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Dear Mrs Taylor and Mr Inamdar,

Procedural irregularities and standards violations in IFC support for Wilmar Trading

With reference to our letter to the President of the World Bank considering the same matter (copy enclosed), we are writing to express our concerns about the IFC's financing of the palm oil trading company Wilmar Trading / Wilmar International through a series of three investment projects and a GEF grant. Detailed field assessments show that, through the operations of its wholly owned subsidiaries, Wilmar is party to serious and long term social and environmental impacts which are at odds with the IFC's standards. We also contend that the IFC is making these investments through inadequate compliance with its own operating procedures and requirements for due diligence. The IFC is also making false claims about Wilmar's compliance with the standards of the Roundtable on Sustainable Palm Oil (RSPO) contrary to its responsibilities as an RSPO member. We ask that you look into these issues and take urgent remedial action.

1. Background

Wilmar Trading is one of the world's top four traders in palm oil. The company secures its palm oil through purchase on the open market, through long term agreements with independent companies and from its own partially-owned and wholly-owned subsidiary companies, held by Wilmar International.

The IFC has supported the Wilmar group through a series of investment projects, including an investment guarantee for US\$33.3 million in April 2003 (Project Number 20348), a loan of US\$17.5 million to Delta-Wilmar CIS in the Ukraine in June 2006 (Project Number 24644)

and a further investment guarantee for US\$50 million in December 2006 (Project Number 25532). IFC is also supporting the Wilmar group through a grant of US\$375,000 approved in April 2007 through the IFC's GEF-funded Biodiversity and Agricultural Commodities Project (BACP Project No. 6).¹

Concerns about the operations of the Wilmar group have been raised publicly on many occasions: through previous letters to the IFC in 2004² and in 2007³; through publications in 2004,⁴ 2006⁵ and 2007⁶; as well as through media reports and court actions, which are also detailed in these publications.

Our field investigations have uncovered a series of serious social and environmental impacts which are detailed in these reports and only listed here. These include:

- Illegal use of fire to clear lands
- Clearance of primary forests
- Clearance of areas of high conservation value
- Take over of indigenous peoples' customary lands without due process
- Failure to carry out free, prior and informed consultations with indigenous peoples leading to broad community support
- Failure to negotiate with communities or abide by negotiated agreements
- Failure to establish agreed areas of smallholdings
- Social conflicts triggering repressive actions by companies and security forces
- Failure to carry out or wait for approval of legally required environmental impact assessments
- Clearance of tropical peat and forests without legally required permits.

2. IFC procedural violations

Despite these long-term and continuing expressions of well-substantiated concern about Wilmar's operations, IFC rated both its investment guarantees in 2003 and 2006 as 'Category C' on the grounds that its support for Wilmar's liquidity, allowing it to 'scale up its offtake of CPO from palm oil plantations in Indonesia',⁷ 'will not support expansion of oil palm

¹ BACP Project Appraisal Document 12 April 2007

² Letter from Milieudefensie and SawitWatch to IFC dated 1 March 2004.

³ Letter from Milieudefensie, Lembaga Gemawan and KONTAK Rakyat Borneo to IFC dated 4 July 2007.

⁴ Jan Willem van Gelder, 2004, *The Banks of Wilmar: a research paper prepared for SawitWatch Indonesia*, Profundo, Amsterdam; Eric Wakker, Otto Miettinen and Zufahmi, 2004, *PT Jatim Jaya Perkasa (Wilmar Group) in Riau, Indonesia: field assessment of environmental and social impacts of oil palm plantations*, Aidenvironment, Amsterdam; Jan Willem van Gelder and Eric Wakker, 2004, *Wilmar Trading – IFC Project no. 20348: a briefing prepared on behalf of Milieudefensie and SawitWatch, Profundo and Aidenvironment*, Amsterdam.

⁵ Marcus Colchester, Norman Jiwan, Andiko, Martua Sirait, Asep Yunan Firdaus, A. Surambo and Herbert Pane, 2006, *Promised Land: Palm Oil and Land Acquisition in Indonesia – Implications for Local Communities and Indigenous Peoples*, Forest Peoples Programme, Sawit Watch, HuMA and ICRAF, Bogor; Marcus Colchester and Norman Jiwan, 2006, *Ghosts on our own land: oil palm smallholders in Indonesia and the Roundtable on Sustainable Palm Oil*, Forest Peoples Programme and SawitWatch, Bogor.

⁶ Milieudefensie, Lembaga Gemawan and KONTAK Rakyat Borneo, 2007, *Policy, Practice, Pride and Prejudice: Review of legal, environmental and social practices of oil palm plantation companies of the Wilmar Group in Sambas District, West Kalimantan (Indonesia)*, Milieudefensie (Friends of the Earth Netherlands), Amsterdam; Profundo, 2007, *Buyers and Financiers of the Wilmar Group: a research paper prepared for Mileudefensie*.

⁷ IFC Summary of Project Information, Project Number 20348. www.ifc.org

production⁸ and will have ‘minimal or no adverse environmental impacts’, meaning that ‘beyond screening, no further EA action is required...’⁹

However, contradictorily, the IFC loan to Delta-Wilmar CIS was classed as ‘Category B’ and led to an Environmental and Social Assessment being carried out in Indonesia in April 2006 which included a visit to at least one Wilmar subsidiary holding in West Kalimantan. Although the project was for the development of a processing facility in Ukraine, in this case, and in our view correctly, ‘IFC deemed that adequate appraisal of this investment mandated a representative review of Wilmar’s supply chain operations’.¹⁰ According to the Environmental and Social Review Summary disclosed in May 26, 2006, this assessment included a review of *inter alia* ‘plantations operations... corporate relations with the community... [and] plasma [smallholder] cooperatives [and] environmental management systems’.¹¹ The Review Summary notes that the project had triggered the following performance standards: Policy on Environment Assessment (OP4.01) (October 1998); IFC Policy Statement on Forced Labour and Harmful Child Labour (March 1998); and Policy on Disclosure of Information (September 1988).¹²

The same logic that led Project 24644 to be classed as Category B, because there would be wider effects along the supply chain, should have led to Projects 20348 and 25532 being classed as at least Category B if not Category A projects. Indeed IFC staff explicitly noted that there would be supply chain effects from the latter investment guarantee (Project 25532) noting that the investment ‘will facilitate the exports of Indonesian palm oil and have a **positive** effect on other players along the supply chain, such as farmers who will benefit from increased local demand from Wilmar International’s refineries and therefore better access to international markets, as well as local businesses involved in services’.¹³ In our view, the same logic that led staff to assert that the investment guarantee would have positive impacts down the supply chain should have led them also to consider whether or not there would be negative impacts. Indeed, this is the main point of the assessment procedures that the IFC has so carefully developed, to make a balanced judgement about investment impacts and take measures to avoid or mitigate any harm.

In our opinion, these two projects should indeed have been Category A projects not least because Wilmar’s expanding operations in West Kalimantan are having direct social and environmental impacts. Project 25532 should also have taken into account the IFC’s new Performance Standards issued on April 30, 2006 which should have been applied in accordance with the new IFC E&S Review Procedures that were adopted the same day.¹⁴

According to these standard procedures, the IFC should have required and verified compliance by the Wilmar group with the following Performance Standards: PS1 (Social and Environment Assessment and Management System); PS2 (Labor and Working Conditions), PS 3 (Pollution

⁸ Letter from Jean-Paul Pinard, Director, Agribusiness Department, IFC to SawitWatch and Milieudefensie, April 9, 2004.

⁹ IFC Summary of Project Information, Project Number 20348. www.ifc.org

¹⁰ IFC, 2006, Delta Wilmar: Environmental and Social Review Summary, Project No 24644, www.ifc.org

¹¹ IFC, 2006, Delta Wilmar: Environmental and Social Review Summary, Project No 24644, www.ifc.org

¹² Ibid.

¹³ IFC, 2006, Summary of Proposed Investment (emphasis added) available on :

<http://www.ifc.org/ifcext/spiwebsite1.nsf/2bc34f011b50ff6e85256a550073ff1c/6e90f8c17d5fa3d58525722c004b44b1?opendocument>

¹⁴ IFC, 2006, International Finance Corporation’s Performance Standards on Social & Environmental Sustainability, April, 30, 2006; IFC, 2006, IFC E&S Review Procedures, April 30, 2006. www.ifc.org – the latter expressly notes on page 9 that these procedures apply to ‘the full range of IFC’s investment activities... [including] structured finance products (guarantees.....)’.

Prevention and Abatement), PS4 (Community Health, Safety and Security), PS5 (Land Acquisition and Involuntary Resettlement), PS6 (Biodiversity Conservation and Sustainable Natural Resource Management), PS7 (Indigenous Peoples) and PS8 (Cultural Heritage). As we note below, in fact, Wilmar's operations are in violation of many of these performance standards.

It is our understanding that in fact what happened was that IFC investment staff decided not to carry out a review of Project 25532, on the grounds that they had carried out a (somewhat limited) review for Project 24644 eight months earlier, ignoring the fact that the IFC had adopted new Performance Standards and Procedures in the interim. To avoid the required procedures they classed the Project as 'Category C' even though they noted that their support for the Wilmar group would have implications further down the supply chain by increasing demand for palm oil and despite the widely available information that Wilmar's expanding operations were highly controversial and had been subject to previous complaints to IFC, and despite the availability of new research further detailing negative social impacts of Wilmar subsidiaries in West Sumatra.¹⁵

Notwithstanding the fact that no social or environmental assessment was carried out for Project 25532, the Summary of Proposed Investment sheet posted on the IFC website states:

Environmental and social issues - Category C

It is anticipated that this project will have minimal or no direct, adverse social or environmental impacts. This investment provides continuing support for a company which is committed to high standards of sustainability and corporate social responsibility throughout its palm oil supply chains. IFC has recently reviewed Wilmar International's Indonesian operations. Wilmar's Indonesian plantation operations and crude palm oil (CPO) mills that were evaluated as part of IFC review appear to be managed appropriately and are in line with good international practice. Wilmar International's CPO mills are generally well maintained and operated. Air and water emissions meet local and national requirements, but in some cases are higher than IFC guidelines. Overall, social and occupational health and safety performance meets applicable IFC guidelines, as well as the Roundtable on Sustainable Palm Oil (RSPO) Principles and Criteria. Corporate labor policies and practices follow, and in many areas exceed, national legal requirements. Corporate relations with the community, government, plasma cooperatives, and other stakeholders are strong.¹⁶

We have also made efforts to acquire further information about the procedures followed in the case of this investment guarantee from IFC staff. On May 22, 2007, FPP Director, Marcus Colchester, met with IFC Principal Investment Officer, Jean Bui, in the IFC's Bangkok office to get further information about the latest investment guarantee. Although Mr Bui did answer a series of questions about the project, he was not able to answer detailed questions about the sites visited in the 2006 assessment (which is understandable). He then refused to provide information about who was the Team Leader for the project and who was the Lead Specialist who had carried out the 2006 Environmental Assessment, noting that he was under instructions from Washington DC not to disclose this information. This is in clear contravention of the IFC's information disclosure policy.

In sum, Project 25532:

¹⁵ IFC staff attending the 4th Roundtable on Sustainable Palm Oil in 2006 had picked up copies of the publications cited in footnote 5.

¹⁶ IFC, 2006, Summary of Proposed Investment available on:
<http://www.ifc.org/ifcext/spiwebsite1.nsf/2bc34f011b50ff6e85256a550073ff1c/6e90f8c17d5fa3d58525722c004b44b1?opendocument>

- was wrongly classed as Category C when it should have been Category A
- did not follow the newly adopted E&S Review Procedures
- did not give due consideration of the newly adopted Performance Standards PS1 through PS8
- did not adhere to the IFC's Information Disclosure policy.

3. Violations of IFC Performance Standards

We list here some of the most obvious violations of the IFC Performance Standards on Social and Environmental Sustainability (PSSSES) by the wholly-owned subsidiaries of the Wilmar group. Further details of the operational realities of Wilmar subsidiaries are given in the documents referred to in footnotes 4 to 6 which we are sending in a separate email.

3.1 Compliance with the law:

The PSSSES explicitly notes that 'clients must comply with applicable national laws, including host country obligations under international law.'¹⁷

Wilmar subsidiaries are not complying with laws and agreements with local governments in the following ways:

- Operating without having carried out an environmental impact assessment
- Clearing forest without a legal permit
- Clearance on upstream peat soils over 3 metres deep
- Use of fire in clearance of vegetation
- Failing to develop agreed areas of smallholdings

Some of these violations were already the subject of court actions which were ongoing at the time the project was being prepared. On 11 April 2007 the Deputy Minister of Environment in Jakarta instructed Wilmar subsidiaries PT Wilmar Sambas Plantation, PT Buluh Cawang Plantation to stop all activities in the field until EIA Procedures were completed.

3.2 Social and Environmental Assessment:

PSSSES requires that 'Risks and impacts will be analysed.... [of] (iii) areas potentially affected by cumulative impacts from further planned developments.... and other project-related developments... and (iv) areas potentially affected by impacts from unplanned but predictable developments caused by the project that may occur later or at a different location.' PSSSES also notes that 'Projects with potential significant adverse impacts that are diverse, irreversible, or unprecedented will have comprehensive social and environmental impact assessments'... to address which... 'the client will develop an Action Plan.' The assessment and Action Plan should be made public and shared with affected communities.¹⁸

So far as we are aware no such assessment was carried out by Wilmar and no Action Plan to address these impacts exists. If these do exist they have not been made public. Some subsidiary companies do not have approved environmental impact assessments.

3.3 Land Acquisition and Involuntary Resettlement

¹⁷ IFC, 2006, International Finance Corporation's Performance Standards on Social & Environmental Sustainability, April, 30, 2006:i.

¹⁸ Op. cit.:2, 4, 5 and 6.

PSSSES notes that ‘Resettlement is considered involuntary when affected individuals or communities do not have right to refuse land acquisition that results in displacement... in cases of (i) lawful expropriation or restrictions on land use based on eminent domain and (ii) negotiated settlements in which the buyer can resort to expropriation or impose legal restrictions on land use if negotiations with the seller fail’.¹⁹

This is exactly the situation in Indonesia, as documented in detail in our publications. Most land acquisition for oil palm plantations in Indonesia occurs by invoking the ‘controlling power of the State’ and by obliging communities to release lands.²⁰

IFC notes that ‘Clients are encouraged to acquire land rights through negotiated settlements wherever possible, even if they have the legal means to gain access to the land without the seller’s consent.’²¹ Wilmar’s subsidiaries however have been acquiring lands without the sellers’ consent. It is no excuse that in Indonesia land acquisition ‘is the responsibility of the host government’ for in such cases the PSSSES requires the client to collaborate with the responsible government agency to achieve outcomes consistent with PS5.²² When lands are acquired involuntarily, the PSSSES requires a long list of actions including providing compensation arrangements, carrying out consultations, establishing grievance mechanisms and developing a resettlement action plan.

Neither for Project 25532, when no assessment was carried out, nor for the prior Project 24644, when a partial assessment was carried out, did Wilmar or IFC give attention to PS5 or the prior policy on Involuntary Resettlement nor has any resettlement action plan been shared with affected communities.

Consequently, there are land conflicts in a number of Wilmar operations, including in PT PHP in West Sumatra where the land conflicts were brought to the IFC’s attention in 2004.²³

3.4 Biodiversity Conservation and Sustainable Natural Resource Management

Consistent with the Convention on Biological Diversity, the PSSSES requires special attention to threatened habitats, species and ecosystems and explicitly requires very careful attention in the case of conversion of natural habitats and that there be no conversion or degradation of critical habitats.²⁴

In West Kalimantan, however, Wilmar’s operations are clearing rainforests, destroying the habitat of orang utans and clearing peatlands.

3.5 Indigenous Peoples and Cultural Heritage

¹⁹ Op cit:18.

²⁰ Marcus Colchester, Norman Jiwan, Andiko, Martua Sirait, Asep Yunan Firdaus, A. Surambo and Herbert Pane, 2006, *Promised Land: Palm Oil and Land Acquisition in Indonesia – Implications for Local Communities and Indigenous Peoples*, Forest Peoples Programme, Sawit Watch, HuMA and ICRAF, Bogor; Marcus Colchester and Norman Jiwan, 2006, *Ghosts on our own land: oil palm smallholders in Indonesia and the Roundtable on Sustainable Palm Oil*, Forest Peoples Programme and SawitWatch, Bogor

²¹ IFC, 2006, International Finance Corporation’s Performance Standards on Social & Environmental Sustainability, April, 30, 2006: 18.

²² Op.cit.:22.

²³ Letter from Milieudefensie and SawitWatch to IFC dated 1 March 2004.

²⁴ IFC, 2006, International Finance Corporation’s Performance Standards on Social & Environmental Sustainability, April, 30, 2006:24-26.

PSSSES also makes special provisions for indigenous peoples, as the IFC recognises that these are ‘social groups with identities that are distinct from dominant groups in national societies, [and] are among the most marginalized and vulnerable segments of the population.’ PSSSES requires clients to take measures designed to foster respect for these peoples’ dignity and human rights, avoid, minimize or mitigate adverse impacts, maintain an ongoing relationship with the affected peoples, foster good faith negotiation with and informed participation of the affected peoples and respect their culture. Based on assessments and consultations with the affected peoples, the client is required to develop an Indigenous Peoples Development Plan or similar based on culturally appropriate and inclusive consultations that ensure the peoples’ free, prior and informed consultation and the expression of their own views following collective decision-making without coercion or manipulation and intimidation. Special measures are required to protect such peoples when their lands are being acquired.²⁵

The majority of the lands being acquired by Wilmar subsidiaries in West Sumatra and West Kalimantan are the customary lands of indigenous peoples referred to as Minangkabau and Dayak respectively. So far as we are aware, Wilmar has not carried out an assessment of the impacts of their plantations on indigenous peoples in terms of this Performance Standard. No consultations along the lines required by PS7 have been carried out. No Indigenous Peoples Development Plan or equivalent has been shared with the affected communities, much less were they consulted in its elaboration. Moreover the assessment carried out for Project 24644 was not considered to have triggered the IFC’s prior Indigenous Peoples policy.

Contrary to these requirements, in West Kalimantan the Wilmar companies PT Wilmar Sambas Plantation, PT Buluh Cawang Plantation and Agro Nusa Investama have commenced clearing indigenous peoples’ lands in Sambas District without following the proper land acquisition procedures, and without properly informing and consulting local communities about the plantation projects. Likewise in West Sumatra, PT Permata Hijau Pasaman has been in dispute with Minang communities both about land acquisition and the delayed and diminished allocations of smallholdings. All four plantation companies are now beset with social conflicts.

4. Contrary to IFC’s obligations as an RSPO member

IFC is a member of the Roundtable on Sustainable Palm Oil (RSPO). A number of the signatories of this letter are also members of the RSPO, are members of the RSPO’s Board, are members of the RSPO’s Criteria Working Group, Certification Working Group and Task Force on Smallholders and/or have attended RSPO meetings.

RSPO has been developing a set of Principles and Criteria for Sustainable Palm Oil and a Certification Protocol for verifying and certifying compliance with the same. The Principles and Criteria were adopted in 2005. The Certification Protocol was only adopted by the RSPO Board in June 2007.²⁶ No certification bodies have yet been accredited and endorsed as RSPO-approved in accordance with the Certification Protocol. Until these procedures are fully in place, RSPO members have agreed that no claims of RSPO compliance can yet be made. Even once the procedures are in place members may ‘not make any misleading or unsubstantiated claims about the production, procurement or use of sustainable palm oil’.²⁷

Notwithstanding, apparently based only on its partial assessment carried out for Project 24644, IFC has repeatedly and explicitly claimed that Wilmar is compliant with the Roundtable on

²⁵ Op.cit.:28-31.

²⁶ www.rspo.org

²⁷ RSPO Code of Conduct for Members 2.1.

Sustainable Palm Oil (RSPO) Principles and Criteria.²⁸ It is extremely unfortunate that the IFC is one of the first organisations to violate the RSPO's rules.

5. Request for action

We are thus formally submitting this complaint to you as IFC CAOs. We ask that you look into these concerns, provide an independent judgement on the procedural and performance standard violations and membership obligations, and clarify what if any corrective and remedial actions you propose.

It is our view that the IFC by continuing with these investment mal-practices is not only contributing to environmental and social harms but is also undermining efforts to reform the palm oil sector. It is also weakening the credibility of the RSPO. Stern corrective action by IFC is now required to address these problems (see Annex 1).

We will send a copy of this letter to the President of the World Bank.

We look forward to learning how you plan to deal with this complaint.

Yours sincerely

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²⁸ IFC, 2006, Delta Wilmar: Environmental and Social Review Summary, Project No 24644, www.ifc.org and IFC, 2006, Summary of Proposed Investment available on: <http://www.ifc.org/ifcext/spiwebsite1.nsf/2bc34f011b50ff6e85256a550073ff1c/6e90f8c17d5fa3d58525722c004b44b1?opendocument>

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Annex 1:

Additional information in accordance with Model Letter.²⁹

We are NGOs, smallholders and indigenous peoples' organisations living and/or working in Indonesia and/ or in support of people in Indonesia. This complaint is also be made on behalf of palm oil affected groups including indigenous peoples and smallholders.

We are lodging a complaint concerning Project 25532 which is an IFC investment guarantee to Wilmar Trading/ Wilmar International. Wilmar Trading sources a major proportion of its palm oil from Indonesia much through subsidiaries wholly owned by Wilmar International.

We can be contacted through the address, telephone and fax numbers given in the letterhead and the email addresses in the email through which this message is being sent to you.

We work on behalf of people who are being and are likely to be affected by the social and environmental impacts of the project in ways detailed in the letter above and in the publications referred to in the footnotes. We are sending copies of these documents in separate emails. The investment guarantee is aimed at increasing Wilmar Trading's trade in palm oil and is contributing to an expansion of the palm oil sector notably by Wilmar's wholly owned subsidiaries in West Sumatra and West Kalimantan and other parts of Indonesia.

We have raised our concerns about these investments in letters and dialogues with the IFC and Wilmar Trading since 2004 and have had meetings with IFC staff to clarify the procedures through which these investments have been made. The details are given in the footnotes of the letter above. Some of us have also had meetings and correspondence with the staff of Wilmar subsidiary companies in Indonesia.

We would like to see this complaint resolved by:

- changing the way IFC applies its investment guarantees and other support for companies in the palm oil supply chain;
- taking corrective action against staff who have violated IFC procedures and standards;
- immediately posting a disclaimer on the IFC website noting that IFC is withdrawing its claims that Wilmar International's Indonesian operations comply with RSPO standards;
- reviewing IFC operational procedures to ensure it respects the rules of RSPO;
- carrying out an independent participatory review of the operations of Wilmar group companies in Indonesia;
- making recommendations for reforms of practice;
- ensuring Wilmar and IFC take remedial actions to mitigate or undo the harms detailed and compensate those whose livelihoods and environments have been irretrievably harmed;
- initiate a compliance audit of these investment decisions.

²⁹ CAO Operational Guidelines page 34.