STANDING COMMITTEE ON FOREIGN AFFAIRS AND INTERNATIONAL TRADE

COMITÉ PERMANENT DES AFFAIRES ÉTRANGÈRES ET DU COMMERCE INTERNATIONAL

EVIDENCE

[*Recorded by Electronic Apparatus*]

Thursday, October 18, 2001

• 0908

[*English*]

The Vice-Chair (Ms. Jean Augustine (Etobicoke—Lakeshore, Lib.)): Good morning. I would like to call to order the discussion today on Bill C-31, an act to amend the Export Development Act and consequential amendments to other acts, and to welcome the officials who are here with us this morning and will be making presentations to us.

At this point in time, we also have an item that needs to have the approval of the committee: the report of the subcommittee's work on Bill C-32. Mr. Mac Harb, the chair of that subcommittee, is here, so before we get into the other business, I would like to have the consent of the committee to take up the report when it is ready for us.

We'll wait until the report is brought forward. At that time we will have the necessary quorum to deal with it.

Mr. Paquette.

[*Translation*]

Mr. Pierre Paquette (Joliette, BQ): Good morning and thank you, Madam Chair. I hereby give notice that I intend to rise on a point of order when we move to discuss the subcommittee's report on Bill C-32.

When the subcommittee met yesterday, I announced that I planned to move some amendments to the bill respecting the implementation of the agreement with Costa Rica. The subcommittee chair ruled these amendments out of order, on the grounds that a bill of this nature was either adopted as a whole, or rejected as a whole.

• 0910

To my mind, an implementation bill can be amended. However, the agreement itself between Canada and Costa Rica cannot. Could you please explain this to me?

I will, therefore, be reintroducing my amendments to the committee so that the main committee can address them in the course of adopting the subcommittee's report.

[*English*]

The Vice-Chair (Ms. Jean Augustine): Mr. Harb.

Mr. Mac Harb (Ottawa Centre, Lib.): Madam Chair, we had a very lengthy debate about it, and if it is the wish of the committee, we'll introduce it and vote for or against without further elaboration, because we've really exhausted this whole thing. We had officials, we brought in all those people who had concerns, and we introduced a motion to deal specifically with Mr. Paquette's concern, which is going to be part of the

report we will be making to Parliament.

In my view, if he really wanted to help the process along, he'd have one very efficient venue, the 48 hours to introduce it in Parliament at the report stage. I think that would be the most effective way to deal with it, and he'd have a chance to air it publicly. He'd have a chance to put it on the record. Not only that, the House of Commons would have a chance to vote for or against.

At this point in time, I think we should get the bill to the House of Commons as efficiently as possible so that it can be scheduled for debate and we can have an informed debate in the House. If my colleague would agree with that, I think that would be very helpful.

The Vice-Chair (Ms. Jean Augustine): Thank you.

Mr. Robinson.

Mr. Svend Robinson (Burnaby—Douglas, NDP): Thank you, Madam Chair.

[*Translation*]

I support Mr. Paquette's request to be allowed to introduce some amendments. Precedents must exist in other acts. I don't think we need to debate the matter at length, but the principle whereby it should be possible to amend this bill is very important. Judging from what Mr. Harb said, members can move amendments and these can be voted on. I agree with this as well.

[*English*]

Mr. Mac Harb: I'm quite willing, if they introduce a motion to vote for or against.

The Vice-Chair (Ms. Jean Augustine): Then we'll do that at the appropriate time. We'll carry on with Bill C-31, and when we have before us the report of the subcommittee, we'll deal with that. Thank you very much.

We'll now call on the officials from the Department of Foreign Affairs and International Trade. We have with us Marie-Lucie Morin, director general of planning and policy, trade commissioner service; Sara Hradecky, director of the export financing division; Wayne Robson, deputy director of export financing division; and Martin Jensen, an officer in the export financing division.

Welcome. You've been before us on this specific bill in the past. We'll now call on you to make your presentation.

[*Translation*]

Ms. Marie-Lucie Morin (Director General of Planning and Policy, Trade Commissioner Service, Department of Foreign Affairs and International Trade): Thank you, Madam Chair.

Distinguished members of this committee, I am very pleased to have the opportunity this morning to present Bill C-31, an Act to Amend the Export Development Act. I would like to start by giving you an overview of the background and rationale of this bill, and then provide answers to any questions you may have.

Bill C-31 is the outcome of a legislative review process that was mandated in 1992. In that year, a number of amendments were made to the Export Development Act. The purpose of the amendments was to improve the Export Development Corporation's ability to serve Canadian exporters. The expansion of the Corporation's powers in the 1993 amendments was supported by all parties.

Since the 1993 amendments took effect, EDC's volume of business has grown almost fourfold, reaching over $45 billion last year. It is clear that the 1993 changes have borne fruit, but at the time they were seen as a bold step. As a result, Parliament also decided that the Corporation's future performance should be carefully monitored. To this end, it imposed a requirement for a thorough review of EDC's mandate and operations in five years' time.

• 0915 

[*English*]

That review commenced as required in 1998. It began with a report produced by the law firm Gowling, Strathy & Henderson. This was the so-called Gowlings report, which was the starting point for this committee's studies in the fall of 1999.

[*Translation*]

Your own report was presented to Parliament in December 1999, and was then the subject of a Government response tabled in Parliament by Minister Pettigrew in May 2000. On the whole, the government endorsed your findings.

[*English*]

The review included very extensive public consultations. If you were to look at the list of witnesses and written submissions during the review,

you would see that scores of individuals, companies, and organizations were heard. There were additional consultations on very specific issues as well. The review was conducted with great publicity. This did not always make for easy decisions.

There is a huge range of opinion on the issues. Much of it is valid on its own terms but difficult to reconcile. However, we did ensure that all voices were heard and that we were well-informed concerning where Canadians stand.

[*Translation*]

There was strong consensus on some points. Canada's economic well-being depends on international trade. The review demonstrated EDC's significant contribution to this trade. It is a well-managed organization, highly valued by its clients and respected by its competitors. It is innovative in its development of programs and is an important contributor to multilateral dialogue on trade issues. Whatever changes we may propose, we should preserve EDC's flexibility to deliver its services, and protect those programs that are operating well.

But at the same time, there was also a consensus that EDC could do more to ensure adherence to those values that Canadians expect of an agency of Government. This was particularly true regarding environmental and human rights issues. EDC is Canada's emissary in many important respects. All Canadians have a stake in this.

Therefore, you told us that EDC should meet reasonable environmental and social standards in conducting its business. To do this, its environmental review framework should be given a firm basis in law. To promote greater transparency and rigour in the framework, the Auditor General could be tasked to oversee its operation on a regular and public basis.

You welcomed EDC's development of an information disclosure policy along the lines proposed in the Gowlings Report, but suggested that it be subject to public consultations and independent review, and that the Corporation consider creating an ombudsman to administer the policy.

[*English*]

Finally, you recommended that the Export Development Act be amended to require EDC to pay due regard to benefits to Canada and Canada's international commitments, particularly those bearing on human rights and labour standards.

Of course, the challenge to do these things is not peculiar to EDC or international financial institutions. Increasingly, this challenge confronts any firm doing business on a certain scale. We are seeing very focused responses to it, both on the part of individual firms as well as multilateral bodies such as the Organization for Economic Co-operation and Development, where relevant codes of business conduct are being developed.

The guidelines for multilateral enterprises developed under the OECD are a prime example of such a code. Canada is a signatory to the guidelines. They outline principles and standards in areas as diverse as employment and industrial relations, human rights and the environment, disclosure and transparency, as well as competition and tax. There are no easy precedents to follow in taking these initiatives.

• 0920 

These new systems will have an impact on costs, on client expectations, and on accepted ways of doing business.

This kind of work requires time, resources, and real commitment. The government believes that our crown corporations have both the means and the duty to take a leadership role in this work. At the same time, the importance and complexity of the interests at stake demand that we proceed cautiously.

[*Translation*]

I'd now like to describe to you the proposed amendments to the Export Development Act, and how they respond to the concerns raised during the legislative review.

Bill C-31 proposes to amend the Corporation's name to Export Development Canada in English, and to Exportation et développement Canada in French. This change will allow use of the well-known brand name “EDC” in both official languages. It will strengthen the Corporation's connection with Canada's institution. It should also facilitate the Corporation's outreach marketing, especially to small exporters throughout Canada. In a subtle way then, this amendment serves an important objective that I hope we can all support.

Bill C-31 also contains two rather technical amendments to the powers of EDC's Board of Directors. The first would permit delegation of Board powers to subcommittees composed of Directors with special expertise in some area of corporate concern.

A second, related technical amendment would enable EDC's Board to make by-laws for the administration of a recently established pension plan. The plan took effect in April 2000. It was established with all appropriate authorizations, and is consistent with Treasury Board policy that Crown corporations should establish pension plans independent of the Government plan.

[*English*]

I turn now to the amendments. These may be of most interest to you.

In brief, Bill C-31 would establish a legal requirement for EDC to conduct environmental reviews of the projects it is asked to support. EDC

already does this, but this amendment would make it a binding, legal obligation.

A related amendment would require the Auditor General to conduct regular examinations of EDC's environmental review framework. These examinations would cover both the design as well as the framework and EDC's performance in applying it. The examinations would occur at least once every five years and would be reported to Parliament.

There are also related amendments to prevent duplicate requirements arising under the Canadian Environmental Assessment Act. Certain ministerial or cabinet actions can trigger that act. For instance, when ministerial authorizations are required for a transaction, Bill C-31 will require environmental reviews under the Export Development Act, but there would still be a risk of duplicate obligation arising under the Canadian Environmental Assessment Act. This amendment would prevent that duplication from occurring.

Some have suggested that EDC should be regulated under the Canadian Environmental Assessment Act. This view was expressed repeatedly throughout the legislative review, but neither the Gowlings report nor this committee took up the suggestion.

In fact, Gowlings stated that legislating specific environmental requirements for EDC might not be practical. Instead, they recommended an approach similar to that of the United States export credit agency, Ex-Im Bank.

Ex-Im Bank has had an environmental requirement in its governing legislation for nearly ten years. Ex-Im Bank's practices are often held up as a model for other agencies. In this approach, a general mandate to conduct environmental reviews is set by law. But Ex-Im Bank's board of directors is responsible for developing specific guidelines and procedures in consultation with stakeholders.

After analysing numerous models, this is precisely what Bill C-31 would do—establish a general environmental mandate while leaving its detailed implementation to EDC's board of directors. It is the approach that this committee, with some enhancements, also endorses.

• 0925 

EDC recently completed public consultations on revising its environmental review framework. It employed both the Auditor General's recommendations and specific government guidelines in undertaking these consultations. It has sought and recorded the views of industry and NGOs. It has engaged a leading environmental consultant to assist with the consultations and prepared detailed recommendations for the framework's revision. No other export agency in the world has had its environmental procedures subjected to such meticulous and exhaustive review.

The possibility of regulating EDC under the Canadian Environmental Assessment Act was analysed exhaustively before the present course was chosen. In making its decision the government applied such criteria as ensuring environmentally sustainable projects, protecting Canadian competitiveness, respecting the sovereignty of foreign governments, and creating sufficient flexibility to operate in a varied, complex, and fast-paced international environment.

The approach we have chosen is consistent with the emerging practices in the international community and with our work on this issue in the OECD. It will provide a uniform process for EDC projects and permit rapid adaptation to changing competitive and technical circumstances. To ensure that its procedures and standards are sound, the Auditor General will continue to oversee both its design and operation.

[*Translation*]

It has been recommended that EDC's mandate should include a general requirement to pay due regard to benefits to Canada and Canada's international commitments, particularly those that concern human rights and core labour standards.

EDC's mandate is trade promotion, to the benefit of Canadian exporters and our common prosperity. Furthermore, as an agent of the Crown, EDC is already bound to adhere to Canada's international commitments. However, it was determined that a general statutory mandate of this kind could raise legal risks for the Corporation without clarifying the specific requirements that must be met in a given case. Unlike the environmental mandate, there is no pre- existing framework to help ground such an obligation in concrete operational measures.

Nonetheless, the Government acknowledges the serious concern that inspired your recommendation, and is committed to ensuring that economic benefits and international obligations are taken account of in EDC's decision-making. The Government has decided to address this issue through two interconnected mechanisms.

[*English*]

In the first place, EDC will be required by its corporate plan to consider economic benefits to Canada and Canada's international commitments in the area of human rights and core labour standards. Annual preparation of the corporate plan is required for crown corporations by the governing statute, the Financial Administration Act. A corporate plan sets out and limits the range of a crown corporation's business and activities. The plan is approved by ministers and tabled in summary form in Parliament, and a crown corporation cannot act outside its parameters.

In addition, the Department of Foreign Affairs and International Trade is working with EDC to refine mechanisms for continuous information exchanges on human rights in specific countries. This will operate at the level of general or sectoral conditions as well as with reference to specific projects.

In bringing Bill C-31 to Parliament, the Minister for International Trade has taken a balanced approach to policy reform at EDC. On the one hand, this bill would leave significant responsibility in EDC's hands for the development of credible and effective environmental and social policies. On the other hand, both government oversight and public accountability would be brought to bear on these policies through regular public consultation and the Office of the Auditor General.

I hope I have helped to clarify the background and purpose of this bill. We welcome any questions you may have for us.

The Vice-Chair (Ms. Jean Augustine): Thank you very much, Ms. Morin.

Having called clause 1, we'll now go to questioning.

• 0930 

Recognizing the time that we have with these witnesses, I'd like to ask the committee if we can go a five-minute round and see where we are at that point. We might want to use some of this time to deal with Bill C-32. But we'll go to the members who can now question the witnesses.

Mr. Martin.

Mr. Keith Martin (Esquimalt—Juan de Fuca, Canadian Alliance): Thank you, Madam Chair.

Merci beaucoup, Madame Morin, et les autres. I'm sorry we didn't have an opportunity to meet, as you had asked, in my office. I'm glad you have come today.

This is an issue that has been plaguing us for much of our time. There are some serious questions even with this bill. Because we only have five minutes, I'll be brief and ask the question.

It's come to our attention that projects backed by the EDC, for example those in Papua New Guinea where there has been strip mining and clear-cutting, as well as those in South and Central America, have been allowed to go ahead with devastating results on the ground for the environment. In fact, as you're all well aware, the reputation of EDC is as a supporter and backer of companies that, while in Canada, would not be engaging in these types of environmentally disastrous behaviours, yet internationally feel compelled to be allowed to do this with minimal oversight.

I have a couple of questions on this bill. The EDC is exempt from the Access to Information Act as far as I can see. It's not built into this bill. Why has this not been allowed, and would you support the EDC being subject to the Access to Information Act?

Secondly, on the suggestions that you've made, Madam Morin—good suggestions—the problem that people are finding is that when the EDC's in charge of the legal and environmental framework, how do we find a third party that's prepared to keep EDC's feet to the fire? How is there some oversight on what the EDC is doing?

If I may put this into an analogy, the problem is if the fox is overseeing the chicken coop, how do we ensure that the chickens are safe? Perhaps you could explain how that could be built into this bill.

Merci beaucoup.

The Vice-Chair (Ms. Jean Augustine): We could carry that analogy on.

Some hon. members: Oh, oh!

Ms. Marie-Lucie Morin: Thank you for these questions, Mr. Martin.

With respect to your question as to why the government currently does not subject the EDC to the Access to Information Act, as it does with some other crown corporations, the answer relates to the protection for commercial confidentiality that is included in the Access to Information Act. It may not be appropriate for an international lender and insurer like EDC to be subjected to the act. Commercial crown corporations are expected to operate on the same terms as their private sector competitors, which are not subject to the Access to Information Act. In fact, there are only a select number of crown corporations that are subject to the Access to Information Act at this time.

Mr. Keith Martin: May I just interrupt you for a second. I'm sorry, but we only have a couple of seconds. Isn't the quid pro quo here that if I'm a private company going to you requesting financial help, while I'm getting access to the public moneys, I ought to also be subject to the same public supervision and oversight? This is not the same as a simple transaction between two private companies, because you have the third-party public element in there.

Mr. Martin Jensen (Officer, Export Financing Division, Department of Foreign Affairs and International Trade): Mr. Martin, if I may respond to this in part, on the question of the Access to Information Act, you will be aware that the question of the application—the operation—of the act is currently being reviewed by a federal task force. I believe it is being headed up by Justice and Treasury Board, but, in any event, that task force has been studying that question and is expected to report to Parliament this fall.

• 0935

I think it would be premature to act in advance of their recommendations. Their recommendations may well favour your opinion. It has been recognized that in the application of the Access to Information Act to crown corporations, it's not always easy to say why it should apply to one and not to another.

The general rule seems to be that as crown corporations are more commercial in their orientation, there is a reason not to apply the act, in order to preserve their commercial character and keep them on a level playing field with their private sector competitors. It is a policy reason that is given. Nonetheless, you can expect a report to Parliament this fall from that task force.

With respect to disclosure of information about EDC, we should note, in accordance with an earlier recommendation of this committee, that EDC is developing disclosure framework. Furthermore, that disclosure framework is not only access-responsive to particular requests, it's proactive. It would act ahead of time. It would make information available without request. That disclosure will then go some way toward creating the kind of public oversight of the corporation's activities that we also believe is important.

Finally, to be very brief, the Auditor General is also going to be looking, henceforth, very closely. You have in your binder, I think at tab 7, the Auditor General's report. It was an extremely comprehensive report on both the design and operation of EDC's environmental review framework. It was quite a hard-hitting report—that is disclosure and transparency. We expect to build on that, both from the point of view of outside oversight coming from the Auditor General, and also through EDC's disclosure framework, proactively disclosing more information.

The Vice-Chair (Ms. Jean Augustine): Thank you.

Mr. Svend Robinson: On a point of order, Madam Chair, Mr. Jensen referred to a task force that is looking at the issue of including the EDC under the access legislation. I wonder if he could provide the committee with the information on who that is and when they will be reporting.

Mr. Martin Jensen: I do not have that on hand, but I can do that. Is first thing tomorrow morning sufficient, or the end of today?

Mr. Svend Robinson: That's fine.

The Vice-Chair (Ms. Jean Augustine): I think Mr. Robinson said first thing tomorrow morning.

Mr. Martin Jensen: Sorry, I'm tied up downtown for the rest of the day. I can go back to the office and do it at dinner.

The Vice-Chair (Ms. Jean Augustine): Mr. Robinson is very accommodating and he'll wait until tomorrow morning.

Mr. Martin, I think recommendation 20 in our report also speaks to your question.

Mr. Keith Martin: I guess my time is up, isn't it.

The Vice-Chair (Ms. Jean Augustine): Yes, your time is up.

Thank you very much, Mr. Jensen.

We'll now move to Mr. Paquette.

[*Translation*]

Mr. Pierre Paquette: Madam Chair, I have a few questions. First of all, I would like to know why the Export Development Corporation should act unilaterally to define the criteria on which the environmental assessments will be based and why these criteria should not be set out in the act?

Pursuant to paragraph 10.1(2)a) of Bill C-31, the Board shall define words and expressions such as “transaction”, “project”, “adverse environmental effects” and “mitigation measures”. If the government was really serious about the whole thing, it would have provided a more accurate definition of the words and expressions in the bill itself.

Having said this, I'd like to hear your views on the subject because this provision bothers us considerably. A number of people have also suggested that an ombudsman be appointed. You rejected this proposal and I would like to know why.

Subclause 11(2) states that a review will be conducted every five years. That seems like a long time between reviews. Public opinion and opinion of environmental issues in particular changes quickly. Five years seems like a long time to me. Why five years between reviews, not two?

Finally, the bill seems rather weak to me in the area of human rights and labour standards. Why is there not, at the very least, the same type of involvement in environmental matters? These are just a few of my questions, for starters. Thank you.

• 0940

[*English*]

Mr. Martin Jensen: Thank you, sir.

With respect to the first question on criteria for assessment, in the case of the environmental review of competitive export finance activities, we are working in a multilateral competitive context. We're not simply working within the confines of the Canadian borders, or any single nation. We're working across a great number of different national systems, and so forth.

There is no received wisdom on how this is to be done. There are ongoing negotiations within the Organization for Economic Co-operation and Development, where a multilateral framework, which will set a kind of floor or base of standards and procedures, is being developed. That work has been mandated at the highest political levels, by both OECD ministers and G-8 leaders. We certainly hope to have that framework concluded, completed, and agreed upon by the end of the year.

In a context like this it would be very difficult, and possibly counterproductive, to put specific environmental criteria into the act itself. Gowlings observed that in their early study, after looking at a number of different national systems. They observed that it could be counterproductive to put such binding criteria into legislation when you have a field that is evolving, in a technical sense, as quickly as this field. Standards are constantly changing—both procedural standards and scientific-quantitative standards.

If you look at the Canadian Environmental Assessment Act itself, while it lays out extremely definite procedural standards, it is silent on some of the details of those specific factors.

If you look at section 58 of the Canadian Environmental Assessment Act, you will see a direction there that the Minister of the Environment may establish criteria and guidelines to help make decisions on whether a project should or should not be supported, but they're not actually built into the act itself.

Ms. Aileen Carroll (Barrie—Simcoe—Bradford, Lib.): Could you just repeat those last two sentences on references to the CEAA?

Mr. Martin Jensen: If you look at section 58—

Ms. Aileen Carroll: I have written it down.

Mr. Martin Jensen: —you will see that the Minister of the Environment is given the power to establish criteria to assist people applying the act, but these are criteria guidelines; they're not stipulated in the act itself.

I should say, however, that if you look in the briefing book we have provided, you will see that there has been a great deal of guidance provided, by the Auditor General and the government itself, to the Export Development Corporation, on what the Auditor General and the government, respectively, consider to be good environmental practices.

We have reference standards. Our G-8 leaders have said, “We think you should draw on multilateral development bank standards”, and that is included in the government guidance. There are pretty hard political directions being given to the corporation, and the Auditor General will be looking at them.

It is true that the act says the Auditor General will review, at a minimum, once every five years. If you look into the Auditor General's report, at tab 7, you will see that the Auditor General made a recommendation to my minister, Minister Pettigrew, that Minister Pettigrew request the Auditor General to audit the framework again three years after it's revised. At page 27 in English and page 31 in French of the report you will see that my minister said “No, I would like you to come back and look at it again in two years' time.” That request has not been superseded by the five-year minimum in the legislation.

• 0945

Finally, on the question of an ombudsman, as part of its disclosure framework, EDC has developed or is developing terms of reference for such a position within the corporation. The terms of reference will be made public in, I think, very short order.

[*Translation*]

Mr. Pierre Paquette: What about human rights and labour standards?

[*English*]

Mr. Martin Jensen: Oh, yes. That question was also given a lot of study. The concern there is that you can put such a direction into EDC's mandate, but there is no concrete operational direction on how it shall be fulfilled.

There is, as I've pointed out, a great body of practice and technique developing on environment, but there is no concrete operational grounding for such a mandate. You would create a legal obligation without being specific as to how to fulfill it. Therefore, we recognize its importance but are seeking administrative means to answer this problem.

As my colleague has pointed out, the corporate plan is a binding legal obligation itself under the Financial Administration Act. There are enhanced and increasingly systematized information exchanges between the Department of Foreign Affairs, Export Development Corporation, and other Canadian departments, such as CIDA, that may be operating in foreign countries. So we're seeking to do this through administrative

means rather than simply a bare mandate in the legislation.

The Vice-Chair (Ms. Jean Augustine): Thank you, Mr. Jensen.

We'll now move to Mr. Robinson.

Mr. Svend Robinson: Thank you.

I want to just follow up on that last point, because, frankly—and I say this with respect—it's logically profoundly flawed. Mr. Jensen has suggested that by including a requirement in this bill that the EDC should respect international obligations, ILO standards, and human rights standards, in Mr. Jensen's words we would be creating a legal obligation without being specific as to how to fulfill it.

Well, that legal obligation already exists. I take it you would agree.

Mr. Martin Jensen: Yes, it does.

Mr. Svend Robinson: Right. So if that legal obligation exists, we're not creating any new obligation at all, are we?

Mr. Martin Jensen: No.

Mr. Svend Robinson: No. Correct. So you're already bound to observe those commitments, as you said, and in fact Ms. Morin herself said you're already bound to observe them. This committee unanimously recommended, after hearing compelling evidence on this, that we should include an explicit reference to that existing obligation in the legislation to remind the EDC that it is important those obligations be fulfilled.

What possible harm would it do to explicitly include that requirement in the legislation, when you're already legally bound to fulfill it?

Mr. Martin Jensen: There is a concern that it would create grounds of legal action that could, without benefiting human rights or promoting them, actually cause serious operational problems for the corporation and for the exporters who use it.

Mr. Svend Robinson: But if the legal obligation already exists, why couldn't people sue now?

Mr. Martin Jensen: I can't answer that question. I don't know.

Mr. Svend Robinson: I'm sure you can't because there's no answer to it. The fact of the matter is we're not asking EDC, according to you, to undertake any new obligation whatsoever. All this committee is saying is that we want to make sure in the legislation that establishes the EDC that your existing obligations are explicitly recognized. Certainly I intend to propose an amendment to that effect. I've heard nothing from the witnesses this morning that would in any way explain why that would create, in Ms. Morin's words, “new legal risks”. The obligation exists now and is presumably just as enforceable now as it would be if we included that.

• 0950

I want to say it's particularly important that we include it, because the EDC has a pretty appalling record in a number of different areas. When I look at their environmental record—the Three Gorges Dam, the Omai gold mine in Guyana, the Urra Dam in Colombia....

I met with indigenous leaders in Colombia, Madam Chair, and I think other members of this committee are probably familiar with the situation in Colombia of the Embera Katio people. They said to me they had been treated with contempt in that whole process, that the concerns of aboriginal peoples, the indigenous peoples there, were ignored by the EDC completely.

What I heard from the ambassador was that we only had a small stake in it. But I'm sure you'd agree that's not an acceptable rationale for saying we're going to ignore the situation. The Auditor General's report was a pretty devastating indictment of the EDC's policies so far. I think it's very important that we include an explicit reference in this bill.

As for the access to information legislation, I sat on the justice committee that wrote that bill. I recall moving an amendment at the time it was originally proposed that would have included the EDC within the framework of the bill. It wasn't included then. We don't have to wait for a task force of the government. If we believe it's the right thing to do, we can do it now. In fact I believe the Canadian Business Development Bank is already under the framework of the access to information legislation, Mr. Jensen, is that not correct?

Mr. Martin Jensen: That is correct, although the Business Development Bank has in the Business Development Bank statute itself, I believe—and I could confirm this by checking it—a rather sweeping exemption for all its commercial activities. So you could say they're put in and then taken back out again.

Mr. Svend Robinson: One last question, Madam Chair, and that's with respect to the issue of disclosure of the environmental assessments. Certainly I believe we have to have much stronger language on environmental assessments in this bill. I'd like to see the legislation encompass the CEAA requirements, but at the very least we've got to have explicit criteria.

Why are there no disclosure provisions for the environmental assessments within the framework of the legislation itself? I know there have been some administrative policy suggestions, but why are no explicit disclosure provisions included within the framework of the legislation itself?

Mr. Wayne Robson (Deputy Director, Export Financing Division, Department of Foreign Affairs and International Trade): Maybe I could address those questions in order, starting first with the question of human rights.

There are some issues related to how human rights would affect projects that are also dealt with in the environmental framework. We should point out that a number of mechanisms exist to address human rights. Some of them are already enshrined in legal obligations through the policy being developed for the environment. In particular, there are the ones related to social impacts on projects conducted overseas.

Regarding the environmental review framework, we have direction in it and World Bank guidelines that we should be taking a look at issues such as resettlement and aboriginal issues and undertaking local consultations in the context of each project as it goes forward. That guidance has been provided by the government and is being worked into the environmental policy being developed by the EDC.

There is at the same time another mechanism being developed for ensuring that the EDC continues to have an exchange of information with the Canadian government on a fixed basis in order to receive human rights reports from the Canadian government and our standing policies on where we stand on human rights in particular areas. They are followed up with exchanges with EDC about what they learned in the conduct of consultations on projects. These help to advise us on anything they may learn in the process of their consultations in countries.

So those mechanisms are already in place. Arguably the mechanisms under the environmental review framework are then mandated through this guidance and the legal obligation inside the act. The additional obligations that would be suggested, to reinforce what they are already required to follow by public policy, are also conducted through the corporate plan and the ongoing guidance from the minister. There was a decision taken, and perhaps we could review it again at the clause-by-clause stage, that there was not a need to add it into the act at this point. So the human rights issue has been addressed on a number of fronts, including in some instances in the environmental framework, which is a legal obligation inside the act.

I'll move past the access to information question, because I think Martin answered it while you were in the middle of asking it, and on to the disclosure policy and disclosure provisions, in particular those related to the environmental assessments.

• 0955 

The disclosure policy has been partially implemented already by the EDC and was approved by their board. It has already been moved forward on the issue of aggregate disclosure, aggregate information about what they're doing on a regular basis, reported quarterly and annually—that is up on their website now—and on a transactional basis for those transactions the parties have consented to release.

The third step of that disclosure policy is related to the environmental projects, and that part of the disclosure policy is in a sense also tied to the compliance officer issue and to the environmental review consultations that are being undertaken right now by the EDC. Those consultations only recently ended, and a report is expected on them next week. I'm hopeful the EDC will be able to provide additional information to you on where those consultations have—

Mr. Svend Robinson: We may be able to incorporate disclosure provisions within the framework of this legislation.

Mr. Wayne Robson: Well, what I think you might have is a clear understanding of how the disclosure policy that is going to be implemented by the EDC affects the ERF, which is the policy guidance that's been provided and encompassed in this legislation through that track.

Mr. Svend Robinson: Or we may be able to include it in the legislation.

Mr. Wayne Robson: I would not presume to suggest what you can or can't do.

Mr. Svend Robinson: Thank you.

The Vice-Chair (Ms. Jean Augustine): Thank you, Mr. Robinson. If you had asked this a third time, I would say you were badgering the witness.

Mr. Svend Robinson: Twice is okay.

The Vice-Chair (Ms. Jean Augustine): Mr. Casey.

Mr. Bill Casey (Cumberland—Colchester, PC/DR): I find it really puzzling that the EDC has the ability and the power to develop their own environmental standards and implement them. Does this make sense? Would it make sense for the Department of Transport to be able to develop their own rules, to police them and implement them, and then maybe to have the Department of Natural Resources have their own rules and so on, for every department to have the ability to set their own standards? Do you think every department and agency should have their own environmental standards and be able to police them?

Mr. Stan Keyes (Hamilton West, Lib.): Good idea, Bill.

Mr. Bill Casey: I'd like to know. Why is EDC special? Why can they have their own set of rules?

Mr. Martin Jensen: I would suggest they do not have their own set of rules. Again, if you look at the briefing book, there is a great deal of

guidance being given to the corporation from the highest levels of the Canadian government. It is guidance that takes into account developing standards and environmental assessment science and techniques as they are being developed in the international context, the development context, and the trade context.

So while they have formal power to adopt them and implement them, they cannot do so in blissful ignorance of what is happening around them in the world. The government has made very clear our expectations of the standards they will meet.

I can finish very quickly, sir. The Auditor General has done so as well. Even under the Canadian Environmental Assessment Act, the person applying the act is primarily responsible.

You said they would police themselves. Well, yes, we certainly hope they will police themselves and ensure they implement their policies faithfully, but they are also going to have the cold eye of the Auditor General looking over their shoulder as they do. If they implement a new environmental review framework on January 1, 2002, they will have the Auditor General undertaking a thorough review of both the implementation and the fundamental merit of the design, beginning in 2004.

Mr. Bill Casey: Does any other department or agency have their own environmental rules? Have they the same power the EDC has, and why not?

Mr. Martin Jensen: Well, there are other crown corporations that have environmental review frameworks, although I don't believe they have been made a matter of binding legal obligation in a statute, as we're proposing to do here.

Mr. Bill Casey: Why doesn't EDC follow the same rules the other agencies and departments do? Why can't you just accept those environmental rules the other departments have? Why do you have to have your own set of rules and the ability to establish your criteria?

Mr. Martin Jensen: Because of the context in which EDC is working, because it's an international trade context with extremely rapidly evolving standards and practices, and because we have to be able to meet the competitive requirements of the other export credit agencies and the other exporters in the OECD countries with whom we cooperate.

• 1000

Mr. Bill Casey: I think you could say the same thing about the forestry industry. It's an evolving international industry that is changing very quickly in products, standards, and everything.

I want to go to the Access to Information Act. Something you said earlier was that you couldn't make your information available to the Access to Information Act because you were competing with the private sector and you had to maintain similar standards. The next minute, you patted the book and said this book is full of political direction. Certainly, in the private sector they have annual meetings where the shareholders can go and hold the directors accountable. Do you have annual meetings where the shareholders can hold you accountable and vote new directors in?

Mr. Wayne Robson: Just to answer a little bit on the environmental standards and the question of access to information, part of the oversight that is provided by the government to the EDC is through the board of directors. The board of directors are appointed by the government, which is arguably the major shareholder in EDC.

Mr. Bill Casey: That's arguable.

Mr. Wayne Robson: The oversight that is provided is by directors who are appointed through the Governor in Council, and through two deputy ministers of departments: the Department of Finance and the Department of Foreign Affairs and International Trade. They sit on the board and provide the oversight for the activities of the management of the corporation. So there is some oversight in that method, through the corporate plan and through the reviews by the Auditor General of the operations of the EDC and the operations, in this case, of the framework.

The transparency and disclosure mechanisms being developed by the EDC, as Martin mentioned earlier, are attempting to put the items of most interest to the public out front proactively, so they get a chance to look—through the corporate plan, the annual report that comes out, the disclosure of transactions and aggregate reporting, and specific projects with environmental concern—at information that is of most interest to them—proactively out there, so that they can take a look at it.

Mr. Bill Casey: But you're choosing what information is of most interest to them. The public is not choosing what interests them.

Mr. Wayne Robson: The disclosure process also went through a consultation process, as did the environmental review framework. We're responding to the stakeholders' wishes that we heard through that process.

Mr. Bill Casey: So you will respond to questions from the public and answer all the questions you get?

Mr. Wayne Robson: Part of the role of the disclosure policy that's being developed, and one of the recommendations that was put in here, was to put an ombudsman-like position in EDC to deal with requests from the public where they feel disclosure has not adequately been dealt with in the disclosure policy. That position should provide the capability for those parties who are not feeling they get ongoing disclosure and transparency on the EDC activities to get another window into the corporation where they should be able to get that information.

Mr. Bill Casey: Thanks very much.

The Vice-Chair (Ms. Jean Augustine): Thank you, Mr. Casey.

Ms. Carroll.

Ms. Aileen Carroll: Thank you, Madam Chair. I've been trying to reconcile all that I've heard with the committee's report that was done and the recommendations. I wasn't able to find the recommendation you referred to.

I'm very pleased with a lot of what I'm hearing insofar as I think there's been considerable effort made to meet the bar the Auditor General has set. There is no better bar for all our legislation to meet than that one.

I want to ask one question and get clarification, Mr. Jensen or Ms. Morin, with regard to our commitment and obligation in Canada under international agreements. Do you feel the changes in the amendments will bring us up to and consistent with those obligations in the areas we've been discussing, and as recommended by this committee?

Mr. Martin Jensen: Yes, I do.

Ms. Aileen Carroll: As I am relatively new to this committee, can you clarify that for me? In what way do you think we weren't, and how will we now be doing that job better?

Mr. Martin Jensen: It's not a question of our not having been compliant. EDC is an agent of the Government of Canada. As such, it must obey, as we would all be bound to obey, those international commitments. But we are talking about transactions in far-flung places. We are talking about the necessity to have information so we can understand what the conditions and local concerns are. There could be a country where human rights conditions were generally good except perhaps for practices within a sector.

What we are then doing is establishing administrative means, apart from the obligation in the corporate plan, which is a solemn obligation. Corporate plans are reviewed by ministers. They are approved by cabinet. They are presented in summary form to you in the House. The administrative means are simply to ensure that our officers on the ground in these countries and here, that Canadians and EDC people who have information on specific conditions, are in a position to share that so we could clarify what should be done in a specific case. If there are then cases where there would be grave breaches of our human rights obligations, clearly we could not participate.

• 1005 

Ms. Aileen Carroll: Thank you very much. I appreciate your reply.

The Vice-Chair (Ms. Jean Augustine): You have time for one more. That's it for you?

Ms. Aileen Carroll: Madam Chair, others have answered my other questions.

The Vice-Chair (Ms. Jean Augustine): It's over to you then, Mr. Duncan. It's your opportunity.

Mr. John Duncan (Vancouver Island North, Canadian Alliance): What is the EDC worth?

The Vice-Chair (Ms. Jean Augustine): Are you talking about their annual budget?

Mr. John Duncan: No, I'm not talking about their annual budget. What is the valuation of EDC?

Mr. Wayne Robson: I'm not sure I know how to answer that question. The volume of their business is very large. They do approximately $45 billion worth of transactions every year. They support 10% of Canada's trade around the world.

If you're asking about the questions of capitalization and their bottom line, respectfully, I would ask that EDC answer the specifics about how large their corporation is in terms of employees and capitalization. I think they're better placed to be able to answer those questions specifically.

Mr. John Duncan: The question is, what would somebody be prepared to pay for EDC? No one has done the exercise?

Mr. Wayne Robson: No, not to my knowledge.

Mr. John Duncan: Thank you. That's obvious by the answer or lack of.

Mr. Mac Harb: It's a good question.

Mr. John Duncan: Thank you, Madam Chair.

The Vice-Chair (Ms. Jean Augustine): Mr. Robinson.

Mr. Svend Robinson: I'm just curious as to the existing policies of the EDC with respect to the environment, with respect to human rights and meeting labour standards, particularly ILO standards. Is it your understanding that the current policy of the EDC is in fact to review potential funding using these as benchmarks?

Mr. Wayne Robson: The current year environmental review framework, as opposed to the one that's going to come out of the review and the consultation process they're undergoing right now, has aspects of social reporting and consultations that are included in it, and they are bound not in the evaluation of the projects through the ERF but through the general oversight requirement to follow Canadian government standards and obligations to take into account those obligations that the Canadian government has taken on.

Mr. Svend Robinson: Is there any reference in those existing standards to labour standards?

Mr. Wayne Robson: The existing standards are simply the overall requirement, which is dealt with through the corporate plan and through the annual reports, to follow the policies and guidelines provided by the government, normally through the Department of Foreign Affairs and through the minister directly.

Mr. Svend Robinson: So there's absolutely no reference to labour standards?

Mr. Wayne Robson: I don't think we'll find a specific location where it's been written down that they will follow the ILO standards, although it would be generally understood that those are obligations of the Canadian government, which the agency would be required to follow.

Mr. Svend Robinson: To the best of your knowledge, has the EDC ever turned down an application for funding on human rights or labour grounds?

Mr. Wayne Robson: To be honest, I would have to ask them, because normally when there's an issue related to human rights and labour grounds, there are also other issues related to financial grounds and the aspects of the country and the other risks that are involved. They often get lumped into one general synopsis of problems with a project, and then they're turned down in that way.

Mr. Svend Robinson: Have you asked that question? You say they apply these standards. Do you not know whether they've ever actually applied them in a way that has resulted in rejection of an application for funding?

Mr. Wayne Robson: We have asked the question directly related to human rights standards and environment standards and we've been told that in certain cases it simply is not viable. Often what happens then is the project is referred back to another way that you can deal with the project to mitigate those particular problems, work around them.

Mr. Svend Robinson: To the best of your knowledge, has the EDC turned down an application for funding because of an unsatisfactory environmental assessment, a human rights assessment, or an assessment that labour standards are not being met?

Mr. Wayne Robson: Yes, and in specific instances where I know that has occurred, they have gone back and dealt with other mitigating circumstances to work around those particular problems.

Mr. Svend Robinson: They then ultimately extended the funding?

• 1010 

Mr. Wayne Robson: They then ultimately extended...I think in this case it was insurance as opposed to funding, but, yes.

Mr. Svend Robinson: They did extend the insurance. So you're not aware of a single instance in which they've finally rejected an application for funding or insurance?

Mr. Wayne Robson: Not solely based on that question, but, again, on a case-by-case transactional basis I would really respectfully ask that you refer that to the EDC, because the transactions come to the government when there are Canada account provisions that are being applied. The individual risk evaluations that are done on transactions are done by the EDC, and then we receive the evaluation when there's an issue of government policy to take a look at.

Mr. Svend Robinson: Wouldn't it be appropriate, and indeed desirable and essential, that you be aware of circumstances of that nature? I would have thought so.

Mr. Wayne Robson: It is desirable that they have a policy put into place that deals with these issues, and that they're able to deal with them proactively on their own.

Mr. Svend Robinson: I'm not asking whether it's desirable to have a policy. I'm saying wouldn't you want to know about how that policy's being enforced?

Mr. Wayne Robson: The oversight mechanisms are such that by the time they reach my level, at the officer level inside the Department of Foreign Affairs, they have already gone through the board of directors, they've gone through the risk evaluations and the political evaluations

inside EDC, and they may well have gone through the minister's office.

Mr. Svend Robinson: Right.

Mr. Wayne Robson: I apologize, but my individual knowledge of the transactions of the EDC, and indeed those of the members sitting here in front of us, don't always extend to that level.

Mr. Svend Robinson: Again, just to be clear, you're not aware of a single instance in which funding or insurance has been turned down on the basis of either environmental, labour, or human rights criteria?

Mr. Wayne Robson: Again, the only point I can make here to clarify this is that it's a long, complicated process for risk evaluation—

Mr. Svend Robinson: I understand it's very complicated and very long—

Mr. Wayne Robson: —which deals with all of these issues at the same time.

Mr. Svend Robinson: That's not my question. Are you aware of a single instance, are any of you at the table aware of an instance, in which the application of those alleged criteria has resulted in final rejection of funding?

Mr. Wayne Robson: Can I take that question in reference and return with an answer to you, because I'm—

Mr. Svend Robinson: You can, but perhaps the other members—I see some nodding—are....

Mr. Martin Jensen: Yes. I cannot give you the name of specific applications to EDC, and I have not reviewed files, but it is my understanding that EDC has refused projects, yes, on those grounds, on environmental grounds.

Mr. Svend Robinson: And human rights and labour grounds?

Mr. Martin Jensen: Human rights and labour I cannot speak to specifically. If you have severe environmental problems, then you often have human rights questions as well.

Mr. Svend Robinson: But you can have human rights concerns without having an environmental problem.

Mr. Martin Jensen: That's quite right.

Mr. Svend Robinson: So can you come back to the committee then with the information on this specific issue?

Mr. Martin Jensen: Yes, indeed.

The Vice-Chair (Ms. Jean Augustine): Thank you, Mr. Robinson.

[*Translation*]

Mr. Pierre Paquette: In the legislation, the ministers of International Trade and Finance... I believe I read in the bill that an environmental assessment is not required if two ministers exercise their discretionary authority. What exactly is this discretionary authority that ministers have to circumvent the environmental assessment process and to decide that a project will be implemented without such an assessment? What types of decisions could be involved?

[*English*]

Mr. Martin Jensen: Yes, this is solely to prevent duplicate application of the Canadian Environmental Assessment Act and the environmental obligation under the Export Development Act.

These two ministers are responsible for sometimes providing authorizations for specific transactions. If they do so, under the Canadian Environmental Assessment Act they may trigger the application of the Canadian Environmental Assessment Act, specifically, section 5 of that act. Because we're establishing an environmental obligation under the Export Development Act, we don't want a duplicate legal obligation arising under the Canadian Environmental Assessment Act.

But this does not give these ministers power to exempt EDC transactions from environmental review. That is established in the Export Development Act. This is simply to say we are dealing with environmental review under EDC's act. We are not going to do it under the CEA act. It's simply to prevent duplication.

The Vice-Chair (Ms. Jean Augustine): Thank you very much, Mr. Paquette.

Mr. Svend Robinson: I have one other brief question. Just in the bill—

• 1015

The Vice-Chair (Ms. Jean Augustine): You realize you're taking advantage of the chair.

Mr. Svend Robinson: Absolutely, Madam Chair.

The Vice-Chair (Ms. Jean Augustine): Keep it very brief.

Mr. Svend Robinson: I wonder why the directives under proposed section 10.1 on environmental criteria—or what's left of these directives after the EDC board has decided what's completely exempt, and so on—would not be considered statutory instruments for the purposes of the Statutory Instruments Act. Could you clarify why that provision is in the bill?

Mr. Martin Jensen: It's because of the nature of the Statutory Instruments Act, which basically does two things. It will put a statutory instrument before a regulatory scrutiny committee, and it will subject it to justice department review.

Mr. Svend Robinson: Correct.

Mr. Martin Jensen: It will result in the instrument being given a form that is the one we all know and recognize from Canadian regulatory law.

We wish to ensure that EDC consults thoroughly and that high standards are brought to the creation of this directive, but we do not want the directive to be bound by the formal and procedural requirements of the Statutory Instruments Act, because it may result in a form of drafting that is appropriate in a domestic context but may not be appropriate in an international competitive context.

Mr. Svend Robinson: How so?

Mr. Martin Jensen: Simply because of, literally, the legal form of the instrument. You know Canadian regulations; they're highly detailed, specific, and technical instruments. We are contemplating an instrument that would have more generality and flexibility in its terms.

Mr. Svend Robinson: And it wouldn't have to go through the rigour of a regular statutory instrument.

Mr. Martin Jensen: No, it would not go through that form of procedural rigour.

Mr. Svend Robinson: And it wouldn't be subject to review by the joint parliamentary committee on statutory instruments either, would it?

Mr. Martin Jensen: No, it would not be required to go before that committee under the Statutory Instruments Act.

Mr. Svend Robinson: Whereas if it came under the act, it would.

Mr. Martin Jensen: Yes, it would. That's my understanding of the act.

Mr. Svend Robinson: I think those are some very good reasons for making sure it does get treated as a statutory instrument.

The Vice-Chair (Ms. Jean Augustine): Thank you very much, Madame Morin, Mr. Jensen, Mr. Robson, and Ms. Hradecky, for being with us today and answering so many of our questions. You can tell the direction and the concerns coming out of our 1999 report and the reflections we've had since.

So we appreciate your being here with us, and hopefully as we consider clause-by-clause, we'll anticipate some participation and some facilitation by you again. Thank you so much for coming.

Now, before we call our next set of witnesses, we want to take a few minutes to address ourselves to the October 2 order that this committee's study of Bill C-32, an act to amend the Free Trade Agreement between the Government of Canada and the Government of the Republic of Costa Rica be referred to the Subcommittee on International Trade, Trade Disputes and Investment.

I think the subcommittee has done its work. The chairman, Mr. Mac Harb, is here. I'll ask him to now present to us the subcommittee's report.

Mr. Mac Harb: Thank you, Madam Chair.

Since I'm told I'm not the substitute any more, I'm going to call on my colleague Madame Marleau to officially move it, but I will read it:

> The Sub-Committee on International Trade, Trade Disputes and Investment of the Standing Committee on Foreign Affairs and International Trade has the honour to present its
>
> SECOND REPORT
>
> In accordance with its Order of Reference of Tuesday, October 2, 2001, your Sub-Committee has considered Bill C-32, An Act to implement the Free Trade Agreement between the Government of Canada and the Government of the Republic of Costa Rica, and agreed on Wednesday, October 17, 2001, to report it without amendment.

A copy of the relevant Minutes of Proceedings *(Meeting No. 11)* is tabled.

Respectfully submitted.

Ms. Diane Marleau (Sudbury, Lib.): I'd like to move that.

• 1020

The Vice-Chair (Ms. Jean Augustine): I see Mr. Paquette is indicating that he wants to make an amendment.

[*Translation*]

Mr. Pierre Paquette: At the risk of repeating myself, I would like to propose three amendments. Yesterday, we were informed that an implementation act could not be amended and that it must either be adopted as a whole, or rejected as a whole. I'd like an answer to my question. Are my three amendments in fact in order and if so, I would like to put them forward for consideration by the committee. Barring any objections, I would like to table them at this time.

As Mr. Robinson was saying, this doesn't necessarily have to take a lot of time. I simply want the committee to be apprised of our proposed amendments.

[*English*]

The Vice-Chair (Ms. Jean Augustine): At this point, Mr. Paquette, I would ask that you present the amendments one at a time, and we'll call on the committee to vote on the amendment. I can't make a ruling as to your earlier request, but I can put each amendment to a vote.

[*Translation*]

Mr. Pierre Paquette: May I pass them around?

Mr. Mac Harb: Yes.

[*English*]

The Vice-Chair (Ms. Jean Augustine): Is that agreed?

[*Translation*]

Mr. Pierre Paquette: Good, then they've been distributed. The first amendment...

[*English*]

The Vice-Chair (Ms. Jean Augustine): We have to distribute the amendments at this point in time so that everyone will be aware.

Start with the first one.

[*Translation*]

Mr. Pierre Paquette: Thank you, Madam Chair.

For my first amendment, I propose that a new clause, clause 3.1, be added to clause 3 after line 7 on page 4. The new clause would read as follows:

> 3.1 For greater certainty, the Agreement may not be used as a model for any other bilateral free trade agreement, and any future negotiations relating to sugar must take place in a multilateral context and in connection with the future Free Trade Area of the Americas (FTAA).

Can I proceed with my second amendment?

[*English*]

The Vice-Chair (Ms. Jean Augustine): We are in the process of distributing copies.

Mr. John Harvard (Charleswood St. James—Assiniboia, Lib.): Madam Chair, are we going to deal with these one at a time?

The Vice-Chair (Ms. Jean Augustine): Yes, one at a time.

We'll deal with clause 3.1, that Bill C-32 be amended by adding after line 7 on page 4 the following new clause:

> 3.1 For greater certainty, the Agreement may not be used as a model for any other bilateral free trade agreement, and any future negotiations relating to sugar must take place in a multilateral context and in connection with the future Free Trade Area of the Americas (FTAA).

At this point, we can debate or go directly to the vote.

[*Translation*]

Mr. Pierre Paquette: Fine. Yesterday, the subcommittee heard from a number of witnesses, including representatives of Lantic Sugar and the Canadian Sugar Institute. We were told that the world sugar market is completely distorted. Both the European Union and the Americans have adopted protectionist measures. By opening up our market to other producers, from Costa Rica for instance, we're in effect unilaterally allowing free trade, since Costa Rica is not likely at any time in the future to buy from Canada.

It is also a know fact that the Minister of International Trade is willing to negotiate free trade agreements with four other Central American countries, including Guatemala, which is a major sugar exporter. This plan could threaten the sugar industry.

• 1025 

An agreement has been reached with Costa Rica and there would not appear to be any adverse effects in the short term. However, if this agreement was used as a model for future negotiations, our sugar industry could in fact be wiped out, in both eastern and western Canada.

To guard against this eventuality, I am proposing that this agreement not be used as a model and that any future negotiations relating to the sugar trade be conducted in a multilateral or continental context.

[*English*]

The Vice-Chair (Ms. Jean Augustine): All right. I'll now recognize Mr. Harvard.

Mr. John Harvard: Thank you, Madam Chair.

I'm sure the amendment is well-intentioned. I just don't understand how it could be enforced. To which body is the amendment speaking? Is it speaking to this committee? Is it speaking to the government? Is it speaking to a group of negotiators in the future?

I don't think we can say to future negotiators, negotiating some other free trade agreement, that they can't look at this particular agreement and use it as a model, part of a model, or whatever. I just don't see how we can tie the hands of anybody in the future. To me it just simply does not make any sense whatsoever.

I'm sure it's well-intentioned, but I can't see how I can support something that really would not have any enforceability. We cannot foist our own particular views on a body that may be dealing with some issue in the future.

The Vice-Chair (Ms. Jean Augustine): We'll go then to Mr. Robinson.

[*Translation*]

Mr. Svend Robinson: I support this amendment. In my view, it addresses the concerns raised by the witnesses yesterday, particularly by the representatives of the sugar industry. I have already voiced my serious concerns about the fact that this agreement could be used as a model in the future. Therefore, we support the underlying principle of this amendment.

Nevertheless, I would like to move a sub-amendment, namely that the words following “multilateral context” be deleted, specifically the expression “in connection with the future Free Trade Area of the Americas (FTAA)”. We are staunchly opposed to the FTAA. We feel that for a variety of reasons, it adversely affects the interests of the environment and the public, as well as human rights. That's why I propose that we delete these words.

[*English*]

The Vice-Chair (Ms. Jean Augustine): Is Mr. Paquette accepting this?

Mr. Pierre Paquette: Yes.

The Vice-Chair (Ms. Jean Augustine): But we'll have to dispose of the amendment.

Mr. Svend Robinson: Have those words been removed?

The Vice-Chair (Ms. Jean Augustine): That is why I was trying to clear the way, by asking if that's accepted. Then it becomes a friendly amendment.

Mr. Svend Robinson: That's fine. So the words after “multilateral context”, the reference to FTAA, are out.

Mr. Pat O'Brien (London—Fanshawe, Lib.): On a point of order, Madam Chair, you've heard the amendment. As indicated, he's willing to accept Mr. Robinson's suggestion and incorporate it into his amendment.

The Vice-Chair (Ms. Jean Augustine): Yes, so we're now dealing with one, rather than any subamendment.

Mr. Duncan.

Mr. John Duncan: I just wanted to say that we had a good meeting last night with representatives of the refiners and growers from the sugar industry. We included a provision in our report, when we tabled it, that we will make specific comment to address the fact that future negotiations with the CA-4 or the free trade area of the Americas will take the specific concerns of the sugar growers and refiners into account.

I will measure the government, based on how they respond to that.

• 1030 

I think it talks to the basic spirit and intent of this amendment. I guess there are some people here today who weren't there last night, so I'm just trying to add clarity to that discussion.

The Vice-Chair (Ms. Jean Augustine): Mr. O'Brien.

Mr. Pat O'Brien: Thank you, Madam Chair.

Exactly. There are people here who weren't there last night. Some were even on the subcommittee, I think, and had left by the time of this discussion. But the point is, this is substantially different from what Mr. Paquette was proposing last night. This says “must”; he verbally said “should”. Mr. Harvard is right on. This seeks to bind a government that it must take place in a multilateral context.

Last night the spirit of the amendment—and I know my colleague will recall—was to call on the government to continue to pursue its three-track trade promotion policy of bilateral, regional, and multicultural. Some members here may disagree with the regional initiatives, such as the FTAA, but this government is very strongly committed to a three-track policy of trade promotion. That was the spirit of what we talked about last night.

We could have a long philosophical, ideological debate here today, but let's get on with life and have the question.

The Vice-Chair (Ms. Jean Augustine): Thank you.

I'll ask Ms. Lalonde, since she had indicated, and then I'll call the question.

[*Translation*]

Ms. Francine Lalonde (Mercier, BQ): Thank you, Madam Chair. I have not participated in the subcommittee's work, but I have met with sugar industry workers and I have examined this issue.

While it may be noble to want to open up markets, we believe that a multilateral approach must be taken. Otherwise, a number of key sectors will be penalized, and the United States won't be forced to change their policies. The truth of the matter is that we cannot even export to the US products such as cookies which contain sugar. The sugar must be replaced by substitutes. Otherwise, the product is rejected. That's what I've been told by industry workers.

I'm very pleased that we're discussing this matter, because it demonstrates the importance of pursing our principles. However, we need to give ourselves every opportunity to ensure the effectiveness of this agreement for countries of the South and to allow it to create genuine openings.

I would also like to respond to Mr. Harvard's argument. The amendment could have been ruled out of order but it was not. In allowing the amendment, the committee is sending a message to the government, a message to the effect that... As you know, we are not opposed to the Free Trade Area of the Americas, although we do have some concerns about it, which we have voiced.

We haven't talked, but if Pierre supports the amendment, it is not because we are stronger supporters of the FTAA, but rather because we support a multilateral framework approach. Both the FTAA and NAFTA operate within a multilateral context.

Under the circumstances, I think we would be sending out a positive signal if we were to endorse this amendment, one that would reflect the expressed will of this committee. I'm pleased to see Mr. Harb nodding in agreement.

[*English*]

The Vice-Chair (Ms. Jean Augustine): All right. I'm going to call the question.

[*Translation*]

Ms. Francine Lalonde: We request a recorded division.

[*English*]

The Vice-Chair (Ms. Jean Augustine): We'll do a recorded vote of the amendment, as proposed by Mr. Paquette. You know there was a subamendment and that was incorporated as a friendly amendment, so we're dealing with one amendment.

• 1035 

[*Translation*]

Ms. Aileen Carroll: I understand perfectly. Thank you, Madam Chair. I plan to vote against this amendment.

[*English*]

(Amendment negatived: nays 7; yeas 3)

The Vice-Chair (Ms. Jean Augustine): Are you moving the second amendment?

Mr. Stan Keyes: On a point of order, Mr. Clerk, have you signed on Mr. Harb as a member of this committee?

The Clerk of the Committee: Mr. Harb was signed on as a substitute member, with the appropriate form signed by his whip, in replacement of Mr. Harvard. However, when Mr. Harvard enters the room and takes his place at the committee table, that substitution is no longer valid.

Mr. Mac Harb: But now I have changed my name to Baker.

The Clerk: Which the clerk has not seen or signed, Madam Chair.

Mr. Stan Keyes: Okay, he'll be ready for the next one.

The Vice-Chair (Ms. Jean Augustine): He'll be replacing Mr. Baker on the next amendment.

Mr. Svend Robinson: Nobody can replace Mr. Baker.

Some hon. members: Oh, oh!

The Vice-Chair (Ms. Jean Augustine): Would you present your second amendment?

[*Translation*]

Mr. Pierre Paquette: The focus of my second amendment is clause 4.

I propose that Bill C-32 be amended in clause 4 by replacing line 42 on page 4 with the following:

> for the resolution of disputes, including the repeal of article XII of the Agreement between the Government of Canada and the Government of the Republic of Costa Rica for the promotion and protection of investments, signed on March 18, 1998.

Let me briefly explain my amendment to you. It relates to the part of the agreement whereby private sector companies may bring one or more of the parties to the agreement before an arbitration tribunal, whereas we would prefer an approach based on the resolution of disputes.

Mr. Carrière advised us that this agreement would not contain the components present in Chapter 11 of the NAFTA. However, one of the witnesses who testified yesterday demonstrated to us that, with a few minor exceptions, this was a true copy of Chapter 11, which apparently people claim not to want to see in the agreement respecting the Free Trade Area of the Americas. For consistency's sake, we must ensure that the irritants found in Chapter 11 are not found as well in the new agreement.

[*English*]

The Vice-Chair (Ms. Jean Augustine): Are we trying to amend something that's not within the bill itself and is part of some other international agreement? I'm just asking for clarification.

[*Translation*]

Mr. Pierre Paquette: Yes, exactly.

[*English*]

The Vice-Chair (Ms. Jean Augustine): So it's outside the scope of this bill.

I think it's out of order.

Mr. John Harvard: Does the clerk rule it out of order?

The Vice-Chair (Ms. Jean Augustine): I think it is out of order because—

Mr. John Harvard: Well, end of issue.

The Vice-Chair (Ms. Jean Augustine): —it's not within the scope of—

[*Translation*]

Mr. Pierre Paquette: Both the implementation act and the agreement contain a reference to the Canada-Costa Rica agreement. This is part of the agreement.

[*English*]

Mr. Svend Robinson: With consent, we can put it in.

The Vice-Chair (Ms. Jean Augustine): If it's not part of the bill that's before us....

Mr. Stan Keyes: On a point of order, Madam Chair.

The Vice-Chair (Ms. Jean Augustine): Yes.

Mr. Stan Keyes: We have legal counsel at the table, and maybe we can get some direction on whether it's admissible or not.

Let's ask the legal people. That's what we pay them all the big money for.

What does he have to say?

The Vice-Chair (Ms. Jean Augustine): I'm told it's not a legal question; it's a procedural question.

Mr. Stan Keyes: All right. So what's the determination?

• 1040

The Vice-Chair (Ms. Jean Augustine): The chair has more or less indicated the procedure here. We're dealing with C-32. The amendment does not make any reference to any specific part of this, therefore it becomes problematic.

Mr. Stan Keyes: I don't understand that because he just read it and it says, “in Bill C-32, clause 4 be amended by replacing line 42 on page 4”. You can amend a bill by replacing a clause.

The Vice-Chair (Ms. Jean Augustine): It was signed on March 18, 1998.

Mr. John Harvard: Madam Chair, you made a ruling. The committee accepts it, unless somebody wants to challenge the chair. So if you've made a ruling, let's accept it. It's out of order.

Mr. Stan Keyes: Mr. Harvard, we're just asking questions. Relax. We're just asking to make sure we're doing the procedurally correct thing here. There's no good sense jumping to...anyway.

The Vice-Chair (Ms. Jean Augustine): Are you satisfied then, Mr. Keyes, that it's out of order?

Mr. Stan Keyes: Yes. You said it's because it was signed March 18, 1998.

The Vice-Chair (Ms. Jean Augustine): Yes.

Mr. Stan Keyes: Thank you, Madam Chair.

The Vice-Chair (Ms. Jean Augustine): Okay.

[*Translation*]

Ms. Francine Lalonde: I'd like some additional explanations. Each time we rise in the House to ask that treaties be submitted to the House before being adopted, we're told that we cannot say anything about the implementation act. If we cannot change anything, then the members opposite will need to change their tune. You've just confirmed that we are right to demand that treaties be reviewed in the House first.

The issue of Chapter 11 is at the heart of the negotiations on the Free Trade Area of the Americas. When, right in the midst of a discussion, we

discover that the provisions in this part of the agreement are in essence the same as those contained in Chapter 11 of the NAFTA, we cannot allow this to go by unnoticed. Moreover, if the government wants to be consistent in its actions, it will remove this provision immediately by renewing the agreement with Costa Rica. That's all there is to it. I fail to see how that would be illegal. It's possible for this committee to adopt an amendment to clause 4. That's not illegal. Fundamentally, it would be a political decision. We can't say that it's not acceptable from a procedural standpoint.

[*English*]

The Vice-Chair (Ms. Jean Augustine): I ruled it out of order. I want to stand by that and move on.

[*Translation*]

Mr. Pierre Paquette: Now for my third amendment. I propose that Bill C-32, in Schedule 2, be amended by deleting lines 1 to 11 on page 2.

These lines pertain to the tariff on sugar. I'm proposing that current tariff levels be maintained.

[*English*]

The Vice-Chair (Ms. Jean Augustine): Just let me find the place in the annex. That's schedule 2, which is part of the treaty. I'm not sure it belongs in the same category as earlier, so I'll also rule that out of order.

[*Translation*]

Mr. Pierre Paquette: To my knowledge, Schedule 2 is part of the bill and can therefore be amended.

[*English*]

The Vice-Chair (Ms. Jean Augustine): I'll read then from the *House of Commons Procedure and Practice*, page 657:

> If the schedule to such a bill contains the Agreement itself, the schedule cannot be amended. However, amendments may be proposed to the clauses of the bill, as long as they do not affect the wording of the Agreement in the schedule....

I think this is really our authority.

Now we have to make sure we deal with the bill itself.

• 1045 

Shall the report be adopted as amended?

(Motion agreed to: yeas 8; nays 3)

The Vice-Chair (Ms. Jean Augustine): The report has been adopted. Shall I now report this to the House?

Some hon. members: Agreed.

Some hon. members: On division.

The Vice-Chair (Ms. Jean Augustine): Thank you.

Mr. Mac Harb: Madam Chair, as both Mr. Duncan and Mr. Paquette are here, I would like to make one comment. I want to tell you that, notwithstanding the motions before us, both the oppositions as well as the government worked very diligently last night, late into the night, to try to deal with this issue. As a result of the opposition raising some issues, the committee unanimously adopted two motions. One deals specifically with what Mr. Paquette has raised. In essence, we have dealt with the motion that the committee voted against today, because it was not in conformity with what we have voted on last. So Mr. Paquette can go back to his constituency and tell them that in fact he made a proposal that was adopted by the committee last night. Mr. Duncan also made a recommendation dealing specifically with future negotiations that was also adopted unanimously by the committee.

On behalf of the committee, I want to tell you that the international trade committee worked collectively and very efficiently, and unanimously adopted those motions. We will be communicating to the minister in the form of a letter on them. They will be part of our proceedings. So I want to thank them publicly and for the record.

An hon. member: Hear, hear!

The Vice-Chair (Ms. Jean Augustine): Thank you and—

Mr. Mac Harb: And my colleagues, of course, who were there in full force and did everything they could to get it through.

The Vice-Chair (Ms. Jean Augustine): I want to thank you too on behalf of the committee for the leadership you provided to the subcommittee for that report.

We'll now take a two-minute break and we'll come to our next set of witnesses. I'll ask the witnesses who can hear me to please bear with us. We apologize for having to do this piece of business.

• 1048 

• 1053 

The Vice-Chair (Ms. Jean Augustine): We are considering Bill C-31, an act to amend the Export Development Act and to make consequential amendments to other acts.

We have with us several witnesses today from Probe International, North-South Institute, the NGO Working Group on the Export Development Corporation, Halifax Initiative, as well as the Canadian Ecumenical Justice Initiative.

I'm not too sure whether or not you've had a discussion earlier as to who wants to begin or whether the chair will just start and go from my left.

• 1055 

So welcome all. We'll start then with Patricia Adams from Probe International.

Ms. Patricia Adams (Executive Director, Probe International): Thank you, Madam Chairman.

I thank you especially for the opportunity to appear before this committee once again to address this very important subject of changes to the legislation governing the Export Development Corporation.

Probe International, the organization I represent, has investigated the environmental, the financial, and the social consequences of EDC's activities for the past 20 years. Our foundation routinely uses regulatory proceedings and the courts to constitutionally challenge environmentally deleterious laws, to establish liability, and to stop environmental damage.

From this base of experience, we have evaluated Bill C-31 and have concluded that it is a bad law. Rather than holding EDC to account for the environmental consequences of its operations, Bill C-31 will give EDC legal protection to destroy the environment. The public wants EDC to stop supporting environmentally damaging projects. This law would not accomplish that.

Government lawyers insist that this law would be actionable, but because the drafters of this bill have built in so many thresholds, they have almost totally protected EDC from action. If Bill C-31 passes intact, EDC will be legally permitted to follow its own self-styled environmental review procedures, in which EDC writes the rules, establishes the criteria, defines the terms, assesses itself, and then decides whether or not it is justified in supporting a project that will destroy the environment.

Under these circumstances in which EDC is in charge of the legal and the environmental goalposts, it is highly unlikely that any EDC activity would ever be defined as a legal infraction, let alone an environmental infraction that would give cause for action by citizens.

In the end, Bill C-31 will create a paper exercise in environmental review in which EDC will be able to produce without challenge—because EDC sets the standards—its own view of the environmental risks and benefits of a project.

Probe International runs into these self-serving assessments all the time. This is where benefits are inflated and costs are discounted. When laws provide for unchallengeable, self-serving assessments, then no project is too environmentally egregious to justify.

The Three Gorges dam on China's Yangtze River, which will force the relocation of nearly two million people, is a classic case of this.

Bill C-31 is the culmination of a three-year review in which the government was told over and over by the public that it wants EDC to be subject to the Access to Information Act. But Bill C-31 leaves this badly needed reform out. The public, once again, is left to the mercy of a self-serving EDC policy that directs EDC to release only bare-bones details of its activities and compromised environmental assessments.

The disclosure of other documents will be left to the discretion of EDC's corporate clients. The corporate beneficiaries of EDC's largesse will determine EDC's disclosure practices, not the public or this legislature. Because Bill C-31 fails to subject EDC to the Access to Information Act, EDC will continue to be able to hide its damaging and costly mistakes from public view, and possibly put lives at risk.

In my written brief to you I explained why this is so, in light of the disturbing case of the Chamera dams in India.

• 1100

In 1984, EDC and CIDA committed $645 million to build the Chamera I dam, on India's Ravi River. Probe International filed an access to information request to CIDA because CIDA is subject to the act, and we recently received approximately 2,000 pages of documents, including correspondence, internal memos and e-mails, reports to the National Hydro Power Corporation of India, and performance and safety reports about this troubled project that were prepared by an independent monitor. Those documents revealed safety problems that should have been in the public domain from the moment they were known to project authorities.

For example, as early as 1993, RSW, the engineering firm hired to monitor construction of the project, submitted one disturbing report after another in which they warned the integrity of the dam structure was jeopardized by the inherent weakness of rock at the right abutment of the dam. Then on May 24, 1996, a major landslide occurred. RSW reported that the landslide revealed that the “depth of the overburden immediately downstream from the dam is much greater than generally reported”.

RSW continued, “in view of the forgoing, the Monitor considers the signs of instability extremely serious”. Any further signs of structural unsoundness, slides, increasing seepages into the dam and downstream of the dam, and vortices on the reservoir,

> must be considered as being potentially catastrophic requiring the immediate, controlled lowering of the reservoir and, eventually, the shutting down of the power plant and the notification of NHPC Management, Government of India and all concerned administrative authorities in the area.

RSW reminded CIDA that it warned of this geological instability in 1993—three years earlier—and felt it was “regrettable that the opinion expressed in this report had received so little attention at that time”.

RSW then warned CIDA, and I quote:

> Degradation of the already precarious situation could lead to a catastrophic event involving not only a major shortage in power production but, more important than all, potential losses of lives in the communities installed downstream of the dam.

Probe International has sent copies of these documents to Indian citizens' groups who are now reviewing them with independent engineers to assess the risk to residents downstream.

Why is this case relevant to Bill C-31? Because we would never have received these documents if CIDA, which is subject to the Access to Information Act, had not been involved.

In 1999, EDC's board of directors approved another loan, this time $175 million, to build Chamera II. That's another dam just 30 kilometres upstream of the troubled Chamera I dam. But this time CIDA backed out and EDC is funding it alone. Because Bill C-31 fails to make EDC subject to the Access to Information Act, Indian citizens living downstream of Chamera I and Chamera II will simply have no right to know from here on in what risks EDC has taken with their lives.

Lastly, let me address this fallacious argument of the EDC that it must balance the views of all of its stakeholders when drafting environmental review and information disclosure rules. The implication here is that the two stakeholder groups, its corporate beneficiaries, and the public have equal rights. They do not.

EDC may have legal contracts with its corporate clients and be responsible to adhere to those, but it is not accountable to those corporations. It is, however, accountable to those who backstop every dollar EDC borrows, giving EDC its wherewithal to carry on business—that is, to Canadian taxpayers. Equating the two only serves to blur and confuse the parties' rights and responsibilities and compromise the policies and the law that govern EDC. It is your duty, as our elected representatives, to see clearly through that confusion and to translate the public will into effective legislation, not into Bill C-31.

• 1105

Thank you.

The Vice-Chair (Ms. Jean Augustine): Thank you, Ms. Adams.

We'll now move to Ms. Gibb. Ms. Gibb is from the North-South Institute, a senior researcher.

Ms. Heather Gibb (Senior Researcher, North-South Institute): Thank you, Madam Chair. I'd like to thank you for the opportunity to appear today. My comments generally relate to issues of consistency and coherence across Canadian policy and to Canadian obligations under international conventions and treaties to which it is a signatory.

This legislation, I believe, is important not only because it responds to a very lengthy process of examination and consultation in Canada, but because it's part of larger international discussions relating to global governance. In November, as you know, the OECD's working party on export credits and credit guarantees is scheduled to consider a recommendation on common approaches in environment and officially supported export credits. Canada has been taking a leadership role in discussions on global governance in many forums, for example, on international financial architecture.

The direction of revisions to the Export Development Act should be consistent with our broader Canadian objectives to move the bar up. I'd like to make three general observations.

The first has to do with setting environmental standards for the Export Development Corporation, and that is that Canada should be aiming for the highest common denominator. The benchmark on environmental assessment has moved substantially since the Canadian Environmental Assessment Act was first approved, and now includes socioeconomic considerations as well as national obligations under international agreements on human rights and labour standards. We believe Bill C-31 should state explicitly that environmental assessment includes socioeconomic rights and labour standards impacts.

We have several concerns with the proposed changes regarding environmental effects, and these include absence of language requiring the EDC to turn down projects that have significant adverse environmental effects. I go back to my earlier comment about what we now understand is environmental effect. We also have concerns about vagueness in the definitions and criteria and concerns about delegating responsibility and authority to the Export Development Corporation to set its own criteria when such criteria and standards already exist elsewhere, including in the CEAA.

A third area of concern is the absence of language on disclosure. This is a major weakness in the bill. Timely and appropriate disclosure of environmental reviews is important to facilitate meaningful input by stakeholders and the possibility of improvements to the projects. I think critically it's also an important tool for accountability.

Referring specifically to the clauses in the legislation, I'd like to comment on clause 1, the long title of the corporation. While it's to be hoped that agencies acting under the name of the Government of Canada would act in accordance with all international obligations of that government, we understand there is a concern that when there is an apparent potential conflict between supporting and developing trade and promoting Canadian competitiveness in international marketplaces on the one hand, and environmental, human, or labour rights considerations on the other, priority could be given to the former, that is, promoting trade and Canadian competitiveness.

To remove any doubt, both on the part of the EDC and its staff and clients, and to provide for the EDC to reject environmentally—broadly understood—projects, we suggest the addition of language in the bill that clearly spells out that in its business decisions, the EDC will pay due regard to international treaties and conventions ratified by Canada. This is done by the Australians with their legislation. I think it's also important to provide tools for the EDC to build capacity within itself to understand the implications of these commitments. For greater clarity, it might be useful to actually append a list of international conventions against which transactions are to be checked.

• 1110 

Turning to clause 9, “Environmental Effects”, the EDC has embarked on an ambitious initiative to strengthen its own environmental review framework. In our comments during a recent consultation by the EDC on the draft environmental framework, we commended the corporation for the substantial progress it has made in strengthening that framework.

We did note some concerns, which we have as well concerning Bill C-31, specifically with respect to proposed section 10.1. This requires the corporation to determine whether there might be environmental effects resulting from a project despite implementation of mitigation measures, and then to determine whether the corporation should enter into a transaction if there were adverse environmental effects anticipated.

We feel this section could be strengthened with the addition of language that required the corporation not to enter into transactions where an environmental assessment indicated significant adverse environmental, social, human, or labour rights effects despite mitigation measures. If the EDC is expected to respect norms for corporate, social, and environmental behaviour, it must be required to turn down business when environmental assessments indicate a project cannot meet standards. Such decisions should also be made public, to assist the building up of a corpus of practice to guide both clients and the corporation itself.

The proposed section would be strengthened and the corporation given greater flexibility to fulfill its mandate, with the addition of language requiring the corporation to request project proponents to identify alternative means of carrying out the project. Information on alternative means should also be disclosed.

With respect to proposed section 10.1(2), for greater clarity, consistency, and accountability the legislation should include specific taxonomy and not leave definitions of terms and expressions to the board. The Canadian Environmental Assessment Act, for example, contains a detailed list of definitions.

Finally, with respect to disclosure, a key principle of good governance is transparency. In view of the trend in international practice in favour of disclosure, as well as more demanding public expectations for behaviour on the part of those exercising some measure of public authority, we believe the legislation should include explicit requirements for disclosure of project-related information in a timely and regular manner. The Canadian Environmental Assessment Act, for example, presumes in favour of disclosure, specifying non-disclosure only if disclosure would cause “specific, direct, and substantial harm.”

There is little argument against non-disclosure of trade secrets—financial, commercial, scientific, or technical information of a confidential nature—or of information that could result in material financial loss. The CEAA sets out clear guidance on access to information. Other national and multilateral financial credit agencies also provide explicit direction.

Since the EDC is exempted from provisions of the Access to Information Act, it is even more important that the legislation governing the

corporation clearly set out a requirement for adequate and timely disclosure of environmental assessments—standards against which a clear assessment of the corporation's performance can be made.

The legislation, not the board, should spell out the nature of any exemptions to the requirement for an assessment. In practice, all projects should be screened, and most agencies have established clear criteria to guide them. The CEAA, for example, has exclusion and inclusion list regulations. They are specific and public. Guidance is provided on exceptions by other export credit and finance agencies. The World Bank is often cited as an example. Thank you.

The Vice-Chair (Ms. Jean Augustine): Thank you very much, Ms. Gibb. We'll now ask Ms. Revil, from the NGO Working Group, the Halifax Initiative, to come forward.

[*Translation*]

Ms. Émilie Revil (Coordinator, NGO Working Group on the Export Development Corporation, Halifax Initiative Coalition): Thank you very much, Madam Chair. My name is Émilie Revil and I'm the coordinator of the NGO Working Group on the Export Development Corporation.

• 1115

[*English*]

The NGO working group on the Export Development Corporation has been working on this file for three years, and I must say that we are deeply disappointed with Bill C-31. Our case studies of EDC-supported projects detail the kinds of impacts this institution can have on people's lives and the environment, on our international commitments, and on our reputation abroad if it operates without proper regulation.

Not only does Bill C-31 fail to provide appropriate checks and balances or much-needed direction, it proposes to reinforce in law a status quo that is highly problematic. More than 100,000 Canadians have written to the government this year to express dismay concerning the status quo, and pages of newsprint have been dedicated to the failures of EDC as a public institution.

Yet Bill C-31 is silent in all areas of public interest with the exception of the environment, in which basically all it says is that the EDC can do whatever it wants. Bill C-31 legislates the process of autonomy the EDC already enjoys today. It puts into law the kinds of loopholes in the environmental assessment process that, if used, will put to shame international and Canadian standards for environmental assessments.

No other government-owned institution we know of has the legislative power to define its own environmental assessment process that Bill C-31 gives the EDC. The majority of public institutions in this country are regulated under the Canadian Environmental Assessment Act. Bill C-31 not only allows EDC's board of directors to define environmental assessment; it allows it to exempt its own activities from an environmental assessment process and to agree to go ahead with a project even if the environmental assessment process indicates serious adverse impacts.

These loopholes have been clearly exposed in the summary and analysis of the bill on the government's website. The delegation of decision-making authority to the board of directors of the EDC, with no limits or criteria to this delegation, is—and I quote—“unusual”. And I quote again:

> The complete absence of limits on the decision-making power would suggest that the board directives would be virtually immune from judicial review.

Bill C-31 gives control to EDC when EDC has failed to show itself capable of steering itself in the public interest. EDC's current environmental framework has been widely criticized by Gowling, by SCFAIT, and most recently by the office of the Auditor General.

In its response to the SCFAIT report of December 1999, the government asked the Auditor General to review the current environmental directive the EDC developed on its own. The Auditor General found it lacking and poorly implemented in 92% of the cases it reviewed.

EDC's environmental framework will only be finalized this spring. How can Parliament decide that the ERF will be satisfactory if it does not require EDC in law to adopt good practice?

This bill also asks the Auditor General to review the EDC's implementation of its own directives every five years. But what recourse does the public have when EDC gets a failing grade? What recourse does the public have to hold EDC accountable when it exempts itself from an environmental process or when it approves a project that has known serious adverse environmental impacts?

This act should lay out criteria that it expects EDC to follow, such as the following.

All transactions with potential or known significant adverse impacts must undergo an environmental assessment.

All environmental assessments of transactions with known significant adverse impacts must include the consultation of locally affected populations.

Information collected on impacts through an assessment process must be made public at least 60 days before the transaction's approval by the board of directors.

Standards followed must take after the large body of expertise that exists on environmental assessment process such as the IFC of the World Bank Group or American export credit agencies.

Finally, EDC's board must be required to review all transactions with known or potential severe impacts.

This last criterion is important because few of EDC's transactions are actually approved by EDC's board of directors.

There is a little confusion here. I do not know if it's over $25 million or over $250 million that projects have to be approved by the board of directors, while all the other transactions under $25 million—or under $250 million, if what I think is right—can be approved solely at management's discretion.

Mr. Svend Robinson: It's $225 million.

Ms. Émilie Revil: Is it $225 million? Okay.

I also note that the World Bank board of directors approves all transactions and the U.S. Ex-Im Bank's board approves all projects greater than $10 million.

• 1120 

Also, EDC should be brought under the Canadian Environmental Assessment Act. The inclusion of the clause in Bill C-31 reinforcing EDC's current exemption from CEAA ties the hands of policy-makers. CEAA does not need to be amended to bring EDC under it; however, now the ED Act would need to be if the government decided to apply CEAA, as one hopes they would by example after an appalling review by the Auditor General's office.

You heard from DFAIT this morning, from a Mr. Jensen in particular, that it included the clause regarding CEAA to ensure that EDC is not required to follow two different assessment processes. There is a case to be made that EDC's Canada account should fall under the projects outside Canada regulation of CEAA. This case is being made in the courts at the moment, but Bill C-31 might pre-empt this court decision with the inclusion of this clause.

Also, on human rights, Bill C-31 does not strengthen EDC's respect of Canadian international commitments and obligations. EDC's purpose in section 10 must be changed to include consistency with Canada's international obligations. I have made some more specific recommendations that are in the submission I presented to SCFAIT.

The bill must also set out requirements for EDC in the area of disclosure. Mr. Warren Allmand sent me a copy of a letter that he sent to SCFAIT yesterday. He apologizes for not being present today. He hopes he can be present next week at the hearings. He's in Montreal today releasing a report on human rights in China.

He writes in his letter, which I have here, that they have been unable to find the crucial information they needed from the EDC, that is, what projects received EDC's support in the form of financing or insurance, over what period of time, and to whom this support was given. He writes further in his letter that this demonstrates clearly that we need a requirement for regular disclosure of project-related information in the bill.

My last point is that specifically EDC must be required, prior to approval, to disclose environmental and social information for projects with adverse impacts. This was noted in the draft policy paper. As noted in the legislative summary, it is in the draft policy paper but it was not in the final policy paper that was finalized October 1. The EDC has said about this that this type of disclosure will be considered in relation to the environmental framework that is currently being developed and is to be finalized this spring.

To conclude, my working group would urge you not to recommend this bill for approval as it is currently drafted because it fails to live up to Canadian values and standards.

Thank you very much. Merci.

The Vice-Chair (Ms. Jean Augustine): Thank you, Ms. Revil. We look forward to having Mr. Allmand with us, and maybe some of the references made in your letter he will be making directly to the committee.

We now have Ms. Price from the Canadian Ecumenical Justice Initiatives.

Ms. Kathy Price (Representative, Canadian Ecumenical Justice Initiatives): Thank you, Madam Chair. Thank you for this opportunity to appear before the committee.

The coalition I work with is formed by the Anglican, United, Presbyterian, Christian Reformed, and Evangelical Lutheran churches of Canada, as well as the Canadian Conference of Catholic Bishops, the Canadian Catholic Organization for Development and Peace, the Canadian Religious Conference, the Quakers, and the Mennonite Central Committee.

Canadian Ecumenical Justice Initiatives includes the former Inter-church Committee On Human Rights In Latin America, with whom I've worked for almost a decade. Indeed it's in my capacity as a human rights worker that I've come here today to comment on this bill and draw attention to a serious omission in terms of its failure to embed in law that EDC investments must be consistent with Canada's commitments to international

human rights agreements we've signed and ratified.

I will make specific recommendations with regard to amendments that would address this omission, but first let me briefly explain why amendments are necessary, why they are crucial.

We appeared before this committee during hearings in 1999 with Embera Katio leader Kimy Pernia, who provided testimony about the impact of the EDC-supported Urra hydroelectric dam in northern Columbia.

Kimy testified about how their land and crops were being flooded by the dam. Fish stocks up river from the dam were eliminated, robbing the Embera of the mainstay of their diet, and vast areas of stagnant water were created bringing mosquitoes and epidemics of malaria and dengue to Embera communities.

• 1125 

What's most important to remember is that Kimy testified that the dam was built without ever consulting the indigenous communities living in the area that would be affected, a violation of both the Colombian constitution and international human rights agreements. Kimy also told you that speaking out about these things put his life in danger and that four other Embera leaders had already been killed by paramilitary forces for challenging the negative impacts of the dam.

On June 2, Kimy Pernia was abducted by paramilitary gunmen. Since then there has been absolutely no news about his whereabouts. Since Kimy was “disappeared”, there have been other killings and continued threats against Embera communities.

While Colombia is a country in the midst of a bloody armed conflict with horrendous levels of human rights abuses, there is no doubt that Kimy's disappearance and the killing of other Embera Katio leaders has to do with their opposition to the dam. It is also clear that the dam, a project the EDC chose to invest in despite the opposition of local affected indigenous communities, in a country where opposition to powerful economic interests, like those involved with the Urra project, is regularly met with repression, has exacerbated the violence that already existed.

This lamentable situation is not something that the tens of thousands of members of our constituency want to see repeated in the future. And it should be noted that the churches collected more than 140,000 letters calling for the Export Development Act to be amended so as to compel the EDC to respect Canada's commitments to international human rights and indigenous rights agreements.

Yet there is nothing in Bill C-31 that would prevent the EDC from investing in projects, again, that might exacerbate human rights violations in the future. For this reason it is crucial to amend the bill in the following way: section 10, which establishes the purpose of the EDC, needs to be amended to add that the EDC respond to international business opportunities in a manner consistent with Canada's commitments to international agreements, including the Universal Declaration of Human Rights; UN covenants on civil, political, economic, social, and cultural rights; ILO core labour standards; and the Rio declaration of the United Nations Conference on Environment and Development. Trade and investment cannot be allowed to take place in isolation from our commitments to standards regarding human rights. And the only way to ensure that is to specifically write this into Bill C-31's mandate statement.

I also want to make a recommendation about amending the operational framework set out in Bill C-31. Environmental review alone is inadequate, particularly when it fails to include criteria for assessing the human rights impact of a given project and for withholding support for a project on the basis of a negative human rights impact.

The EDC must be required, through amendments to Bill C-31, to undertake an efficient human rights assessment process when considering a project with potential negative impacts. That assessment process must involve a full and meaningful consultation for affected communities, including women and indigenous peoples. It must also include full and meaningful consultation with national and international non-governmental human rights organizations.

The object of such consultation would be to assess whether a proposed development project might exacerbate existing violence and lead to human rights violations. The way to ensure that EDC investments are consistent with Canada's obligations under international human rights agreements we have signed is to require the EDC, by law, through amendments to Bill C-31, to do a proper human rights impact assessment prior to approval of a project and to reject a project that yields a negative human rights impact.

If such an assessment had been done in Colombia, consulting with the Embera Katio and with organizations like the National Indigenous Organization, and the Colombian Commission of Jurists, who represented the Embera Katio in obtaining an injunction from the Colombian court on the basis of the way in which the dam violated their rights, Canadians would not now feel a sense of responsibility with regard to the violence being levied against the Embera Katio.

This brings me to my final recommendations. Bill C-31 must be amended to legally require the disclosure of project-related information in a timely and regular manner. This is a specific recommendation that the Canadian Catholic Organization for Development and Peace has asked me to raise with you here today. They were unable to come.

• 1130 

Why is this crucial? In the case of the Ralco dam project in southern Chile, a project approved under the EDC's new environmental review framework, a specialized consultancy group did an impact study that satisfied the EDC that its standards would be met. But an environmental

group working with local indigenous Pehuenche people told Development and Peace that the original report of this consultant had been submitted to the Chilean government, which then falsified aspects of the report before sending it to the funding agencies. This claim was supported by written testimony from staff of the consultancy group.

If the EDC was subject to the Access to Information Act, as 140,000 of our constituents and member churches have called for by amendments to Bill C-31, the environmental groups and the local Pehuenche could have known early on the impact assessment the EDC relied on and could have shown that the study had been falsified. Not only would EDC have been forced to review its decision, but it would have raised questions about the overall legitimacy of the Ralco dam.

A voluntary disclosure policy is not good enough. There is no accountability unless disclosure is required by law.

These amendments to the bill will ensure that the investments of a public institution that should be accountable to the Canadian Parliament and to Canadian people do not hurt people or the environment.

I would like to close by telling you that I was in Colombia last summer filming the impact of the Urra dam and met with many indigenous people there who are suffering an absolutely horrendous situation. I cannot forget the Embera Katio woman who said, “Maybe Canadians don't care because your investments are felt in other countries, but it's our people who are dying.”

I urge you to change Bill C-31 to ensure this can never happen again.

Thank you.

The Vice-Chair (Ms. Jean Augustine): Thank you, Ms. Price.

I think some members would remember Kimy's presence and presentation to us, and we regret his disappearance.

We'll now go to questioning. We have a half hour.

We'll start with you, Mr. Duncan.

Mr. John Duncan: Thank you very much.

There certainly seems to be a consistent thread in your testimony. What hits me quite strongly is that dams don't seem to be very good projects in terms of their consequences, and I have to wonder, if EDC were not a funder, would those projects proceed?

One or more of you may offer an opinion there, please.

The Vice-Chair (Ms. Jean Augustine): Ms. Adams.

Ms. Patricia Adams: Thank you for that question. It's an important one.

We monitor dams around the world. We're one of the two groups in the world that follow them religiously. What we have seen happen in the last 10 years is that the public sector institutions have slowly but surely retreated from big hydro dams because of the conflicts, and because they're not economic and they don't perform properly. They have hoped that the private sector would step in, but the private sector has refused to do so because they are simply not economic.

If you take the case of the Three Gorges dam, no public funder supported that project until EDC declared that it would. At that point, a couple of other export credit agencies then stepped in because the dam had burst, so to speak.

What has happened with Three Gorges is that it is under construction. Approximately 150,000 to 200,000 people have been forcibly resettled. There is a lot of opposition. People are returning to their homes. Several people have been arrested for trying to expose that these peasants are not receiving compensation.

• 1135

During the construction it has come to light that the price of power from Three Gorges will be about 8¢ a kilowatt. This compares to about 3¢ to 4¢ a kilowatt for power from small-scale, more environmentally benign, and obviously much more efficient generators of electricity that could be up and running within a couple of years, and in some cases as little as six months.

So what has happened in the hydro dam industry is that the private sector refuses to move in, and the only institutions that are financing these projects now are ones that don't need to care about the economics, that are driven often by political interests.

It actually goes back to a very interesting question you asked this morning; that is, what is EDC worth? EDC is essentially worth us. There are—

Mr. John Duncan: Excuse me, what did you say?

Ms. Patricia Adams: EDC's assets are taxpayers in this country.

Mr. John Duncan: Oh, okay.

Ms. Patricia Adams: Taxpayers gave $1 billion towards the capital of EDC. Its debt-to-equity ratio is not a good one. It insures companies that probably have a better asset base than it has. Why is it able to insure these private corporations? Because it has access to taxpayers' pockets.

So in answer to both of your questions, EDC is an institution that essentially is backed by taxpayers. It would be very difficult to sell it to a private sector, because you can't sell the taxpayer commitment along with it. In the case of hydro dams, you only find institutions like the export credit agencies, and in some cases the multilateral development banks, that don't need to worry about the economics of these projects and will support them.

Mr. John Duncan: Ms. Price, would you care to comment on the same question?

Ms. Kathy Price: The question we're addressing here is whether we should be getting involved in these projects, and—

Mr. John Duncan: You were concerned about projects also. Do you think they would have proceeded if there hadn't been EDC-type mechanisms to fund them?

Ms. Émilie Revil: Can I answer that?

Mr. John Duncan: Yes.

Ms. Émilie Revil: Very often the EDC is a small player in the project, and the project would go ahead even if the EDC were not involved. That is the argument EDC always uses when they say they can't apply their strong environmental standards.

Mr. John Duncan: But you would argue that small player or not, we shouldn't participate.

Ms. Émilie Revil: Absolutely.

As soon as the EDC gives out political risk insurance or a loan or equity, as soon as they're involved in a project that has impacts, the impacts are the trigger for environmental assessments and whether we should be involved or not, and not the importance of the role of the EDC, financially speaking.

Ms. Kathy Price: May I add a comment?

Mr. John Duncan: Sure.

Ms. Kathy Price: If we are serious about our commitment to human rights through the international agreements we've signed, then we have to do the human rights impact assessment. If that comes up negative, we should not be involved, if we are serious about these other commitments that are central and that have primacy. So whether or not the dam goes ahead with other investment, we're not involved.

Mr. John Duncan: I have one further question. Do I have time?

The Vice-Chair (Ms. Jean Augustine): One small question.

Mr. John Duncan: It's for Ms. Gibb.

You talked at some length about EDC taking heed of international conventions, and you mentioned the Australian model. One of the things that I think concerns not just my party, but Pierre's party in the House of Commons, is the fact that we have these international conventions that don't receive any parliamentary scrutiny. What you're asking is that those international conventions become binding on EDC, which does receive some parliamentary scrutiny. So I would ask whether you think it's appropriate that international conventions receive parliamentary scrutiny, some form of ratification. There are many we enter into, and they're binding—and you know the rest.

• 1140

The Vice-Chair (Ms. Jean Augustine): Have we gone outside of EDC?

Mr. John Duncan: Well, not really, not according to her testimony. Her proposal would have those attached as a schedule to EDC. Those conventions would be attached to any project and would be a checklist against which their performance or standards would be measured, if I understood correctly.

Ms. Heather Gibb: Yes, that's an excellent question. It takes us into quite a wide-ranging discussion—the extent to which government and indeed corporations can be held accountable to fulfill obligations that a government makes through the United Nations or the ILO or other organizations. I would be delighted to engage in that.

The example given in the Export Finance and Insurance Corporation Act governing the Australian agency simply states that in performing its functions, their corporation must comply with a number of areas, but it must also have regard to Australia's obligations under international

agreements. My suggestion was that the Canadian body, the Export Development Corporation, should include that as well. One can tend to get bogged down in federal and provincial jurisdiction issues. I think that's one of the problems with the Canadian Environmental Assessment Act.

The intent is to develop and to require the development of capacity within the corporation and use every tool possible that we have to advance understanding and ways to effect the kinds of agreements that we've entered into as a government. I'm very much a practical person. If I were working in the Export Development Corporation, where I think there is one corporate social responsibility person and probably one environmental assessment person, it would be impossible for me to do my job properly. But if there were legislation that required me to have regard to those international agreements, then the corporation would be required—I would hope—to start developing some capacity to do that and some capacity to work with the private sector. This is what the World Bank agencies are doing right now.

The Vice-Chair (Ms. Jean Augustine): Thank you.

[*Translation*]

Mr. Paquette.

Mr. Pierre Paquette: Thank you, Madam Chair.

My first question is for Ms. Gibb. In the part of your document concerning disclosure of information, you allude to the practices of the World Bank Group and I'd like you to elaborate further on this point. However, nowhere do you mention the Access to Information Act. Several of the groups that have appeared before the committee have suggested that the Export Development Corporation be subject to the provisions of the Access to Information Act. However, you are silent on this point. Is it because you feel it would be better to integrate the standards of the World Bank into the act than to make an explicit reference to the Access to Information Act?

Ms. Heather Gibb: Thank you for your question. I will answer it in English.

[*English*]

The quick answer is that my colleagues are much more knowledgeable about the Access to Information Act. I knew they would be covering it off very well. Again, I think one wants to be proactive rather than reactive. There is a very significant lag time in obtaining information through an application to the Access to Information Act. The emphasis in the World Bank Group, through the international financial corporations and through various other export credit agencies, is for the timely and regular disclosure of information. Relying on an appeal to the Access to Information Act means a delay in some cases of years.

The purpose of disclosure is to provide information in a way that a group—an aboriginal group in Colombia—can have access to information about what is being proposed for an area that affects them. Waiting for a Canadian organization to file an appeal under the Access to Information Act just won't work. That is why other organizations have embarked on timely and effective methods of disclosure.

Some organizations propose to do this by relying on the Internet. This may be very useful in western countries, but it is not useful in areas where aboriginal groups do not have access to computers and may not be literate. The onus, again, is on the project proponents to ensure that they disclose in a way that can be accessed by communities, so that these communities are able to know what's being planned and are able to comment and have input on it. The intent is constructive—to see that a project could be improved by consulting with those who know the area—but it's also to prevent, hopefully, the kinds of scenarios that my colleagues here have described to us this morning.

• 1145

Ms. Patricia Adams: May I respond?

I think it's a good suggestion that a lot more information should be readily available—posted before projects are approved. But the crucial issue is who defines what information should be disclosed. The problem with EDC is that it is defining what it will disclose, and it will not disclose anything if its corporate clients say no. We would never have received that information on India without the Access to Information Act. It would never have been disclosed in a timely fashion. You have to give the public the right to define what kind of information they want in order to make that institution truly accountable. Otherwise, they can hide mistakes. And it was a very big mistake. They had many serious problems with that dam. The engineers who were building it, as well as CIDA and EDC, had every interest in keeping it under wraps. You must give the public the right to define what kind of information they need to get.

[*Translation*]

Mr. Pierre Paquette: I have another question for Ms. Revil, time permitting, of course. You suggest, and I fully agree with you, that along with the environmental assessment per se, we consider the overall social and human impacts. As far as the environmental assessment is concerned, you suggest that the assessment process be regulated, but I did not see any proposal calling for an assessment of the social and human impacts to be mandatory in the case of the Export Development Corporation.

This morning, EDC representatives told us that is was more difficult to assess the social and human impacts, because the framework was not as clearly defined as in the case of environmental impacts. Would it not be a good idea to have in place regulations governing the assessment of

social and human impacts?

Having said this, I neglected to mention at the outset that I greatly appreciated your proposals. You can be certain that the Bloc Québécois will look to your recommendations for inspiration when considering amendments.

Ms. Émilie Revil: Indeed, I failed to mention this recommendation pertaining to social and environmental impacts.

We did, however, recommend among other things that the section entitled “Environmental Effects” be changed to “Environmental, Social and Human Rights Impacts”. The EDC sometimes refers to social impacts within its environmental framework, but this area is not highly developed. Local populations are consulted as part of the environmental assessment process. Since the section will not be finalized until the spring, it's difficult to know exactly what it will cover. It would in fact be interesting to develop the social impacts aspects further, because aside from the consultation process, few social effects are in fact taken into account.

Regarding human rights impacts, the EDC maintains that it does take human rights into account in its studies and assessments before projects are approved. We've never seen a clear process in the area of human rights. The EDC maintains that it takes into account Canada's international obligations in the area of human rights, but no clear, well-drafted standards are in place to ascertain if in fact , it complies with conventions and respects human rights. If such standards exist, we have yet to see them.

Quite often, when the EDC talks about human rights, it's in the context of how human rights in the country may affect projects. We would like to the EDC to think about how the project in question may affect the human rights situation in that particular country.

There should be a clear reference to human rights in the bill. It's unacceptable that no mention whatsoever is made of them.

[*English*]

The Vice-Chair (Ms. Jean Augustine): Thank you. I'm going to move on. Maybe there will be an opportunity for you to come back in on this, but I'm conscious of the time and I have two questioners on this side. When there's an opportunity, maybe you can throw your response in.

• 1150

We'll go to Ms. Marleau.

Ms. Diane Marleau: I have read some of your briefs. I object a little to the kind of language that is sometimes used.

Part of the challenge is of course that many of these projects go on for many years. They may have been in process for 15 or 20 years. Often EDC will come in towards the end of the project rather than at the beginning.

I don't know how you view that in terms of some of your statements. For instance, I look at this statement by Probe. On page 3 you use an example with the Three Gorges dam in China. You say “For example, in the case of the CIDA and EDC-funded Three Gorges dam in China”.... Well, if memory serves me right, CIDA has not funded the actual dam. CIDA was involved in an environmental study perhaps 15 years ago and has not been involved since.

I can't speak to EDC, but I know that this particular dam was a project of the Government of China that went ahead and is ongoing. If there is some involvement of EDC, it is later rather than sooner. It consists more of the monitoring and technology aspect. Would you suggest that EDC should have done an environmental assessment before the dam started and not come in after the fact to make sure some of the equipment worked properly?

It's very difficult for me because many of these things are not black and white. They're just not. They go on for many years. Oftentimes EDC will be asked to ensure perhaps the installation of a Canadian turbine in one of these projects. The project would have gone on whether EDC and this turbine were there or not. Is it not better to have the improved technology at this point than otherwise?

I find it very difficult to see how some of your simplistic statements can always fit these situations, because they're not black and white.

I have another point. The Auditor General is mandated to review the work of the Export Development Corporation every five years. I know for many people this means after the fact. But I can tell you that there isn't a crown corporation in this country, nor a department of this government, that is not very much in tune to the fact that they're about to be reviewed by the Auditor General and that his or her report will be made public. Therefore, they very much want to make sure that this review comes off well.

In a sense, that is perhaps more than many other development corporations in other countries would be subjected to. I'm not aware of others who are subjected to this kind of public review by an Auditor General.

The Vice-Chair (Ms. Jean Augustine): I think this one is directed to Probe.

Ms. Diane Marleau: Whichever one.

Ms. Patricia Adams: Yes, that's right. Thank you.

Ms. Diane Marleau: One of them was to Probe.

Ms. Patricia Adams: I can also answer the second one, and other people may want to contribute.

In the case of the Three Gorges dam, CIDA financed a feasibility study for the dam.

Ms. Diane Marleau: Way back, yes.

Ms. Patricia Adams: We obtained that information through the Access to Information Act as well.

We commissioned an independent review by nine international experts. They looked it over and declared that it was negligent and so seriously flawed that we filed complaints against the engineering firms for completion of it.

Let me give you a few examples. The environmental assessment that the engineers did really did not exist. They accepted a flawed and rejected Chinese assessment that had been done. They never saw the sedimentation data. The Yangtze River has the fourth highest silt load of any river in the world. A dam just downstream of the Three Gorges has already lost 40% of its capacity to silt, and it's only about eight years old. So that assessment was a very seriously flawed one.

• 1155

Ms. Diane Marleau: But that was 15 years ago.

Ms. Patricia Adams: The purpose of that assessment was so the Chinese authorities could go and raise international funds for the project. But by that time there was so much publicity and so many problems with the dam—which has, by the way, been in the works for 70 years—that the Chinese government then tried to get foreign financing for it.

Nobody would touch it. The Export-Import Bank knew they would probably face a lawsuit under the Endangered Species Act if they decided to support Three Gorges, so they rejected it. EDC started the bandwagon. EDC kicked it off. EDC gave moral support to this dam. It has financed a computer system to help with the management of construction. It has financed turbines that General Electric Canada is providing.

I think Three Gorges is black and white. It is a flawed project, and history will prove it is flawed. It is not economic. It is leading to gross human rights violations. People are under arrest without trial, without detention. They have been in jail since March of this year. What has the Canadian government done to help them? What has EDC done to help them? Nothing.

Let me go to your second point about the Auditor General doing a five-year review. I don't know if you were referring to the environmental review framework or the special examination the Auditor General does every five years. For your information, that document it produces once every five years is a confidential document. The Auditor General is not allowed to disclose it.

We tried to get it using the Access to Information Act, by going to the Department of Foreign Affairs and International Trade. They told us they couldn't find it in their files. That was disturbing. We went to EDC. We said, “Could you please give us this examination? It is supposed to cover the economic efficiency and effectiveness of EDC's operation.” They sent us back correspondence saying, “This is a confidential document and we will not disclose it to the public.”

That's the kind of scrutiny that EDC is put under. They don't live in fear of this being disclosed to the public because it won't be. That's why the institution has to be subject to the Access to Information Act.

The Vice-Chair (Ms. Jean Augustine): Ms. Carroll, you have the final question.

Ms. Aileen Carroll: This is a follow-up. You are saying, Ms. Adams, you are not able to get this document, *Report on the Export Development Corporation's Environmental Review Framework*, May, 2001 by the Auditor General.

Ms. Patricia Adams: I was referring to another—

Ms. Aileen Carroll: [*Technical Difficulty—Editor*]...that is his or her role.

Ms. Patricia Adams: The Auditor General's relationship with the EDC—and I have this in correspondence, which I would be happy to provide this committee with—is that the Auditor General must accept the disclosure requirements and policy of the institution they are financing. This may be particularly with respect to crown corporations. The policy of EDC is that no information will be disclosed without approval from their corporate clients.

I have asked the Auditor General for information for 15 years about EDC and the 26 projects that were reviewed. Initially, they weren't disclosed, then they finally were disclosed, except for three, because three of the firms wouldn't agree to the disclosure of their projects that were reviewed in the scrutiny of the environmental review framework.

In the case of the special examination of EDC, which is done every five years by the Auditor General, the Auditor General is bound by its contract with EDC not to disclose the details of that review. So it's not available to the public. We have tried letters to EDC, we've tried Access

to Information, and we haven't been able to get it.

Ms. Aileen Carroll: Thank you for your response.

I was pleased to note in Mr. Pettigrew's letter, with regard to the Export Development Corporation's environmental review framework—not the larger one—that he asked not for a three-year audit in that venue but a two-year audit. So I think there is evidence in all of our discussions—and of course the discussions are focused on what has yet to be done, rather than on what has been done—that considerable change has been implemented in a number of aspects, as a result of the work of this committee and as a result of his report. Our work in the past reflected your witnessing, and so on.

• 1200

I was coming along a segue from Ms. Marleau. You commented, Ms. Price, that you're not sure about where we are with the Export Development Corporation and its practices vis-à-vis international obligations. That was discussed earlier by Ms. Morin. Were you here earlier for...? Then you might want to get a copy of the blues, because there was a good discussion relating to that.

I can make reference to what I particularly noticed in the document she gave out, and I'm sure those copies are available. The approach we have chosen is consistent with emerging practice in the international community and with our work on this issue, this particular issue being environmental dimensions, in the OECD. The OECD, of course, is doing some excellent work. I just came back from meeting with the OECD a week or two ago, and meeting with Mr. Johnston. As someone who sat on the environment committee, I was really pleased to see how much progress has been made there, the priorities they're setting, and the timelines they're giving for the goals they want to see achieved. So I have to say, quite honestly, I was pleased to see the nexus this morning in her response to that of the OECD.

Again, it is incumbent on all of us to keep feet to the fire, but I think on occasion we ought to pull them off and take a look at what progress has been made.

Finally, just with regard to the question on what has to be within legislation in order for there to be a response within the administration, I think you ought not be too legalistic there, because I think frequently progress has been made because of onuses and directives set by government and priorities set by us and the Auditor General that obligate corporations such as the Export Development Corporation to respond. I don't think it is always the best route, at least not the exclusive route, to see those obligations put down in legislation. I think much can be done and is being done within the everyday practice of that.

I was just going to respond to your comment that if you were the only one there alone, maybe you wouldn't be alone if there were something in the statute. But from my perspective, I think directions are taken and enhancement has been made of your job—as you yourself gave the example—without every single word of that being nailed down in law.

The Vice-Chair (Ms. Jean Augustine): I think maybe I'll give Ms. Price the opportunity to respond first, simply because I offered you that opportunity earlier.

Ms. Kathy Price: I'd just like to say that the accountability comes through legislation. The human rights requirements need to be there within legislation for there to be accountability. Expressions of goodwill or voluntary movement are not adequate. There needs to be that embedding in law, that recognition that human rights impacts are just as important as environmental impacts.

We know there have been horrendous human rights abuses and exacerbation of very serious situations, and the Urra dam and the situation in northern Colombia is just one of those. It needs to be there in the mandate statement and in the operational guidelines in terms of a requirement to do a human rights impact assessment. That impact assessment must be based on consultations with local communities and non-governmental human rights organizations in the region.

If that had happened in the case of the Urra dam in Colombia, we wouldn't be seeing the situation we are seeing now.

The Vice-Chair (Ms. Jean Augustine): Mr. O'Brien, very short.

Mr. Pat O'Brien: I'll be very brief. Thank you, Madam Chair. I wasn't going to speak. I waited for my colleagues.

I would just note that the only example I have heard cited today was Australian legislation, and the quote I heard was “have regard to”. I'm not a lawyer, but I've been in politics for a while and I don't think a statement saying that somebody must have regard to something is the same as saying they must comply, or shall comply. I would make that point.

• 1205

As a request of the witnesses, if they have any specific examples of countries with legislation—their equivalence to what Export Development Canada's will be called—requiring them to comply with various standards, I'd ask them to table them with the committee.

Thanks, Madam Chair.

The Vice-Chair (Ms. Jean Augustine): I would want to follow up by saying to the witnesses that anything they send to us will be considered

by the committee as we proceed with clause-by-clause deliberation.

I want to say how much I appreciate your being here this morning. Thank you so much for the input, and carry on the work you do in your various organizations.

Thank you.

The meeting ends.

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