

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>1</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 management urges the Panel not to recommend such an investigation to the Bank's Executive Directors.<sup>2</sup>

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<sup>1</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.

<sup>2</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.

## **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 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>3</sup> however, if the Republic does not carry it out, the Republic forfeits the right to receive the applicable SSAL tranche proceeds.<sup>4</sup>

(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

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<sup>3</sup> See Ibrahim F.I. Shihata, *The World Bank Inspection Panel 39* (2nd ed. 1999) (forthcoming).

<sup>4</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 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).

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>5</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 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>6</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**

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<sup>5</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.

<sup>6</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.

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>7</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>8</sup>

**\* 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).

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<sup>7</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>8</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.

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>9</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 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>10</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*

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<sup>9</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.

<sup>10</sup> See footnote 4 above.



*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 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.