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EXECUTIVE COMMITTEE OF
THE MULTILATERAL FUND FOR THE
IMPLEMENTATION OF THE MONTREAL PROTOCOL
Fifty-seventh Meeting
Montreal, 30 March - 3 April 2009

PROJECT PROPOSAL: VENEZUELA, BOLIVARIAN REPUBLIC OF

This document consists of the comments and recommendation of the Fund Secretariat on the following project proposal:

Phase-out

- National CFC phase-out plan: 2009 work programme

UNIDO

PROJECT EVALUATION SHEET – MULTI-YEAR PROJECTS
Venezuela (Bolivarian Republic of)

(I) PROJECT TITLE	AGENCY
CFC phase out plan	UNIDO

(II) LATEST ARTICLE 7 DATA (ODP Tonnes)					Year: 2007
CFC: -114.4	CTC: 0	Halons: 0	MB: 0	TCA: 0	

(III) LATEST COUNTRY PROGRAMME SECTORAL DATA (ODP Tonnes)											Year: 2007		
Substances	Aerosol	Foam	Halon	Refrigeration		Solvent	Process Agent	MDI	Lab Use	Methyl Bromide		Tobacco fluffing	Total Sector Consumption
				Manufacturing	Servicing					QPS	Non QPS		
CFC					1,028.7			29.6					1,058.2
CTC													0
Halons													0
Methyl Bromide													0
Others													0
TCA													0

(IV) PROJECT DATA			2004	2005	2006	2007	2008	2009	2010	Total
Montreal Protocol Consumption Limits		CFC	3,322.4	1,661.2	1,661.2	498.4	498.4	498.4	0.	
Maximum Allowable Consumption (ODP Tonnes)		CFC	3,262.	1,661.	1,661.	400.	0.	0.	0.	
Project Costs (US\$)	UNIDO	Project Costs	1,895,062.	1,631,831.	2,071,831.	641,831.				6,240,555.
		Support Costs	142,129.	122,387.	155,387.	48,137.				468,040.
Total Funds Approved in Principle (US\$)		Project Costs	1,895,062.	1,631,831.	2,071,831.	641,831.				6,240,555.
		Support Costs	142,129.	122,387.	155,387.	48,137.				468,040.
Total Funds Released by the ExCom (US\$)		Project Costs	1,895,062.	1,631,831.	0.	2,071,831.				5,598,724.
		Support Costs	142,130.	122,387.	0.	155,387.				419,904.
Total Funds Requested for Current Year (US\$)		Project Costs						641,831.		641,831.
		Support Costs						48,137.		48,137.

(V) SECRETARIAT'S RECOMMENDATION:	For individual consideration
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PROJECT DESCRIPTION

1. On behalf of the Government of the Bolivarian Republic of Venezuela (Venezuela) UNIDO has submitted to the 57th Meeting of the Executive Committee a request for funding of the fourth tranche (2007) of the national CFCs phase-out management plan amounting to US \$641,831 plus agency support costs of US \$48,137; this fourth tranche is the last tranche under the plan. The request was accompanied by a progress report on implementation in the years 2006 and 2007 and MYA tables containing a progress report for the year 2008. UNIDO has also submitted the implementation programme for 2009 and a verification report for 2006 and 2007.

Background

2. The national CFC phase-out plan of Venezuela was approved at the 42nd Meeting of the Executive Committee for a total value of US \$6,240,555 plus agency support costs of US \$468,040 to support the country in completely phasing out CFC consumption by 1 January 2010. The third tranche (2006) was submitted to the Multilateral Fund in September 2006. Subsequently, UNIDO, in consultation with Venezuela's National Ozone Unit, withdrew the submission based on advice from the Secretariat that the verification was incomplete. In February 2007 UNIDO resubmitted the third tranche (2006) request, providing the 2005 progress report of the annual implementation programme along with the verification report on the 2005 data on CFC consumption. The third tranche was approved at the 51st Meeting.

3. UNIDO submitted a request for the fourth tranche (2007) to the 56th Meeting of the Executive Committee. The Secretariat reviewed the documentation and advised UNIDO that the verification report was not acceptable in the present form; and subsequently, the submission was withdrawn. While reviewing the verification, the Secretariat had noticed that the 2006 CFC consumption reported in the documentation was about 980 ODP tonnes above the compliance target both under the Montreal Protocol and under the Agreement with the Executive Committee, and informed the Committee accordingly based on the preliminary data. The Secretariat also informed the Committee that according to the data available, it appeared that Venezuela was not in compliance with the Agreement between the Government of Venezuela and the Executive Committee. The Executive Committee decided in its decision 56/14 that consideration of the fourth tranche of the national CFC phase-out plan of Venezuela be deferred to the 57th Meeting of the Executive Committee and to request UNIDO to complete the verifications for 2006 and 2007 and submit all other information required in respect of CFC consumption.

Progress report for the years 2006, 2007 and 2008

4. The infrastructure for training in good practices in refrigeration has been fully established, with 46 training centres established and equipped, and all of the 130 trainers having received their courses; and in addition 38 trainers were retrained. So far, 4,395 service technicians have been trained in good refrigeration practices, and 3,889 of those were certified by the end of 2008; this constitutes 80 per cent and 70 per cent, respectively, of the planned numbers which were revised and significantly higher than the original targets in the plan. Comparing the results with the objectives of the original plan where training for 3,000 technicians was supposed to be provided, 46 per cent more personnel than anticipated for the whole plan have been trained by the end of 2008. One hundred fifty sets of equipment for certified technicians were purchased in 2008, bringing the total to 600 sets or 80 per cent of the planned figure. Additionally, 50 sets of equipment for service workshops were purchased in 2008 and with this the related overall target has been reached. The establishment of twelve recycling centres has been completed after seven have been established in 2007; a reclamation centre and the necessary transport infrastructure have also been established. A number of workshops were also organized for customs officers with a total of 120 participants. Other non-investment activities included the development of a

concept for a code-of-practice, public awareness, and establishment and operation of a co-ordinating monitoring and project implementation unit.

5. Including the third tranche, US \$5,598,724 have been approved so far, of which 83.9 per cent has been spent and a balance of US \$903,115 remains as of January 2009.

2009 Annual implementation programme

6. The main activities foreseen for 2009: are completion of training and certification of technicians in good service practices in refrigeration to reach the target of 5,500 technicians certified, and establishment of a chiller programme as well as two chiller demonstration projects. The awareness campaign will continue, monitoring activities are also foreseen and a code of practice is planned to be put into operation.

Verification report

7. The verification report states that the 2006 CFC consumption was 2,641.7 ODP tonnes, and notes that there is a 980.5 ODP tonne difference between the maximum allowable consumption in the Agreement for that year, set at 1,661 ODP tonnes. The report also verifies the 2007 consumption, which is negative, with -114.4 ODP tonnes because of exports, and therefore clearly below the agreed limits of 400 ODP tonnes.

SECRETARIAT'S COMMENTS AND RECOMMENDATION

COMMENTS

Activities and plan

8. The Secretariat had several communications with UNIDO to obtain a clear and quantitative picture of the present status of the implementation of Venezuela's phase-out plan. Several key activities under the plan have completed, and others well advanced. Questions were raised regarding the planned activities for 2009, in particular in the chiller sector. UNIDO advised that a major remaining use of CFCs (about 80 ODP tonnes/year) was in the chiller sector, and that a revolving fund would be used to replace a number of chillers. About US \$40,000 will be to manage the revolving fund, which will contain US \$710,000 from the plan, plus as yet unspecified additional resources of US \$200,000 to US \$300,000. Consequently, the full amount requested for the fourth tranche, as well as some of the funds remaining from previous tranches, are to be allocated to that chiller activity.

Verification

9. The verification report to the 56th Meeting was not accepted by the Secretariat since the data submitted could not be checked with that held by customs. A new verifier was selected for the verification and a new report has been submitted. The new verifier also faced problems in communications with customs authorities. Nevertheless, data collection was intensified, thus the new verification report contains significantly more detailed data derived from available customs information compared to the last report. The data obtained from customs turned out to be sufficient to identify and correct some inconsistencies between the data used by the NOU and the customs data. It should also be noted that the CFC imports into Venezuela were zero in 2007, a number which is relatively easy to verify. As a consequence of the above, the Secretariat sees the verification of the CFC consumption for the years 2006 and 2007 to be acceptable. However, it is advisable for Venezuela to address certain generic data quality issues as well as the necessity of differentiation between refrigerant mixtures of different composition to enable it to more accurately report data for different groups of ODS in the future.

Compliance with the Agreement

10. As stated above, the verified 2006 CFC consumption of 2,641.7 ODP tonnes was 980.5 ODP tonnes above the maximum level allowable under the Agreement. The Ozone Secretariat informed the Fund Secretariat that the Article 7 data submission of Venezuela was accompanied by a document stating, inter alia, that 985.1 metric tonnes of CFC-12 had been produced in 2006 to satisfy the needs of other Article 5 Parties in the region during the period 2007-2009. This information was also contained in document UNEP/OzL.Pro/ExCom/56/12/Add.1.

11. In its previous decision 51/32, the Executive Committee accepted a consumption level above the maximum allowable consumption under an agreement for a given year, on the basis that CFC production in a certain year, which included production for domestic feedstock use in a future year, had resulted in a calculated CFC consumption level in excess of the limits set under the Agreement, and that CFC feedstock use in a future year of an amount greater than the excess quantity had been verified before approval. In the same decision the Executive Committee noted that approval was on the understanding that it did not constitute a precedent for any future submissions of similar cases to the Executive Committee, and was without prejudice to any decision of the Meetings of the Parties on compliance issues.

12. This decision of the Executive Committee had been taken in the context of decision XVIII/17 of the Meeting of the Parties, which noted that the Ozone Secretariat had reported that “Parties which had exceeded the allowed level of production or consumption of a particular ozone-depleting substances in a given year had in some cases explained that their excess production or consumption represented one of the four following scenarios:

- (a) Ozone-depleting substance production in that year which had been stockpiled for domestic destruction or export for destruction in a future year;
- (b) Ozone-depleting substance production in that year which had been stockpiled for domestic feedstock use or export for that use in a future year;
- (c) Ozone-depleting substance production in that year which had been stockpiled for export to meet basic domestic needs of developing countries in a future year; and
- (d) Ozone-depleting substances imported in that year which had been stockpiled for domestic feedstock use in a future year.”

13. The decision continued by recalling that “the Implementation Committee under the non-compliance procedure of the Montreal Protocol had concluded that scenario (d) was, in any event, in conformity with the provisions of the Montreal Protocol and decisions of the Meetings of the Parties”; by requesting “the Ozone Secretariat to maintain a consolidated record of the cases in which the Parties have explained that their situations are the consequence of scenarios (a), (b) or (c), and incorporate that record in the documentation of the Implementation Committee, for information purposes only, as well as in the Secretariat’s report on data submitted by the Parties in accordance with Article 7 of the Protocol”; and by recognizing that “new scenarios not covered will be addressed by the Implementation Committee in accordance with the non-compliance procedure of the Protocol and the established practice hereunder”; and, finally, by agreeing to “revisit this issue at the Twenty-first Meeting of the Parties, in the light of the information gathered in accordance with the previous part of the present decision, with a view to considering the need for further action”.

14. While it is for the Parties to interpret the Protocol, the decision of the Meeting of the Parties might imply that the level of production or consumption will continue to be defined on an annual basis, and that any consumption or production in excess of the Protocol’s prescribed levels for that year, that is

reported by the Party concerned to be in one of the categories described in decision XVIII/17, would not be subject to the non-compliance procedure of the Protocol unless so directed by the Twenty-first Meeting of the Parties following its review of the issue.

15. The Secretariat noted from the annual reports provided by UNIDO, and from the data of the verification report, that Venezuela has exported 114.4 ODP tonnes in the year 2007. The Secretariat had received for the 52nd and 54th Meetings of the Executive Committee verifications of CFC production for 2007 in Venezuela which verifies the available CFC stockpiles at the CFC manufacturer to be 697.1 ODP tonnes at the end of 2007. These stocks could be exported in the years post 2007; therefore, the maximum Venezuela can export from the stockpiles generated in 2006 are the actual 2007 exports plus the stocks remaining at the end of 2007. With that, and adding these verified numbers, not more than 811.5 ODP tonnes of the 2006 consumption can be exported post 2006. As stated in paragraph 12, Venezuela's consumption was 980.7 ODP tonnes higher than the maximum allowable consumption under the Agreement. This indicates that by the end of 2007 the 169.0 ODP tonnes foreseen for export, as per the information provided, cannot be exported any more, and therefore paragraph 12(c) above from decision XVIII/17 of the Meeting of the Parties is no longer applicable to this amount.

16. The Executive Committee might therefore determine that Venezuela has not complied with the phase-out plan Agreement. A similar case was discussed by the Executive Committee at the 53rd and 54th Meetings related to consumption beyond the maximum allowable level, caused by production above the country's consumption needs in a specific year where exports were lower than expected. This resulted in decision 54/35 and the application of a penalty clause as foreseen in the related Agreement. In another case at the same meeting, the Executive Committee decided in decision 54/34 that a limited penalty was applicable when a number of criteria had been met, among them that the country had returned to compliance without additional assistance from the Fund. The related decisions are the two only cases where a penalty clause was applied to a consumption agreement; both are included in Annex I to this document.

17. The President of the Industrial and Technological Reconversion Fund of Venezuela, FONDOIN (acting as the NOU) wrote a letter to the Fund Secretariat in November 2008. FONDOIN provided clarifications regarding "173.7 ODP tonnes¹ that should have been exported to meet the needs of Article 5 countries in 2007" were "consumed internally to meet basic needs, and to avoid importing that amount, as ODS imports to Venezuela have been prohibited since 2005". FONDOIN stated further that "there was no way to express the 173.7 ODP tonnes consumed in the country in 2007", and that "export demand was lower than predicted, which enabled us to meet our own demands within the 400 ODP tonnes allowed for 2007 under the Consumption Phase-out Plan Agreement." Finally, FONDOIN pointed out that the "situation, which seems quite clear and well justified given our status as an Article 5 country with authorization to continue consumption to cover basic needs up until 2009, has given rise to a number of misunderstandings". In the understanding of the Fund Secretariat the case stated by FONDOIN seems to amount to stockpiling for consumption in a future year. This is not one of the categories specified in decision XVIII/17 of the Meeting of the Parties, as recalled in above paragraphs 12(a) to (d). The letter of FONDOIN as well as an official translation is attached as Annex II to this document.

18. The Secretariat had pointed out to UNIDO that, given these circumstances, it would be unable to provide a positive recommendation for the tranche. UNIDO advised as follows: that the country signed two different Agreements with the Executive Committee, one for the accelerated closure of the production sector and one for the national CFC phase-out plan. In 2006, the country produced 2,876.3 ODP tonnes (2,913 ODP tonnes allowed under the Production Sector Agreement). Considering the exports of that year, the production should not have exceeded 1,895 ODP tonnes to be in compliance with the consumption sector Agreement. The production plan and the production in 2006 were based on a survey of basic domestic needs in the region. UNIDO points to the significant and successful efforts of

¹ Actual value according to the Fund Secretariat's calculation is 169 ODP tonnes.

the country, with support of the agency, to reduce the demand for virgin CFCs. UNIDO further points out that the allowable consumption in 2007 under the Agreement was 400 ODP tonnes, but instead Venezuela actually exported 114 ODP tonnes, and used about 170 ODP tonnes from previously produced stocks for export. Based on the above, UNIDO states the belief of both the country and the agency that the compliance for each year should be based on recent (i.e. 2007) data, not 2006 data. UNIDO also states that there is no doubt that the country is in full compliance in the year 2007.

19. Regarding the factual correctness of the figures provided by UNIDO, the Secretariat would like to inform the Committee that indeed the country produced within the limits of its production sector Agreement and consumed, in 2007, 514.4 ODP tonnes less than allowed under the Agreement. This compares to a calculated over-consumption in 2006 of not less than 169 ODP tonnes; this latter number might have increased since the end of 2007 depending on the exports in 2008 and the stockpiles at the end of 2008. No verified information regarding stockpiles or export in 2008 is available at the time of writing this document.

20. Should the Executive Committee decide that Venezuela is not in compliance with the Agreement, the amount of funding provided could be reduced by US \$11,920 per ODP tonne of reduction in consumption not achieved in the year, leading to a calculated value of US \$2,014,480. The remaining and last tranche requested for approval amounts to US \$641,831.

RECOMMENDATION

21. The Executive Committee might wish to discuss the request for release of the final tranche of the national CFC phase-out plan for Venezuela in light of the information provided above.

Annex I

EXECUTIVE COMMITTEE'S DECISIONS 54/34 AND 54/35

Decision 54/34 - Kenya: Terminal CFC phase-out management plan (second tranche) (France)

“...The Executive Committee decided:

- (a) To apply the penalty in the Agreement calculated as 10 per cent of the amount of the tranche being submitted to the Executive Committee for approval in instances of non-compliance with the Agreement between the Executive Committee and the Government concerned, when the following criteria had been met: (i) the country concerned was a low-volume-consuming country, (ii) it was the first time that the country had been in non-compliance and (iii) the country had returned to compliance without additional assistance from the Fund;
- (b) Using the method outlined in sub-paragraph (a) above, to apply a US \$33,000 penalty to the second tranche of the terminal phase-out management (TPMP) for Kenya;
- (c) To approve the second tranche of the TPMP for Kenya at the amount of US \$297,000, plus agency support costs of US \$38,610, which took into account the penalty as calculated in sub-paragraph (b) above.”

Decision 54/35 - India: National CFC consumption phase-out plan

“...The Executive Committee decided:

- (a) To note with concern the over-consumption of 2,181 metric tonnes of CFCs in 2006 and 2007 as compared to the maximum allowable consumption limit established in the agreement between India and the Executive Committee for National phase-out of CFC consumption in India focussing on the refrigeration service sector, as per decision 42/37;
- (b) To note that, in accordance with Article 10 and appendix 7A of this agreement, there would be a reduction of US \$14,960 for each ODP tonne of consumption over the maximum allowable consumption limit;
- (c) To note also that the Government of India had submitted a proposed action plan to return the country to compliance with the agreement in the years 2008 and 2009;
- (d) To take into consideration that, in the particular situation of India, the penalty for non compliance under this agreement might be quite large;
- (e) To reaffirm that the Executive Committee wished to assist India in its efforts to phase out CFC consumption;
- (f) To calculate the penalty as follows:
 - (i) Foregone profit of US \$4,178,600 from exporting 1,228 metric tonnes of existing stock of CFCs on the international market instead of selling them domestically;
 - (ii) US \$1.94 million from the remaining funds available in the CFC consumption sector agreement;

- (g) In respect of the CFC consumption sector agreement, that:
 - (i) India would produce no more than 690 metric tonnes of CFCs, primarily for the manufacturing of metered-dose inhalers (MDIs), up until 1 August 2008;
 - (ii) India's CFC producers would sell no more than 825 metric tonnes of CFCs for MDI production in the years 2008 and 2009, comprising 690 metric tonnes of new production and 135 metric tonnes reprocessed from existing stock;
 - (iii) India would export 1,228 metric tonnes of CFCs no later than 31 December 2009;
 - (iv) India would not import any more CFCs of any kind; and
- (h) To approve US \$250,000 (US \$101,078 for Germany, US \$81,141 for Switzerland, US \$47,881 for UNDP and US \$19,900 for UNEP) of the remaining funds available under the CFC consumption sector agreement for continuing project activities.”

Annex II

Letter from FONDOIN (original in Spanish)

Caracas, November 5, 2008

Ms. Maria Nolan
Chief Executive Officer
Multilateral Fund for the Implementation of the Montreal Protocol

Dear Ms. Nolan,

I have the pleasure of writing you in reference to the Addendum to document UNEP/OzL.Pro/Excom/56/12/Add.1, regarding paragraphs 13-21 and their mention of Venezuela's case, which will be discussed at the upcoming Executive Committee Meeting to be held in Doha, Qatar.

Specifically, in paragraph 18 of the Addendum, there is a reference to 173.7 ODP tonnes that should have been exported to meet the needs of Article 5 countries in 2007. I would like to take this opportunity to clarify that said tonnage was consumed internally to meet basic needs, and to avoid importing that amount, seeing as ODP imports to Venezuela have been prohibited since 2005.

Seeing as consumption is expressed according to the (C=I+P-E) formula, there was no way to express the 173.7 ODP tonnes consumed in the country in 2007, because they truly were produced in the country (taking into account the Early Production Phase-Out Agreement, which led Venezuela to stop producing ODP as of December 31, 2006) to meet export demand (feedstock). However, export demand was lower than predicted, which enabled us to meet our own demands within the 400 ODP tonnes allowed for 2007 under the Consumption Phase-out Plan Agreement.

Taking the 173.7 tonnes as imports and subtracting the 114 tonnes exported results in consumption of 59 ODP tonnes from the 980-tonne stockpile mentioned in paragraph 14 of the Addendum. However, the consumption formula does not allow for such clarifications, which is why the data could not be reflected in this way in the report.

This situation, which seems quite clear and well justified given our status as an Article 5 country with authorization to continue consumption to cover basic needs up until 2009, has given rise to a number of misunderstandings, which we would like to resolve to the satisfaction of the Parties.

In that respect, I appeal to your understanding and support to resolve the above-mentioned differences in the best manner possible, and to quell the concerns that the Multilateral Fund Secretariat has seen fit to raise.

Most sincerely and with best regards,

Osmer Enrique Castillo
President

Caracas, 5 de Noviembre de 2008

Sra. Maria Nolan
Directora Ejecutiva
Fondo Multilateral para la Aplicación del Protocolo de Montreal

Estimada Sra. Nolan:

Tengo el agrado de dirigirme a Usted para hacer mención al Addendum del documento UNEP/OzL.Pro/Excmo./56/12/Add.1, en lo concerniente a los párrafos 13-21 que hacen referencia al caso Venezuela, el cual será discutido en el próximo Ex Com a realizarse en Doha, Qtar.

Concretamente, en el párrafo 18 del Addendum se hace referencia a una diferencia de 173.7 ODP toneladas que debieron ser exportadas para atender necesidades de otros países, amparados por el Artículo 5 del Protocolo de Montreal, para el año 2007. Valga la oportunidad para aclarar que dichas toneladas fueron consumidas internamente, para cubrir necesidades básicas, que de otra manera hubieran debido importarse, teniendo Venezuela prohibida la importación de las ODP desde el año 2005.

Dado que el consumo está expresado por la fórmula ($C=I+P-E$), no había manera de expresar las 173.7 ODP consumidas en el país en el año 2007, pues realmente fueron producidas en el país (considerando las limitaciones del acuerdo de Cierre Temprano de Producción, con lo cual Venezuela dejó de producir ODP a partir del 31 de Diciembre de 2006) para atender la demanda de exportación (feedstock), pero que, en efecto, estuvo por debajo de lo proyectado y nos permitió atender nuestras necesidades que, según el Acuerdo del Plan de Eliminación del Consumo, nos permitía consumir hasta 400 ODP toneladas en el 2007.

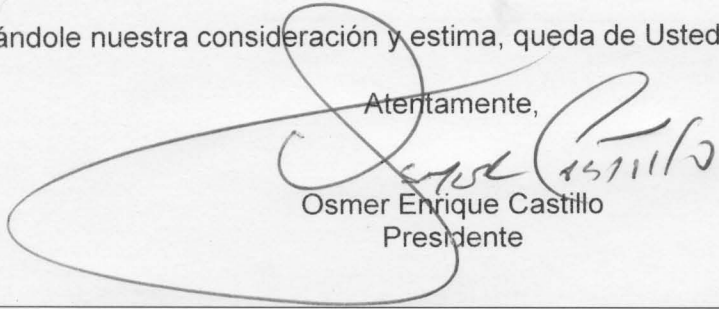
Si se colocan las 173.7 toneladas como importación y se restan las 114 toneladas exportadas, da un consumo de 59 ODP toneladas extraídas de las 980 del stockpile referido en el párrafo 14 del Addendum; no obstante, la ecuación de consumo no permite estas aclaratorias y por eso no pudieron ser reflejadas tal cual en los datos del reporte.

Esta situación que parece bastante clara y bien justificada, dada nuestra condición de país bajo el amparo del artículo 5 cuyas necesidades básicas le permitirían extender su consumo hasta el final del 2009, ha dado lugar a una serie de confusiones que quisiéramos quedaran aclaradas a satisfacción de las partes.

En tal sentido solicito su comprensión y apoyo para resolver de la mejor manera posible las diferencias referidas, así como las inquietudes que a bien a tenido en hacer la Secretaría del FMPM.

Manifestándole nuestra consideración y estima, queda de Usted.

Atentamente,


Osmer Enrique Castillo
Presidente