50 on Disclosure of Operational Information could possibly justify Management's actions in this case, the Panel feels that a more open dialogue between Management and CELS as representatives of the then

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<sup>13</sup> The Panel was informed that supervision at this level of detail would require additional resources.

<sup>14</sup> See Management Response, paragraph 19.

potential Requesters (within the boundaries of the Bank's stated policies<sup>15</sup>, which favor disclosure) could have perhaps avoided the need for a Request for Inspection.

#### **G. RECOMMENDATION**

28. In light of the foregoing, the Panel does not recommend an investigation into the matters alleged in the Request.

Attachments

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<sup>15</sup> See "The World Bank Policy on Disclosure of Information" Washington DC, March 1994, Part II Policy, par.4 and BP 17.50

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**VIOLATION OF PROVISIONS**

**SAFEGUARDING SOCIAL PROGRAMS -**

**REQUEST FOR INVESTIGATION**

**(Pro-Huerta Program)**

**SPECIAL STRUCTURAL ADJUSTMENT LOAN (SSAL)  
ID #4405-AR (62991)**

**Between**

**THE GOVERNMENT OF THE ARGENTINE REPUBLIC**

**And**

**THE WORLD BANK**

**Signed November 11, 1998  
(US\$2,525,250,000)**

Affiliated with the International Commission of Jurists (Geneva). International League for Human Rights (New York)  
Correspondent of the International Federation of Human Rights Leagues (IFHR – Paris)  
Member of the World Organization against Torture (Geneva)  
Prizes received: LETELIER-MOFFIT (1983); THE ROGER E. JOSEPH PRIZE (1988) and THE HUMAN RIGHTS PRICE  
OF LAWYERS COMMITTEE FOR HUMAN RIGHTS (1988)



Mr. Jim MacNeill  
Chair  
Inspection Panel

Buenos Aires, July 20, 1999

We, Victor Ernesto Abravomich Cosarín, attorney, CPACF registration at page 45, Volume 40, and Martín Abregú, attorney, CPACF registration at page 466, Volume 46, both employed as attorneys by the Center for Legal and Social Studies [*Centro de Estudios Legales y Sociales*], hereinafter “CELS,” a civil association (NGO), representing the beneficiaries of the *Programa de Huertas* (hereinafter called “Pro-Huerta”), who are and will be directly and materially affected by the actions and/or omissions described below, having provided a letter of attorney (original attached hereto as Annex A) authorizing us to exercise such representation and having elected domicile for purposes of the present proceedings at Rodríguez Peña 286, 1<sup>st</sup> floor, P.O. Box 1020, Buenos Aires, Argentine Republic, do now respectfully bring the following to your attention:

## I. PURPOSE

We request that the Inspection Panel (hereinafter “the Panel”) initiate the corresponding investigation and subsequently require the World Bank (hereinafter “the Bank”) to act in a manner consistent with its own lending policies and procedures by instructing the Government of the Argentine Republic to review its budgetary allocations so as to respect the safeguards awarded to social programs within the framework of the Special Structural Adjustment Loan, No. 4405-AR [(63991), hereinafter the “SSAL,” “the Agreement,” and/or “the Loan”], signed on November 11, 1998 by the Government of the Argentine Republic in the amount of US\$2,525,250,000 (two billion five hundred twenty-five million two hundred and fifty thousand US dollars).

The reason for the present request is the failure by the Argentine Government to honor its commitments under the Agreement, as witness the lack of funding for the Program, implemented by the National Institute of Agricultural Technology [*Instituto Nacional de Tecnología Agropecuaria*] (hereinafter “INTA”) and financed through the Department of Social Development [*Secretaría de Desarrollo Social, Presidencia de la Nación*] (hereinafter “SDS”), and the unsuccessful outcome of subsequent approaches to the World Bank’s Argentina, Chile, and Uruguay Country Unit. This failure constitutes a serious violation by Bank management of the terms and conditions on which the Bank’s Executive Directors approved the Loan and of certain of the Bank’s policies and legal procedures, namely: OD 4.15, Poverty Reduction; OD 13.05, Project Supervision; OP/BP

10.70, Project Monitoring and Evaluation; OP/BP 13.40, Suspension of Disbursements, and OP/BP 17.50, Disclosure of Operational Information.

Given the nature (food/nutrition) of the program forming the object of this request, we ask the Panel to treat this as an *urgent matter* and that it urge the Bank to withhold, on a preventive basis, disbursement of this third tranche of the Loan.

## II. FACTS

### II. 1. Historical Review of the Pro-Huerta Program

In February 1990, the Executive Branch commissioned INTA to prepare a food security program designed to improve the diet of population groups with unsatisfied basic needs [*necesidades básicas insatisfechas* – NBI] (hereinafter the “NBI population” or “NBI individuals”) through small-scale subsistence food production (gardens). On August 3, 1990, the INTA Board of Directors issued Resolution 239 approving the Pro-Huerta Program [*Programa de Promoción de la Autoproducción de Alimentos* – PRO-HUERTA].

The purpose of this Program was to provide the most needy social sectors with a more balanced diet, supplying them with fresh foods of better quality and wider variety, improving the household food budget, promoting community participation in food production, generating appropriate technologies for subsistence gardening, and encouraging small-scale agrofood production systems. It was expected right from the start that Pro-Huerta would be a progressively expanding operation.

Thanks to INTA’s commitment and to the well-organized and disciplined efforts voluntarily performed by the institutions, organizations, and individuals that espoused Pro-Huerta’s objectives and functions, the Program achieved its goal, with an exponential growth in the number of beneficiaries (see II FACTS; II.1. The Pro-Huerta Program – cf. Annexes I and II; Report Submitted to the World Bank’s Argentina, Chile and Uruguay Country Unit on June 11, 1999, attached hereto as Annex B). Despite having reached 2,744,000 beneficiaries, Pro-Huerta was still far from its estimated potential demand of 6,247,000 NBI individuals (see II FACTS; II.1 The Pro-Huerta Program – cf. Annex I; Annex B).

In parallel with the increase in the number of beneficiaries assisted by the Program, the pertinent budgetary allocations were also increased, with US\$11,200,000 earmarked for the 1998 fiscal year (see II FACTS; II.1 The Pro-Huerta Program – cf. Annexes III and IV; Annex B).

Unfortunately, the country's economic situation since the last quarter of 1998 and the need for external financing obliged the National Government to proceed to a restructuring of its services and projects. However, this restructuring should not have resulted, as it did, in a drastic reduction of the allotments for continuation of the social programs in progress, regardless (in the case of food aid) of the nature of the operations concerned.

With the approval of the budget law for the present fiscal year, Law 25.064, the SDS received specific funding for the Program in the amount of US\$4,000,000 (40 percent of the total previously authorized, 32 percent of the total budget) (see II FACTS; II.1. The Pro-Huerta Program – cf. Annexes I and VII; Annex B), providing undeniable evidence of the Government's decision to use social programs as budget deficit adjustment variables. The budget cut also affected other important social programs: the Solidarity Program in Support of Older Persons [*Apoyo Solidario a los Mayores* – ASOMA], the Infant Nutrition Program [*Programa Alimentario Nutricional Infantil*], which, as we shall see below (see II.2. Special Structural Adjustment Loan – SSAL) were, like Pro-Huerta, protected under the Loan.

The situation was compounded by the absence of internal coordination among the various administrative units responsible for financing and implementing the Program. Given its finally authorized allotment, the SDS had to reprogram its institutional policy and make a drastic cut in the number of beneficiaries, dropping a total of 1,700,000 NBI individuals (58.52 percent of the population assisted during fiscal 1998) (see II FACTS; II.1. The Pro-Huerta Program - cf. Annexes IX, X and XI; Annex B).

There being no possibility of finding “reasonable” justification for excluding such a large portion of the target universe (especially when that entire universe is composed of the very poor), and even if this were hypothetically possible, the budgetary allotments historically managed by the SDS for a similar number of beneficiaries were not taken into account (see II FACTS; II.1. The Pro-Huerta Program - cf. Annex III; Annex B) and INTA had to go ahead with its original agenda, even though this would involve suspension of the Program halfway through the year (see II FACTS; II.1. The Pro-Huerta Program - cf. Annexes II and IX, with the amendments proposed in Annexes III and XII; Annex B).

The disagreement arising over the Pro-Huerta timetable resulted in its suspension during the month of March (considerably delaying the 1999 fall-winter activities), and now threatens to paralyze the Program after June (see II FACTS; II.1. The Pro-Huerta Program - cf. Annexes III and IX; Annex B).

As a corollary to the lack of financing mentioned above here and the impossibility, acknowledged by Development Secretary José Figueroa, of continuing with the Program cycle, Pro-Huerta suffered a new reversal in the form of a breakdown of negotiations with the Inter-American Development Bank for an external line of credit to improve the proposed diet through the addition of protein supplements (see II FACTS; II.1. The Pro-Huerta Program; Annex B).

It goes without saying that the facts herein described are indicative of the current precarious situation of a highly productive food-related program which has targeted the most needy sector of the population and made a significant contribution to the control of poverty.

As we shall explain below, the economic crisis and the requirements associated with external financing have today brought the Pro-Huerta program to the brink of extinction.

## II.2 Special Structural Adjustment Loan (SSAL)

During 1998, the international financial system was thrown into great disarray. Upheavals in the international financial markets led to a temporary closing of access to external credit, with adverse repercussions on the economic stability of the Argentine Republic (see II FACTS; II.2. Special Structural Adjustment Program - cf. Annex V; Annex B).

With the closing of the markets and disruption of capital flows, the Argentine Republic was unable to finance its deficit and/or refinance its external debt as maturities came due. In order to meet its debt service obligations and avoid a major contraction of its international reserves, which would provoke severe recession and increased unemployment, obliging the Government to take drastic decisions *to the detriment of critical social programs* (see II FACTS; II.2. Special Structural Adjustment Program - cf. Annex V; Annex B), the Argentine Government approached the World Bank with a request for extraordinary assistance.

As a result, negotiations began in September 1998 for the Special Structural Adjustment Loan (SSAL), which, together with the Special Repurchase Facility Support Loan (contingent Repo loan), was intended to support the ongoing efforts of the Argentine Government to transform the country's economy and preserve the economic and social gains achieved thus far, while *mitigating the deleterious effects on vulnerable groups* (see II FACTS; II.2. Special Structural Adjustment Program - cf. Annex V; Annex B).

The Agreement for a three tranche Loan (November 1998, March 1999, and post-June 1999) was signed on November 11, 1998. The purpose of the Loan was to finance implementation of a reform package based on four main objectives, with priority for *safeguarding the continuity of ongoing social safety net programs, which could be vulnerable in times of financial stress, and advancing reforms in health and education* (see II FACTS; II.1. Special Structural Adjustment Program - cf. Annex V; Annex B).

Reflecting the experience and recommendations of the international agencies concerning the use of social programs as the principal adjustment variables in the public sector economic restructuring process, the SSAL sets out in its Sections 2.02 (d) (ii) and 2.02 (e) (ii) the requirements to be met by the national authorities, based on evidence satisfactory to the Bank, prior to any withdrawal of funds (see II FACTS; II.1. Special Structural Adjustment Program - cf. Annex VI; Annex B).<sup>16</sup>

As we already informed the Bank, we believe that the Argentine Government has failed to honor its commitments under the Agreement with the Bank, in that it has failed to preserve the continuity/sustainability of the Pro-Huerta program as stipulated in the above-mentioned safeguard provisions (a requirement *sine qua non* for effectiveness of the Loan).

### II.3 Submittal of CELS Report to the World Bank

Having learned of the letter of compliance corresponding to disbursement of the third tranche of the Loan [Sections 2.02 (e) (ii) and 3.01 of the SSAL] sent to the Bank by the Argentine Government, CELS submitted the above-mentioned report (hereinafter “the Report”) (Annex B) to the Bank on June 11, 1999, setting out the facts described above (see Annex B).

It was stated in the Report that the Argentine Government’s commitment to maintain its budget for the social programs listed in the Annex to Schedule 3 to the SSAL at an aggregate level equivalent to at least US\$680,000,000 should be interpreted as a corollary to the Bank’s manifest intention to safeguard the sustainability of all ongoing social programs (or at least those listed in the Annex), thereby preventing their use as a budgetary adjustment variable. This means that

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<sup>16</sup> The Sections mentioned provide that no funds may be drawn from the accounts opened for the purpose until the Bank shall be satisfied, on the basis of evidence satisfactory to the Bank, that the actions described in Schedules 3 and 4 (respectively) to the Agreement have been taken in form and substance satisfactory to the Bank. Such actions include the Government’s commitment to maintain the 1999 budgetary allocations for the social programs listed in the Annex to Schedule 3 to the SSAL, at an aggregate level equivalent to at least US\$680,000,000 (see II FACTS; II.2. Special Structural Adjustment Program ; footnote - cf. Annex VI; Annex B).

nonperformance of even one of the Government guaranteed operations would prevent the release of subsequent disbursements<sup>17</sup> (see III. COMMENTS; III.1. Interpretation of SSAL Covenants; Annex B).

It was also pointed out that a contrary interpretation would mean giving the Government full discretionality in the allocation of resources among the programs included in the safeguarded package, conditional solely upon the aggregate amount of all the programs not falling below the level stipulated. This would imply a complete lack of interest on the Bank's part in preserving the necessary balance among the different programs of assistance and a total disregard for the broad spectrum of needs of the vulnerable groups. On the other hand, no explanation was given for preparing such a detailed list of protected programs other than that they were all essential (see III. COMMENTS; III.1. Interpretation of SSAL Covenants; Annex B).

The opinion expressed earlier was reinforced by documentation issued by the Bank (paragraphs 13 *et seq.* of Annex V to Annex B) emphasizing the need to prevent curtailment of critical social programs whose effectiveness and scope had been limited by the financial contractions that the Loan was actually intended to prevent (see III. COMMENTS; III.1. Interpretation of SSAL Covenants; Annex B).

Mention was also made of the conclusions reached by the open-ended Working Group on structural adjustment programs and economic, social, and cultural rights, within the framework of the Economic and Social Council (ECOSOC) of the United Nations (UN) (see "Report ...," E/CN.4/1999/51-ECOSOC-UN) which discussed the unpublished version of the study submitted by Dr. Fantu Cheru on the effects of structural adjustment policies on the effective enjoyment of human rights (to be published in E/CN.4/1999/50 – ECOSOC – UN). It was emphasized that "*Structural adjustment programs have had two distinct impacts: at the economic level they have led to a significant erosion of the living standards of the poor*" (our italics and underlining) (see "Report...," E/CN.4/1999/51 - ECOSOC - UN).

CELS found particularly significant the conclusion recognizing "... the urgent need to foster closer cooperation between governments, United Nations bodies and *other international financial institutions, in particular the World Bank and the IMF*" (our italics), Dr. Cheru being charged with overseeing the "...actions

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<sup>17</sup> This is the sense that should be given to the Bank's statement in paragraph 17 of Annex V to the Report (Annex B) that the SSAL consists of "... a package of reforms in four main areas: (...) and, most importantly, (d) the reform package also has measures to safeguard current social protection programs, which in a time of financial stress might be vulnerable, and to advance reforms in health and education."

*and initiatives being taken by institutional financial institutions (...) with respect to structural adjustment policies and human rights ...”* (our italics) (see “Report...,” E/CN.4/1999/51 - ECOSOC - UN).

The above was reaffirmed in the report presented by Mr. Windfuhr during the World Food Summit Plan of Action follow-up meeting at the FAO (Rome, November 18-19, 1998) (UN), which included among the five basic functions to be performed by international organizations that of “respecting, protecting, supporting and promoting (the right to adequate nutrition) in their own policies and programs and by assisting and promoting States’ compliance with their obligations” (our parentheses) (see E/CN.4/1999/45).

In summary, the Report requested postponing disbursement of the third Loan tranche until the Argentine Republic had allocated sufficient funds to continue Pro-Huerta. It was argued that the safeguarding provisions of the SSAL should be interpreted as the Bank’s clear intention to preserve the essential social programs to the fullest extent possible. This was a means of mitigating the erosion of living standards of the vulnerable groups caused by the unstable economic situation and by the structural adjustment process promoted by the Bank itself (see Annexes V and VI to Annex B).

Having submitted the Report on June 9 [*sic – Translator*], CELS received no reply until June 23, when it received a fax containing no mention of any measures to be taken (copy attached hereto as Annex C).

Consequently, in our fax of June 24 (copy attached as Annex D), we reiterated our opinion concerning the serious threat hanging over the Program, and, given the closeness of the disbursement date, we asked to be notified of the measures to be taken by the Bank’s Country Unit. On July 15, still having heard nothing, we resubmitted the above note, this time in person (this note attached as Annex E).

Since to date we have received no reply, we now submit to your Panel the present request for investigation.

### **III. COMMENTS**

#### **III.1. Timeliness of the Request**

Pursuant to Article 14 (c) of Resolution IBRD 93-10/IDA 93-06 of September 22, 1993, setting out the scope and bounds of the Panel’s functions, the Panel shall

not hear “requests filed after the Closing Date of the loan financing the project with respect to which the request is filed or after the loan financing the project has been substantially disbursed.”

To our understanding, disbursement of the third tranche of the SSAL (US\$500,000,000) is still outstanding. Given that the Closing Date is December 31, 1999 (see Section 2.03 Annex VI to Annex B), we therefore believe that the present request is appropriately made in both time and form.

And even if the third tranche had already been disbursed by the time these proceedings were instituted, implementation of the Repo facility loan (US\$505,500,000), regarded by the Bank (together with the SSAL) as part of a coordinated multilateral support effort containing special financing provisions (see paragraph 21 of Annex V to Annex B), would still be pending.

In its technical information section, the Loan Agreement provides that Repo loan proceeds will be disbursed only as long as the SSAL is effective. Said effectiveness would be vouched for by an exchange of tranche release reviews and by ongoing supervision of achievement of the respective program goals (see paragraph 21 of Annex V to Annex B).

Consequently, it was established in the Agreement that “[Article 3.01 (a)] The Borrower and the Bank shall from time to time, at the request of either party, exchange views on the progress achieved in carrying out the Program and *the actions specified in Schedules 3 and 4* to this Agreement.”

As we have mentioned, one of the actions covered in those Schedules is signature of the budgetary commitment (US\$680,000,000) for the package of protected social programs (listed in the Annex to Schedule 3), of which Pro-Huerta is one.

Then, even if the loan had been “substantially disbursed,” (see above reference to IBRD/IDA Resolution of September 22, 1993), it would still be necessary to conduct the investigation we are requesting, since this would be fundamental to ensuring satisfactory implementation of the SSAL program, an essential condition for activation of the Repo loan.

Thus the timeliness of the present request is amply demonstrated.

### III.2.Omissions of the Bank in Supervising Implementation of the SSAL Agreement



As noted in the Report submitted to the Bank's Country Unit, Sections 2.02 (d) (ii) (C) and 2.02 (e) (ii) (C) make it a condition of withdrawal of funds from the Loan Account that "the Bank shall be satisfied, after an exchange of views as described in Section 3.01 of this Agreement based on evidence satisfactory to the Bank: [...] (C) *that the actions described in schedule 3 (4)<sup>18</sup> of the present Agreement* have been taken in form and substance satisfactory to the Bank ..." (our italics and parenthesis) (see Annex VI to Annex B).

The above-mentioned Schedules 3 and 4 mention, respectively, the actions referring to individual sections of the SSAL Agreement, including the "Human Development Sector Actions" (see Schedules 3 and 4 of Annex VI to Annex B). One such action consists of a commitment by the Argentine Government to maintain its budget for 1999 for the social programs listed in the Annex to Schedule 3 (to which Schedule 4 also refers) at an aggregate level equivalent to at least US\$680,000,000 (see Schedules 3 and 4 to Annex VI to Annex B).

The above-mentioned Annex to Schedule 3 contains a list of social programs to which the Bank has assigned priority in its efforts to reduce poverty, including, in the section listing food and nutrition programs, "Programa de Huertas – PROHUERTA"(see Schedule 3 to Annex VI to Annex B), making that program a requirement *sine qua non* of effective disbursement of the different tranches of the SSAL and/or the Repo loan.

Covenants similar to those contained in the sections mentioned above should be viewed in the context of what Mr. Wolfensohn has called "balanced development,"<sup>19</sup> i.e. the notion that sustainable development involves "... a totality of effort – a balanced economic and social program - ." <sup>20</sup> In his October 1998 address, Mr. Wolfensohn already recognized the need to devise a new concept of development establishing "... objectives to ensure environmental and human sustainability – so essential to the long-term success of development and the future of our shared planet – water, energy, *food security* – issues that must also be dealt with at the global level"<sup>21</sup> (our italics).

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<sup>18</sup> The number in parentheses relates to the text of Section 2.02 (e) (ii) (C), while this (Spanish) translation follows the substantially identical text of Section 2.02 (d) (ii) (C).

<sup>19</sup> cf. "The Other Crisis": address by Mr. James D. Wolfensohn, President of the World Bank Group, to the Board of Governors. Washington, D.C., October 6, 1998.

<sup>20</sup> Idem footnote 4.

<sup>21</sup> Idem footnote 4. Mr. Wolfensohn went on to say: "We have learned, Mr. Chairman, that there is a need for balance. We must consider the financial, the institutional, and the *social*, together. We must learn to have a debate where mathematics will not dominate humanity, where the need for often drastic change can be balanced with protecting the interests of the poor. Only then will we arrive at solutions that are sustainable. [...] We see that in today's global economy countries can move toward a market economy, can privatize, can break up state monopolies, can reduce state subsidies, but if they do not fight corruption and put in place good governance, if they do not introduce social safety nets, if they do not have the social and political consensus for reform, if they do not

Consequently, at the time the Agreement was concluded, there was no doubt in the Bank's mind about the need to provide all its programs with safeguards that would enable it to pursue its goal of reducing poverty while at the same time propagating incentives for development.

While this was regarded as essential for sustainable development projects, it was considered even more vital in the case of other projects embodying structural adjustment programs, because, as noted by the Bank in its Operational Directive 4.15 (see below III.3. Poverty Reduction as a Priority Objective of the Bank), the poorest segments of the population may be adversely affected by the transitional costs of adjustment policies.<sup>22</sup> Hence, "Bank-supported adjustment programs, therefore, include measures to protect the most vulnerable from declines in consumption and *social services – with particular attention paid to food and nutritional security – in the context of an agreed public expenditure program*" (our italics) (see paragraph 25; OD 4.15).

The same Operational Directive 4.15 notes that public expenditure is an important issue for all adjustment operations. "Within the overall spending envelope given by the macroeconomic framework, *special efforts should be made to safeguard, and increase* where appropriate, budgetary allocations for basic health, nutrition and education, including programs that benefit the most vulnerable groups among the poor" (such as the NBI population) (our underlining and italics) (see paragraph 24; OD 4.15).

Given the inclusion in the SSAL of a package of protected social programs (those listed in the Annex to Schedule 3 to the Agreement), including the Pro-Huerta program, it is unquestionably the responsibility of the Bank's local office to supervise effective compliance with the conditions for access to the loan proceeds [Sections 2.02 (d) and 2.02 (e) of the Loan Agreement]. The basis for this is found in the above-mentioned Operational Directive, which states: "Given the critical nature of institutions for the success of operations with a strong emphasis on benefiting the poor, the project supervision plan may need a strong institutional focus. Where projects include specific targeting of services to poor people, the monitoring and evaluation system should be used (a) to assess whether these

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bring their people with them, their development is endangered and will not last [...] but if they marginalize the poor, if they marginalize women and indigenous minorities, if they do not have a policy of inclusion, their development is endangered and will not last."

<sup>22</sup> It is pointed out that a position consistent with that of the Bank, and to which mention was made in the Report, was that expressed by Dr. Fantu Cheru before the UN Commission on Human Rights at its 55<sup>th</sup> session, during discussion of the "Report of the open-ended Working Group on structural adjustment programs and economic, social and cultural rights on its second session" (Geneva, 1-3 March 1999). The conclusion was that structural adjustment programs "... at the economic level have led to a significant erosion of the living standards of the poor" (see E/CN.4/1999/51).

services are indeed reaching the target group [...] and (b) to identify adjustments to project design that would increase its efficiency and effectiveness in reaching target groups” (see paragraph 42; OD 4.15).

Despite the Bank’s policy of assuring the NBI population of continuity of the vital Pro-Huerta program, and despite the provisions of the Operational Directives instructing the local managers to oversee due compliance with the covenants of the Loan Agreement, the Bank’s regional office ignored the Report submitted to it.

Its only response was to fax a letter to CELS saying that “... *this year’s situation may perhaps be affecting the financing of several government programs, including Pro-Huerta*” and that “The Loan Agreement does not specify the amount of funds to be allocated to each individual program but instead approves an aggregate amount of financing for all programs” (our italics).

It goes without saying that this response (the only one received to date) is far from satisfactory to us.

First, the Panel will agree that if, as the local office says, “*several*” of the Government’s social programs are “*perhaps*” being affected, and if such programs’ continuity is expressly guaranteed, their implementation being a requirement *sine qua non* for authorizing disbursement of the third SSAL tranche and the contingent Repo loan, the Bank should hold up all disbursement until it is fully satisfied that the requirements of Section 2.02 (e) (ii) of the Agreement have been met.

Second, any tendency to regard the country’s present economic vicissitudes as justification for the tightening of funds for social programs should be offset by the recollection that the Loan Agreement was concluded to address those very economic problems, thereby invalidating any argument about its lack of foresight, and that the breach of the protective guarantee (in the case of Pro-Huerta) violates the very reason for the Loan, for which reason it behooves the Bank to make every effort to preserve its continuity.

Lastly, we believe that while it is true that there are no specific distribution guidelines for allocating a specific amount to each one of the protected programs, it is no less true, as noted in the Report submitted for the Bank’s consideration and ratified by Mr. Wolfensohn’s statements, that Bank policy must be interpreted in light of “balanced development,” which means ensuring at least the *continuity of all of the programs considered*.

As claimed in our Report (Annex B) and acknowledged by the Bank (Annex C), the Pro-Huerta program is today in serious difficulties, and it is incumbent upon the Bank's Country Unit to demand its rapid rehabilitation.

This omission on the part of the Bank represents a dereliction of international responsibility ..... given that, echoing the sentiments expressed by the UN Commission on Human Rights (see "Report ..." E/CN.4/1999/51), the Committee on Economic, Social and Cultural Rights concluded in its General Comment No. 12 of May 12, 1999, that: "The food organizations, FAO, WFP and the International Fund for Agricultural Development (IFAD), in conjunction with the United Nations Development Programme (UNDP), UNICEF, the World Bank and the regional development banks, should cooperate more effectively, building on their respective expertise, on the implementation of the right to food at the national level, with due respect to their individual mandates. The *international financial institutions, notably the International Monetary Fund (IMF) and the World Bank, should pay greater attention to the protection of the right to food in their lending policies and credit agreements* and in international measures to deal with the debt crisis. *Care should be taken, in line with the Committee's General Comment No. 2, paragraph 9, to ensure that the right to food is protected*"<sup>23</sup> (our italics) (see E/C.12/1999/5).

In summary, the Bank has not fulfilled its duty to oversee preservation of the Program, which is suffering from serious financial stresses resulting from the ups and downs of both the national and the international economy and from the structural adjustment process promoted by the Bank itself.

It is therefore incumbent on the Panel to remedy such negligence.

### III.3. Poverty Reduction as a Bank Objective

The Bank has long maintained that one of its objectives is to strive to eradicate poverty throughout the world. To accomplish this goal, the Bank produced a document summarizing certain basic procedures and guidelines to be followed in the lending process: OD 4.15 of December 1991.

Echoing the World Development Report for 1990, the Bank acknowledged that a sustainable reduction in poverty indexes would require improved access to

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<sup>23</sup> The right to adequate food (art. 11): 12/05/99. General Comment No. 12 E/C.12/1999/5. Committee on Economic, Social and Cultural Rights. Twentieth session. Geneva, 26 April-14 May 1999. "Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights."

education, *nutrition*, health care, and other social services (OD 4.15). This approach should also include a social safety net for the poorest and/or most vulnerable segments of society (OD 4.15).

The Bank acknowledged the need to give particular attention to the impact of sectoral policies concerning, *inter alia*, ownership of productive lands, rural credit, *food security*, etc. (OD 4.15). It maintained that if its aim was to sustainably reduce poverty levels, efforts should focus on institutional design and investment in the analysis, design, implementation, and financing of essential programs and projects (OD 4.15). For certain sectors, a cost-benefit analysis should be used to evaluate alternative projects (OD 4.15).

One of the elements regarded as being of vital importance in controlling poverty was the need to link the volume of lending to proven government efforts and commitment to improving social indicators and policies in the areas of education, health, *nutrition*, *food security*, family planning, labor market reform, etc. (OD 4.15).

As noted above, the Bank's OD 4.15 acknowledges that the poorest groups of society could be adversely affected by the transitional costs of implementing adjustment policies. Consequently, any adjustment program financed by the Bank should include measures to protect the most vulnerable from declines in their potential for access to consumption and social services "... - *with particular attention paid to food and nutritional security* - ..." (see paragraph 25: Social Costs of Adjustment; OD 4.15), all within the context of an agreement on the levels of expenditure for such measures. This was the underlying basis for the policy whereby every project should be consistent with the poverty reduction strategy (OD 4.15).

The Bank was forced to recognize that since the NBI population lives at the margin of existence, any risk that could lead to a decline in its living standards would be life threatening (OD 4.15). For this reason, in countries where food aid is prominent in assistance strategies (as we believe is the case of the Argentine Republic), it was essential to provide for the coordination of that aid – including distribution policies – and its integration with the rest of the assistance programs (OD 4.15).

However, given the Bank's attitude to requiring compliance with the safeguard clauses of the SSAL Agreement, the above simply becomes a *petitio principii*. How can the importance assigned by the Bank's internal policies to the package of protected social programs be justified if those programs are then relegated to the background because of a complex economic situation (originally

the very reason for conclusion of the Agreement)? How can a rhetoric that espouses such commendable objectives be reconciled with such a lack of interest in their practical implementation?

If the Bank truly desires to combat poverty, if the policies it proclaims represent a commitment to the international community, then we believe it is essential that the Panel urge the Bank to practice what it preaches and to avoid giving the impression that its Operational Directives are not simply a collection of sophistries.

Moreover, these facts constitute violations of the pertinent provisions and of the following operational policies of the Bank: OD 4.15, Poverty Reduction; OD 13.05, Project Supervision; OP/BP 10.70, Project Monitoring and Evaluation; OP/PB 13.40, Suspension of Disbursements, and OP/BP 17.50, Disclosure of Operational Information.

#### **IV. SUPPORTING DOCUMENTS**

- (a) letter of attorney from Pro-Huerta beneficiaries authorizing CELS to represent them in all proceedings before the World Bank's Inspection Panel (Annex A);
- (b) report from CELS submitted on June 9, 1999 to the World Bank's Argentina, Chile and Uruguay Country Unit, describing the threat to continuity of the Pro-Huerta food program (Annex B);
- (c) communication from Ms. Myrna Alexander, Country Unit Director for Argentina, Chile and Uruguay at the World Bank, faxed to CELS headquarters in response to the above Report (Annex C);
- (d) request for report faxed to the Argentina, Chile and Uruguay Country Unit, requesting that CELS be informed of the measures to be taken to address violations by the Argentine Government in connection with the protected Pro-Huerta program (Annex D); and
- (e) renewal of the request for information of June 24, 1999, submitted in person on July 15 at the offices of the World Bank's Argentina, Chile and Uruguay Country Unit (Annex E).

## **V. URGENCY – PREVENTIVE WITHHOLDING**

Since the present case concerns the continuity of a food assistance program (Pro-Huerta), to be discontinued after June 1999 for lack of funds, and given that this program is essential to the subsistence of vulnerable groups (NIB population), we ask that the Panel handle this request as an *urgent matter*.

Likewise, and since compliance with the safeguard clauses of the Agreement constitutes a requirement *sine qua non* for disbursement of the third tranche of the Loan, we ask that the Panel urge the Bank to withhold the funds for said third tranche on a preventive basis until refinancing of the Program is guaranteed.

We authorize Juana Kweitel, Andrea Pochak, María José Guembe, Viviana Krsticevic, Patricia Licciardello, Martín M. Serrano, and Santiago A. López to examine the file forming the basis of the present request, and accept notifications, submit documents, extract items and/or make photocopies and engage in other procedures necessary to the progress of these proceedings.

## **VII. ANONYMITY**

To avoid possible reprisals on the part of the agencies responsible for implementation and/or financing of Pro-Huerta, thereby ensuring inviolability of the food aid that this program supplies to our principals, we ask the Panel to preserve the anonymity of the claimants and of any persons asking to be included in the present claim until such time as the matter is favorably resolved.

## **VIII. REQUEST**

Now therefore, we request:

1. that we, having waived true domicile and elected legal domicile for the purpose of the present proceedings, be accepted as a party to these proceedings;
2. that the Panel accept production of the accompanying documentary evidence and any further evidence offered;
3. that the Panel give favorable consideration to registration of the present request for investigation and take the necessary steps to determine possible noncompliance (omissions) on the part of the Bank;

4. that the Panel handle the present proceedings as an *urgent matter*, urging the Bank to withhold on a preventive basis the funds corresponding to disbursement of the third tranche of the Loan;
5. that the Bank be instructed, in pursuance of its Operational Directive OD 4.15 of December 1991, to comply with the provisions of Sections 2.02 (d) (ii) and 2.02 (e) (ii) of the SSAL Agreement prior to disbursement of the third tranche of the Loan, or, failing that, prior to releasing the proceeds of the contingent Repo loan;
6. that Juana Kweitel, Andrea Pochak, María José Guembe, Viviana Krsticevic, Patricia Licciardello, Martín M. Serrano, and Santiago A. López be authorized to act in these proceedings on the terms set forth above (see VI. AUTHORIZATIONS).
7. lastly, that the anonymity of the principals be respected (see VII. ANONYMITY).

Very truly yours,

Víctor Ernesto Abramovich Cosarín  
T° 46, F° 45  
CPACF

Martín Abregú  
T° 46, F° 466  
CPACF



# Request in Spanish

CELS

Centro de Estudios Legales y Sociales

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Buenos Aires, 20 de julio de 1999.

Sr. Presidente  
Panel de Inspección,  
Banco Mundial.  
Dr. Jim MacNeill.  
S. / D.

Víctor Ernesto Abravomich Cosarín, abogado, inscripto en el T, -40, Fl 45, de la matrícula del C.P.A.C.F. y Martín Abregú, abogado, inscripto en el T-46, F0466, del mismo registro, en carácter de abogados del Centro de Estudios Legales y Sociales (en adelante "CELS"% Asociación Civil (O.N.G.), y en representación de los beneficiarios del Trograma de Huertas' (en adelante el "Programa", "Tro-Huerta" y/o "P-H", indistintamente), quienes son y serán directa y materialmente afectados por las acciones y/u omisiones descriptas a continuación, acreditando personería mediante carta-poder (cuyo original se adjunta a la presente como "ANEXO A"), constituyendo domicilio a los efectos de las presentes actuaciones en Rodríguez Peña 286, piso 11, C.P. 1020, Buenos Aires, República Argentina, nos presentamos a Ud. y respetuosamente decimos:

## I. OBJETO

Venimos a solicitar al Panel de Inspección (en adelante el "Tanel") tenga a bien iniciar la investigación correspondiente y finalmente requerir al Banco Mundial (en adelante el "Banco" y/o "B.M.", indistintamente) el cumplimiento de sus políticas y procedimientos crediticios, tal que se comine al Gobierno de la República Argentina a revisar las asignaciones presupuestarias a fin de dar cumplimiento a las garantías acordadas a los programas sociales en el marco del Préstamo Especial de Ajuste Estructural ["Special Structural Adjustment Loan";

Product ID 4405-AR (63991)] (en adelante el "S.S.A.L.", el "Acuerdo" y/o el "Préstamo", indistintamente), que fuera suscrito el 11 de noviembre de 1998 por el Gobierno de la República Argentina por un monto global de U\$D) 2.525.250.000 (dólares estadounidenses, dos mil quinientos veinticinco millones, doscientos cincuenta mil).

Motiva la presente el incumplimiento de los compromisos asumidos en dicho acuerdo por la Nación Argentina habida cuenta del desfinanciamiento que aqueja al Programa, ejecutado por el Instituto Nacional de Tecnología Agropecuaria (en adelante el "I.N.T.A.") con recursos de la Secretaría de Desarrollo Social (en adelante "S.D.S."), Presidencia de la Nación, así como la infructuosa gestión que en consecuencia se llevara a cabo por ante la Dirección Subregional para la Argentina, Chile y Uruguay del B.M. Este incumplimiento constituye una grave violación por parte de la Gerencia del Banco de los términos y condiciones bajo las cuales el Directorio Ejecutivo del Banco aprobó el Préstamo y de las siguientes políticas y procedimientos legales del Banco com o se detalla a continuación: OD 4.15, Reducción de la Pobreza; OD 13.05, Supervisión de Proyectos; OP/BP 10.70, Monitoreo y Evaluación de Proyectos; OP/BP, 13.40 Supervisión de Desembolso y OP/BP, 17.50 Declaración de Información Operacional.

Subsidiariamente, y en función de la naturaleza (alimentaria) de la prestación objeto de este reclamo, solicitamos al Panel se sirva dar *trámite urgente* al mismo e instar al Banco para que retenga, preventivamente, los fondos correspondientes al desembolso del tercer tramo del Préstamo.

## **II HECHOS**

### **II- 1 - Reseña Histórica del Programa Pro-Huerta**

En el mes de febrero de 1990, el Poder Ejecutivo de la Nación encomendó al I.N.T.A. la elaboración de un programa de seguridad alimentaria, dirigido a mejorar la dieta de la población con necesidades básicas insatisfechas (en adelante la "población NBI" y/o "personas N13F", indistintamente) mediante la autoproducción de alimentos en pequeña escala (huertas). El 3 de agosto del mismo año, mediante Resolución 239, el Consejo Directivo del I.N.T.A. dio nacimiento al "Programa de Promoción de la Autoproducción de Alimentos, ProHuerta".

Con la instrumentación del Programa se pretendió facilitar a los sectores sociales más carenciados el acceso a una dieta más equilibrada,

complementándola con una mayor calidad y diversidad de alimentos frescos, procurando una mejora del gasto familiar en alimentos, promoviendo la participación comunitaria en la producción de éstos y generando tecnologías apropiadas para su autoproducción e incentivando las pequeñas alternativas productivas agroalimentarias. Se previó, desde el inicio, que el Pro-Huerta tuviera progresividad" (vocación expansiva).

Gracias al empeño puesto por el I.N.T.A., conjuntamente con la organización y disciplina impartida al trabajo voluntario prestado por las instituciones, organizaciones y personas que se solidarizaron con los objetivos y funciones del Programa, éste logró su cometido evidenciando un crecimiento exponencial del número de beneficiarios (Vid. 11 HECHOS; 11.1. El Programa Pro-Huerta --conf. ANEXOS I y II-; Informe presentado a la Dirección Subregional para la Argentina, Ché y Uruguay del B.M., el 11 de junio de 1999, que en copia se adjunta a la presente como "ANEXO B"). No obstante haber alcanzado los 2.744.000 beneficiarios, el Pro-Huerta se encontraba aún distante de su demanda potencial, estimada en los 6.247.000 personas NBI (Vid. 11 HECHOS; 11.1. El Programa Pro-Huerta -conf ANEXO 1-; ANEXO B).

Paralelamente al incremento del número de beneficiarios asistidos por el Programa tuvo lugar un necesario incremento de las partidas presupuestarias, alcanzándose una asignación de \$ 11.200.000 para el ejercicio correspondiente al año 1998 (Vid. II HECHOS; 11.1. El Programa Pro-Huerta --conf. ANEXOS 111 y IV-; ANEXO B).

Desgraciadamente, la coyuntura económica por la que debió atravesar el país desde el cuarto trimestre de 1998, y la necesidad de contar con financiamiento externo, han llevado al gobierno nacional a encarar una necesaria reestructuración de sus cuadros y proyectos. Sin embargo esta reestructuración no debió generar lo que produjo, una drástica reducción de los fondos afectados a la continuidad de los programas sociales en curso, sin que siquiera se reparase en la naturaleza (para el caso alimentaria) de las prestaciones brindadas.

Con la aprobación de la ley presupuestaria para el presente ejercicio, Ley 25.064, la S.D.S. recibió, en carácter de fondos para su asignación específica al Programa, la suma de \$ 4.000.000 (un 40% del total previamente acordado, 32% del total presupuestado) (Vid. II HECHOS; 11.1. El Programa Pro-Huerta --conf ANEXOS 1 y VII-; ANEXO B) tornando inocultable la decisión gubernamental de utilizar los programas sociales como variables de ajuste del déficit presupuestario. El recorte presupuestario

afectó asimismo a otros importantes planes sociales (ASOMA -Apoyo Solidario a los Mayores-; PRANI -Programa Alimentario Nutricional Infantil-), que como veremos infra [Vid. 11.2. Préstamo Especial de Ajuste Estructural (S.S.A.L.)], al igual que el Pro-Huerta, se encontraban garantizados en el Préstamo.

A lo dicho vino a sumársele la falta de coordinación interna entre las distintas unidades administrativas encargadas del financiamiento y ejecución del Programa. Reparando en la suma finalmente autorizada la S.D.S. debió reprogramar su política institucional procurando una drástica reducción del número de beneficiarios, desentendiéndose de un 1.700.000 personas NBI (58,52% de la población asistida durante el ejercicio 1998) (Vid. II HECHOS; 11. 1. El Programa Pro-Huerta -conf ANEXOS IX; X y XI-; ANEXO B).

No existiendo posibilidad de concebir un criterio de "razonabilidad" para cercenar tamaña porción del universo asistido (máxime cuando todo él se conforma de personas indigentes), y, aún si concediéramos por hipótesis tal posibilidad, no habiéndose reparado en las previsiones presupuestarias que históricamente la S.D.S. manejó para un número de beneficiarios similar al pretendido (Vid. II HECHOS; 11. 1. El Programa Pro-Huerta -conL ANEXO III-; ANEXO B), el I.N.T.A. debió persistir en la ejecución de su agenda, tal y como la había estructurado originariamente, aunque ello supusiese la paralización del Programa al promediar el año (Vid. II HECHOS; 11. 1. El Programa Pro-Huerta --conf ANEXOS II; IX, con las correcciones propuestas en el ANEXO III, y XII; ANEXO B).

La desavenencia suscitada en torno al cronograma del Pro-Huerta provocó la suspensión del mismo durante el mes de marzo (retrasando sensiblemente la campaña Otoño Invierno '99) y amenaza ahora con enervar el programa con posterioridad al mes de junio (Vid. II HECHOS; II. 1 . El Programa Pro-Huerta -conL ANEXOS III y IX-; ANEXO B).

Como corolario del desfinanciamiento aquí denunciado y la imposibilidad de continuar con el ciclo del Programa, tal como lo reconociera el Sr. Secretario de Desarrollo, José Figueroa, el Pro-Huerta sufrió un nuevo revés al verse obstruida la negociación de una línea de crédito externa gestionada por ante el Banco Interamericano de Desarrollo con el objeto de mejorar la dieta propuesta mediante la incorporación de suplementos proteínicos (Vid. II HECHOS; 11. 1. El Programa Pro-Huerta; ANEXO B).

Va de suyo que los hechos narrados manifiestan la precariedad en que se ha sumido a un programa de naturaleza alimentaria, que ha venido desarrollándose con un índice sobresaliente de productividad, focalizado en un sector indigente de la población y que ha significado una singular ayuda en la lucha contra la pobreza.

Como expondremos a continuación, la crisis económica y las exigencias impuestas por el financiamiento externo ponen hoy al Pro-Huerta al borde de su discontinuidad.

### 11.2. Préstamo Especial de Ajuste Estructural (S.S.A.L.)

Durante el año 1998 las finanzas internacionales se vieron grandemente conmocionadas. Los desajustes de los mercados financieros internacionales provocaron el cierre temporario del acceso al crédito externo lo que repercutió desfavorablemente en la estabilidad económica de la República Argentina (Vid. II HECHOS; 11.2. Préstamo Especial de Ajuste Estructural -conf ANEXO V- ANEXO B).

Con el cierre de los mercados y el descalabro de los flujos de capital, la República Argentina se encontró ante la imposibilidad de financiar su déficit y/o refinanciar su deuda externa una vez operados los respectivos vencimientos. A efectos de hacer frente a los servicios de la deuda y evitar una importante contracción de sus reservas internacionales, lo que provocaría una severa recesión e incremento del desempleo urgiendo al gobierno a tomar decisiones drásticas *en desmedro de programas sociales críticos* (Vid. II HECHOS; 11.2. Préstamo Especial de Ajuste Estructural -conf. ANEXO V-; ANEXO B), el gobierno argentino solicitó al Banco lo asista en forma extraordinaria.

Fue así como desde septiembre de 1998 fue gestándose el Préstamo Especial de Ajuste Estructural (o Special Structural Adjustment Loan -S.S.A.L.) que en conjunción con el REPO (o Special Repurchase Facility Support Loan -préstamo contingente) procuraban brindar apoyo a los esfuerzos continuos del gobierno de la República Argentina para la transformación de su economía y la protección de los logros alcanzados en los campos económico y social, *mitigando los efectos dañinos sobre los grupos vulnerables* (Vid. 11 HECHOS; 11.2. Préstamo Especial de Ajuste Estructural -conf. ANEXO V-; ANEXO B).

El 11 de noviembre de 1998 fue suscripto el Acuerdo, quedando estructurado en tres tramos (noviembre de 1998, marzo de 1999 y con

posterioridad a junio de 1999). En el Préstamo se convino la implementación de un paquete de reformas asentado sobre cuatro objetivos primordiales entre los que se señalaba como prioritario el *garantizar la continuidad de los actuales programas de protección social, que en tiempos de contracción financiera pudieran ser vulnerados, así como avanzar en las reformas en las áreas de salud y educación* (Vid. 11 HECHOS; 11.2. Préstamo Especial de Ajuste Estructural -conf. ANEXO V-; ANEXO B).

Haciéndose eco de la propia experiencia y las recomendaciones de los organismos internacionales que dan cuenta de la utilización de los programas sociales como principales variables de ajuste en la reestructuración (económica) del sector público, el S.S.A.L. estableció en sus cláusulas 2.02 (d) (ii) y 2.02 (e) (ii) los requisitos que debían ser previamente satisfechos por las autoridades nacionales, según criterio librado a la autoridad del Banco, para efectuar cualquier retiro de fondos (Vid. 11 HECHOS; 11.2. Préstamo Especial de. Ajuste Estructural -conf ANEXO VI- ANEXO B)<sup>24</sup>.

Tal como diéramos a conocer al Banco oportunamente, a nuestro entender el gobierno argentino se encuentra incurso en un incumplimiento de los compromisos pactados con no el B.M. por cuanto ha dejado de garantizarse la continuidad/subsistencia del Pro-Huerta, según fuera contemplado en las mentadas cláusulas de salvaguarda (requisito *sine qua non* para la de efectividad del Préstamo).

### 11.3. Presentación del Informe del CELS al Banco Mundial (B.M.)

Habiendo tomado conocimiento de la remisión al Banco, por parte del gobierno nacional, de la carta de cumplimiento correspondiente al desembolso del tercer tramo del préstamo [cláusulas 2.02 (e) (ii) y 3.01 -S. S.A.L.-], el CELS efectuó, con fecha 11 de junio del corriente, la presentación del informe de que se diera cuenta precedentemente (en adelante el "Informe") (ANEXO B) y en el que denunciara los hechos descriptos supra (Vid. ANEXO B).

En dicho Informe se puso de manifiesto que el compromiso asumido por el gobierno argentino de mantener las asignaciones presupuestarias de los programas

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<sup>24</sup> Las cláusulas mentadas prescriben la imposibilidad de efectuar cualquier retiro de fondos de las cuentas abiertas a tal efecto sin antes haberse acreditado, sobre la base de evidencia razonable a criterio del Banco, el cumplimiento de las acciones previstas en la Planilla 3 y 4 (respectivamente) del Acuerdo, en forma y substancia librados a criterio del Banco. Entre tales acciones se contempla el compromiso del gobierno nacional de mantener las partidas presupuestarias de los programas sociales listados en el Anexo a la Planilla 3 del S.S.A.L., correspondientes al ejercicio 1999, en un monto total no inferior a los U\$D 680.000.000 (Vid. II HECHOS; II.2. Préstamo Especial de Ajuste Estructural; nota al pie-conf. ANEXO VI-; ANEXO B).

sociales listados en el Anexo a la Planilla 3 del S.S.A.L. en un monto no inferior a los USD 680.000.000 debía ser interpretado como corolario de la voluntad manifiesta del B.M. de garantizar la subsistencia de todo los programas sociales en curso (o, al menos los listados en dicho Anexo), enervándose así su utilización como variable de ajuste presupuestario. En tal sentido, bastaría con el incumplimiento de cualquiera de las prestaciones, por ellos garantizadas, para obstar la efectivización de posteriores desembolsos<sup>2</sup> (Vid. III. OBSERVACIONES; III. 1. Interpretación de las Cláusulas del S.S.A.L.; ANEXO B).

Se apuntó, también, que una hermenéutica contraria importaría reconocer al gobierno nacional una total discrecionalidad en la asignación de recursos entre los programas ejercicio 1999, en un monto total no inferior a los USD 680.000.000 (Vid. II HECHOS; 11.2. Préstamo Especial de Ajuste Estructural; nota al pie --conf. ANEXO VI-; ANEXO B).<sup>25</sup>

contemplados en la canasta de salvaguarda, condicionada tan sólo a que el agregado de los mismos arrojaré la suma comprometida. Supondría un absoluto desinterés por parte del Banco en preservar el necesario equilibrio entre las prestaciones asistenciales brindadas, obviándose todo reparo respecto del amplio espectro de necesidades que aquejan a los grupos vulnerables. Por otro lado, la confección de un listado tan detallado de programas garantizados no daba lugar a una explicación distinta de aquélla que reconocía a todos ellos el carácter de indispensable (Vid. 111. OBSERVACIONES; 111.1. Interpretación de las Cláusulas del S.S.A.L.; ANEXO B).

Reforzaba la opinión oportunamente vertida la documentación que emitiera el Banco (párrafos 13 y ss. del ANEXO V al ANEXO B) en donde se pusiera de manifiesto la necesidad de preservar la operatividad de los programas sociales críticos cuya efectividad y alcance se hubieran visto limitados de haber acaecido las contracciones financieras que el Préstamo buscaba precaver (Vid. III. OBSERVACIONES; III. 1. Interpretación de las Cláusulas del S.S.A.L.; ANEXO B).

Se trajeron, asimismo, a colación las conclusiones a que arribara el Grupo de Trabajo de composición abierta sobre programas de ajuste estructural y derechos económicos, sociales y culturales, en el marco del Consejo Económico y Social (ECOSOC) de la Organización de las Naciones Unidas (O.N.U.) (Vid. "Informe

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<sup>25</sup> Tal es el sentido que corresponde otorgar a lo dicho por el Banco, en el párrafo 17 del ANEXO V al Informe (ANEXO B), según el cual el S.S.A.L. consiste en "...un paquete de reformas en cuatro áreas principales: (...) y primordialmente (d) el paquete de reformas contempla asimismo medidas para garantizar los actuales programas de protección social, que en tiempos de contracción financiera pudieran ser vulnerados, así como avanzar en las reformas en áreas de salud y educación:".

E/CNA/1999/51 -ECOSOC-O.N.U.) en el que fuera tratada la versión inédita del estudio presentado por el Dr. Fantu Cheru sobre los efectos de las políticas de ajuste estructural en el goce efectivo de los derechos humanos (a ser publicado en E/CNA/1999/150 -ECOSOC- O.N.U.). Se subrayó, en tal sentido, el hecho de que "Los programas de ajuste estructural producían dos efectos diferentes: en el nivel económico han traído consigo una importante erosión en los niveles de vida de los pobres" (las itálicas y el subrayado son propios) (Vid. Informe "...", E/CNA/1999/51 -ECOSOC- O.N.U.).

El CELS entendió que debía asignársele particular relevancia al hecho de haberse reconocido "...la urgente necesidad de promover una cooperación más estrecha entre los gobiernos, los órganos de la Organización de las Naciones Unidas y las *instituciones financieras internacionales, en particular el Banco Mundial* y el FMF (las itálicas son propias), encomendándose al Dr. Cheru vigilar las "*...acciones e iniciativas que adoptan las instituciones financieras internacionales (...) en relación con las políticas de ajuste estructural y los derechos humanos*" (las itálicas son propias) (Vid. Informe "...", E/CNA/1999/51 -ECOSOC- O.N.U.).

Reafirmaba lo dicho el informe presentado por el Sr. Windfuhr durante la reunión de seguimiento del "Plan de Acción de la Cumbre Mundial sobre la Alimentación", F.A.O. (Roma, noviembre 18-19, 1998) (O.N.U.), en la que se enunciara, dentro de las cinco funciones básicas que debían desempeñar las organizaciones internacionales, la de "respetar, proteger, apoyar y promover (el derecho a una alimentación adecuada) en sus propias políticas y programas, promover el cumplimiento de las obligaciones de los Estados y prestar su asistencia para hacerlo posible" (el paréntesis es propio) (Vid. E/CNA/1999/45). En suma, en el Informe se solicitó posponer el desembolso correspondiente al tercer tramo del Acuerdo hasta tanto la República Argentina destinase los fondos suficientes para la continuación del Pro-Huerta. Se arguyó que las cláusulas garantistas previstas en el S.S.A.L. debían ser interpretadas como la voluntad manifiesta del Banco de preservar, en todo cuanto fuera posible, las prestaciones sociales indispensables. De esta forma se buscaba mitigar la erosión en el nivel de vida de los grupos vulnerables causada por los avatares económicos y la implementación de los ajustes estructurales que el mismo Banco propiciaba (Vid. ANEXOS V y VI al ANEXO B).

Ahora bien, presentado el Informe el 9 de junio, el CELS no obtuvo contestación sino hasta el 23 del mismo mes, fecha en que, se recibiera un fax que eludía mencionar medida alguna a llevarse a cabo (cuya copia se adjunta a la presente como "ANEXO C").



Consecuentemente, en nuestro fax de fecha 24 de junio (que en copia se adjunta como "ANEXO D"), reiteramos nuestro parecer sobre la seria amenaza que se cernía sobre el Programa y, teniendo en cuenta la cercanía del desembolso, requerimos se tuviese a bien informarnos cuáles serían las medidas a adoptar por la Dirección Subregional del Banco. Ante el mutismo de ésta, el 15 de julio ppdo. presentamos, una vez más, en persona, la nota antedicha (cuya copia se adjunta como "ANEXO E").

A la fecha, no hemos tenido contestación alguna, por lo que estimarnos pertinente interponer, por ante vuestro Panel, la presente solicitud de investigación.

### **III. OBSERVACIONES**

#### **111. 1. Temporalidad del Reclamo**

De conformidad con el artículo 14 (c) de la Resolución BMRD 93,10/ADI 93-06, del 22 de septiembre de 1993, en la que se concibieran y delimitaran las funciones del Panel, el mismo no se encuentra habilitado para auditar "Los reclamos que se presenten con posterioridad a la Fecha de Cierre del crédito que financia el proyecto respecto del cual se formula la petición o con posterioridad a que el crédito que financia el proyecto haya sido substancialmente desembolsado" (la traducción, libre, es propia).

A nuestro entender, aún resta efectivizar el desembolso correspondiente al tercer tramo de S.S.A.L. (USD 500.000.000). Asimismo, siendo la Fecha de Cierre del Acuerdo el 31 de Diciembre de 1999 (Vid. Section 2.03. ANEXO VI al ANEXO B) consideramos que el presente reclamo resulta procedente en tiempo y forma.

Ahora bien, si al momento de incoarse el mismo se hubieran librado ya los fondos correspondientes al tramo de referencia, subsistiría aún latente la ejecución M préstamo contingente REPO (USD 505.500.000), al cual el propio Banco estima (en conjunción con el S.S.A.L.) como parte de un esfuerzo coordinado de apoyo multilateral que contiene términos especiales de financiamiento (Vid. párrafo 21 del ANEXO V al ANEXO B).

En tal sentido, la ficha técnica del Acuerdo prevé que el desembolso de los fondos correspondientes al préstamo contingente tendrá lugar en tanto el S.S.A.L. siguiese siendo efectivo. Dicha efectividad estaría garantizada por el intercambio de notas de cumplimiento con anticipación al libramiento de cada tramo, así como en función de una supervisión permanente del cumplimiento de sus metas programáticas (Vid. párrafo 21 del ANEXO V al ANEXO B).

Consecuentemente se convino en el Acuerdo, que "[Artículo 3.01. (a)] El Prestatario y el Banco podrán, de tiempo en tiempo, a solicitud de cualquier parte, intercambiar notas sobre el progreso alcanzado en la ejecución del Programa y acciones *eMeciAcadas en las Planillas 3 y del este Acuerdo*".

Demás está decir que, tal como lo adelantáramos, entre las acciones contempladas en tales Planillas se encuentra la suscripción del compromiso presupuestario (USD 680.000.000) para la canasta de programas sociales protegidos (listados en el Anexo a la Planilla 3), entre los que se cuenta al Pro-Huerta.

Luego, si eventualmente se hubiere efectuado el desembolso substancial a que se aludiera en el primer párrafo, subsistiría igualmente la necesidad de impulsar Ja. investigación que propiciarnos por cuanto la misma resultaría fundamental en el control de la correcta ejecución del programa del S.S.A.L., requisito indispensable para la habilitación del REPO (préstamo contingente).

Queda, pues, suficientemente evidenciada la temporalidad del presente reclamo.

#### 111.2. La Omisión del Banco en su Función de Contralor de la Eiecución de Acuerdo (S.S.A.L.)

Como fuera puesto en evidencia en el Informe presentado a la Dirección Subregional del Banco, el texto del Acuerdo de crédito en sus cláusulas 2.02 (d) (ii) (C) y 2.02 (e) (ii) (C) condiciona el retiro de fondos de la Cuenta de Préstamo a que "el Banco se encuentre satisfecho, luego de un intercambio de opiniones en la forma prevista en el punto 3.01 del presente Acuerdo y sobre la base de evidencia razonable a criterio del Banco: [...] (C) *con el cumplimiento que se haya hecho de las acciones descritas en la Planilla 3 (4)<sup>26</sup> del presente Acuerdo*, en farma y substancia librados a criterio del Banco..." (la traducción, libre es propia) (las itálicas y el paréntesis son propios) (Vid. ANEXO VI al ANEXO B).

Ahora bien, las Planillas aludidas (3 y 4) mencionan, respectivamente, la acciones referidas a sendas cláusulas del S.S.A.L., dentro de las cuales quedan comprendidas la "Acciones del Sector de Desarrollo Humano" (Vid. Schedules 3 y 4 del ANEXO VI al ANEXO B). Una de dichas acciones se constituye en el compromiso del gobierno argentino de mantener las partidas presupuestarias correspondientes al aflo 1999 de los programas sociales listados en el Anexo a la Planilla 3 (al que remite igualmente la Planilla 4), por un monto no inferior a los USD 680.000.000 (Vid. Schedules 3 y 4 del ANEXO VI al ANEXO B).

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<sup>26</sup> La numeración del paréntesis obedece al texto de la cláusula 2.02 (e) (ii) (C), en tanto la traducción sigue el texto, substancialmente idéntico, de la cláusula 2.02 (d) (ii) (C).

El mentado Anexo a la Planilla 3 contempla un listado de programas sociales que el Banco ha pretendido priorizar en su lucha contra la pobreza y que, dentro del subtítulo referente a los programas de nutrición, contempla (entre otros) al "Programa de Huertas PROHUERTA-" (Vid. Schedule 3 del ANEXO VI al ANEXO B), convirtiendo al P-H en un requisito *sine qua non* de la efectividad de los libramientos de los distintos tramos del S.S.A.L y/o el REPO.

Las cláusulas similares a la que aquí se estudia deben ser entendidas en el contexto de lo que el Sr. Wolfensohn ha dado en llamar 'un desarrollo equilibrado'<sup>27</sup>, idea según la cual el desarrollo sustentable exige "...un esfuerzo total -un programa económico y social equilibrado-"<sup>28</sup>. Ya en su discurso de octubre del '98 fue reconocida la necesidad de concebir un nuevo esquema de desarrollo en el que se establecieran "...objetivos pertinentes para garantizar la sostenibilidad ambiental y humana, tan fundamental para el éxito a largo plazo del desarrollo y el futuro de nuestro planeta: agua, energía y *seguridad alimentaria* cuestiones que deben resolverse también a escala mundial"<sup>29</sup> (las itálicas son propias).

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<sup>27</sup> Confir. "La Otra Crisis": Discurso del Sr. James D. Wolfensohn, Presidente del Grupo Banco Mundial, frente a la Junta de Gobernadores. Washington, D.C., 6 de octubre de 1998.

<sup>28</sup> Idem nota 4.

<sup>29</sup> Idem nota 4. Se dijo también: "Hemos aprendido, señor Presidente, que se necesita un equilibrio. Debemos tener en cuenta los aspectos financieros, institucionales y sociales. Debemos aprender a entablar un debate en que las matemáticas no valgan más que las razones humanitarias, en que la necesidad de cambios, con frecuencia drásticos, sea compatible con la protección de los intereses de los pobres. Sólo entonces llegaremos a soluciones sostenibles [ ... ] Observamos que en la economía globalizada de nuestros días los países pueden avanzar hacia la economía de mercado, pueden privatizar, pueden acabar con los monopolios, y pueden reducir las subvenciones estatales, pero si no combaten la corrupción y adoptan prácticas razonables de gobierno, si no introducen sistemas de protección social, si no logran el consenso social y político entomo a la reforma, si no consiguen el apoyo de la población, su desarrollo corre peligro y no durará [ ... ] pero si marginan a los pobres, si marginan a las mujeres y a las minorías indígenas, si no adoptan una política de inclusión, su desarrollo corre peligro y no durará".

Consecuentemente al momento de concertarse el Acuerdo, no ofrecía ninguna duda para el Banco la necesidad de nutrir a todos sus programas con cláusulas de salvaguarda que le permitieran llevar a cabo el objetivo de lucha contra la pobreza de consuno con la propagación de los incentivos para el desarrollo.

Si esto último se consideraba indispensable en los proyectos de desarrollo sustentable, lo era aún más para aquéllos otros en los que se instrumentaran programas de ajuste estructural, por cuanto, tal como el Banco lo reconociese en su Directiva Operacional 4.15 (Vid. infra 111.3. La Reducción de la Pobreza como Objetivo Prioritario del Banco), los costos de transición de las políticas de ajuste suelen afectar adversamente a los estratos más pobres<sup>30</sup>. De allí que "En los programas de ajuste financiados por el Banco se incluyan medidas para proteger a los grupos más vulnerables de las mermas de consumo y goce de servicios sociales -con particular reparo *en la* alimentación y seguridad nutricional- en el contexto de un gasto público acordado para tales programas" (la traducción, libre, es propia) (la itálicas son propia) (Vid. párrafo 25; OD 4.15).

Se consideró, luego, que el gasto público suponía un elemento de relevancia en toda operación de ajuste y que "Dentro del paquete total de gasto, dado por el marco económico, debían realizarse esfuerzos especiales para salvaguardar, e incrementar cuando fuera apropiado, las asignaciones presupuestarias para asistencia básica a la salud, nutrición y educación, incluyendo los programas que benefician a los grupos más vulnerables de entre los pobre? (como ser las personas NB1) (las itálicas y el subrayado son propios) (Vid. párrafo 24; OD 4.15).

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<sup>30</sup> Vale mencionar que una postura coincidente con el reconocimiento hecho por el Banco, y de la que se diera cuenta en el Informe, fue la vertida por el Dr. Fantu Cheru ante la Comisión de Derechos Humanos de la organización de las Naciones Unidas, en su 55° período de sesiones, al tratarse el Informe del Grupo de Trabajo de composición abierta sobre programas de ajuste estructural y derechos económicos, sociales y culturales sobre su segundo período de sesiones? (Ginebra 1 a 3 de marzo de 1999). En tal oportunidad se concluyó que los programas de ajuste estructural "...en el nivel económico han traído consigo una importante erosión en los niveles de vida de los pobres" (Vid. E/CN.4/1999/51).

Ahora bien, prevista en el S.S.A.L. la canasta de programas sociales garantizados riguna (programas listados en el Anexo a la Planilla 3 del Acuerdo), entre los que se encuentra el Pro Huerta, surgía incuestionable la responsabilidad de la delegación local del Banco de cerciorarse sobre el cabal cumplimiento de las condiciones para el acceso al crédito [cláusulas 2.02 (d) y 2.02 (e) del Préstamo]. Lo dicho encuentra fundamento en la directiva mentada que prescribe que: "Dada la naturaleza crítica de las instituciones para el éxito de las operaciones con un fuerte énfasis en la ayuda a los pobres, el plan de supervisión del proyecto tendrá necesidad de una fuerte focalización institucional. Donde los proyectos contemplen la prestación específica de servicios a un universo de gente pobre, el sistema de monitoreo y evaluación deberá emplearse (a) para evaluar si tales servicios alcanzan verdaderamente al grupo de referencia [...] y (b) para identificar los ajustes necesarios al diseño del proyecto que permitan incrementar su efectividad y eficiencia a efectos de alcanzar a tales grupo" (la traducción, libre, es propia) (Vid. párrafo 42; OD 4.15).

No obstante la política del Banco de garantizar a las personas NBI la continuidad de un programa tan vital como ser el Pro-Huerta, a lo que ha de sumársele las Directivas Operacionales que conminan a la gerencia local a percatarse del cabal cumplimiento de las cláusulas contractuales suscriptas en el Acuerdo, la delegación regional del Banco hizo caso omiso al Informe que le fuera presentado.

En efecto, por toda respuesta remitió al CELS (vía facsímil) una carta en la que se expresaba que "*...la situación del presente año tal vez esté afectando el financiamiento de varios programas del Gobierno, incluyendo el Pro-Huerta*" y que "El convenio de préstamo no especifica el monto de los fondos que se destinarán a cada programa en particular, sino que se aprueba un financiamiento general para todos los programas" (las itálicas son propias).

Va de suyo que tal contestación (la única obtenida a la fecha) dista mucho de dejarnos satisfechos. Primeramente el Panel estará de acuerdo que si tal como reconoce la delegación local nos encontramos ante la '*possible*' afección de '*varios*' de los programas sociales del Gobierno, y si tales programas se encontraban expresamente garantizados, siendo su cumplimiento requisito *sine qua non* para la autorización de los libramientos del tercer tramo del S.S.A.L. y del préstamo contingente REPO, el Banco debiera obstar todo desembolso hasta tanto fuera plenamente satisfecho en el cumplimiento de los requisitos de la cláusula 2.02 (e) (ii) del Acuerdo.

En segundo lugar, si se quisiera ver en los vaivenes económicos por que atraviesa la nación una razón justificante de las estrecheces a que se someten los programas sociales, parecería necesario traer a la memoria que el Préstamo fue concertado justamente con

motivo de tales avatares económicos, lo que obsta a toda argumentación sobre su imprevisión, y que la garantía vulnerada (mediante la afección del Pro-Huerta) hace a la razón del mismo, por lo que corresponde al Banco bogar por su preservación.

Finalmente entendemos que si bien es cierto que no se especifican pautas distributivas que permitan garantizar una determinada asignación a cada programa de los garantizados, no es menos cierto que, como se dijera en el Informe sometido a consideración del Banco y fuera ratificado por los dichos del Sr. Wolfensohn, la política del Banco debe ser interpretada a la luz de 'un desarrollo equilibrado' lo que supone asegurar mínimamente la continuidad de toda las prestaciones consideradas.

Tal como se denunciara en nuestro Informe (ANEXO B) y lo reconociera al Banco (ANEXO C) el Pro-Huerta se encuentra hoy gravemente afectado, cabiéndole a la Dirección Subregional del B.M. exigir su pronto saneamiento.

La omisión en que se encuentra incurso el Banco acarrea al mismo responsabilidad internacional dado que, al igual que lo hiciese la Comisión de Derechos Humanos de la O.N.U. (Vid. "Informe..." E/CN.4/1999/51), el Comité de Derechos Económicos, Sociales y Culturales concluyó en su Observación General 12, del 12 de mayo del corriente, que: "Las organizaciones que se encargan de la alimentación, la F.A.O., el P.M.A. y el Fondo Internacional de Desarrollo Agrícola (F.I.D.A.) juntamente con el Programa de la Naciones Unidas para el Desarrollo (P.N.U.D.) y el U.N.I.C.E.F. y, el Banco Mundial y los bancos regionales de desarrollo deben cooperar con mayor eficacia, aprovechar sus respectivos conocimientos técnicos, en la realización del derecho a la alimentación en el plano nacional, con el debido respeto a sus mandatos individuales. Las *instituciones financieras internacionales, especialmente el Fondo Monetario Internacional (F.M.I.) y el Banco Mundial, deben prestar una mayor atención a la protección del derecho a la alimentación en sus políticas de concesión de préstamos y acuerdos crediticios y en las medidas internacionales para resolver la crisis de la deuda. En todos los programas de ajuste debe procurarse se garantice la protección del derecho a la alimentación*, de conformidad con el párrafo 9 de la Observación general 2 del Comité"<sup>31</sup> (las itálicas son propias) (Vid. E/C.12/1995/5).

En suma, el Banco ha incumplido su deber de velar por la preservación del Programa, el cual acusó la importante estrechez financiera en que lo sumieran las alternativas de la economía, nacional e internacional, así como el ajuste estructural Propiciado por la misma entidad.

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<sup>31</sup> El derecho a una alimentación adecuada (art. 11): 12/05/99. Observación general 12 (E/C.12/1999/5). Comité de Derechos Económicos, Sociales y Culturales. 20' período de sesiones. Ginebra, 26 de abril al 14 de mayo de 1 ' 999.

Corresponde al Panel, pues, subsanar dicha desidia.

### 111.3. La Reducción de la Pobreza como Objetivo del Banco.

Desde antaño el Banco, ha sostenido que uno de sus objetivos a nivel mundial lo constituye el bogar por la erradicación de la pobreza. En aras de la consecución de tal cometido el Banco ha resumido ciertos procedimientos y líneas directrices fundamentales los que debieran ser implementados en el otorgamiento de créditos: OD 4.15 de diciembre de 1991.

Haciéndose eco del Reporte sobre el Desarrollo Mundial correspondiente al año 1990, el Banco reconoció que una reducción sostenida de los índices de pobreza requeriría una mejora en el acceso a la educación, *nutrición*, salud y otros servicios sociales (OD 4.15). Esta política debía también incluir una red de seguridad social para los más indigentes y/o segmentos más vulnerables de la sociedad (OD 4.15).

El Banco asumió la necesidad de prestar particular atención al impacto de las políticas sectoriales que concerniesen, entre otras, a la titularidad de las tierras productivas, los créditos rurales, la *seguridad alimentaria*, etc. (OD 4.15). Se sostuvo que si se pretendía una reducción sostenible de la pobreza, debían concebirse instituciones e invertirse en el análisis, diseño, implementación y financiación de programas y proyectos esenciales (OD 4.15). Se consideró que para determinados sectores, un análisis de costo-beneficio sería de utilidad para evaluar los proyectos alternativos (OD 4.15).

Se estimó de vital importancia en la lucha contra la pobreza condicionar las cuantías de los fondos otorgados en préstamo a la verificación de los esfuerzos y empeño puestos por los gobiernos prestatarios en aras de mejorar los indicadores sociales y sus políticas en las áreas de educación, salud, *nutrición*, *seguridad alimentaria*, planeamiento familiar, reformas en el mercado de trabajo, etc. (OD 4.15).

Ahora bien, tal como se señalara precedentemente, en su OD. 4.15 el B.M. reconoció que los componentes más pobres de la sociedad podían verse adversamente afectados por los costos de transición originados en la implementación de las políticas de ajuste. Consecuentemente, en todo programa de ajuste financiado por el Banco, debía (debe) preverse la inclusión de medidas de protección de los grupos más vulnerables, procurándoseles evitar una merma en sus posibilidades de acceso al consumo y goce de los servicios sociales "...-Con particular atención respecto de la *alimentación y seguridad nutricional*-..." (Vid. párrafo 25: Social Costs of Adjustment; OD 4.15), todo ello en el contexto de un acuerdo sobre niveles de gasto para tales prestaciones. En este sentido, se suscribió la política según la cual, cada proyecto debía ser consistente con la estrategia de reducción de la pobreza (OD 4.15).

El Banco se vio forzado a admitir que desde que la población NBI vive en el margen de su existencia, cualquier riesgo que pudiera marcar un declive en su nivel de vida importa una seria amenaza a la misma (OD 4.15). Es por ello que en aquellos países en los que la ayuda alimentaría fuera primordial en sus estrategias asistenciales (tal como entendemos es el caso de la República Argentina), debió preverse su esencial coordinación -incluyendo las políticas de distribución- e integración con el resto de los planes asistenciales (OD 4.15).

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"Cuestiones sustantivas que se plantean en la aplicación M Pacto internacional de Derecho Económicos, Sociales y Culturales".

Sin embargo, al repararse en el comportamiento evidenciado por el Banco al momento de exigir el cumplimiento de las cláusulas garantistas del S.S.A.L. lo dicho supra se vuelve una mera petición de principios. ¿Cómo justificar la relevancia que las políticas internas del Banco asignan a la canasta de programas sociales asegurados si la misma es luego relegada a un segundo plano aduciéndose una compleja coyuntura económica (que a la sazón motivara en su momento la concertación del Acuerdo)? ¿Cómo conciliar una retórica en la que se hacen propios objetivos tan encomiables con el desinterés demostrado en su práctica?

Si verdaderamente existe la voluntad de combatir la pobreza, si las políticas denunciadas por el Banco importan un compromiso asumido frente a la comunidad internacional, entendemos, pues, indispensable que el Panel restituya a aquél a la rectitud de sus procedimientos para que no se advierta en sus Directivas Operacionales la formulación de meras sofisterías.

Además, estos hechos constituyen violaciones de las disposiciones~ pertinentes y de las siguientes políticas operacionales del Banco: OD 4.15, Reducción de Pobreza; OD 13.05, Supervisión de Proyectos; OP/BP 10.70, Monitoreo y Evaluación de Proyectos; OP/BP 13.40, Supervisión de Desembolso y OP/BP 17.50, Declaración de Información Operacional.

#### IV. PRUEBA

a) Carta-poder otorgada por los beneficiarios del Pro-Huerta en favor del CELS para el ejercicio de su representación en las instancias que se ventilen por ante el Panel de Inspección del Banco Mundial (ANEXO A);



- b) Informe del CELS presentado, con fecha 9 de junio de 1999, a la Dirección Subregional, para la Argentina, Chile y Uruguay del Banco Mundial y en el que se diera cuenta de la amenaza que se cernía sobre la continuación de la prestación alimentaria brindada por el Pro-Huerta (ANEXO B);
- c) Misiva de la Sra. Myrna Alexander, Directora Subregional para la Argentina, Chile y Uruguay del Banco Mundial, remitida vía facsímil a la sede del CELS, dando respuesta a la presentación del Informe de referencia (ANEXO C);
- d) Solicitud de informe remitido vía facsímil a la Dirección Subregional para la Argentina, Chile y Uruguay del Banco Mundial, requiriendo se tuviera a bien informar al CELS de las medidas a adoptar habida cuenta de los incumplimientos en que se encontraba incurso el gobierno de la República Argentina con relación al programa garantizado Pro-Huerta (ANEXO D); y
- e) Reiteración de la petición de informe del 24 de junio del corriente, presentada en persona el 15 de julio en la Sede de la Dirección Subregional para la Argentina, Chile, y Uruguay del Banco Mundial (ANEXO E).

## V. TRAMITE URGENTE - RETENCION PREVENTIVA

Siendo que en el presente caso se debate la continuidad de un programa asistencial de naturaleza alimentaria (Pro-Huerta), el cual debido a la escasez de fondos se verá discontinuado con posterioridad al mes de junio del corriente, y reparando que tal prestación reviste características esenciales para la subsistencia de los grupos vulnerables (personas NBI), solicitamos al Panel se sirva dar a este reclamo el carácter de *trámite urgente*.

Asimismo, y puesto que el cumplimiento de las cláusulas de garantía constituye un requisito *sine qua non* para el libramiento de los fondos correspondientes al tercer tramo del Préstamo, requerimos al Panel tenga a bien instar al Banco a retener preventivamente los fondos de dicho desembolso, hasta tanto se garantice la refinanciación del Programa.

## VI. AUTORIZACIÓN

Autorizamos a las Dras. Juana Kweitel, Andrea Pochak, María José Guembe y Viviana Krsticevic y a los Sres. Patricia Licciardello, Martín M. Serrano y Santiago A López a compulsar el expediente a que diera lugar la presente denuncia, así como a tomar vista,

presentar documentación, efectuar desgloses, extraer testimonios y/o fotocopias y demás fúmites necesarios para la prosecución del mismo.

## VII. ANONIMATO

A efectos de evitar cualquier posible represalia por parte de los organismos encargado de la ejecución y/o fmanciamiento del Pro-Huerta y asegurar, así, la intangibilidad de la prestación alimentaria que éste brinda a nuestros representados, solicitamos al 'Panel tenga a bien preservar en el anonimato las identidades de los denunciantes, así como las de aquéllos que espontáneamente se adhieran a la presente, hasta tanto acaezca resolución favorable.

## VIII. PETITORIO

Por todo lo expuesto solicitamos:

- 1 . Se nos tenga por presentados parte, denunciado el domicilio real y constituido domicilio legal a efectos del presente procedimiento;
2. Se tenga por producida la prueba documental acompañada y se requiera la agregación de la ofrecida;
3. Se evalúe favorablemente la registración del presente pedido de investigación y se lleven a cabo los procedimientos pertinentes a efectos de determinar los posibles incumplimientos (omisiones) en que se encuentre incurso el Banco;
4. Se de *trámite urgente* a las presentes actuaciones instando al Banco retención preventiva de los fondos correspondientes al desembolso del tercer tramo del Prèstamo;
5. Se intime al banco en función de su directiva operacional OD 4.15 de diciembre de 1991 a dar cumplimiento a las cláusulas 2.02 (d) (ii) y 2.02 (e) (ii) del S.S.A.L. con anticipación al desembolso correspondiente al tercer tramo del Acuerdo o, en su defecto, con anticipación al libramiento de los fondos correspondientes al préstamo contingente REPO;
6. Se autorice a las Dres. Kweitel. Pochak, Guembe y Viviana Krsticevic y a los Sres. Licciradello, López y Serrano, a procurar las preentes actuaciones en los términos precedentemente enunciados ( vid. VI AUTORISACIONES); y

7. Finalmente, se acceda a preservar en el anonimato a las partes representadas (Vid. VII. ANONIMATO).

Sin otro particular, aprovechamos la ocasión para saludar a Uds. Muy atentamente.

Victor Ernesto Anramovich Cosarín  
T°46, F°45  
C.P.A.C.F.

Martín Abregú  
T°46, F°466  
C.P.A.C.F.

September 13, 1999

**ARGENTINA SPECIAL STRUCTURAL ADJUSTMENT LOAN  
(LOAN 4405-AR):  
REQUEST FOR INSPECTION NO. RQ99/4**

**MANAGEMENT RESPONSE**

1. On July 26, 1999, the Inspection Panel (the Panel) received a Request for Inspection dated July 20, 1999 (subsequently supplemented on August 11, 1999) (the Request), from the Argentine non-governmental organization *Centro de Estudios Legales y Sociales* (CELS), acting in alleged representation of beneficiaries of an Argentine government social program called *Pro-Huerta* (the PH Program).<sup>32</sup> The Request, filed pursuant to the terms of Resolution No. 93-10 of September 22, 1993 (the Resolution) whereby the Executive Directors of the International Bank for Reconstruction and Development (the Bank) created the Panel, claims that Bank management failed to observe Bank policies in connection with the supervision and disbursement of the Special Structural Adjustment Loan (SSAL; Loan 4405-AR) made by the Bank to the borrower Republic of Argentina (the Republic or the Borrower) under the terms of the SSAL Loan Agreement entered into between the Bank and the Republic on November 11, 1998 (the Loan Agreement). At its core, the Request contends that, by disbursing SSAL proceeds to the Republic at a time when the PH Program has undergone budget cuts, Bank management has acted in contravention of conditions in the Loan Agreement which require a stated level of budgetary support for identified social programs, such as the PH Program, as one of the preconditions for such disbursement.

2. Pursuant to paragraph 18 of the Resolution, Bank management hereby responds to the Request by stating that Bank management has complied fully with all relevant Bank operational policies and procedures applicable to the matters raised by the Request, by disbursing SSAL proceeds as legally required in strict compliance with the terms of the disbursement conditions set forth in the Loan Agreement. Consequently, no investigation by the Panel is warranted of the allegations made in the Request, and Bank

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<sup>32</sup> The Request, as subsequently supplemented, was originally submitted in Spanish. Thereafter, the main body of the Request was translated by CELS into English at the behest of the Panel, but its supplement is still available in Spanish only. Citations herein are to the English text of the Request where possible.

management urges the Panel not to recommend such an investigation to the Bank's Executive Directors.<sup>33</sup>

### **SSAL BACKGROUND**

3. In response to the economic constraints threatening the Republic during 1998 as a result of the Asian crisis, the Bank's Executive Directors approved the SSAL to the Republic in the amount of \$2,525,250,000. The Loan Agreement specifies that the SSAL may be disbursed in three tranches, the first in the amount of \$1,025,250,000, the second in the amount of \$1,000,000,000, and the third in the amount of \$500,000,000. The first tranche was disbursed in 1998 after the Loan Agreement became effective. The second tranche was made available for disbursement on September 9, 1999. The third tranche has yet to be made available for disbursement.

4. As is the case for any adjustment loan, disbursement of the SSAL tranches is contractually conditioned in the Loan Agreement on the occurrence of certain events which evidence the carrying out by the Republic of those policy reform or other actions which justify the approval and disbursement of the loan. The SSAL was approved by the Executive Directors, and its first tranche was disbursed, upon confirmation of the carrying out of those first tranche release conditions which were detailed in the *Report and Recommendation of the President* presented to the Executive Directors by Bank management on November 3, 1998. The preconditions for release of subsequent tranches are detailed in Section 2.02 and related Schedules 3 and 4 of the Loan Agreement.

5. There are 22 separate second tranche release conditions, and 26 separate third tranche release conditions, set forth in the Loan Agreement (pertaining to a wide gamut of reforms and actions regarding the Argentine fiscal, financial, regulatory and human development sectors), all of which have to be met "in form and substance satisfactory to the Bank" and "based on evidence satisfactory to the Bank" prior to release for disbursement of the pertinent tranche (Loan Agreement, Section 2.02 (d) (ii) and (e) (ii)). As in any adjustment loan, an additional general tranche release condition for the SSAL is that the Bank be satisfied "with the progress achieved by the Borrower in the

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<sup>33</sup> Because the Panel has granted anonymity to the parties represented by CELS, Bank management is unable to comment on various critical aspects regarding the potential eligibility of the Request under the terms of the Resolution. For example, whether or not any harm was indeed suffered by those whom CELS represents is impossible for Bank management to determine given that anonymity. For the same reason, it is impossible for Bank management to determine whether those whom CELS represents are in fact benefiting from programs, other than the PH Program, covered by the Social Budget Condition. It is conceivable that, as a result of those other programs, at least some of the individuals represented by CELS may be benefiting to an extent that might even preclude the need for the direct nutritional support offered by the PH Program, thus rendering them unharmed by the budgetary fate of the PH Program and ineligible to act as affected parties vis-à-vis the Panel.

carrying out of the Program” set forth in the Borrower’s Letter of Development Policy addressed to the Bank, containing the broad outlines of the adjustment efforts more explicitly detailed in the afore-mentioned separate tranche release conditions (Loan Agreement, Section 2.02 (d) (ii) (A) and (e) (ii) (A)).

6. The only tranche release condition that concerns CELS and is the focus of the Request (the Social Budget Condition) pertains initially to the second tranche and can be found in paragraph 15 of Schedule 3 to the Loan Agreement. It reads as follows: “The Borrower’s budget for 1999 for the social programs listed in the Annex to this Schedule is being maintained at an aggregate level equivalent to at least \$680,000,000.” The identical condition also appears as a third tranche release condition in paragraph 18 of Schedule 4 to the Loan Agreement. The listed programs referred to therein consist of 24 programs of the Republic, in the areas of food and nutrition, disease control, emergency employment, education, social funds and programs for vulnerable groups, targeted at providing for the needs of the poorest segments of Argentine society. Among the listed programs is the PH Program which aims to provide nutritional support to those poor who are classified statistically as having “*necesidades básicas insatisfechas*” (NBI or unsatisfied basic needs) by assisting them in the maintenance of small vegetable gardens to produce food for their own consumption.

7. A number of vital points are worth noting with regard to the Social Budget Condition:

(a) If the Social Budget Condition is not met, the Bank is legally entitled to withhold disbursement of the relevant tranche. Nevertheless, following standard adjustment lending practice, the Social Budget Condition is not stated as a legal covenant. This means the Republic is not legally obligated to carry out the condition;<sup>34</sup> however, if the Republic does not carry it out, the Republic forfeits the right to receive the applicable SSAL tranche proceeds.<sup>35</sup>

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<sup>34</sup> See Ibrahim F.I. Shihata, *The World Bank Inspection Panel 39* (2nd ed. 1999) (forthcoming).

<sup>35</sup> Because adjustment lending tranche release conditions are not binding covenants, the normal Bank legal remedies of disbursement suspension, followed by possible loan cancellation and loan repayment acceleration, typically do not apply. There are only very limited sets of circumstances where failure to comply with tranche release conditions can trigger the discretionary exercise of normal legal remedies by the Bank in an adjustment context. That can occur, not when an isolated condition (such as the Social Budget Condition in this case) is challenged, but when a borrower’s entire adjustment reform program supported by an adjustment loan, as set forth in the borrower’s Letter of Development Policy (see point 5 above), is affected by a “situation” which makes it improbable that the entire program, or a significant part thereof, will be carried out, thus jeopardizing the *raison d’être* of the entire loan (see Loan Agreement Section 4.01, IBRD May 30, 1995 General Conditions Section 6.02 (e), and January 29, 1997 legal opinion to the Panel from then Acting Senior Vice President and General Counsel Andrés Rigo in connection with the Bangladesh Jute Sector Adjustment Credit case brought before the Panel in 1997). No such allegation regarding failure of Argentina’s overall adjustment program is made by CELS, and therefore the remedy grounds discussed above are inapplicable to the current facts of the case at hand. Furthermore, given that the situation which could trigger this remedy need not involve any borrower action or omission (indeed, it could be triggered by a natural catastrophe such as an earthquake), the existence of the remedy in no way alters the conclusion that

(b) The Social Budget Condition is the product of normal and legitimate negotiation between the parties to the Loan Agreement, that is to say the Bank and the Republic. The Bank was concerned about the protection of social programs which might be vulnerable to budgetary cuts in an atmosphere of tight national fiscal constraints made necessary by the impact of a global financial crisis and concomitant limitations on the Republic's access to international capital markets. The Republic fully shared that concern, but also needed to maintain a reasonable degree of budgetary flexibility to accommodate a series of factors and potential unexpected contingencies (involving, for example, shifts in the relative efficiency of each potentially vulnerable social program), as well as to maintain its ultimate right as sovereign to make decisions and trade-offs regarding its internal fiscal affairs. The Social Budget Condition as drafted reflects the negotiated outcome of the interplay between these equally legitimate approaches of the Bank and the Republic: it calls for maintenance of a global budgetary aggregate (no less than \$680 million) for a series of identified social programs, but at the same time leaves flexible the distribution of that aggregate among the programs, without assigning an exact figure to each of the programs individually.

(c) If the Social Budget Condition, as well as all the other relevant tranche release conditions, are met, the Bank is legally obligated, pursuant to the terms of the Loan Agreement, to make the relevant tranche available to the Borrower for withdrawal.

## **ARGENTINE SOCIAL PROGRAMS/PH PROGRAM BUDGETARY HISTORY**

8. In the Republic's fiscal year 1998 budget, the social programs cited in the Social Budget Condition were assigned a total budget of approximately \$926.6 million equivalent, of which the five programs identified in the Social Budget Condition as food and nutrition programs were assigned approximately \$134.0 million equivalent. Of that \$134.0 million figure, \$11.2 million equivalent was assigned to the PH Program which is the focus of the Request. Despite the severe fiscal constraints faced by the Republic as a result of conditions in international financial markets,<sup>36</sup> the corresponding budget allocated in the Republic's fiscal year 1999 budget was actually increased to \$984.5 million equivalent for all the Social Budget Condition programs, although there was

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tranche release conditions do not constitute borrower obligations. Undisbursed portions of a loan can likewise be canceled, under Sections 2.02 (d) (ii) and 2.02 (e) (ii) of the Loan Agreement, if, after an exchange of views with the Republic, the Bank has notified the Republic of the Bank's dissatisfaction with the Republic's compliance with the relevant tranche release conditions and 90 days have passed from the time of that notice without reversal of the Bank's dissatisfaction. Here again, such a cancellation possibility does not mean that the tranche release conditions constitute Borrower obligations; it merely allows the Bank to cease making a loan it no longer deems useful (and in that sense amounts to a permanent refusal to make tranche releases).

<sup>36</sup> For 1999, Argentine GDP is dropping approximately 4%, fiscal revenues are dropping approximately 5% and federal primary (excluding interest) public expenditures are dropping approximately 1.6% in comparison with 1998.

virtually no change for the subset of food and nutrition programs, and an original decrease of 64%, to \$4.0 million equivalent, for the PH Program.<sup>37</sup>

9. In the first semester of 1999, approximately \$3.8 million of that reduced \$4.0 million equivalent amount allocated to the PH Program was spent, thus threatening, as correctly pointed out by CELS in the Request, the continuation of the PH Program for the rest of the fiscal year. To remedy this situation, as a direct result of Bank SSAL supervision efforts as indicated in point 14 below, the Republic subsequently increased the 1999 budgetary allocation for the PH Program by an additional \$3.0 million equivalent, thus raising the total allocation for the PH Program for 1999 to \$7.0 million equivalent and allowing the PH Program to continue at least until the end of 1999. Furthermore, the Argentine authorities have issued a letter to the Bank indicating their intention to maintain the PH Program at least through fiscal year 2000.

### **BANK MANAGEMENT COMPLIANCE WITH THE TERMS OF THE LOAN AGREEMENT AND WITH BANK OPERATIONAL POLICIES AND PROCEDURES**

10. The second tranche of the SSAL was not released for disbursement by Bank management until September 9, 1999, and as of today it is not known when the third tranche might be released.<sup>38</sup> Consequently, Bank management had not disbursed either the second or third tranche in alleged violation of any Bank policy as of the July 1999 date of the filing of the Request.<sup>39</sup>

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<sup>37</sup> Figures are taken from the Republic's budget tables attached hereto as Attachment A. Apart from the PH Program, the other programs referred to in the Social Budget Condition show the following budgetary allocation trajectory from fiscal year 1998 to fiscal year 1999: allocations for PRANI (for infants) decreased slightly from \$36.2 million equivalent for 1998 to \$35.1 million equivalent; for ASOMA (for senior citizens) they decreased slightly from \$21.5 million equivalent for 1998 to \$20.1 million equivalent for 1999; for *Materno-Infantil* (for mothers and infants) they increased from \$37.9 million equivalent for 1998 to \$45.3 million equivalent for 1999; and for PROMIN (also for mothers and infants) they decreased slightly from \$27.2 million equivalent for 1998 to \$26.2 million equivalent for 1999.

<sup>38</sup> Resolution para. 14 (c) requires that a project loan be less than 95% disbursed in order for a request pertaining thereto to be eligible for possible Panel investigation. In case the third tranche of the SSAL had been already released without CELS' knowledge, the Request cites the Bank's as yet undisbursed Repurchase Facility Support Loan to the Republic (Loan 4406-AR; approved by the Executive Directors in conjunction with their approval of the SSAL) as a justification for nevertheless allowing Request eligibility (see Request, page 6). However, because the third tranche of the SSAL has in fact not been disbursed, it is unnecessary to bring Loan 4406-AR to bear in this case. It is also inappropriate to in any way involve Loan 4406-AR in these Panel proceedings because the Social Budget Condition does not apply to Loan 4406-AR or affect its disbursement. Only general Bank satisfaction with the Republic's overall reform program is relevant for purposes of Loan 4406-AR (see 4406-AR Loan Agreement, Section 4.01 (b)).

<sup>39</sup> The *first* tranche of the SSAL had been released in late 1998, but the Social Budget Condition is a legal condition for second and third tranche release, not for first tranche release. The related first tranche release condition was that the Republic agree to the roster of social programs to be covered by the Social Budget Condition; compliance with this first tranche condition is evident from the fact that the Republic negotiated the Loan Agreement Schedule 3 containing said roster.



**\* Release for Disbursement of the SSAL Second Tranche Occurred upon Compliance with the Social Budget Condition**

11. Subsequent to the filing of the Request, Bank management did release the second tranche for disbursement, as it was legally obligated to do by the terms of the Loan Agreement (see point 7 (c) above) given the Republic's compliance with all second tranche release conditions. The Social Budget Condition was met and even exceeded: whereas the Social Budget Condition called for maintenance for 1999 of a budget for identified social programs at an aggregate level equivalent to at least \$680 million equivalent, the actual budgetary allocation for 1999 has reached \$984.5 million equivalent (see point 8 above).

12. CELS expresses no complaint in the Request with regard to the nature and scope of the Social Budget Condition; in other words, CELS does not challenge the condition's *design*. CELS also recognizes that the Social Budget Condition does not require a specific individual budget allocation for each of the covered social programs. However, CELS argues that the very fact that individual programs are named in connection with the Social Budget Condition demonstrates that, beyond merely looking out for compliance with the letter of the condition, the Bank should concern itself with at least making sure that, even if the \$680 million aggregate minimum budget is available, that minimum be distributed among individual programs in such a way as to at least ensure the viability of each one. In other words, "while it is true that there are no specific distribution guidelines for allocating a specific amount to each one of the protected programs, it is no less true ... that Bank policy must be interpreted in light of 'balanced development', which means ensuring at least the continuity of all of the programs considered" (Request, page 9).

13. Although it is an overstatement to attribute such per-program specificity to "Bank policy," Bank management sympathizes with CELS' view that the spirit of the Social Budget Condition requires sufficient funding for each identified program, within the aggregate global minimum amount, to permit some continuity of each such program (or eventual launch in the case of a start-up program). Even though the Social Budget Condition makes clear that there is no intent to guarantee specific individual financing levels for each program, the concept of "protection" mentioned in the Republic's Letter of Development Policy (see point 5 above) can suggest the desirability of maintaining each program's continuity with *some* level of minimum funding. What that level of minimum funding would be for any particular program can be assessed by the Bank in expressing its "satisfaction" allowed by the standard and deliberately flexible language of tranche release conditions (see point 5 above).

14. In the course of its supervision of the SSAL, Bank management realized that the 1999 budget for the PH Program had been cut significantly from 1998, and that what budget did remain had been almost entirely spent during the first semester of 1999. It was evident, therefore, as CELS has pointed out, that the continuity of the PH Program into the second semester of 1999 and beyond was being jeopardized. As a result, Bank management, beginning on July 6, 1999, urged the Argentine authorities to revisit the PH Program's budget. The authorities responded by indicating that the \$4.0 million equivalent originally allocated to the PH Program for 1999 would be supplemented by an additional allocation of \$3.0 million, a fact of which CELS might be unaware. The pertinent supplemental allocation is reflected in the August 27, 1999 *Decisión Administrativa* (Administrative Decision) no. 294 of the Republic's *Jefatura de Gabinete de Ministros* (Office of the Chief of Cabinet of Ministers), which document modifies the Republic's 1999 budget accordingly. That same Office subsequently sent a September 3, 1999 letter to the Bank indicating the Republic's intention, as evidenced by already ongoing budgetary planning for next year, to keep funding the PH Program into the year 2000. These actions by the Republic avoid the threatened premature exhaustion of PH Program funding during 1999 and go one step further by expressing an intention to keep funding the PH Program beyond the 1999 fiscal year covered by the Social Budget Condition. Consequently, continuity of the PH Program, albeit at a reduced level from 1998, is being maintained, and it is on that basis that Bank management proceeded to release the second SSAL tranche for disbursement as legally obligated by the terms of the Loan Agreement. Bank management intends eventually to disburse the third tranche of the SSAL on the same basis if Republic compliance is maintained.

\* **Release for Disbursement of the SSAL Second Tranche Was Consistent with Bank Operational Policies and Procedures**

15. OD 4.15 on Poverty Reduction: Given the above, it is clear that no relevant Bank operational policies and procedures have been violated in the course of SSAL supervision and tranche release. To begin with, Operational Directive (OD) 4.15 cited by CELS as a basis for the Request has been complied with. With respect to poverty reduction efforts reflected in adjustment lending, OD 4.15 states that “[w]ithin the overall spending envelope given by the macroeconomic framework, special efforts should be made to safeguard, and increase where appropriate, budgetary allocations for basic health, nutrition and education, including programs that benefit the most vulnerable groups among the poor” (OD 4.15, para. 24). “Bank-supported adjustment programs, therefore, include measures to protect the most vulnerable from declines in consumption and social services – with particular attention to food and nutritional security – in the context of an agreed public expenditure program” (OD 4.15, para. 25).

16. Mindful of the possible negative effects of adjustment on social sector initiatives and on the most vulnerable segments of society, and consistent with OD 4.15 regarding poverty reduction, Bank management insisted to the Argentine authorities that the Social Budget Condition be included among the nine second tranche release conditions and nine third tranche release conditions, set forth in the Loan Agreement, relating to human development sector actions. Care was thus taken to ensure that the SSAL did not focus exclusively on macro-economic and financial sector conditionality to the detriment of more immediate human concerns.

17. More particularly, the Social Budget Condition, consistent with OD 4.15, was designed to focus in part on safeguarding budgetary allocations for basic health, nutrition and education, with particular attention paid to food and nutritional security through the identification of specific programs of such nature identified in Schedule 3 to the Loan Agreement. Note, however, that OD 4.15 recognizes the need to place such focus “within the overall spending envelope given by the macroeconomic framework” (OD 4.15, para. 24), thus acknowledging the inescapable reality that national budgetary resources are not unlimited and that trade-offs can legitimately be made among programs by the sovereign nation in question. Furthermore, although OD 4.15 draws special attention to the needs of food and nutritional programs such as the PH Program, *it in no way mandates specific budgetary amounts or budgetary proportions for such programs*, calling at most for special efforts to “safeguard” and “protect” them without dictating exactly how. Absent the Social Budget Condition, SSAL second and third tranches could in theory be disbursed in the context of a zero budget for each of the identified social programs, but, in full compliance with the flexible and realistic terms of OD 4.15, the SSAL does include the Social Budget Condition to safeguard such programs within the realities of budgetary constraints. In addition, that condition has been complied with and even exceeded (see point 11 above), and the condition’s existence has further helped to catalyze maintenance of the PH Program’s continuity (see points 12-14 above). All CELS has in essence requested is that said continuity be maintained (see Request, page 9, cited in point 12 above); given the fact that OD 4.15 does not mandate a rigid budgetary outcome on an individual program-by-program basis, the \$7.0 million currently assigned to the PH Program (almost double what was spent on the PH Program through June 1999 (see point 9 above)) evidences more than sufficient Social Budget Condition and Bank poverty policy compliance.<sup>40</sup>

18. OD 13.05 on Project Supervision: Bank management has supervised the SSAL through many supervision missions, as well as through written and verbal exchanges

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<sup>40</sup> It deserves noting that the PH Program is not the only program covered by the Social Budget Condition which contributes to meeting the food and nutrition needs of the poor. Even covered employment and revenue generation programs contribute, albeit indirectly, to satisfying such basic needs of beneficiaries, yet CELS ignores such potential secondary effects.

with the authorities too numerous to mention. For supervision of the Social Budget Condition alone, the expertise of at least seven Bank sector specialists was brought to bear. The very fact that, at the Bank's urging, the PH Program budget was increased by \$3.0 million equivalent to \$7.0 million equivalent (not to mention increases for other programs similarly made at the Bank's urging) demonstrates the impact of Bank supervision in the particular context of compliance with the Social Budget Condition. Although the release of the second tranche could have taken place in theory as early as February 28, 1999 (see Loan Agreement, Section 2.02 (d) (i)), delays in satisfying all the conditions allowed Bank management to supervise not only the original budget allocations for 1999, but ongoing expenditure throughout the year of those allocations as well.

19. OD 10.70 on Project Monitoring and Evaluation: By its very terms, OD 10.70 does not apply to adjustment loans such as the SSAL. The term "project," as used in the OD, specifically "refers to *investment lending operations only* and excludes adjustment operations" (OD 10.70, footnote 1). CELS is therefore incorrect in using OD 10.70 as a basis for challenging Bank management performance with regard to the SSAL. At any rate, the beneficiary consultation that CELS alleges is required by said OD (see Request supplement, Section III) is unnecessary for purposes of monitoring compliance with the Social Budget Condition. PH Program budgetary allocation and expenditure figures are obtainable from the relevant government authorities, not from individual PH Program beneficiaries.

20. OP/BP 13.40 on Suspension of Disbursements: CELS argues that, because of the situation regarding the PH Program, Bank management should have proceeded to suspend disbursements of the SSAL (see Request supplement, Section III). This analysis is incorrect, even if the Social Budget Condition had not been met. As stated in point 7 (a) above, adjustment loan tranche release conditions do not constitute legal obligations of the Borrower. Consequently, failure to comply with such a condition results in Bank withholding of release of the relevant tranche until such condition is met; it cannot, however, absent a resulting threat to at least a significant portion of the entire reform program of a borrower,<sup>41</sup> trigger the application of a suspension remedy. Operational Policy (OP) 13.40, by its very terms, is therefore inapplicable to the case at hand: "The General Conditions authorize the Bank to suspend, in whole or in part, the right of the borrower to make withdrawals from the loan account when the events set out or referred to in [General Conditions] Sections 6.02 and 7.01 (f) and (g) occur and are continuing. *These events pertain either to the failure of the borrower or other contracting parties to fulfill obligations unrelated to payment under a Loan Agreement or to the borrower's failure to make payments as required*" (OP 13.40, para. 1; emphasis

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<sup>41</sup> See footnote 4 above.

added). Again, because the Social Budget Condition is just that – a condition instead of a legally binding obligation – OP 13.40 does not apply under the facts of this case and there is therefore no policy violation by Bank management resulting from failure to exercise a suspension remedy.

21. BP 17.50 on Disclosure of Operational Information: Bank Procedure (BP) 17.50 sets forth the rules for implementing the Bank’s “Policy on Disclosure of Information” (March 1994; the Disclosure Policy). The BP is supplemented by a June 20, 1994 internal Bank memorandum entitled “Disclosure of Factual Technical Documents” (the Disclosure Memo). The only documents, relating to an adjustment loan, explicitly disclosable to interested parties according to Bank policy are the “Project Information Document” or PID (BP 17.50, para. 3) and the Loan Agreement (Disclosure Policy, paras. 45 and 46), both of which CELS already has obtained and attached as Annexes V and VI of Annex B to the Request.

22. Unlike the Staff Appraisal Report (now generically renamed as the Project Appraisal Document or PAD) submitted to the Bank’s Executive Directors in connection with their approval of an investment project, the analogous President’s Report or Memorandum of the President similarly submitted in connection with approval of an adjustment loan is explicitly not subject to public disclosure (compare BP 17.50, paras. 6 and 7 with Disclosure Memo footnote 2, which – based on Disclosure Policy para. 50 -- states that “the President’s Report for adjustment operations is ... not made available to the public”). Disclosure Policy para. 52 also makes the crucial point that “[t]here is also a need to preserve the integrity of the deliberative process and to facilitate and safeguard the free and candid exchange of ideas between the Bank and its members. For this reason, documents that define the Bank’s country strategy, analysis of country creditworthiness, supervision reports and project completion reports are not publicly available.” Disclosure Policy para. 53 goes on to add that “[t]he above-mentioned principle relating to the preservation of the integrity of the deliberative process also applies to the Bank’s own decision-making processes. Thus, internal documents and memoranda written by staff to their colleagues, supervisors or subordinates are considered confidential and not publicly available.”

23. In short, Bank policy, in frank acknowledgment of the country-relations sensitivities arising from adjustment operations, restricts the possible public disclosure of documentation pertaining thereto. More generally, Bank policy limits the disclosure of supervision reports or of analyses of borrower performance with regard to specific operations. CELS complains that, because the Bank’s regional office in Buenos Aires did not answer its queries regarding the approach the Bank would take in the face of the PH Program situation, BP 17.50 has been violated (see Request supplement, Section III). As detailed above, Bank policy requires no such answer pertaining to Bank-borrower

relations, particularly in an adjustment loan context. Bank management wrote CELS on June 22, 1999 to explain the Social Budget Condition and confirm that the PH Program was covered by that condition, but there was no policy requirement to provide more information than that which would have been discernible from the text of the Loan Agreement and the PID. For Bank management to have done otherwise would have amounted to allowing CELS to become an active participant in the Bank-Republic dialogue, a role which CELS cannot formally play.

## **CONCLUSION**

24. In light of the above, Bank management concludes that (a) it has fully complied with Bank policies and procedures with respect to the SSAL and (b) it has disbursed the SSAL second tranche only after the Social Budget Condition was fully met. Consequently, Bank management urges that the Request for an investigation of the SSAL by the Panel be denied.

## PROJECT INFORMATION DOCUMENT

Report No. PID7125

Project Name            Argentina-Special Structural Adjustment Loan  
(SSAL)

Region                    Latin America and the Caribbean

Sector                    Structural Adjustment

Project ID                ARPE62991

Borrower                Argentine Republic

Implementing Agency    Ministry of Economy  
Address: Hipolito Irigoyen 250,  
Buenos Aires, Argentina  
Contact: Dr. Roque Benjamin Fernandez  
Telephone: 54-1 349-8801  
Fax: 54-1 349-8815/03/05

Date PID Prepared        November 13, 1998

Appraisal Date            September 1998

Board Date                November 10, 1998

1. Country and Sector Background - The Convertibility Plan: Argentina's reform agenda builds upon a successful program of reforms accomplished under the government's convertibility plan. The plan, launched in March of 1991, consisted of the following five main pillars:

- (a) monetary reform, through the Convertibility Law, subsequently supplemented by the new charter of the Central Bank;
- (b) fiscal reform, initially through a sharp improvement in the administration of the tax system and later through a redefinition of tax instruments and rates;
- (c) public sector reform, through debt restructuring, civil service reform,

fiscal restructuring and an ambitious and successful plan of divestiture and deregulation of factor and product markets;

(d) social security reform, allowing for a new capitalization mechanism operated by the private sector; and

(e) trade reform, through the elimination of export taxes and most quantitative restrictions on imports, and the reduction of the level and range of import tariffs. Entry into MERCOSUR followed.

2. The monetary reform established a currency board-type arrangement and full convertibility of the peso. The monetary base must be backed by foreign exchange reserves by at least a two-thirds ratio (up to one-third may be dollar-denominated government bonds), thus strongly restricting financing of fiscal deficits.

3 Long-sought stabilization of prices followed the implementation of the reform. The fiscal, public sector, and social security reforms led to a re-definition of the role of the state, dramatically improving economic efficiency and allowing the government to focus on the core social safety net and regulatory functions. Trade reform allowed local companies improved access to state-of-art foreign technology, and it unleashed a renewed dynamism in exports, with exports doubling from 1992 to 1997. The immediate impact on economic performance was to achieve average annual GDP growth of 8.5 percent over the 1991-1994 period. Consumer price inflation fell to less than 4 percent by mid-1994.

4. The 1994-1995 Regional Crisis: Argentina's macroeconomic stability depends on both foreign and domestic confidence in the currency board arrangement instituted under the convertibility plan. Under this system, a decline in international reserves translates into a monetary contraction, as occurred in 1995, during the aftermath of the Tequila crisis. As a consequence, there is a symbiotic relationship between the convertibility plan and the financial system, requiring strength to the financial system.. Weaknesses in the banking system were quickly revealed in 1995, and emergency actions were required to stabilize the situation - with support from the IMF, IDB and the Bank. The economy contracted by 4.0 percent in 1995, and the unemployment rate soared to 18.4 percent. Nevertheless, the government's commitment to the currency board arrangement was reaffirmed and the Convertibility plan emerged stronger from that crisis.

5. Argentina's reaction to the 1995 crisis sent strong signals to the markets about its long-run credibility. This was specially true with respect to its decisions to: (a) remain with the currency board despite a rapid decline in the money supply and high unemployment; (b) allow some banks to fail and some bank depositors to lose money; and (c) react to the crisis by tightening market discipline over banks and moving to



strengthen the credibility of the currency board (for example, by moving bank and Central Bank effective 'reserves' offshore). Even at the worst moments of the 1995 crisis, the Convertibility Law (in particular its mandated coverage of high powered money by international reserves) was never breached. While at the height of the crisis usage of dollar denominated bonds reached its legal limitations as a share of total reserves, the usage of bonds was quickly reduced following the crisis.

6 Aftermath to the 1995 Crisis: Despite serious prior efforts to strengthen the financial system, the 1995 crisis increased the urgency for reform since the financial system came close to the point of collapse. As a result, following the crisis, Central Bank authorities took a number of measures to build on the growing strength of the banking system both from the regulatory and supervisory perspectives (which also mitigate the need for lender-of-last-resort functions), and increasing the liquidity in the system, actual and contingent.

7. Recent Economic Performance: Investment-led growth returned quickly following the 1995 crisis. The Argentine economy expanded by 4.8 percent in 1996 and by an impressive 8.6 percent in 1997. By May 1998, the unemployment rate had improved to a still-high 13.2 percent. Preliminary estimates for the first half of 1998 indicate GDP growth of 7 percent.

8. External Balance: After running small trade surpluses in 1995 and 1996, a trade deficit of under 1.5 percent of GDP appeared in 1997, partially driven by booming imports of capital goods. So far in 1998, there has been a further deterioration in the trade balance, as well as some deterioration on services accounts. The current account deficit reached 3.5 percent of GDP in 1997, and it could reach about 4.3 percent of GDP this year. About one-third of the current account deficit was financed by foreign direct investment in 1997, and this share may be maintained this year.

9. Improved Fiscal Balance: The government has attempted to relieve demand pressures on the current account through an improved fiscal balance. The overall public sector deficit (federal plus provincial) has declined from just over 3 percent of GDP in 1996, to about 2 percent in 1997. The federal deficit, driven largely by the transition costs of the newly "privatized" pension system, constituted about three-fourths of that deficit, while the provinces' deficit constituted one-fourth. For 1998, the consolidated fiscal deficit is projected to fall to about 1.5 percent.

10. The Current International Financial Instability and Its Impact on Argentina: The recent turmoil in international financial markets is having an impact on the Argentine economy in various ways: the temporary closing of access to foreign borrowing; a fall in the prices of major exports; and a sharp decline in the local stock market. Confidence in

the currency board and in the banking system, however, remains strong. International reserves have held fairly steady, at about \$24 billion. Although this level is slightly lower than the \$25 billion reached in early August, it is still about 7 percent higher than the level of reserves held at the end of 1997. Deposits in the banking system have also held steady, but the rapid expansion of credit in the first half of 1998 has now slowed to near zero.

11. Argentina is highly dependent upon access to international capital markets due to its large foreign debt relative to its export base. Foreign debt service-to-export ratios for upcoming years are projected to be over 60 percent, despite the lengthening of maturities of public external debt. Prior to the current crisis, Argentina had been able to lengthen the average maturity of its stock of public debt to over eight years. In recent weeks, however, foreign private lenders have expressed no interest in extending new credits to emerging markets, including Argentina. Although the export base doubled from 1992 to 1997, exports of goods and non-factor services represent only about 9 percent of GDP, up from 6.3 percent in 1993, and it will take sustained fiscal discipline and continued productivity improvements to lower Argentina's high debt-service-to-export ratio.

12. The adoption of important reforms in the financial system, further fiscal strengthening, and the deepening of structural reforms, have been instrumental in deflecting the critical early stages of the recent Asian crisis. Despite the decline in equity and bond values, and the initial brief dip in reserves, the financial markets have remained relatively stable. The government has taken additional fiscal measures, reducing in August planned expenditures in 1998 by one billion pesos from what was approved in the 1998 budget. These same levels - or less if need be--were presented to Congress in the draft 1999 budget. This has sent a clear signal to the markets that the government is prepared to maintain fiscal discipline.

13. With markets closed and capital flows disrupted, Argentina will not be able to finance its deficit and refinance its external debt as maturities come due. In order to make these payments, there would have to be a significant contraction in international reserves, starting in the fourth quarter of 1998. Such contraction would produce a severe recession, increases in unemployment, and would result in fiscal cuts that would go beyond what is feasible or advisable given the timeframe available for making the adjustment. Such drastic action would result in the curtailment of government services and critical social programs. The significant loss of reserves would threaten monetary and fiscal stability. The financial system would come under stress.

14. To avoid this severe scenario, the government has requested extraordinary assistance from the Bank and IDB. The request is based on the country's strong track record in undertaking reforms and the quality of its macro-economic policies. It is also

prepared to undertake additional measures to advance to the next stage of structural reforms. With the requested assistance, the government would be able to bridge the immediate disruption of the international capital markets and mitigate the effects of the financial crisis on the economy, especially the poor and vulnerable groups.

15. Loan Objectives - The SSAL, in conjunction with the REPO loan listed below, will support the continued efforts of the Government of Argentina to transform its economy and to protect gains achieved thus far. The project's operations are preventative, aimed at mitigating the deleterious effect of the current international financial instability on the economy and protecting vulnerable groups. This project will help meet critical foreign exchange needs of the Government and will allow it to remain focused on longer term reform issues.

16. .In conjunction with the SSAL, the Special Repurchase Facility Support Loan (REPO) will strengthen the Argentine financial system's safety net and will safeguard economic and social achievements.

17. Project Description - The US \$2.5 billion Special Structural Adjustment Loan (SSAL) consists of a package of reforms in four main areas: (a) stimulating confidence in the domestic banking system, deepening the capital markets, expanding access to credit, especially for small- and medium-scale businesses; (b) enhancing the efficiency of regulatory institutions; (c) strengthening intergovernmental fiscal relations; and, most importantly (d) the reform package also has measures to safeguard current social protection programs, which in a time of financial stress might be vulnerable, and to advance reforms in health and education.

18. The Repo facility allows the Central Bank to engage in repurchase transactions with a syndicate of commercial banks in the event of a crisis. The US\$500 million Special Repurchase Facility Support Loan (REPO) would be made to the Argentine Republic, with the proceeds made available by the borrower to the Central Bank. The proceeds could be drawn only if and when the repurchase facility is triggered, and would be deposited in a special account at the Central Bank to be used only by the Central Bank to meet margin calls or repurchases from repo buyers (or to invest in highly liquid securities during periods when margin calls are not necessary, with proceeds to be redeposited in the special account). If the margins move favorably, the reflows would replenish the special account. If the repo facility is not used, the loan would not be drawn and could be cancelled upon request by the borrower.

19. Financing - The SSAL would be a three-tranche loan of US\$2.5 billion. The first tranche of \$1.0 billion would be made available upon effectiveness, in November 1998.

The second tranche for \$1.0 billion would be anticipated for March 1999, and the third tranche of \$500 million, no sooner than July 1999.

20. The contingent REPO loan of US\$505.05 million would be made to the borrower Argentine Republic, with the proceeds made available by the Central Bank. Both loans carry special financing terms, and are part of a coordinated multilateral support effort.

21. Project Implementation - For the SSAL, proceeds will be disbursed against satisfactory implementation of the adjustment program, including compliance with stipulated tranche release conditions. In the case of the contingent loan to support the repurchase facility, proceeds would be disbursed only if the repurchase facility is activated and if the SSAL is effective. Tranche release review and program supervision will ensure that the program supported by the SSAL is carried out as agreed.

22. Lessons Learned from Past Operations - Argentina's record in satisfying the conditions of Bank adjustment loans has been excellent. The Bank has extended US\$3.8 billion in nine such operations since 1990. Completed adjustment operations--Public Sector Reform Loan (Ln. 3394-AR), Public Enterprise Reform Loans I and II (Ln. 3291-AR and Ln. 3556-AR), the Financial Sector Adjustment Loan (Ln. 3558-AR), the Provincial Pension Reform Loan (Ln. 4116-AR) and the Provincial Reform Loan (Ln. 3836-AR)--met all major objectives in a timely manner. The Provincial Bank Privatization Loan (Ln. 3878-AR) and the Banking Sector Reform Loan (Ln. 3926-AR) are both fully disbursed. The Second Provincial Performance Loans (Ln. 4218-AR, Ln. 4219-AR, 4220-AR, and Ln. 4221-AR) and Health Insurance I Loans (Ln. 4002-AR and Ln. 4003-AR) are still under implementation and are being implemented satisfactorily.

23. Poverty Category - Program of Targeted Intervention

24. Environmental Aspects - In accordance with the Bank's Operational Directive on Environmental Assessments (OD4.00, Annex A), the operations have been placed in Category "U" and do not require an environmental assessment.

25. Program Objective Categories - Economic Management/Poverty Reduction

26. Benefits - The SSAL loan will help meet critical foreign exchange needs of the Government of Argentina, and allow it to remain focused on longer term reform issues. This would prevent the drastic negative impacts, especially on vulnerable groups, that the abrupt absence of external financing would have on the economy and the social gains achieved thus far. In conjunction with the SSAL, the contingent loan in support of the "repo" facility will strengthen the financial system's safety net and similarly contribute to safeguarding economic and social achievements.

27. Risks - A risk is that reforms could be delayed due to the upcoming elections. However, this is offset by the sense of urgency and consensus that measures must be taken to avoid a repeat of the impact of the Tequila crisis. In addition, if access to international capital markets is not restored by mid-1999, the financial package currently assembled might not be sufficient to meet external needs resulting in a severe economic adjustment. The Bank and the other international financial institutions will continue to work with Argentina, as well as globally, to react to any deepening of the financial crisis.

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Note: This is information on an evolving project. Certain activities and/or components may not be included in the final project. Processed by the InfoShop week ending December 4, 1998. 1/ Two prior (1989) pieces of legislation had opened the road to deregulation and privatization: "Ley de Emergencia Economica,"and "Ley de Reforma del Estado."

**The World Bank**

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT  
INTERNATIONAL DEVELOPMENT ASSOCIATION

COUNTRY MANAGEMENT UNIT  
ARGENTINA, CHILE & URUGUAY

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Buenos Aires, 22 de junio de 1999

Sra. Rosa Teresa Polia  
Sra. Ramona Torres  
Sr. Miguel Angel Miño  
Sra., Olga Gueinasso  
Sra. Emilia Rosa Soberal  
Sr. Victor Ernesto Abramovich Cosarin  
Sr. Martin Abregú  
PRESENTE

De mi mayor consideración

***Programa Pro Huerta***

Por media de la presente quisiera agradecerles su carta del pasado 8 de junio en la cual comparten con nosotros su inquietud acerca del financiamiento del Programa Por Huerta correspondiente al presente año fiscal.

Extendemos que la situación del presente año tal vez esté afectando el financiamiento de varios programas del Gobierno, incluyendo al Pro Huerta. El convenio de préstamo no especifica el monto de los fondos que se destinarán a cada program en particular, sino que se aprueba un financiamiento general para todos los programas.

Sin embargo, bajo el Acuerdo del Préstamo Especial para el Ajuste Estructural (SSAL), el Gobierno nacional acordó llevar a cabo una disposición presupuestaria para proteger varios programas sociales. El Pro Huerta es sin duda parte de este grupo de programas protegidos.

Sin otro particular, saludo a usted muy atentamente.

Myrna Alexander  
Directora  
Dirección Subregional  
Argentina, Chile y Uruguay

## **POLITICA PRESUPUESTARIA DE LA ENTIDAD**

los fines institucionales de máximo nivel, incluidos en el Decreto-Ley 21.680/56 que creó el Instituto Nacional de Tecnología Agropecuaria, son atemporales y consisten en impulsar y vigorizar la investigación y la extensión agropecuaria, para acelerar la tecnificación y el mejoramiento de la empresa agraria y de la vida rural.

Las pautas del INTA para los próximos años, señalan la necesidad de lograr un mayor aporte para afrontar con el sector agropecuario-agroindustrial los desafíos de la competitividad, y al mismo tiempo, resolverlos en un marco de equidad y sostenibilidad social y ecológica.

Esta situación revaloriza la importancia de la vinculación del INTA con los mercados, con distintos sectores productivos y de transformación, y otras áreas del sector privado, para prestar su contribución al desarrollo agropecuario y agroindustrial. Para ello, la finalidad de la institución es dar respuestas rápidas y contundentes a las demandas de los distintos beneficiarios.

Los grandes objetivos de las políticas presupuestarias para 1998 se pueden sintetizar en los siguientes puntos:

- Incrementar la producción de rubros exportables, mejorando la calidad de los productos. aumentando el grado de diferenciación de los mismos, reduciendo costos y elevando la competitividad en el comercio internacional. Ello se traducirá en un mejoramiento importante de nuestra balanza comercial. El impacto de la acción institucional, en el cortomediano plazo queda evidenciado por las posibilidades que surgen de las actividades de Producción Intensiva en Cereales y Oleaginosas, Carne y Leche, Frutales y Hortalizas, y Producciones Diferenciadas y Forestales.
- Propender al desarrollo de las Economías Regionales, promoviendo actividades en intensificación de la producción, asociativismo, gestión empresarial y diversificación de la producción, incluyendo productos diferenciados, en las empresas medianas y pequeñas de todo el país, con un importante aporte a nivel de la gran región extra-pampeana. Los proyectos regionales y la acción a través de Cambio Rural constituyen, en gran medida, un factor decisivo para resolverla problemática actual a nivel de las Economías Regionales.

- Mejorar la situación de los productores minifundistas y la producción de alimentos para el autoconsumo, a fin de atender la problemática socioeconómica vinculada con aspectos tecnológicos de personas de menores recursos, lo que se concreta a través de las grandes acciones institucionales en materia de Proyectos para Minifundistas y del Proyecto de Pro-Huerta.

A su vez, la investigación dará las respuestas que requiere el sector, incluyendo a la agroindustria alimentaria en su demanda de tecnología para los próximos años. Los nuevos escenarios con sus desafíos, oportunidades y amenazas, exigirán cada vez más un sector altamente competitivo, atento a los cambios en las señales de los mercados y a los avances tecnológicos.