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Office of the Compliance Advisor Ombudsman (CAO)

COMPLIANCE INVESTIGATION

IFC Investment in Delta-Wilmar (Projects #25532 and #26271)

Complaint 03

CAO Investigation of IFC Environmental and Social Performance in Relation to: Delta-Wilmar 03/Jambi (#25532 and #26271)

Office of the Compliance Advisor Ombudsman for the
International Finance Corporation
Multilateral Investment Guarantee Agency
Members of the World Bank Group

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About CAO

CAO's mission is to serve as a fair, trusted, and effective independent recourse mechanism and to improve the environmental and social accountability of IFC and MIGA.

CAO (Office of the Compliance Advisor Ombudsman) is an independent post that reports directly to the President of the World Bank Group. CAO reviews complaints from communities affected by development projects undertaken by the two private sector arms of the World Bank Group, the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA).

CAO compliance oversees investigations of the environmental and social performance of IFC and MIGA, particularly in relation to sensitive projects, to ensure compliance with policies, standards, guidelines, procedures, and conditions for IFC/MIGA involvement, with the goal of improving IFC/MIGA environmental and social performance.

For more information about CAO, please visit www.cao-ombudsman.org

Executive Summary

This compliance investigation relates to IFC investments in Delta Wilmar in Ukraine (“DW” or “the client”). IFC approved two loans to Delta Wilmar: one of \$17.5 million in 2006 to establish a greenfield palm oil refinery in Ukraine; and a second of \$45 million to expand the Ukraine refinery in 2008.

DW is a joint venture, co-owned by the Wilmar Group, a large agribusiness conglomerate specializing in the production and trade of palm oil and operating in Asia, Eastern Europe, and Africa.

The Complaint

This compliance process was triggered by a November 2011 complaint from a coalition of NGOs on behalf of groups including indigenous peoples and smallholders living near Wilmar Group plantations in Indonesia. The November 2011 complaint was the third received by CAO and is thus referred to as the Wilmar-03 complaint.

The Wilmar-03 complaint raises concerns about the environmental and social (“E&S”) impacts of DW’s supply chains in Indonesia with a focus on land issues. The complaint raises specific concerns regarding PT Asiatic Persada (“PT AP”), a company that operated an oil palm plantation in Jambi (Sumatra), and was, until 2013, owned by Wilmar International (“Wilmar” or “the parent company”).

A specific element of this complaint related to Wilmar’s reliance on the mobile brigade or BRIMOB, a paramilitary unit of the Indonesian police, for security on the PT AP concession. The complaint referred to an incident in August 2011 when a violent confrontation between local residents and company staff and security culminated in the demolition of settlements in the subvillage where those residents lived. A third-party verification report commissioned by the parent company noted that BRIMOB and PT AP staff had forcibly evicted people from areas of the concession, although accounts of the conflict differed.

CAO Process

CAO reviewed the complaint, and found it eligible for further assessment. The parties agreed to a mediated dialogue between PT AP and several local communities beginning in March 2012. However, the mediation process stalled following the parent company’s sale of PT AP in April 2013. The new owners decided not to continue with the CAO-facilitated mediation, and as a result in September 2013 the complaint was transferred to the CAO compliance function. CAO completed a compliance appraisal in June 2014, and determined that the complaint met CAO’s criteria for a compliance investigation. From August 2014 to March 2015, CAO conducted the investigation in accordance with the CAO Operational Guidelines with inputs from CAO staff and an expert panelist.

CAO's June 2009 Audit Report

This is the second time the CAO compliance function has considered IFC's E&S performance in relation to Wilmar Group investments with crude palm oil ("CPO") supply chain linkages to Indonesia. CAO's earlier review of these investments (in response to an earlier complaint) was presented in a June 2009 Audit. Relevantly, CAO's June 2009 Audit found that IFC's pre-investment due diligence did not properly consider the requirements of Performance Standard 1 in relation to the risks and impacts associated with DW's palm oil supply chain in Indonesia.

IFC released its response to the 2009 Audit in August 2009. In the response, IFC expressly agreed that "greater attention should have been given [to DW's] CPO supply chain," noting the parent company's improved ability to track palm oil from its own plantations.

In light of the findings from the June 2009 Audit report, this compliance investigation only considers IFC's supervision of the supply chain risks associated with its DW investments in the period post June 2009.

Investigation Findings

This investigation report considers IFC's E&S performance in relation to: (a) the decision to disburse to DW in January 2010; (b) IFC's general supervision of the DW loans from January 2010 onwards; and (c) IFC's approach to disclosure and consultation in relation to the supply chain risks attached to these loans.

In relation to the decision to disburse in January 2010, CAO notes that its 2009 Audit provided a clear finding that IFC did not assure itself that an analysis of DW's CPO supply chain risks was undertaken in accordance with the Performance Standards. The DW loan agreement included as a condition of disbursement ("COD") a requirement that Delta Wilmar had completed a social and environmental assessment in accordance with IFC's Performance Standards (which at the time included supply chain risk identification and mitigation requirements). In November 2009, IFC and the World Bank began preparatory work on a strategy process in relation to its palm oil portfolio generally. This led to engagement with stakeholders in Indonesia from April 2010, including consultations and bilateral meetings. However, IFC did not take any action to ensure that the deficiencies identified in the 2009 Audit were corrected in relation to the DW loans prior to disbursement. In particular, there is no evidence that completion of a Performance Standard compliant social and environmental assessment was required. As a result, CAO finds that IFC disbursed \$47.5 million to DW in January 2010 without assuring itself the E&S CODs for its loans had been met.

Instead, IFC made a decision to address the palm oil supply chain risks associated with the DW investments through a voluntary engagement with the parent company. This decision was inconsistent with IFC's E&S policies. From a compliance perspective, engagement with the parent company at the corporate level should have complemented a robust review of the E&S CODs for the DW loans.

At the point of disbursement, CAO finds that IFC had insufficient basis to conclude that the DW loans could be expected to meet the supply chain requirements of the Performance Standards. CAO notes IFC's view that the parent company's participation in the Round Table on Sustainable

Palm Oil (RSPO) and its certification plan gave IFC considerable confidence in the company's supply chain management practices. However, as pointed out in the 2009 Audit, these activities were not sufficient to satisfy the supply chain requirements of the 2006 PSs. Absent evidence that the client had a credible plan to address its supply chain risk, CAO finds that IFC's decision to disburse was not compliant with the requirements of the Sustainability Policy.

In relation to IFC's general supervision of the DW loans, CAO finds that IFC did not address the PS requirement that the client analyze and mitigate its supply chain risk as was required under the loan agreement.

To the extent that IFC did engage in relation to the parent company's plantation level supply chain risks, it did this through a "Consultant Review" which IFC commissioned in relation to E&S performance at a sample of six of Wilmar's Indonesia plantations. The parent company participated in this review by granting the consultant access to its property, facilities, documents and personnel. However, the fact that the Consultant Review was commissioned and supervised by IFC meant that it was completed outside the compliance framework of the DW loans. Despite the Consultant Review's findings in relation to social and environmental risks at the plantations visited, and the creation of a draft action plan, no action plan to address these risks was agreed between IFC and either the client or the parent company.

Further, CAO notes that the IFC project team responsible for managing the DW loans was not involved in the response to the complaint that triggered this compliance process. As a result, the issues raised by the complainants did not inform IFC's approach to supervision of the DW loans.

In conclusion, CAO finds that serious concerns regarding impacts associated with DW's CPO supply chains in Indonesia, as raised by the complainants, were not adequately addressed either as part of IFC's supervision of the DW loans or through the relationship between IFC and the parent company.

In relation to consultation and disclosure, CAO notes that affected communities were not consulted with and did not have an opportunity to provide input into the Consultant Review or the resulting draft action plan which IFC commissioned in relation to the parent company's Indonesia plantations. CAO also notes that to date neither of these documents has been disclosed, either by IFC or the parent company. Effective consultation, provided for in IFC's Performance Standard 1 requires "prior disclosure of relevant and adequate information, including draft documents and plans", and should "allow affected communities" to "express their views on project risks, impacts and mitigation measures". The Consultant Review process supported by IFC did not meet the disclosure and consultation requirements of PS1.

CAO identifies five interrelated causes of the non-compliance found in this report. These are:

- (a) A persistent belief among IFC staff that the agreements governing the DW investments did not require the client to take any action to address supply chain issues, despite the fact that this was a clear requirement of the 2006 Performance Standards, which were incorporated into the 2008 investment agreement between IFC and DW;
- (b) IFC's decision to address the Indonesia palm oil supply chain issues with the parent company on a voluntary basis and outside of the E&S requirements of the DW loans;

- (c) A disconnect between IFC's work at the level of strategy and that at the level of the supervision of the DW loans;
- (d) Insufficient understanding of palm oil supply chain issues in general, and of Wilmar's supply chain in particular; and
- (e) Issues related to the supply chain requirements in the PSs and their interpretation.

In relation to the issues raised by the complainants, CAO concludes that IFC fell short of its objective of ensuring that the projects it finances are operated in accordance with the Performance Standards.

CAO will monitor IFC's response to this investigation report.

Acronyms

AMR	Annual Monitoring Report
BRIMOB	Mobile Brigade (of the Indonesian police)
CAO	Office of the Compliance Advisor/Ombudsman
COD	Condition of Disbursement
CPO	Crude Palm Oil
CSO	Civil Society Organizations
DW	Delta-Wilmar
E&S	Environmental & Social
ESMS	Environmental and Social Monitoring System
ESRS	Environmental and Social Review Summary
ESRP	Environmental and Social Review Procedure
FFB	Fresh Fruit Bunches
FPP	Forest Peoples Program
GIIP	Good International Industry Practice
IFC	International Finance Corporation
MIGA	Multilateral Investment Guarantee Agency
NGO	Non-governmental Organization
NMGK	Nizhny Novgorod Fats & Oils Group
PS	Performance Standards
PT AP	PT Asiatic Persada
RSPO	Roundtable on Sustainable Palm Oil
SAN	Sustainable Agriculture Network
SEA	Social and Environmental Assessment
TOR	Terms of Reference
WBG	World Bank Group

Overview of the CAO Compliance Process

CAO's approach to compliance work is set out in its Operational Guidelines (March 2013).

When CAO receives an eligible complaint, the complaint first undergoes an assessment to determine how CAO should respond. If the CAO compliance function is triggered, CAO will conduct an appraisal of IFC's/MIGA's involvement in the project, and determine if an investigation is warranted. The CAO compliance function can also be triggered by the World Bank Group President, the CAO Vice President or senior management of IFC/MIGA.

CAO compliance investigations focus on IFC/MIGA, and how IFC/MIGA assured itself of project environmental and social (E&S) performance. The purpose of a CAO compliance investigation is to ensure compliance with policies, standards, guidelines, procedures, and conditions for IFC/MIGA involvement, and thereby improve E&S performance.

In the context of a CAO compliance investigation, at issue is whether:

- The actual E&S outcomes of a project are consistent with or contrary to the desired effect of the IFC/MIGA policy provisions; or
- A failure by IFC/MIGA to address E&S issues as part of the appraisal or supervision resulted in outcomes that are contrary to the desired effect of the policy provisions.

In many cases, in assessing the performance of the project and implementation of measures to meet relevant requirements, it is necessary to review the actions of the IFC client and verify outcomes in the field.

CAO has no authority with respect to judicial processes. CAO is neither a court of appeal nor a legal enforcement mechanism, nor is CAO a substitute for international court systems or court systems in host countries.

Upon finalizing a compliance investigation, IFC/MIGA is given 20 working days to prepare a public response. The compliance investigation report, together with any response from IFC/MIGA is then sent to the World Bank Group President for clearance, after which it is made public on the CAO website.

In cases where IFC/MIGA is found to be out of compliance, the CAO keeps the investigation open and monitors the situation until actions taken by IFC/MIGA assure the CAO that IFC/MIGA is addressing the non-compliance. The CAO will then close the compliance investigation.

1. Background to the IFC Investments

1.1. IFC Investments in Wilmar

The Wilmar Group is a large agribusiness conglomerate specializing in the production and trade of palm oil and operating in Asia, Eastern Europe, and Africa.

Since 2003, IFC has undertaken four investments in the Wilmar Group. The first, Wilmar Trading (IFC No. 20348) was a \$33.3 million loan to finance the group's trade in crude palm oil ("CPO"). The second investment was a \$17.5 million loan to a Wilmar joint venture company to establish a greenfield palm oil refinery in Ukraine, Delta Wilmar CIS (IFC No. 24644). The third, Wilmar WCap (IFC No. 25532) was a \$50 million guarantee on financing to facilitate further CPO trading. The final investment was a \$45 million loan to the same joint venture company to expand its Ukraine facility, Delta Wilmar CIS Expansion (IFC No. 26271). Further details in relation to these loans are set out in Annex 2.

This investigation focuses on the disbursement and supervision of the two loans to Delta Wilmar, No. 24644 and IFC No. 26271 (the "DW loans"), which represented IFC's active investments in the Wilmar Group at the time the Wilmar-03 complaint was received.

1.2. Wilmar International and DW: Legal and Financial Structure

At the time the DW loans were approved in 2006 and 2008, DW was a 50:50 joint venture between Wilmar International Limited ("the parent company" or "Wilmar") and Delta Exports Limited. Delta Exports is a Singapore-based bulk commodity trader specialized in the countries of the former Soviet Union.

The joint venture parties were also equal owners of Alfa Trading Ltd., a Malaysian company that acted as DW's sole supplier of CPO. The terms of the two DW loans and of the guarantee agreements between IFC and Wilmar required that Wilmar retain at least 50% ownership of both DW and of Alfa Trading.

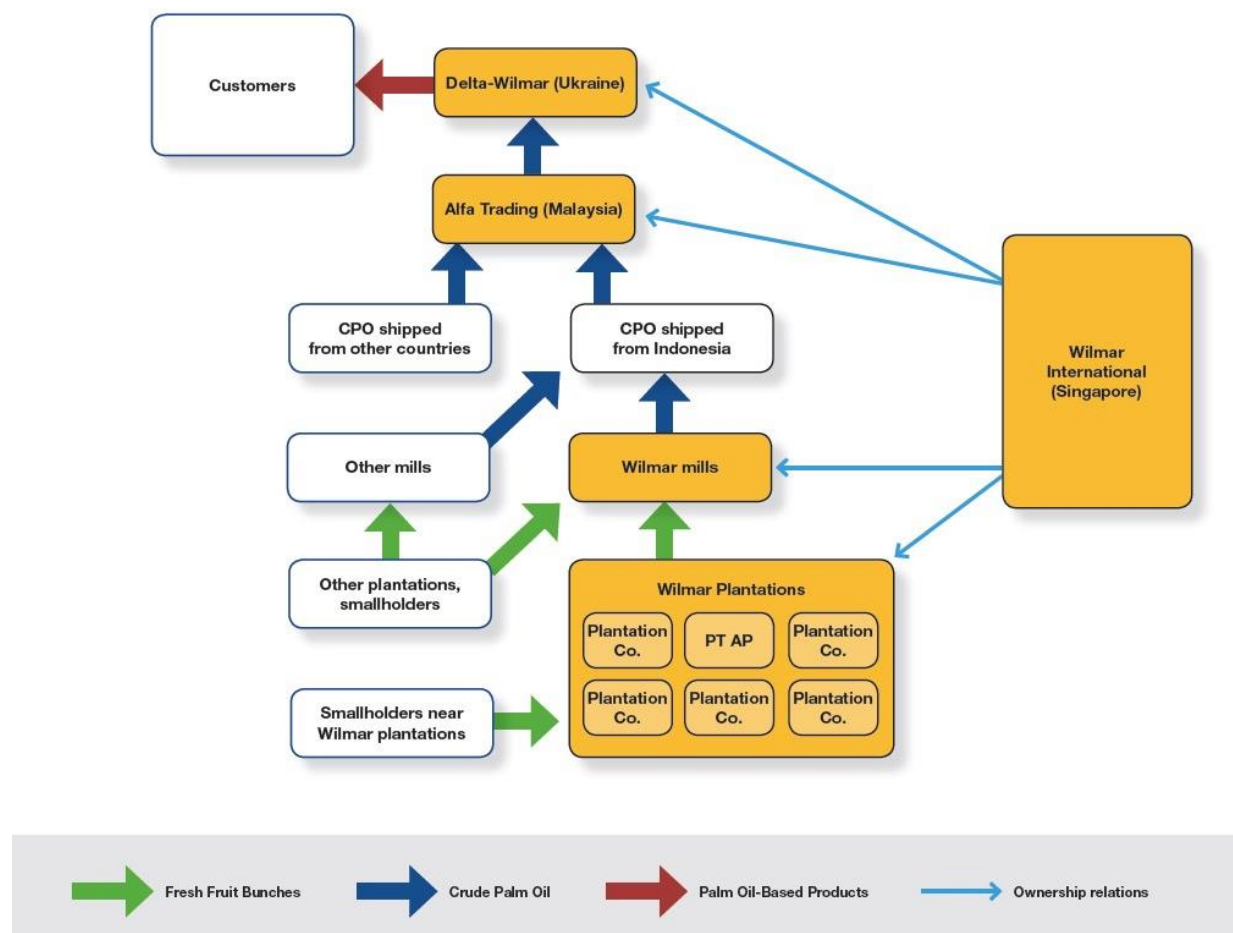
In 2008, DW merged with Nizhny Novgorod Fats & Oils Group ("NMGK"), the largest edible oil and fats producer in Russia. As a result, DW was owned by Wilmar, Delta Exports, and NMGK. The restructuring also provided NMGK with part-ownership of Alfa Trading Ltd. This restructuring was later authorized by amendments to the loan and guarantee agreements.

1.3. Delta Wilmar Supply Chains

The DW loans were intended to finance the construction and expansion of a palm oil refinery in Ukraine. Each of the complaints made to CAO regarding the Wilmar group, including the Wilmar-03 complaint, raise concerns about the E&S impacts of Wilmar's supply chains in Indonesia, rather than DW's operations in Ukraine. In particular, the complaints highlight E&S issues in Wilmar-owned plantations, including PT Asiatic Persada ("PT AP").

For the purposes of CAO's Compliance role, it is sufficient to note that the IFC project team understood at the time the DW investments were approved that there were linkages between the Wilmar-owned plantations in Indonesia and DW's Ukraine operations. At the time of appraisal, it was estimated that the percentage of DW's supply which came from Wilmar mills was around 40%, of which a portion came from Wilmar-owned plantations.

Figure 1: DW Supply Chains



These linkages are illustrated in Figure 1 above. They are both physical, through the supply chain, and legal/financial, through Wilmar International which held ownership stakes in Alfa Trading and DW and also guaranteed DW’s loans to IFC. In terms of the physical supply chain, the figure illustrates that:

1. DW sourced CPO through its sister company, Alfa Trading. In turn, Alfa Trading sourced CPO from a number of locations, including significant components from Indonesia.
2. Wilmar-owned oil palm plantations in Indonesia grew fresh fruit bunches (FFB) that were processed into CPO at Wilmar-owned mills and by other mills. Those mills formed part of the Indonesian CPO supply that Alfa Trading purchased from.

There were three key supply chains that were core to DW’s business:

1. Palm Oil-Based Products: This supply chain consists of the refined palm oil and other value-added products made from CPO at the Ukrainian plant. It connects DW to its customers.
2. Crude Palm Oil: This supply chain consists of the raw or “crude” palm oil that is prepared in a local mill close to the plantation area and supplied to processing facilities such as

DW's Ukrainian plant. DW's CPO supply was provided entirely through Alfa Trading. In turn, Alfa Trading sourced its CPO supply mainly from Indonesia and Malaysia. Suppliers included Wilmar's own mills, as well as other palm oil companies and traders.

3. Fresh Fruit Bunches: This supply chain consists of the fresh oil palm fruit, grown on plantations owned by Wilmar or by other companies or smallholders in Indonesia and Malaysia, and transported to mills. Wilmar-owned mills processed fresh oil palm fruit from Wilmar-owned plantations as well as from other suppliers.

The figure above also illustrates that Wilmar International is a vertically integrated company, with significant ownership and management interests in each stage of its supply chains.

2. Background to CAO's Wilmar-03 Compliance Investigation

2.1. The Wilmar-03 Complaint

This compliance investigation addresses the third complaint received by CAO in relation to IFC's investments in the Wilmar Group ("the Wilmar-03 complaint").

The Wilmar-03 complaint, received in November 2011, was made by a coalition of NGOs and indigenous peoples' organizations on behalf of groups including indigenous peoples and smallholders allegedly impacted by Wilmar oil palm plantations and plantations from which Wilmar sources palm oil, particularly in Sumatra and Kalimantan (together, the "complainants").

The complaint raises specific concerns regarding PT Asiatic Persada ("PT AP"), a company that operated an oil palm plantation in Jambi (Sumatra), and was at that time owned by Wilmar International and supplying CPO to Wilmar's Indonesian supply chain. In March 2012, CAO received a follow-up letter, emphasizing the systemic problems that the complainants alleged remained in the CPO supply chain of Wilmar International. The complainants also emphasized the roles of IFC and Wilmar International as members of the Roundtable on Sustainable Palm Oil ("RSPO").

Based on the letters of complaint and CAO's July 2012 Ombudsman Assessment Report,¹ the complaint can be summarized as raising allegations in relation to the following:

- a) Human rights abuses and forced evictions of local community members (approximately 83 community members) by PT AP personnel and the BRIMOB in Jambi;
- b) Clearance and planting of estates without paying compensation of lands and other properties taken;
- c) The use of coercive measures by PT AP to impose on communities in Jambi a settlement that is viewed as contrary to IFC's Performance Standards;
- d) Land acquisition and dispute resolution problems in Wilmar's other subsidiaries;
- e) Unresolved land conflicts in relation to Wilmar subsidiaries in Indonesia more generally.

The complainants noted that several of these issues had been raised in previous complaints to CAO, as summarized in Annex 3, and that some had been partially resolved through CAO mediation in relation to certain Wilmar subsidiary operations in Sambas District, in West Kalimantan, and in Riau.

A serious new element of this complaint related to Wilmar's reliance on the mobile brigade or BRIMOB, a paramilitary unit of the Indonesian police, for security on the PT AP concession. The complaint referred to a specific incident in August 2011 when a violent confrontation between certain local residents and company staff and security culminated in the demolition of settlements in the sub-village where those residents lived. A third-party verification report commissioned by Wilmar noted that BRIMOB and PT AP staff had forcibly evicted people from areas of the concession, although accounts of the conflict differed.²

The complainants requested that the complaint be resolved through:

¹ CAO Ombudsman Assessment Report, Wilmar-03 - <http://goo.gl/49WyQT>

² TUV Rheinland "Verification Report of "Suku Anak Dalam" Community Settlement Demolition within the Land Use Area (Hak Guna Usaha – HGU) of PT Asiatic Persada," August 2011: <http://goo.gl/7dqbWS>.

- mediation of a negotiated settlement between the affected communities and publication of an independent participatory review of the operations of Wilmar group companies in Indonesia;
- the adoption of reformed standard operating procedures by Wilmar 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.

In discussions with CAO, the complainants noted that IFC and Wilmar were members of the RSPO, a multi-stakeholder association that works to improve the sustainability of palm oil production, including by setting standards for certification of sustainably produced palm oil. The complainants expressed their concern that IFC and Wilmar had breached the principles of the RSPO in the course of their dealings with (or inaction in relation to) affected communities in Indonesia.

In April 2013, the parent company sold PT AP to owners that were not RSPO members or pursuing RSPO certification. Subsequently, the complainants raised with CAO additional concerns in relation to IFC's policies and procedures around client divestment of holdings where a complaint has been made to CAO and where dispute resolution is underway.

2.2. CAO Dispute Resolution Process

CAO accepted the complaint as eligible for further assessment, on the grounds that there were established supply chain linkages between Wilmar's Indonesia operations and IFC's investments in DW. By agreement between the parties, CAO convened a mediated dialogue between PT AP and several local communities commencing in March 2012. The dialogue process led to separate mediations for five community groups living near PT AP. However, a change of ownership in PT AP in April 2013 meant that interim agreements were not formalized or honored.

CAO mediation processes were put on hold as PT AP's new management requested time to get familiarized with the process. However, the new owners chose to withdraw from the mediation in September 2013. Details of the process and its outcomes are set out in a CAO Dispute Resolution Conclusion Report.³

In December 2013 community groups with land claims competing with PT AP's concession area were forcefully evicted from their homes. CAO received information that homes were dismantled and the area was cleared, reportedly by a combination of police, military and the company's private security forces.

Following closure of the CAO Dispute Resolution process, the Wilmar-03 complaint was transferred to CAO Compliance as required by the CAO Operational Guidelines.

2.3. CAO Compliance Appraisal and Investigation Terms of Reference

In June 2014, CAO completed a compliance appraisal of the Wilmar-03 complaint in accordance with its Operational Guidelines. The appraisal found that the criteria for investigation were met, and identified a number of issues to be considered, having regard to the matters raised in the complaint.

³ CAO Dispute Resolution Conclusion Report, Wilmar-03, December 2013 - <http://goo.gl/sLhZGS>

Based on Terms of Reference (“ToR”) also issued in June 2014, this investigation addresses the following questions:

1. Whether IFC adequately assured itself that the environmental and social conditions of disbursement (“CODs”) of its loans to DW were in fact met prior to disbursement in January 2010;
2. Whether IFC supervised its DW investments in accordance with applicable E&S policies, procedures and standards, and specifically:
 - Whether IFC adequately assured itself that DW conducted a supply chain analysis in accordance with the requirements of PS 1;
 - Whether IFC adequately assured itself that DW was meeting its obligations in relation to consultation and disclosure under PS 1;
 - Whether IFC adequately assured itself that DW developed Action Plans to meet the requirements of the PSs; and
 - Whether IFC responded adequately to the issues raised by the Wilmar-03 complaint in the context of DW’s E&S obligations to IFC.

The ToR further provided that this investigation would examine IFC’s actions only with respect to the supervision of its DW investments in the period after finalization of CAO’s June 2009 Audit Report related to the Wilmar-01 complaint. The scope of the investigation includes developing an understanding of the immediate and underlying causes for any non-compliance identified by the CAO. Given CAO’s mandate, and its focus on the performance of IFC, the investigation makes no findings of fact either with regard to the events at PT AP in August 2011, or the client’s E&S performance more generally.

2.4. Methodology

This investigation was conducted in accordance with the CAO Operational Guidelines (2013)⁴ with inputs from CAO staff and an expert panelist. From August 2014 to March 2015, the CAO team reviewed a range of relevant documentation. The team conducted interviews with IFC management and staff who had direct knowledge of the Project, and with the complainants.

This CAO Compliance Investigation process has focused on the adequacy of IFC’s decision to disburse the DW loans and its supervision of the supply chain E&S impacts of the investments. CAO determined that it was not necessary to conduct a field visit for the purpose of preparing this investigation report.

⁴ CAO Operational Guidelines (2013) - <http://goo.gl/mdL4Rz>

3. Previous CAO Findings in Relation to IFC Investments in Wilmar

In July 2007, CAO received its first complaint in relation to the IFC investments in the Wilmar Group (“Wilmar-01”). A second complaint was received in December 2008 (“Wilmar-02”).

A previous CAO compliance audit (“the 2009 Audit”) assessed IFC’s investments in the Wilmar Group in response to the issues raised by the Wilmar-01 complaint.⁵ The Wilmar-02 complaint was closed in 2012, after conclusion of CAO facilitated dispute resolution processes.

This section provides context in relation to the findings of CAO’s 2009 Audit of IFC’s investments in the Wilmar Group.

3.1. Previous Wilmar Group Complaints

The Wilmar-01 complaint was submitted in July 2007 by civil society organizations on behalf of people, including indigenous peoples and smallholders allegedly impacted by Wilmar oil palm plantations in Sumatra and Kalimantan provinces, Indonesia. The complaint claimed that the Wilmar Group’s activities in Indonesia violated a number of IFC standards and requirements. Wilmar and community members chose to enter a dialogue process to help resolve the conflict under the guidance of CAO’s Dispute Resolution function. The negotiations concluded with a settlement agreement in late 2008, and CAO provided ongoing monitoring and implementation support until mid-2013. In addition, the complaint triggered the 2009 Audit, discussed further below. CAO monitored IFC’s response to that audit until March 2013.

The Wilmar-02 complaint was submitted in December 2008 by community groups represented by civil society organizations, also in Sumatra and Kalimantan. In response to this complaint, CAO’s Dispute Resolution team helped to strengthen local mechanisms in three dispute resolution processes already underway in Jambi and Riau provinces, in Indonesia.⁶ The process led to an agreement between the parties in Riau, but the processes in Jambi had not reached a satisfactory settlement at the time that CAO received the third complaint in November 2011. The two community groups involved in the Jambi process re-filed their claims to the CAO in the third complaint and their concerns have been incorporated into this investigation. CAO closed its Wilmar-02 complaint in June 2012, and summarized its involvement in a conclusion report available on CAO’s website.⁷

A summary of each of the three Wilmar complaints is set out in Annex 3.

3.2. June 2009 CAO Audit – Findings and Response

CAO completed the 2009 Audit of IFC’s investments in the Wilmar Group in response to the Wilmar-01 complaint in June 2009.

The 2009 Audit made general findings of non-compliance concluding that IFC took a *de minimis* approach to the interpretation of its standards so as to exclude assessments of Wilmar’s supply

⁵ CAO Audit of IFC’s investments in: Wilmar Trading (IFC No. 20348) Delta–Wilmar CIS (IFC No. 24644) Wilmar WCap (IFC No. 25532) Delta–Wilmar CIS Expansion (IFC No. 26271)”, (“2009 CAO Audit”) - <http://goo.gl/bt1wk9>

⁶ CAO, Wilmar-02 Case Overview page - <http://goo.gl/TFVA5M>

⁷ Ombudsman Conclusion Report, Wilmar-02, June 2012 - <http://goo.gl/7SRz6e>

chain risk. In relation to the DW loans specifically, CAO concluded that IFC failed to adequately assess supply chain risk in accordance with the Performance Standards.

IFC released its response to the 2009 Audit in August 2009 (the “IFC Audit Response”).⁸ In the response, IFC expressly agreed that “greater attention should have been given [to DW’s] CPO supply chain,” noting Wilmar’s improved ability to track palm oil from its own plantations.

Following release of the IFC Audit Response, then World Bank Group President Zoellick noted in an August 2009 letter to the complainants, that the World Bank Group would not approve new investments in palm oil until it had developed a palm oil strategy.⁹ The letter also set out key elements of an action plan (the “IFC Action Plan”). Relevant to this investigation, the IFC Action Plan included the following point:

Subject to reaching agreement with Wilmar, and as part of IFC’s ongoing supervision of DW, [IFC will] assess the status of the company’s E&S performance as well as its existing relationship with local communities affected by its plantations operations, and recommend improvements as necessary.¹⁰

The moratorium on new palm oil investments remained in place until after the World Bank Group released its new palm oil strategy in April 2011.¹¹

CAO published monitoring reports in relation to its 2009 Audit in April 2010 and March 2013.¹²

CAO’s March 2013 monitoring report noted that IFC’s response to the audit included development of a strategic approach to future palm oil investments; a review of its current involvement in the Indonesian palm oil sector; an Advisory Services program aimed at the Indonesian palm oil sector; and commitment to address several of the audit findings as part of IFC’s ongoing policy review. CAO concluded that IFC’s commitments and actions constituted a “substantial approach to addressing the conclusions reached in the CAO Audit Report.” At the same time, CAO noted that its monitoring function extended only to how IFC was addressing “the shortcomings identified in the CAO audit as they related to how IFC approached and processed its investments” and that “CAO fully acknowledges that closing CAO’s audit findings is only one part of an overall approach by IFC to address the concerns connected to the palm oil sector globally.” On this basis CAO closed the 2009 Audit.

⁸ IFC Response to CAO Audit of Wilmar-01, August 4, 2009 – English: <http://goo.gl/VUY9f4>; Indonesian: <http://goo.gl/odZcVP>

⁹ Letter from President Zoellick to Marcus Colchester and complainants, August 28, 2009 - <http://goo.gl/57sNhn>

¹⁰ *Ibid*, page 3.

¹¹ World Bank (2011) The World Bank Group Framework and IFC Strategy for Engagement in the Palm Oil Sector - <http://goo.gl/kfHrQz>

¹² Monitoring and Update of IFC’s response to the 2009 Audit, April 22, 2010 - <http://goo.gl/rp14kJ>; Monitoring and Closure Report, March 27, 2013 - <http://goo.gl/qKiE9d>

4. Project Timeline

The timeline below sets out the key events that occurred in relation to the DW loans and the three Wilmar complaints.

Date	Milestones, Events and Documents
2004	
April	IFC Board approves first investment in Wilmar Group (No. 20348) – \$33.3 m partial guarantee to finance export and trading.
2006	
June	IFC Board approves second investment in Wilmar Group (No. 24644) – \$17.5 m loan to DW CIS to fund construction of a greenfield CPO refinery in Ukraine.
December	IFC Board approves third Investment in Wilmar Group (No. 25532) - \$50 m partial guarantee to provide working capital to the palm oil trading arm.
2007	
July	CAO receives first complaint regarding IFC's investments in Wilmar Group.
2008	
October	IFC Board approves fourth investment in Wilmar Group (No. 26271) - \$45 m loan to DW CIS to fund expansion of CPO processing plant in Ukraine.
December	CAO receives second complaint regarding IFC's investments in Wilmar Group.
2009	
January	Delta and Wilmar bring in additional joint venture partner – NMGK (Russia). Wilmar International retains 38.75% ownership of DW.
June	CAO releases Compliance Audit Report with findings in relation to the Wilmar-01 Complaint. Audit finds that IFC applied a <i>de minimis</i> approach to due diligence of DW's palm oil supply chain, in breach of PS1.
August	IFC Management Response to CAO Audit. WBG President Zoellick announces moratorium on new CPO investments.
September	IFC notified of DW restructuring that had occurred in January 2009.
November	Analytical and preparatory work begins to develop the WBG/IFC palm oil strategy.
December	IFC grants waiver requests in relation to financial covenants of DW loans. Agreements governing the investments and the Wilmar guarantee amended to reflect new shareholding structure and to extend date required for disbursement.
2010	
January	IFC makes disbursements to DW of \$47.5m.
March	IFC issues TOR for Environmental and Social Review of Wilmar's Indonesian Palm Oil Holdings.
Date	Milestone, Events and Documents
May	Stakeholder consultations on issues in the palm oil sector held in Medan (North Sumatra), Pontianak (West Kalimantan) and Jakarta as part of the preparation for WBG/IFC palm oil strategy.
July	IFC Consultant begins Review of Wilmar's Indonesian Palm Oil Holdings.

2011	
April	WBG/IFC issue final report and statement on palm oil strategy. CPO investment moratorium lifted.
May	IFC Consultant issues findings on Wilmar's Indonesian palm oil holdings.
August	Wilmar plantation company PT Asiatic Persada and local communities in Jambi province engaged in violent conflict. PT Asiatic Persada demolishes settlements of local residents.
November	CAO receives third complaint regarding IFC's investments in Wilmar Group.
2012	
March	CAO commences dispute resolution process between PT Asiatic Persada and local communities in Jambi in relation to the third complaint.
2013	
April	Wilmar notifies IFC of intention to prepay loan. Wilmar sells PT Asiatic Persada to Ganda group of companies. CAO issues final monitoring report and closes Wilmar 1 audit.
June	DW CIS (No. 24644) closes.
July	DW CIS Expansion (No. 26271) prepaid. Wilmar International requests waiver of prepayment fee. IFC processes waiver.
September	PT Asiatic Persada, under new ownership, terminates participation in CAO-led dispute resolution process. Wilmar-03 complaint transferred to CAO Compliance.

5. Findings in Relation to IFC's Performance

The relevant E&S requirements for the purposes of this investigation are found in IFC's policies and procedures, as well as the contractual agreements signed with DW. Both loans were required to be administered by IFC in accordance with its Environmental and Social Review Procedures ("ESRP"), which provide guidance to IFC staff on procedures to review and manage client performance throughout the project lifecycle.¹³ The earlier of the two loans, Loan No. 24644, incorporated IFC's 1998 Environmental and Social Safeguard Policies. By 2008, when Loan No. 26271 was agreed, the 2006 Policy on Social and Environmental Sustainability (the "2006 Sustainability Policy") was in effect.¹⁴ The 2006 Sustainability Policy incorporated the IFC Performance Standards (the "2006 PSs"), which included express requirements related to the analysis and management of supply chain E&S risk.¹⁵ IFC investment documentation in relation to Loan No. 26271 acknowledged the application of the 2006 PSs.

Because the second loan was subject to the more specific 2006 standards, CAO concludes that they should have been applied by IFC in their dealings with DW from 2008 onwards. This investigation report thus considers whether IFC's actions were consistent with the 2006 requirements.

The focus of this compliance investigation is on how IFC assured itself of project E&S performance during disbursement and supervision of the DW loans.

More generally, this investigation considers whether IFC's handling of this investment was consistent with its commitment to "do no harm" principles expressed in the following terms: "negative impacts should be avoided where possible, and if these impacts are unavoidable, they should be reduced, mitigated or compensated for appropriately" (Sustainability Policy, para. 8).

This section addresses disbursement, supervision, and disclosure in turn, setting out the relevant IFC policies, client requirements, IFC's actions, and CAO's compliance findings for each.

¹³ The ESRPs in effect at the beginning of the investigation period are v. 4, 2009, and were updated from time to time. Environmental and Social Review Procedures, version 4.0, August 14 2009 - <http://goo.gl/MP0C5j>

¹⁴ IFC Sustainability Policy, 2006 - <http://goo.gl/mXZ1Wi>

¹⁵ IFC Performance Standards, 2006 - <http://goo.gl/URv2JY>

5.1. IFC's Disbursement of the DW Loans

Key Findings

- In its response to the 2009 CAO Audit, IFC management accepted that there were shortcomings in its supply chain due diligence for the DW loans.
- IFC did not assure itself that its E&S Conditions of Disbursement, as they related to supply chain risks and impacts, were met when it decided to disburse \$47.5m to DW in January 2010.
- IFC policy required the application of the supply chain requirements under the 2006 Performance Standards to DW. IFC instead sought to address supply chain issues with the parent company on a voluntary basis. This decision was inconsistent with IFC's E&S policies.
- At the point of disbursement, IFC did not have a basis to conclude that DW could meet the supply chain requirements under the 2006 Performance Standards. The decision to disburse was thus not in compliance with the Sustainability Policy (para.17).

5.1.1 Disbursement – IFC Requirements

The central standard that this investigation considers is a requirement on IFC clients to assess and manage the environmental and social risks associated with their supply chains. This requirement is set out in the 2006 version of the IFC Performance Standards.

Performance Standard 1 (Assessment and Management of Environmental and Social Risks and Impacts) requires an IFC client to assess and manage environmental and social risks and impacts by undertaking a Social and Environmental Assessment (“SEA”) and by developing an Environmental and Social Management System (“ESMS”). Paragraph 6 includes the core supply chain obligation at issue in this investigation:¹⁶

Where relevant, the [SEA] will also consider the role and capacity of third parties (such as local and national governments, contractors and suppliers), to the extent that they pose a risk to the project, recognizing that the client should address these risks and impacts commensurate to the client's control and influence over third party actions. ***The impacts associated with supply chains will be considered where the resource utilized by the project is ecologically sensitive, or in cases where low labor cost is a factor in the competitiveness of the item supplied*** [Emphasis added].

IFC requires that clients meet the Performance Standards, and negotiates specific actions and conditions of disbursement (“CODs”) that must be satisfied before funds are disbursed.

The 2006 Sustainability Policy states that “IFC does not finance new business activity that cannot be expected to meet the Performance Standards within a reasonable period of time”.¹⁷

¹⁶ PS1, 2006, para. 6.

¹⁷ Sustainability Policy, 2006, para. 17.

The ESRPs require that IFC ensure any E&S CODs are met by the client prior to disbursement.¹⁸ Where CODs are not satisfied by the client, IFC should withhold funds unless the CODs are waived by a manager in the E&S department.¹⁹

The agreement governing Loan No. 26271 set out that DW was required to prepare an SEA in accordance with IFC's 2006 Performance Standards.²⁰ As noted above, the Performance Standards incorporated express supply chain requirements into IFC's E&S framework for the first time. The conditions of first disbursement for Loan No. 26271 included the following: (a) that DW had completed an SEA in form and substance satisfactory to IFC; (b) that IFC and DW had agreed on the form of the Annual Monitoring Report ("AMR"); and (c) that DW had implemented an ESMS acceptable to IFC. DW also had to warrant that all material E&S risks in relation to the project were set out in the SEA.

5.1.2. IFC Actions Related to Disbursement

Social & Environmental Assessment Prepared under the 2006 PSs

CAO notes that, despite the advent of the new Performance Standards, no updated SEA for DW was produced when IFC approved Loan No. 26271 for DW in 2008. As explained to CAO by IFC staff, this was seen as unnecessary because the expansion of the Ukraine processing plant that was to be funded by the second investment would not increase the footprint of the plant itself. Thus it was understood that the E&S risks were the same as the original investment. Nevertheless, the 2008 loan agreement did require that an SEA compliant with the new PSs would be completed by the client prior to disbursement.

Approval of the Disbursements

IFC prepared to process the disbursements to DW in late 2009. IFC's disbursement documentation acknowledged the finding from CAO's 2009 Audit that IFC had not adequately considered supply chain risks in its review and approval of the DW loans. It referred to the palm oil strategy process that was to be undertaken as part of the IFC Audit Response. IFC's disbursement documentation noted that the palm oil moratorium had no effect on IFC's current investments, including the DW loans, and recommended that disbursement should go ahead provided that the CODs were met. In this context, IFC noted that it considered the parent company to be a strategic partner through which IFC could contribute to addressing E&S issues in the palm oil sector. Finally, the documentation included a check-box that confirmed E&S CODs had been reviewed and cleared by IFC's Lead E&S Specialist, but without any discussion of this review. There was no discussion of DW's compliance with the supply chain requirements under the PSs, or the adequacy of the required SEA given these requirements.

Disbursements to DW totaling \$47.5 million were approved and paid in January 2010.

¹⁸ ESRP v.4. Procedurally, the Lead E&S Specialist is required to obtain information from the task team leader ("TTL") to determine the status of any E&S CODs, to inform the TTL if any of those CODs are not complied with, and provide clearance on those CODs that are satisfied, paras 6.2.2 and 6.3.2.

¹⁹ ESRP v. 4 2009, paras 6.2.1(a), 6.2.2.

²⁰ Investment review documentation, Loan No. 24644 (November 2007 [ESRS]), and Loan No. 26271 (August 2008 [PDS – Investment Review] and October 2008 [PDS Approval]).

5.1.3. CAO Findings in Relation to Disbursement

In 2009, IFC acknowledged shortcomings in its approach to supply chain due diligence in relation to its investments in Wilmar. However, IFC took insufficient action in relation to the DW loans to ensure that DW had analyzed or set up measures to address its supply chain risk prior to disbursement.

IFC staff members interviewed by CAO were either of the view that the agreements governing the DW loans did not provide grounds or did not provide sufficient leverage to require any such action of DW itself in relation to its supply chain risks. This interpretation is not supported by the agreements, and is not consistent with the broader framework of IFC's Sustainability Policy. While DW loan agreements did not explicitly refer to the supply chain obligations contained in the PSs, they did incorporate the PSs by reference and the PSs included explicit supply chain risk analysis and management requirements. CAO notes that the completion of a PS compliant SEA in accordance with the CODs would have required assessment and actions to address DW's supply chain risks. However, IFC did not assure itself that a PS compliant SEA was produced. As a result, CAO finds that IFC did not ensure that the E&S CODs had been met before disbursement.

In interviews with CAO, IFC staff noted that a decision was made to address supply chain issues through voluntary high-level engagement with the parent company, and not through the mechanisms of the DW loans. From a compliance perspective, engagement with the parent company should have complemented a rigorous review of the E&S CODs at project level.

At the point of disbursement, CAO finds that IFC had insufficient basis to conclude that the DW loans could be expected to meet the supply chain requirements of the Performance Standards over a reasonable period of time. Absent evidence that the client had a credible plan to address its supply chain risk, CAO finds that IFC's decision to disburse was not in compliance with the Sustainability Policy (para.17).

5.2. Supervision of the DW Loans

Key Findings

- IFC's approach to supply chain analysis, review and management developed considerably over the period during which the DW loans were under supervision.
- However, IFC continued to treat the DW loans as if the supply chain requirements of the Performance Standards did not apply.
- IFC did not adapt its approach to supervision of the DW loans as information became available about serious E&S risks in the company's supply chain. In particular, IFC did not take into account in its supervision of the DW loans:
 - the findings of the 2009 CAO Audit;
 - the findings of the Consultant Review of Wilmar's Indonesia Plantations commissioned by IFC; and
 - the Wilmar-03 complaint made to CAO in November 2011.
- IFC attempted to respond to shortfalls in E&S performance at the group level through voluntary engagement with the parent company. However, these activities were not sufficient to address the E&S risks in DW's supply chain.
- The parent company's sale of PT AP during the CAO dispute resolution process does not raise an E&S compliance issue. However, questions as to IFC's responsibilities for the E&S impacts of projects after IFC's involvement in a project ends arise frequently in CAO cases, and would benefit from further clarification.

5.2.1. Supervision – IFC requirements

An IFC investment is subject to E&S supervision from the date of commitment until the investment is closed.²¹ The purpose of E&S supervision is “to develop and retain the information needed to assess the status of compliance with the PSs” and other relevant requirements.²² In accordance with the Sustainability Policy (para. 26):

If the client fails to comply with its social and environmental commitments, as expressed in the Action Plan or legal agreement with IFC, [IFC should] work with the client to bring it back into compliance to the extent feasible, and if the client fails to reestablish compliance, exercise remedies when appropriate.

The Sustainability Policy also provides that IFC should work with the client to address changes in project E&S risk that arise in the course of supervision.²³

As noted above, the DW Expansion loan required DW to assess and supervise its operations in accordance with the requirements of the 2006 Performance Standards, which in turn included express supply chain risk analysis and management requirements.

²¹ ESRP (2010) 6.1.

²² *Ibid*

²³ “If changed project circumstances would result in adverse social or environmental impacts, [IFC will] work with the client to address them,” (2006 Sustainability Policy, para. 26).

DW was also required to provide a regular report on its E&S performance in the form of an Annual Monitoring Report (“AMR”) according to an agreed format (which should be reviewed on a periodic basis and updated in light of any developments in the project’s risk profile).

5.2.2. IFC Actions in Relation to the Supervision of the DW Loans

Following disbursement of the DW loans, IFC staff continued to engage with social and environmental issues in Indonesian oil palm plantations through the palm oil strategy formation process and on a voluntary basis with Wilmar International. However, at the project level, the IFC team responsible for the DW loans continued supervision as if no supply chain requirements applied to DW. DW filed three AMRs with IFC over the investigation period, but these only reported on E&S matters related to the footprint of the Ukraine facility, and not on supply chain issues. Similarly, IFC’s supervision documentation in relation to DW did not refer to any supply chain requirements. Only one mention of supply chain issues in IFC’s DW supervision documentation is included in the report of a site supervision visit in 2011. This report noted that the issue of supply chain and sustainability aspects of the palm oil supplies to the plant had been raised with the plant’s operational manager but that supply chain considerations were managed by Wilmar Group from their Singapore office.

Recommendations for Clients in the IFC Palm Oil Strategy

As part of the IFC Action Plan in response to CAO’s 2009 Audit, the World Bank Framework and IFC Strategy on Palm Oil (“Palm Oil Strategy”) was released on March 31, 2011, after several rounds of consultation with stakeholders, including meetings with civil society and community representatives in Indonesia.²⁴ The Palm Oil Strategy contains guidance on supply chain management options, with a number of recommendations on how IFC clients could take practical steps to address E&S risks in their supply chains, including:²⁵

1. Adopt a supply chain policy, including a commitment to increase the volume of “PS compliant commodities purchased” over time;
2. Develop a supplier database with the purpose of setting targets for traceability, increasing the number of low-risk suppliers, and phasing out high risk suppliers;
3. Work with IFC to develop an implementation plan for mitigating and/or minimizing the E&S risk in the supply chain;
4. Implement a training program for field staff to build in-house E&S audit capacity; and
5. Develop systems for continuous monitoring and periodic reporting of its supply chain’s E&S information to senior management.

CAO found no indication that IFC raised any of these elements as part of its supervision of the DW loans.

Corporate Engagement Leading to a Consultant Review of Wilmar’s Indonesia Plantations

As mentioned above IFC made a decision to address the supply chain issues raised by the 2009 Audit through a voluntary senior-level engagement with the parent company. A key outcome of

²⁴ The World Bank Group Framework and IFC Strategy for Engagement in the Palm Oil Sector, March 31, 2011 - <http://goo.gl/FplZMi>

²⁵ *Ibid*, page 86 onwards.

this engagement was an E&S Review of a sample of Wilmar's Indonesia plantations, which IFC commissioned an independent consultant to conduct in 2010 ("the Consultant Review").

The Consultant Review of Wilmar's Indonesia Plantations was completed in May 2011.

The Consultant Review incorporated field assessments of a sample group of six plantation companies owned and managed by Wilmar in Indonesia – three in Kalimantan and three in Sumatra. These plantations included three that had been involved in CAO dispute resolution processes, including PT AP.²⁶ Through the review process, the Consultant developed a "field checklist" to consider whether Wilmar's plantation operations were consistent with the IFC Performance Standards and relevant RSPO and Sustainable Agriculture Network ("SAN") standards. The consultant team was composed of three professionals with expertise in biodiversity, sustainable plantation management, community and indigenous peoples' issues, labor, health and safety. The team spent three days visiting each plantation.

The Consultant Review found that the Wilmar plantations visited were generally able to meet legal, environmental and social requirements, and had good training and organizational capacity with each of the plantation companies having completed Indonesian legal requirements for environmental impact assessments. The Consultant Review also noted that companies were implementing standard operating procedures on land acquisition. These procedures included payment of compensation, and were assessed to be transparent, consultative and inclusive.

The Consultant Review, however, also made a number of more critical findings in relation to the operations of the plantation companies, in particular in relation to: (a) a lack of social impact assessments and social management systems; (b) shortcomings in the approach to consultation and disclosure with affected communities (including in those plantations that had achieved RSPO certification); (c) unresolved issues in relation to compensation for economic displacement of communities and (d) an underdeveloped approach to security risk management in contexts where armed security personnel were being deployed.^{27 28}

IFC Follow-up to the Consultant Review

The Consultant Review included a draft action plan which IFC staff reported sharing with the parent company. However, IFC staff confirmed that, despite IFC efforts to engage Wilmar, no action plan was agreed.

IFC prepared a briefing on the Consultant Review for internal circulation and a cover letter to be forwarded to CAO. Although the World Bank President's letter in August 2009 had described the Consultant Review as "forming part of the ongoing DW supervision", IFC's cover letter to CAO

²⁶ At the time of the review, Wilmar was reported to have 36 plantation companies active in Indonesia, each a special purpose vehicle for a plantation. Four companies were minority-held by Wilmar or dormant.

²⁷ In relation to security issues, the consultant report noted reliance on a special forces unit of the Indonesian police (BRIMOB) for security on two of the plantations visited. Although the review stated there had been no reports from community members interviewed of excessive force by security personnel, it noted that BRIMOB were employed in areas with very high security risk. PT AP was provided as one example of such an area. The Review noted that community members interviewed had referred to recent violent behavior by certain groups against plantation management. This included the murder of a previous estate manager, and a security guard's hands being cut off. The report noted that representatives of local communities interviewed around PT AP expressed preference for BRIMOB presence for their own protection. In relation to PT AP, the Review also noted that there were ongoing negotiations to compensate communities for displacement that occurred in 1986.

²⁸ Note in 2005, the US Government Accountability Office found in its Report of Congressional Committees that, by providing training to BRIMOB members, the U.S. had breached laws that restricted the provision of funds to units of foreign security forces where the Department of State has credible evidence that the unit has committed gross violations of human rights - <http://goo.gl/UHQSTV>

noted that: “It is recognized that this E&S review is largely a retrospective exercise the results of which cannot be applied to Wilmar [International] given they are no longer an IFC client.” CAO notes that, at the time the Consultant Review was completed in May 2011, IFC’s investment in DW was still active, and this included supply chain risk management requirements under the 2006 Performance Standards.

Events in Jambi Province, August 2011

Following completion of the Consultant Review, the events that triggered the Wilmar-03 complaint occurred at the PT AP concession area in Jambi Province. During the week of August 8-12, 2011 a series of confrontations between PT AP personnel, security personnel, BRIMOB members, police and local community members culminated in the demolition of houses and forced eviction of a number of people living in a settlement on the PT AP concession area. Wilmar International, communities and NGOs give different accounts of the events that occurred, and CAO is unable to take a position in relation to the specifics of these events. Nevertheless, it is uncontested that:

1. Disputes between PT AP and the community over land rights and over appropriate compensation had been ongoing;
2. Theft of FFB in PT APs concession area was a known problem faced by the plantation company;
3. As a result of the ongoing conflict and theft, PT AP had engaged the BRIMOB to provide security on its plantation area.

Local NGOs and Wilmar made press statements and released reports of the events from August to November 2011, when the Wilmar-03 complaint was submitted to CAO.²⁹ In March 2012, the complainants sent a follow-up letter urging CAO to consider wider systemic issues relating to Wilmar’s Indonesian supply chain, and referring to the requirements in the RSPO procedures and IFC’s own policies and procedures. At the same time, a joint mediation process began in Jambi province, supported by CAO and the local and provincial governments.³⁰ IFC management was aware of these developments, but was not actively engaged in the CAO Dispute Resolution process.

Final Supervision Activities in Relation to DW Loans

IFC’s final supervision document in relation to the DW loans was completed in August 2012, and focused on the client’s 2011 AMR and a visit to the Ukraine facility. IFC’s supervision documentation contains no discussion of supply chain risks as they related to DW, and no acknowledgement of the issues raised by the Wilmar-03 complaint or the ongoing CAO Dispute Resolution activities. The investment was assigned an E&S Risk Rating of 2 – indicating satisfactory performance.

Divestment of PT AP

Wilmar International announced its plan to sell PT AP to Prima Fortune International Ltd and PT Agro Mandiri Semesta in a local Indonesian newspaper on 23 March, 2013. Wilmar International

²⁹ Marcus Colchester, Patrick Anderson, Asep Yunan Firdaus, Fatilda Hasibuan and Sophie Chao, “Human Rights Abuses and Land Conflicts in the PT Asiatic Persada Concession in Jambi”, November 2011, <http://goo.gl/0HVTcp>; ²⁹ “Wilmar Reaffirms Commitment to Respecting Human Rights” (30 August 2011), <http://goo.gl/9PldfV>; TUV Rheinland “Verification Report of “Suku Anak Dalam” Community Settlement Demolition within the Land Use Area (Hak Guna Usaha – HGU) of PT Asiatic Persada,” August 2011: <http://goo.gl/7dqbWS>.

³⁰ Discussed in CAO’s Ombudsman Assessment Report, July 2012, 5.1.

informed CAO mediators of the sale in a meeting on 29 March.³¹ In correspondence with the complainants, Wilmar stated:

[T]he buyer is well aware of the progress and status of the mediation, and we have encouraged them to continue with the mediation process. The buyer has expressed interest in doing so. We will work to ensure that there is proper handover of the process to the buyer, and will assist them wherever we can to ensure a smooth transition.³²

In July 2013, the complainants wrote to IFC requesting formal clarification about “the procedures and agreements it has in place when client companies that are in active relations with IFC unilaterally divest themselves of holdings”.³³ In particular, the complainants were concerned that, “if IFC clients can evade their responsibilities simply by selling operations where they get caught out for violations, the whole Performance Standards system for risk avoidance is placed in jeopardy.”³⁴ The complainants informed CAO that they did not receive a response to this letter from IFC.

Prepayment and Closure of Loan No. 26271

In June 2013, the client requested waivers of certain credit requirements in the agreements governing the DW loans to allow them to raise finance for a further expansion of the Ukraine plant. Following unsuccessful negotiations, the client prepaid the balance of loan No. 26271. At this point IFC had no further investments or legal relationships with the parent company or with DW.

Internal IFC Review of E&S Performance under the DW Loans

IFC conducts self-evaluations on a random, representative sample of its investment projects. IFC’s Internal Evaluation Group (IEG) then undertakes an independent review of the project’s performance and ratings, and adjusts them if needed.³⁵ The purpose of this evaluation is to assess the performance of the project and to learn what works in context. The disclosure of such evaluation documents is governed by IEG’s Access to Information Policy.³⁶ Relevant to CAO’s investigation, the review produced by the project team in relation to Loan No. 26271 focused on E&S performance at the Ukraine site. It rated IFC’s E&S work quality at screening, preparation and appraisal as “Excellent.” The review noted that the appraisal had considered E&S risks associated with the CPO supply chain, concluded that the client sourced only a small percentage of its CPO from its own plantations, and noted that the parent company was an active member of the RSPO. The review does not reference the finding of CAO’s 2009 Audit, that this approach to screening and appraisal did not meet the requirements of the Performance Standards. Further, the review rates the E&S work quality at supervision as “Excellent”, and states that “IFC shared knowledge on the management of oil palm supply chain and led the Company to develop a supply chain study to guide its efforts on improving traceability and sustainability of CPO supply”. The study is referred to again in relation to IFC’s E&S “Role and Contribution”, which is rated as “Satisfactory”. On the basis of available documentation and interviews with IFC staff, however, CAO has not been able to verify the completion any relevant study other than the “Consultant

³¹ Jeremy Goon, CSR – Group Head, Wilmar, Letter to complainant group, dated 30 May 2013 Re: Sale of PT Asiatic Persada - <http://goo.gl/GyrYYb>

³² *Ibid.*

³³ Marcus Colchester and complainants, Letter to IFC, 4 July 2013 - <http://goo.gl/bSzQDB>

³⁴ *Ibid.*

³⁵ IFC, Independent Evaluation Group, “Evaluation of IFC’s Investment Operations,” - http://www.ifc.org/wps/wcm/connect/ieg_ext_content/ifc_external_corporate_site/ieg+home/evaluationprocess/investment+operations/evalinvops.

³⁶ IFC, Independent Evaluation Group, *Access to Information Policy*, July 1, 2011, - <https://ieg.worldbankgroup.org/Data/reports/A2I.pdf>

Review” described above, which was commissioned by IFC and which did not result in an agreed action plan. No E&S lessons are listed in relation to the project.

5.2.3. CAO Compliance Findings in Relation to Supervision

IFC’s Response to the 2009 Audit and its strategy documents demonstrate that IFC’s approach to supply chain analysis, review and management evolved considerably over the period during which the DW loans were under supervision. IFC also received and generated new information relevant to the client’s CPO supply chain and its associated E&S risks over the supervision period – in particular through the Consultant Review, Wilmar International’s own public statements, engagement with stakeholders in Indonesia during the palm oil strategy process, and complaints from communities.

However, CAO finds that IFC did not adapt its approach to supervision of the DW loans in light of new information that became available about E&S risks in the Indonesian CPO supply chains in general, or those of its client, Delta Wilmar. In particular, IFC continued to disregard the PS1 requirement that the client conduct a supply chain analysis. Instead, IFC maintained the position that DW was not required to address supply chain issues because: (a) it sourced only a small portion of its supply from Wilmar’s Indonesian plantations; and (b) the client could not trace or control its supply of CPO; this despite statements in IFC documents and by Wilmar International to the contrary. In these circumstances, CAO finds that IFC’s approach to supervision and monitoring of its DW Loans was not compliant with its own policies and procedures.

CAO notes IFC’s view that the IFC client exerted limited leverage over its supply chain, and the engagement on supply chain issues was conducted by other investment and E&S staff dealing directly with the parent company, Wilmar International. To the extent that IFC did engage in relation to Wilmar’s supply chain risks through the Consultant Review, CAO notes that neither connections between DW and the plantations being reviewed, nor supply chain control or traceability issues, were considered. CAO also notes that, while Wilmar did grant access to its property, facilities, documentation and personnel, the nature of the Consultant Review meant that the responsibility for the supply chain analysis was shifted from the client to IFC. As a result, the client’s buy in to the process was limited.

CAO acknowledges that IFC’s voluntary engagement could have helped to establish a cooperative relationship with Wilmar, which could have complemented the reporting and supervision structure required under the DW loans. However, by focusing on informal dialogue and conducting the Consultant Review outside the structure of DW loans, IFC limited its formal options for remedy in the case that voluntary engagement was not sufficient to address the supply chain risks identified.

Further, CAO notes that project teams responsible for managing the DW loans were not engaged in the institutional response to the Wilmar-03 complaint. As a result, issues raised by the complaint did not inform IFC’s approach to supervision of the DW loans.

Finally, CAO finds that Wilmar’s sale of PT AP during the CAO dispute resolution process does not raise an E&S compliance issue. However, questions as to IFC’s responsibilities for the E&S impacts of projects after IFC’s involvement in a project ends – for example because a client prepays a loan – arise frequently in CAO cases, and would benefit from further clarification.

5.3. Consultation and Disclosure in Relation to the DW Loans

Key Findings

- Affected communities were not consulted with and did not have an opportunity to provide input into the Consultant Review or the resulting draft action plan which IFC commissioned in relation to the parent company's Indonesia plantations.
- The process which IFC supported for conducting the Consultant Review did not meet the disclosure and consultation requirements of PS1.

5.3.1. Consultation and Disclosure – IFC requirements

Under PS1, the client is required to make certain disclosures and to consult with affected communities throughout the project lifecycle. When a client carries out an E&S assessment, the client is required to disclose the assessment document.³⁷ If, in the course of that assessment, the client identifies mitigation measures or actions that are necessary for the project to comply with applicable laws, regulations and with the PSs, it is required to consult with affected communities, and to prepare and disclose an action plan that reflects the outcomes of consultation.³⁸

Effective consultation requires “prior disclosure of relevant and adequate information, including draft documents and plans”, and should “allow affected communities” to “express their views on project risks, impacts and mitigation measures”.³⁹

5.3.2. IFC Actions in Relation to Consultation and Disclosure

As discussed above, the Consultant Review was originally envisaged as forming part of the ongoing supervision of DW.⁴⁰ Finally, however, the process of developing the Consultant Review and writing an action plan was carried out by consultants commissioned by IFC outside of the framework for supervision of the DW loans. Wilmar International participated in the review by providing access to property, facilities, documentation and personnel.

The methodology for the Consultant Review included interviews with affected community members, and IFC reported that the consultant was provided with records of consultations with complainants and other stakeholders that occurred during the Palm Oil Strategy process. Further, the Consultant Review identified compliance gaps in the disclosure and consultation practices of Wilmar plantations. However, there is no indication that either the Consultant Review report or the draft action plan were the subject of consultation with or disclosure to affected communities.

CAO notes IFC's view that Wilmar's RSPO membership and commitment to certification provided another venue for disclosure and engagement with communities. However, as discussed further in section 5.4 below, CAO finds that such reliance on RSPO membership and stated commitments

³⁷ PS1, 2006, para 20. According to the Policy on Disclosure of Information, the ESRS completed by IFC must be disclosed and, along with the ESRS, IFC must “make available electronic copies of, and where available, links to any relevant social and environmental impact assessment documents prepared by or on behalf of the client, including the action plan”, para. 13(a).

³⁸ PS1, 2006, para. 16.

³⁹ PS1, 2006, para. 21.

⁴⁰ Letter from President Zoellick to Marcus Colchester and complainants, August 28, 2009 - <http://goo.gl/qlXX6m>

is not a substitute for PS consultation and disclosure requirements, nor is it adequate to meet IFC's E&S Policies and procedures.

5.3.3. CAO Compliance Findings in Relation to Consultation and Disclosure

IFC did not apply the disclosure and consultation requirements of PS1 to the Consultant Review. As a result, affected communities were not consulted with and did not have an opportunity to review the Consultant Review or the resulting draft action plan.

5.4. Underlying Causes of Non-Compliance

CAO's Terms of Reference for this compliance investigation provide that its scope should include "developing an understanding of the immediate and underlying causes for any noncompliance identified by the CAO." As outlined above, CAO finds that IFC did not correctly apply the supply chain requirements of PS1 to its supervision of the DW loans. Each of these observations may constitute the basis for further analysis of the issues through CAO's Advisory function. Five interrelated causes for this non-compliance are identified:

1. **Persistent belief that the agreements governing the investments did not require DW to take any action to address supply chain issues:** IFC did not engage the client to undertake a supply chain analysis as required by PS1. As explained to CAO by members of the IFC project team, they did not consider this as an option, because supply chain requirements were not specifically set out in the agreements governing the DW loans. For reasons outlined above, this belief was mistaken. Nevertheless it persisted and no contrary guidance was given by IFC management.
2. **Preference for addressing the Indonesia palm oil supply chain issues with the parent company on a voluntary basis and outside of the E&S requirements of the DW loans:** This approach was consistent with the mistaken assumption that the agreements governing the DW loans did not establish a basis for IFC to require action on supply chain issues. IFC staff with direct knowledge of the project explained to CAO that there were concerns that a more compliance based approach could be counter-productive. Rather, management sought to maintain a good relationship with the parent company, as a potentially important partner for IFC's future engagement in the sector.
3. **Disconnect between IFC's work at the level of strategy and that at the level of the supervision of the DW loans:** The palm oil strategy process was a key part of IFC's response to CAO's 2009 Audit. However, CAO notes that the strategy did not affect IFC's supervision of the DW loans. The strategy process focused on establishing high-level objectives and approaches to investment in the palm oil sector, rather than developing tools that could have been applied to the challenges of managing DW's supply chain risks. In the course of CAO's investigation, IFC staff emphasized that much work has been done since 2009 within IFC to consider sustainability and risk management in supply chains, particularly through IFC's Advisory Services unit.⁴¹ However, these materials lacked detail and resources necessary to support their implementation, and they were not applied to the supervision of the DW Loans.

⁴¹ In particular, staff referred to the IFC *Good Practice Handbook: Assessing and Managing Environmental and Social Risks in an Agro-Commodity Supply Chain*, August 2013 - <http://goo.gl/vdJAz2>

4. **Insufficient understanding of palm oil supply chain issues in general, and of Wilmar’s supply chain in particular:** In 2006 and 2008, when the DW loans were agreed, IFC staff noted that there was only basic understanding of supply chain issues within investment teams (even among E&S specialists). As knowledge within some parts of IFC advanced throughout the period considered in this investigation, supervision of the DW loans continued on the basis of a rudimentary approach to supply chain risk management. In particular, CAO notes the persistence of views identified as problematic in CAO’s 2009 Audit as justifying DW’s lack of supply chain analysis. CAO refers here to the assumption that supply chain analysis was not required because it was impossible for DW to trace its CPO back to particular plantations in Indonesia (“full traceability”).

CAO notes that the IFC Performance Standards do not require full traceability as the basis for supply chain risk analysis or mitigation. Where full traceability is not possible, good international industry practice (“GIIP”) would focus instead on forward traceability of CPO from high-risk plantations: i.e. identifying regions or individual plantations that have significant E&S challenges, and then assessing whether product from those high-risk plantations could have been feeding into the client’s supply. A management plan could then work to exclude unacceptable CPO sources from the supply base, and/or to re-design the supply chain so it could be more effectively managed.

CAO also notes that IFC continued to rely significantly on the parent company’s membership of RSPO, and its participation in the RSPO certification process as a supply chain risk management measure. CAO notes IFC’s view that Wilmar International’s engagement with the RSPO provided considerable comfort that it was working to improve the E&S performance of its Indonesia plantations. As identified in the 2009 Audit, the parent company’s stated support of the RSPO principles should not have been viewed as a substitute for the application of IFC’s policies, procedures and standards. Further, a commitment to work towards certification in the future by the corporate parent was not sufficient to address the known E&S risks that were associated with sourcing CPO from Indonesia. Gaps between RSPO requirements and IFC’s PSs were clearly identified in the Consultant Review. Although undertaking RSPO certification of Wilmar plantations could have contributed to risk reduction, it should not have been seen as a substitute for the supply chain analysis and risk management measures required by PS1.

5. **Issues related to the supply chain requirements in the PSs and their interpretation:** In the case of DW, the project team’s interpretation of PS1 suggested that a lack of control and influence over a supply chain would excuse the client from the requirement to analyze or mitigate its supply chain risks. This leads to a paradoxical situation whereby an IFC client’s supply chain analysis requirements may become lower as supply chain risks increase. In CAO’s view, this approach is not in line with GIIP, which would require analysis of the supply chain as an initial step, followed by a risk identification exercise, and engagement to identify options to exercise control or adapt the supply chain to better manage E&S impacts and risks.⁴² In this context CAO notes clarification of the supply chain requirements under the 2012 Performance Standards may be beneficial. Further, CAO notes that IFC’s acknowledgment that the team responsible for supervising the DW loans had limited exposure to, and knowledge of, the good practices in supply chain risk management that informed the supply chain requirements in the 2006 PSs. CAO notes

⁴² See, for comparison, the Guiding Principles on Business and Human Rights (UN, 2011, pp. 21-22, <http://goo.gl/mWCcjx>), and the OECD Guidelines for Multinational Enterprises (OECD, 2011, paras 14, 17, 23, 24, and 50, <http://goo.gl/8MwPCl>).

that, where E&S risk management requirements are expanded or introduced in new versions of the PSs, IFC staff likely require additional assistance to effectively communicate those obligations to clients, and to supervise their implementation.

6. Conclusion

Conclusions are presented as answers to the questions formulated in the Terms of Reference for this compliance investigation.

Question 1: Did IFC adequately assure itself that the environmental and social CODs of its loans to DW were in fact met prior to disbursement in January 2010?

IFC did not assure itself that the E&S CODs were met prior to the 2010 disbursement of its loans to the client. IFC did not ensure that a supply chain risk analysis as required by PS1 was conducted prior to disbursement, and instead sought to address supply chain issues with the parent company on a voluntary basis. This decision was inconsistent with IFC's E&S policies.

Question 2: Did IFC supervise its DW investments in accordance with applicable E&S policies, procedures and standards?

IFC did not supervise its DW loans in accordance with applicable E&S policies, procedures and standards. Obligations related to supply chain risk analysis and management set out in PS1 were not recognized or considered by the project team responsible for supervision. Instead, IFC management attempted, unsuccessfully, to address these issues through a voluntary engagement with DW's parent company, Wilmar International. IFC management gave no guidance or direction to the team working on DW in relation to supply chain issues. As a result known supply chain risks were not considered in the course of IFC's supervision of the DW loans.

Question 3: Did IFC adequately assure itself that DW conducted a supply chain analysis in accordance with the requirements of Performance Standard 1?

IFC did not require DW to conduct a supply chain analysis, despite the advances made at a strategic level on supply chain issues, and despite specific information about Wilmar's Indonesia supply chain risks which emerged from: (a) the Consultant Review of the parent company's Indonesia plantations; and (b) the Wilmar-03 complaint to CAO.

Question 4: Did IFC adequately assure itself that DW was meeting its obligations in relation to consultation and disclosure under PS1?

As IFC did not require the client to conduct any supply chain analysis, PS1 consultation and disclosure requirements were not considered in this context. The Consultant Review commissioned by IFC was not subject to consultations with affected communities and no information about the results of this review has been disclosed. The approach taken was not consistent with the consultation and disclosure requirements of PS1.

Question 5: Did IFC adequately assure itself that DW developed action plans to meet the requirements of the Performance Standards?

IFC did not require DW to develop any action plans to meet the supply chain requirements of the Performance Standards. Instead, IFC focused on engaging with the parent company on a voluntary basis. Although an action plan was recommended by IFC to the parent company in relation to the E&S performance of their Indonesian plantation companies, no action plan was finally agreed.

Question 6: Did IFC respond adequately to the issues raised by the Wilmar-03 complaint in the context of DW's E&S obligations to IFC?

The IFC project team responsible for day-to-day supervision of the DW loans were not familiar with the issues raised by the Wilmar-03 complaint and did not respond to assist their client to address the issues raised.

Annex 1: Summary of Key Findings

1.	Disbursement
1.1.	In its response to the 2009 CAO Audit, IFC management accepted that there were shortcomings in supply chain due diligence in relation to the DW loans.
1.2.	IFC did not assure itself that its E&S Conditions of Disbursement, as they related to supply chain risks and impacts, were met when it decided to disburse \$47.5m to the client in January 2010.
1.3.	IFC should have applied PS supply chain requirements in relation to the DW loans. However, it instead sought to address supply chain issues with the parent company on a voluntary basis. This decision was inconsistent with IFC's E&S Policies.
1.4.	At the point of disbursement, there was not enough information to conclude that supply chain requirements could have been met over a reasonable period of time. The decision to disburse was thus not in compliance with the Sustainability Policy (para.17).
2.	Supervision
2.1.	Throughout the supervision period of the DW loans, IFC continued to treat those investments as if they had no supply chain requirements.
2.2.	IFC did not adapt its approach to supervision of the DW loans as information became available about serious E&S risks in the company's supply chain. In particular, IFC did not take into account in its supervision of the DW loans: <ul style="list-style-type: none"> • the findings of the 2009 CAO Audit; • the findings of the Consultant Review of Wilmar's Indonesia Plantations; or • the Wilmar-03 complaint made to CAO in November 2011.
2.3.	IFC attempted to respond to shortfalls in E&S performance at the group level through voluntary activities with the parent company. However, these activities were not sufficient to address the E&S risks in DW's supply chain.
2.4.	The parent company's sale of PT AP during the CAO dispute resolution process does not raise an E&S compliance issue. However, questions as to IFC's responsibilities for the E&S impacts of projects after IFC's involvement in a project ends arise frequently in CAO cases, and would benefit from further clarification.
3.	Disclosure
3.1.	Affected communities were not consulted with and did not have an opportunity to provide input into the Consultant Review or the resulting draft action plan which IFC commissioned in relation to the parent company's Indonesia plantations.
3.2.	The process which IFC supported for conducting the Consultant Review did not meet the disclosure and consultation requirements of PS1.

Annex 2: IFC Investments in Wilmar International

Project	Client	Sponsor	Type	Relevant IFC Standards	Date Approved/ Committed	Amount Approved	Disbursement	Closure
Wilmar Trading – Indonesia No. 20348	Wilmar Trading	Wilmar International	Guarantee for a pre-shipment finance facility	1998 ESRP and later versions; 1998 Safeguard Policies	Approved May 2004 Committed June 2004	Up to US \$33.3 million	November 2005	January 2007
Delta Wilmar CIS – Ukraine No. 24644	DW	Wilmar International	Loan for construction of a CPO refinery	1998 ESRP and later versions; 1998 Safeguard Policies	Approved June 2006 Committed June 2006	US \$17.5 million	October 2006: US \$15 million January 2010: US\$2.5 million	June 2013
Wilmar Working Capital – Indonesia No. 25532	Wilmar Trading	Wilmar International	Guarantee for a pre-shipment finance facility	2006 ESRP and later versions; 2006 IFC Performance Standards	Approved December 2006 Committed February 2007	Up to US \$50 million	March 2007	June 2009
Delta Wilmar CIS Expansion No. 26271	DW	Wilmar International	Loan for expansion of a CPO refinery	2007 ESRP and later versions; 2006 IFC Performance Standards	Approved October 2008 Committed November 2008	US \$45 million	January 2010	June 2013

Annex 3: CAO Complaints Regarding Wilmar

CAO Case Title	Wilmar-01/West Kalimantan	Wilmar-02/Sumatra	Wilmar-03/Jambi
Date of Complaint	7/18/2007	12/19/2008	11/9/2011
Case Status	Compliance Audit issued (June 2009). Compliance Audit closed (March 2013).	Closed at dispute resolution (June 2012).	Compliance Investigation Report issued (March 2015)
Complainants	Civil society organization on behalf of oil palm affected groups including indigenous peoples and smallholders allegedly impacted by Wilmar oil palm plantations; in Sumatra and Kalimantan.	Complaint from community groups represented by civil society organizations allegedly impacted by Wilmar oil palm plantations; particularly in Sumatra and Kalimantan.	Civil society organization “on behalf of oil palm affected groups including indigenous peoples and smallholders” allegedly impacted by Wilmar oil palm plantations and plantations from which Wilmar sources palm oil; particularly in Sumatra and Kalimantan.
Concerns	<ul style="list-style-type: none"> • 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. 	Similar to Wilmar-1, with additional mention of land conflict between communities and a number of Wilmar subsidiaries as the result of non-compliance with PS5.	<ul style="list-style-type: none"> • Imposing a settlement on the communities that is viewed both contrary to IFC Performance Standards and with the use of coercive measures. • Serious human rights abuses and forced evictions of local community members by PT AP staff and PT AP contracted Mobile Police Brigade (BRIMOB). • Clearance and planting of estates without paying compensation for lands and other properties so taken. • Land acquisition and dispute resolution problems in Wilmar’s other subsidiaries.

Annex 4: CAO Investigation ToR

[...] CAO's compliance mandate is to undertake a compliance investigation of IFC, and how IFC assured itself of the environmental and social performance of its investments. The focus of this process is thus on IFC's appraisal and supervision of an investment, and whether or not IFC complied with its own policy provisions. CAO does not undertake a compliance investigation of IFC's client. [...]

Scope of the Compliance Investigation

The focus of compliance investigations is on IFC, and how IFC assured itself of project environmental and social performance at appraisal and during supervision.

The approach to the compliance investigation is described in the CAO Operational Guidelines (March 2013), and states that the working definition of compliance investigations adopted by CAO Compliance is as follows:

An investigation is a systematic, documented verification process of objectively obtaining and evaluating evidence to determine whether environmental and social activities, conditions, management systems, or related information are in conformance with the compliance investigation criteria.

In relation to the issues raised by the complaint the compliance investigation will consider:

- whether IFC adequately assured itself that the environmental and social CODs of its loans to DW were in fact met prior to disbursement in January 2010; and
- whether IFC supervised its DW investments in accordance with applicable E&S policies, procedures and standards.

More specifically in relation to project supervision, the compliance investigation will consider:

- whether IFC adequately assured itself that DW conducted a supply chain analysis in accordance with the requirements of Performance Standard 1;
- whether IFC adequately assured itself that DW was meeting its obligations in relation to consultation and disclosure under Performance Standard 1;
- whether IFC adequately assured itself that DW developed Action Plans to meet the requirements of the Performance Standards; and
- whether IFC responded adequately to the issues raised by the Wilmar-3 complaint in the context of DW's environmental and social obligations to IFC;

In relation to these issues CAO will examine IFC's actions only with respect to its supervision of its DW investments in the period after the finalization of the 2009 Audit. Given the issues raised by the complaint the investigation will also restrict itself to the supply chain impacts of the DW investments in Indonesia.

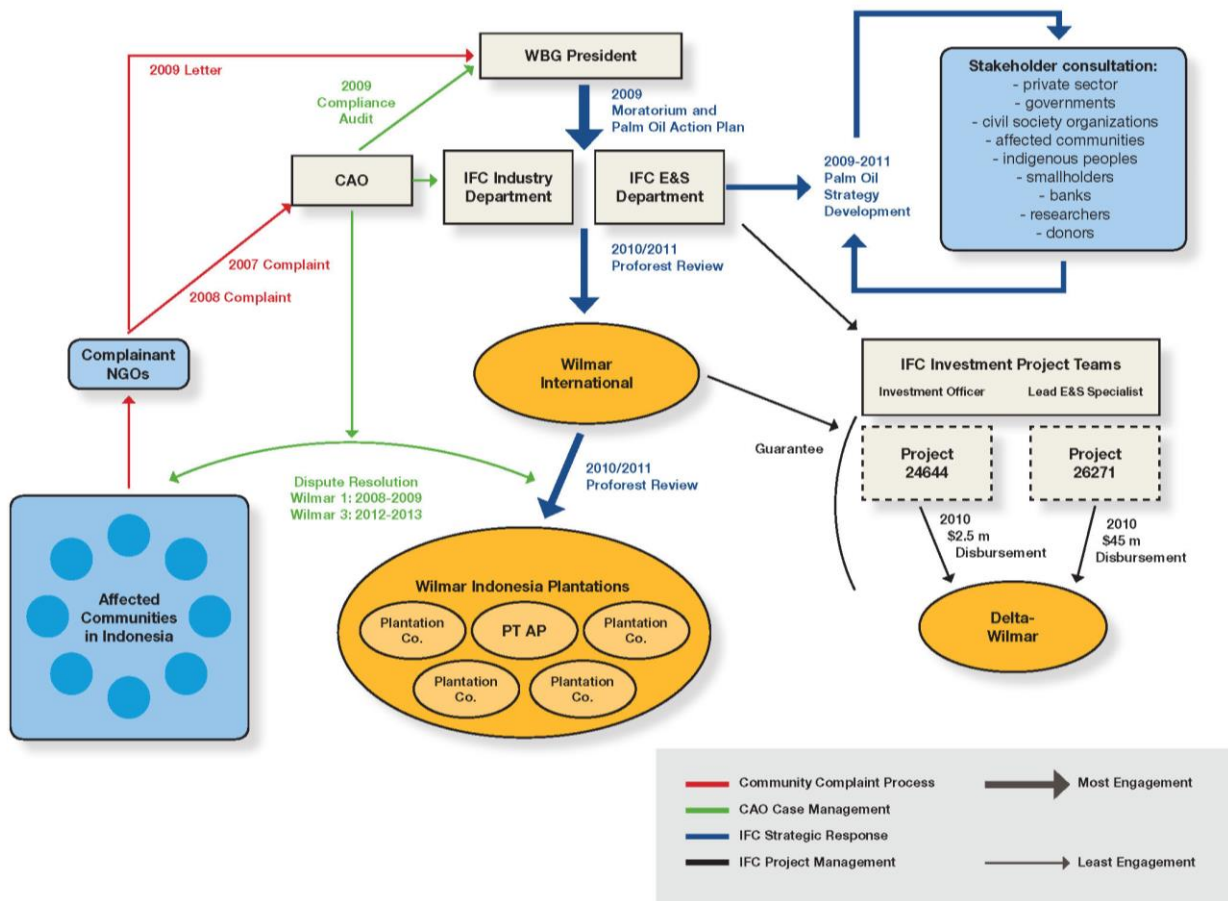
As in all cases, the scope of the investigation includes developing an understanding of the immediate and underlying causes for any non-compliance identified by the CAO.⁴³

⁴³ Full ToR available on CAO website - <http://goo.gl/jxMTfI>

Annex 5: Overview of the IFC Staff Responsibilities and Project Cycle

This investigation considers the actions and decisions taken by IFC staff across a number of different operational teams. The roles and responsibilities of these staff members changed over the investigation period as the DW loans progressed through different stages of the project cycle and as IFC underwent institutional changes. Figure 2 below sets out a simplified organizational diagram to illustrate how different parts of IFC became involved in the management of the DW loans and in the response to complaints about IFC's palm oil investments over time.

Figure 2: Organizational Diagram



IFC's approach to reviewing, approving and managing investments differs depending on the type of investment and its risk profile. Key elements, however, are constant. These are summarized in the box below.⁴⁴

- Business Development and Early Review:** IFC's investment teams identify potential investments based on IFC's strategic goals. Investment Officers (IOs) engage with potential clients, and prepare a description of the proposed project. IFC management decides whether to move forward with project appraisal.

⁴⁴ Adapted from the IFC Project Cycle webpage - <http://goo.gl/c1T2xl>

- **Appraisal / Due Diligence:** The project team assesses the business potential, risks and opportunities associated with the investment including E&S risks. The project team is composed of the IO and various experts including a lawyer and an E&S specialist. If needed, an E&S action plan is developed.
- **Investment Review:** The project team presents the project to management. Management decides whether or not to present the project to IFC's Board of Directors.
- **Public Notification and Negotiation:** Details about the proposed investment are disclosed to the public, and the project team begins negotiations with the client.
- **Board Review and Approval:** The proposed investment is submitted to IFC's Board of Directors for consideration and approval.
- **Commitment:** IFC and the client sign the legal agreement for the investment.
- **Disbursement of Funds:** Once the client meets any conditions of disbursement, IFC may pay out funds in stages.
- **Project Supervision:** IFC monitors the investment to ensure compliance with the conditions in the loan agreement. The client submits regular reports on financial and E&S performance. After disbursement, primary responsibility for monitoring the investment's performance transfers to a portfolio manager.
- **Closing and Evaluation:** A project closes when the investment is repaid in full or when IFC decides to divest or to write off remaining debt. IFC evaluates the project's performance and development impacts.