

Environmental Standards and the Export Development Corporation of Canada



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Summary

The Export Development Corporation of Canada (EDC) is a publicly financed Crown Corporation with a mandate to promote Canadian exports. Though projects supported by the EDC have major environmental impacts, the EDC is not bound by law to conduct environmental impact assessments, or to consider environmental factors in its decisionmaking process. Other similar agencies, notably those in the U.S., do have legal requirements to follow environmental standards and conduct impact assessments.

A voluntary Environmental Review Framework was produced by the EDC in May 1999. It is an important step forward, but could be strengthened. This brief evaluates the Framework and concludes that it does not meet basic criteria for sustainability, such as a categorical list of projects that will not be supported, a comprehensive list of environmental factors to be considered during the review process, disclosure requirements, public participation provisions, and an independent review mechanism. The Review Framework should be strengthened by including these criteria. In addition WCEL advocates requiring the EDC by statute to abide by environmental standards, by:

- amending the *Export Development Act* to require incorporation of environmental factors in decisionmaking,
- requiring environmental impact assessments of EDC's decisions to be conducted pursuant to the *Canadian Environmental Assessment Act*, and
- requiring the Export Development Corporation to prepare a sustainable development strategy and report to the Commissioner of Environment and Sustainable Development,

pursuant to the *Auditor General of Canada Act*.

...(F)rom a global perspective the environment has continued to degrade during the past decades and significant environmental problems remain deeply embedded in the socio-economic fabric of nations in all regions. Progress towards a global sustainable future is just too slow. A sense of urgency is lacking...The recognition of environmental issues as necessarily long-term and cumulative, with serious global and security implications remains limited. The reconciliation of environment and trade regimes in a fair and equitable manner still remains a major challenge."

- *UNEP, Global Environmental Outlook, 1997*

"We will do more to encourage private investment to meet environmental standards. The Overseas Private Investment Corporation will now require that its projects adhere to new and strengthened environmental guidelines just as our Import-Export Bank already does, and as I hope our allies and friends soon will. Common guidelines for responsible investment clearly would lead to more sustainable growth in developing nations."

- *US President Clinton, 1997, UN General Assembly Special Session Statement*

Environmental Standards and the Export Development Corporation

The Export Development Corporation's (EDC) recent Environmental Review Framework is a good first step, but needs to be considerably strengthened if the EDC is to ensure that the environmental impacts of its financing decisions are minimized. The Framework is voluntary, a less effective motivator for environmental improvement than regulation. It lacks key elements of a thorough environmental assessment model, such as provisions for public participation, information disclosure, and public accountability. It also fails to comprehensively address the full range of environmental issues that the EDC, as a Crown corporation with an obligation to advance overall Government of Canada policies, should consider. West Coast Environmental Law (WCEL), among many others, believes all Canadian government entities should promote policy objectives in the critical area of environmental protection. A recent legislative review of the EDC and its governing legislation, the *Export Development Act*, also concluded that the Corporation should be advancing these objectives.

One of the cornerstones of the federal government's foreign policy is sustainable development. Maurice Strong estimated that \$125 billion was needed to fully implement Agenda 21, the 1992 Rio Earth Summit's blueprint for sustainable development. That figure has never been met, yet if private capital flows, which far exceed money spent on official development assistance (ODA), were used for sustainable development, the goal suddenly is more realistic. The EDC facilitates the Canadian flow of private capital abroad, money which could be used to promote sustainable development.

This brief will:

1. Explain the impact of export credit agencies' decisions on the environment.
2. Advocate regulated environmental standards to replace the EDC's current voluntary environmental procedures.

3. Evaluate the Environmental Review Framework recently released by the EDC.

1. Private Sector Investment, Export Credit Agencies and the Environment

Export financing includes a range of financial and risk management services, including the provision of export credits. An export credit arises whenever a foreign buyer of exported goods or services is allowed to defer payment. These services are provided by export credit agencies (ECAs), such as the EDC.

Both the sheer size, as well as the type of projects, that ECAs finance reveals the potential for environmental harm. ECAs are the single largest public financiers of large-scale infrastructure projects in the developing world. The type of projects ECAs finance such as dams, power and chemical plants, mines, forestry, roads, pipelines, and industrial installations are those that can have serious detrimental environmental effects.

But many export credit agencies, including Canada's EDC, are not required by law to abide by any environmental standards, or to conduct environmental assessments before deciding whether or not to support a project. **Though it** is difficult to directly influence private sector decisions on investment, regulating how a publicly financed Crown Corporation can assist these projects provides a lever to influence this investment in more sustainable directions, "... an effective way of using a limited amount of aid money as an environmental screen to influence far larger pools of private capital."

The largest exporting countries have agreed to work towards common environmental standards for ECAs, but are moving slowly towards that goal. The US has led the way, with statutory environmental standards for its own Overseas Private Investment Corporation (OPIC) and Export-Import Bank. In June 1999, at the Koln Summit, the G-8 countries promised to work towards completing common environmental guidelines for export finance agencies by the 2001 G8 Summit.

The International ECA Reform Coalition, a coalition of NGOs from around the world, issued the Call for Reform of Export Credit and Investment Insurance Agencies, endorsed by 160 NGOs from 46 countries, in April 1998, asking governments to engage with civil society in a dialogue on the issues of greater transparency and public participation; environmental screening and assessment; social sustainability; and agreement on common environmental and social standards.

2. The Need for Regulated Environmental Standards for the EDC

The EDC and the Environment

The EDC is a federal Crown corporation that provides Canadian exporters with financing products and commercial and political risk insurance, particularly for higher-risk and emerging markets. It was designed to complement private sector banks and financial institutions wherever possible. In 1997, the EDC worked with 3,711 customers in 145 global markets, helping Canadian companies to generate more than \$28 billion in sales and foreign investments.

The EDC is the chief, but not the sole supplier of export financing assistance in Canada. Other federal agencies that provide this assistance include the Business Development Bank and CIDA's Industrial Cooperation Program (CIDA-INC). Often overseas projects involving Canadian companies have financing from a number of sources. For example, Delcan, a Canadian engineering company is

building wastewater collection and treatment systems in Margarita Island, Venezuela with support from CIDA-INC, the Export Development Corporation, and the Canadian Imperial Bank of Commerce. The project also attracted a US\$15 million loan from the World Bank.

Projects financed by the EDC have had serious environmental consequences. Recent mine accidents involving Canadian companies overseas, such as the Kumtor cyanide spill in Krygyzstan and the Omai gold mine accident in Guyana have received substantial funding from the EDC. The EDC has also provided financing for Canadian companies to obtain contracts to work on the Three Gorges Dam in China, and for the sale of CANDU nuclear reactors to China and Romania.

Current Statutory Environmental Requirements for the EDC

The EDC currently has no statutory environmental obligations.

The *Export Development Act*, the EDC's governing statute, contains no environmental obligations.

The *Canadian Environmental Assessment Act* (CEAA) also does not currently apply to the EDC, though this issue is being litigated. The Sierra Club of Canada is seeking judicial review of the federal government's decision to exempt the federal financial decisions which assisted China to buy CANDU nuclear reactors from any environmental assessment. Generally, an environmental assessment is required whenever a federal agency provides financial support for a project.

EDC's exemption from CEAA raises a policy inconsistency when the entire spectrum of Canadian government support for overseas projects is examined. The Canadian International Development Agency (CIDA) is bound by the *Projects Outside Canada* regulation of CEAA. Canadian development assistance designed to further sustainable development principles flows to the same countries where EDC supported projects may work against the same principles. For example, while CIDA assisted bilateral projects in China focus in large part on environment and human rights, at the same time the EDC supports companies contributing to construction of the Three Gorges Dam which has been labelled the world's most socially and environmentally destructive dam project. And when CIDA and the EDC support different parts of the same project, CIDA is required to conduct an environmental assessment, but the EDC is not.

The EDC is not bound by the *1995 Amendment to the Auditor General Act* which created the Office of the Commissioner of Environment and Sustainable Development and obligates a list of government departments to prepare Sustainable Development Strategies and report on their progress in implementing these Strategies.

To its credit, the EDC has placed more emphasis on the environment in the past year, in the form of voluntary commitments and programs. For example, in May 1999, it joined 5 of Canada's major commercial banks by signing the United Nations Environment Programme's Statement by Financial Institutions on the Environment and Sustainable Development. The Statement commits its signatories to the pursuit of sustainable development as a "fundamental aspect of sound business management" (1.1.) and to compliance with all environmental regulations. "Signatories will work towards integrating environmental considerations into operations, asset management and other business decisions." (2.2)

The EDC also released a voluntary Environmental Review Framework in April 1999. The Framework does not represent a significant change in direction, however, or a commitment to fully incorporate sustainable development as a guiding principle for all of the EDC's operations. The EDC's Environmental Review Framework is examined in detail in the last section of this report.

A separate legislative review of the EDC's governing statute, conducted by an Ottawa law firm, Gowlings, (known as the Gowlings review) was completed in July 1999. The EDC's own submission to the legislative review team made only a cursory reference to the environment and sustainable development, and did not address its role as a publicly accountable agency charged with carrying out government policies beyond its statutory mandate. The legislative review team made several recommendations to the Minister of Foreign Affairs and International Trade on the subject of "EDC's Overall Success in Advancing Government of Canada Policies", including: amending the *Export Development Act* to introduce a general requirement that EDC establish environmental review procedures consistent with the Corporation's commercial objectives and to empower the EDC Board to grant or withhold financing support after taking into account the beneficial and/or adverse environmental effects of a project or transaction, and releasing a policy on public disclosure of environmental assessments.

The Need for Regulated Standards

Significant environmental improvements are often prompted by regulatory requirements. In many cases, voluntary standards have been proven less effective than regulatory standards in obtaining improvements in environmental quality. A recent report from the Environment Canada Pacific Region office reviewing 19 different regulatory groups found that those industrial sectors which relied solely on self-monitoring or voluntary compliance had a compliance rating of 60% versus a 94% average compliance rating for those industries which were subject to federal regulations combined with a consistent inspection program.

Other studies also show that regulations are a key part of obtaining better compliance. In the widely quoted KPMG Environmental Risk Management Survey, executives from 1,547 of the largest Canadian companies, hospitals, universities and school boards rated compliance with regulations as the prime motivating factor for implementing environmental improvements, a motivating factor in over 90% of the cases. Least influential factors were voluntary programs which were responsible for only 15% to 20% of implementation of environmental improvements. And according to the 1998 UNEP Financial Institutions survey, compliance with regulations was one of the main reasons why the institutions had developed environmental policies.

Because of our strong belief that decisionmakers like the EDC will pay more attention to the environmental consequences of decisions when they are required by law both to consider those consequences in advance, and to subject their decisions to public scrutiny, we advocate amending the EDC's governing legislation. The *Canadian Environmental Assessment Act* provides useful guidance for statutory language requiring assessments to be conducted and requiring public participation in the assessments, which we recommend adopting for the *Export Development Act*. These proposed amendments should not jeopardize the competitive position of EDC's clients, since these requirements already exist for Canada's main competitor, the United States. U.S. law requires the Export-Import Bank (Ex-Im Bank) to conduct detailed and open environmental reviews. Both the U.S. Overseas Private Investment Corporation (OPIC) and the Ex-Im Bank are subject to the US *National Environment Policy Act*, NEPA, which requires preparation of an environmental impact statement for any project significantly affecting the environment of the global commons outside the jurisdiction of any nation, and when the cumulative impacts of federal and other actions have significant and adverse impacts. Arguably, this includes projects that will emit greenhouse gases and/or cause biodiversity loss, both of which significantly affect the global commons.

However, CEEA-like requirements for the EDC will not be enough. Five years experience with that *Act* has not transformed federal government decisionmaking. Integrating environmental considerations into all aspects of EDC's operations and decisions, as the EDC has pledged to do by signing the UNEP Financial Institutions Statement, means more than mitigating the negative environmental impacts of projects. True integration of environmental and economic factors requires proactively searching out ways to support environmental protection and improvement in the normal course of business. At a minimum, the EDC should be bound to prepare a Sustainable Development

Strategy and report to the Commissioner of Environment and Sustainable Development on the implementation of this Strategy. In addition, the EDC could be required by legislative amendment to provide preferential support for a specified list of projects or technologies, such as those that reduce greenhouse gas emissions through enhanced supply, from renewable sources, or demand-side management; community-based environmental services projects, including urban and rural water supply, distribution, and sanitation and environmentally sustainable projects or agro-industry pollution reduction activities.

We also recommend amendments to the EDC's governing legislation that would require it to decline support for projects with unavoidable negative impacts. This requirement has precedents: OPIC's governing statute requires it to refuse to support a project that "the Corporation determines will pose a major or unreasonable environmental, health or safety hazard, or will result in the significant degradation of national parks or similar protected areas."

The exclusion list would also reflect the government of Canada's commitment to fully abide by its international commitments, as it could include refusal of support for projects with unacceptable impacts such as :

- increases in CO₂ and other greenhouse gas emissions (the *Framework Convention on Climate Change* and *Kyoto Protocol* require reductions in emissions of these gases)
- use or production of ozone depleting substances (*Montreal Protocol on Substances that Deplete the Ozone Layer*) or persistent organic pollutants (POPs) (a POPs treaty is currently being negotiated)
- increasing biodiversity loss (the *Convention on Biological Diversity* obligates parties to conduct EAs, protect endangered species, identify and conserve biodiversity, use biological resources sustainably, share benefits of biodiversity with local populations)
- increased trade in hazardous waste (*Basel Convention on Transboundary Movements of Wastes and their Disposal*)
- large scale conversion of natural forests (Canada is actively promoting a global Forests Convention)
- projects affecting sites listed under the UNESCO *World Heritage Convention* and the *Ramsar Convention for the Protection of Wetlands*.

Again, this requirement has precedents. The International Finance Corporation, one of the World Bank Group's private sector arms, is obligated not to finance project activities that would contravene a country's obligations under relevant international environmental treaties and agreements, as identified during the EA. OPIC's Environmental Handbook contains a categorical list of prohibitions similar to those listed above.

The EDC, like other export credit agencies and international financial institutions, should prohibit funding for projects that aggravate the problems that environmental treaties are designed to solve.

WCEL Recommendations

1. The EDC should be required by regulation to report to the Commissioner of Environment and Sustainable Development pursuant to s.24 (3) of the *1995 Amendment to the Auditor General Act*.
2. Crown Corporation regulations which would include the EDC should be established as soon as possible under CEAA. Alternatively, the Projects Outside Canada regulation under CEAA should be amended to include, at a minimum, the Canada Account administered by the EDC.
3. The *Export Development Act* should be amended to:
 - A. mandate the promotion of sustainable development and ensure that there are opportunities for public participation in the EDC decisionmaking process as two additional purposes of the Corporation.

- B. require environmental assessment procedures to be applied "as early as is practicable in the planning stages of the project and before irrevocable decisions are made."
- C. require the EDC to refuse support for projects that have unacceptable environmental consequences through the use of a list of categorical prohibitions including projects which aggravate environmental problems that treaties have been designed to solve.
- D. require the EDC to increase its support for projects that are environmentally beneficial, such as those that will result in the reduction of greenhouse gases.
- E. prohibit the EDC from supporting projects that violate Canada's environmental treaty obligations.

3. Evaluation of EDC's Environmental Review Framework, April 1999

EDC's Environmental Review Framework is now in effect. While the Framework is an important step forward, it does not go far enough. The EDC has not taken this opportunity to incorporate sustainable development as a fundamental guiding principle for its operations.

One of the chief deficiencies of the Framework is its voluntary nature, discussed above. The fact that the Framework is not statutorily mandated means that it may not lead to significant environmental improvements as a result. WCEL recommends statutory changes to ensure that the environment is given a high priority in the EDC's decisionmaking process.

Even in the absence of statutory changes, the Framework should be strengthened to ensure public accountability, and establish public participation procedures both in the host country where the project will be located, and in Canada.

Public Participation

The EDC Framework now has virtually no procedures for public participation.

Aside from the rights that the public legally has to participate in environmental decisionmaking, both in domestic and international law, ignoring the public is bad for business. Projects can face delayed risk when local populations are not consulted and object to the project, leading to delay, extra expense, and in some cases abandonment of the project. Again, the EDC's counterparts have recognized the need to establish procedures for public participation. As Jannik Lindbaek, Executive Vice-President, of the IFC puts it: "The long-term sustainability of investments is critically dependent on good relations with all stakeholders."

The importance of legal participation rights cannot be underestimated. Public participation is an integral part of modern environmental domestic law and an accepted feature of international law, recognized in Agenda 21, and most notably in the *Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters*, opened for signature in June 1998. The Convention has not yet been signed by Canada and is not in force. The Convention will likely apply to export credit agencies as "public authorities," as defined by the Convention, especially where they are making a decision to finance, insure, or guarantee projects involving activities listed in Annex I to the Convention, (which are activities with the potential for negative impacts on the environment, such as energy and chemical sector projects, production and processing of metals, industrial plants, waste management projects).

WCEL Recommendation:

- The Environmental Review Framework should include procedures for public participation and public disclosure, in accordance with domestic and international law.

Public accountability

To ensure that the EDC is accountable to the public, we also recommend establishing an independent review mechanism.

To have a noticeable impact on the EDC's decisions, the Environmental Review Framework should be enforceable. The public should have access to mechanisms to enforce the Framework. Two possible methods of enforcement are: an Inspection Panel similar to that of the World Bank; or an Ombudsperson.

Inspection Panels are increasingly used by World Bank entities, and will soon be extended to the private sector arms of these entities, such as the World Bank's International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA). The World Bank created its Inspection Panel in 1994, after an independent review documented numerous serious violations of the Bank's internal procedures, including a complete lack of environmental assessment for the huge Sardar Samovar dam project in India. The Inspection Panel is an independent body designed to hear complaints from affected people who have suffered or may suffer harm from alleged violations of the Bank's policies and procedures as the result of the approval or implementation of a project. The Panel may recommend an investigation into a complaint which will proceed only with the Bank's approval. Ultimately the bank decides what action to take, if any, after receiving the Panel's investigation report.

Another method of improving accountability is through the use of an Ombudsperson. An Ombudsperson for IFC and MIGA was created this year to address the concerns of local communities who are adversely affected by IFC or MIGA-supported projects and to advise senior management on issues relating to their social, environmental and information disclosure policies.

WCEL Recommendation:

5. The Environmental Review Framework should include an independent appeal mechanism similar to the Inspection Panel of the World Bank or the Ombudsperson used by IFC and MIGA.

EDC Environmental Review Framework

(The Environmental Review Framework is reproduced below, in *italics*. WCEL's comments are set out below each section of the Framework, in regular type.)

Definitions

Under this Framework the following definitions are meant to be read in the context of a Project for which EDC's support is sought:

- a)** "Environment" means land, water, air, living organisms and interacting natural systems;
- b)** "Environmental Effect" means any change that the Project may cause in the Environment, including any social impact or any change to the Project that may be caused by the Environment;
- c)** "Environmental Risk" means the potential for an adverse Environmental Effect to occur as a result of the normal construction operation and decommissioning of the Project, or in the event of an accident or malfunction in relation to the Project;

This definition of environmental risk is very narrow. It relates to whether an individual project is at risk due to environmental factors such as seismic, flood or storm damage, rather than on the overall environmental impact of the project as a whole. This traditional view of environmental risk does not recognize threats to the environment that may exist even if a project is technically viable, such as destruction of irreplaceable biodiversity, increased emissions of greenhouse gases or unacceptable impacts to the human environment, for example, disruption of traditional ways of life or resettlement. This latter type of environmental risk is the type that EA procedures are designed to detect, and if possible, avoid, by examining the need for as well as alternatives to the project. The Framework should consider this type of risk, and risk that results from a lack of consultation with people likely to be affected by the decision to support a project as well.

WCEL Recommendation:

- The definition of "risk" used in the Environmental Review Framework should be expanded.

d) "Environmental Review Report" means a report submitted by, or on behalf of, a party seeking EDC support in relation to the Project and prepared by qualified sources, assessing the Environmental Effects and Environmental Risks, if any, associated with the Project; and

e) "Project" means a physical industrial, commercial or infrastructure development.

This definition of "project" is very narrow, and may exclude EDC supported investments with adverse environmental impacts. In contrast, the definition of "project" used by the World Bank in its environmental assessment policy is: "project" covers all operations financed by Bank loans or guarantees" with some exceptions for which separate policies apply. Similarly, the definition of "project" in the *Canadian Environmental Assessment Act* includes physical activities as well as physical works. For physical works, the definition includes "any proposed construction, operation, modification, decommissioning, abandonment or other undertaking" in relation to that work.

WCEL Recommendation:

- The definition of "project" used in the Environmental Review Framework should be expanded.

1.0 Screening Process

1.1 This Framework applies to all Projects for which EDC support is sought.

1.2 EDC will seek to identify the significant adverse Environmental Effects and Environmental

Risks, if any, associated with Projects where :

a) there may be the potential to cause significant adverse Environmental Effects as a result of any of the following :

- *generation of significant air emissions, liquid effluents, wastes or noise;*
- *significant resource requirements (energy, materials, water, land);*
- *significant adverse social impacts;*
- *location in or near a sensitive geographic area; and where*

The screening process does not consider the potential impact on natural habitats or critical habitats. The EDC Review Framework should set parameters for when assistance will be declined due to unacceptable impacts on natural and critical habitat, and should define these terms. For example, the IFC Environment Operational procedure OP 4.04, Natural Habitats provides that "the conservation of natural habitats, like other measures that protect and enhance the environment, is essential for long-term sustainable development. IFC therefore supports the protection, maintenance, and rehabilitation of natural habitats and their functions in its project financing and advisory activities. IFC supports, and expects project sponsors to apply, a precautionary approach to natural resource management to ensure opportunities for environmentally sustainable development."

The screening process does not consider the potential impact of the project on climate change. We recommend setting parameters for when assistance will be declined due to unacceptable impacts on climate change.

b) the nature and level of support requested of EDC has a material impact on the ability of the Project to proceed.

A major flaw in the Screening Process is its scope. The scope is significantly reduced by subparagraph (b). If a project has the potential for significant adverse environmental effects, EDC should investigate those potential significant adverse environmental effects, regardless of whether their support will affect the ability of the project to proceed.

WCEL Recommendations:

- Section 1.2 (b) of the Environmental Review Framework should be deleted.
- The Environmental Review Framework should be augmented by:
 - a Policy on Natural Habitat, similar to the Policy of the IFC, and
 - a Policy on Climate Change, including a commitment to track CO₂ emissions from power sector projects it supports and from other projects with the potential to cause significant effects on CO₂ emissions.

1.3 *For Projects where the nature and level of support requested of EDC do not have a material impact on the ability of the Project to proceed, EDC may nevertheless request information from the applicant regarding the environmental aspects of the Project. To acquire comfort with the environmental aspects of these Projects, EDC may consider the corporate environmental policies, environmental management systems and reputation of the applicants and Project sponsors, where*

applicable.

1.4 For the purposes of Sections 1.2 and 1.3, EDC will draw upon its past experience with similar Projects, and, if applicable, on information contained in a completed screening questionnaire, (Annex 1), and other readily available sources of information on the Project, to identify the Environmental Effects and Environmental Risks, where applicable, associated with a Project.

The following is an illustrative list of projects where, in EDC's opinion there is potential for significant adverse environmental effects: mining, metals processing; oil & gas development; thermal power generation & transmission; forestry, pulp & paper operations; chemical & petrochemical facilities; hydropower & water resources management; waste and wastewater management; or projects located in or near geographic areas designated for environmental protection such as national parks, tropical rainforests, coral reefs, World Heritage Sites, or World Biosphere Reserves.

The illustrative list of projects where there is potential for significant adverse environmental effects is important. However, this list does not capture the full range of environmentally sensitive areas that may be affected by EDC supported projects. Many environmentally sensitive areas are not formally designated for environmental protection.

WCEL Recommendation:

- Preferable wording for Section 1.4 of the Framework would be "projects located in or near geographic areas of environmental sensitivity or high ecosystem value." Additional criteria should also be added, including:
 - forests of high ecological value, a criteria used by the World Bank.
 - the habitat of endangered species, a criteria used by the US Export Import Bank.
 - sites designated under the Ramsar Convention on Wetlands.

1.5 Where significant adverse Environmental Effects or Environmental Risks are identified, EDC will require an Environmental Review Report as outlined in Sections 2.0 and 3.0 below.

1.6 For nuclear power Projects, EDC will require submission of the standard environmental reviews and approvals of recognized nuclear regulatory bodies. EDC may nevertheless request an Environmental Review Report as outlined in Sections 2.0 and 3.0 below.

1.7 EDC will not support Projects which, after taking into account the implementation of mitigation measures, are, in its opinion, likely to cause significant adverse Environmental Effects that cannot be justified by the anticipated positive effects of such Projects.

This is an important part of the Framework, recognizing that in some circumstances, the environmental effects may be of such magnitude that EDC should decline support. This provision would be strengthened if the EDC governing statute also included a list of categorical prohibitions for which EDC financing would automatically be declined.

Environmental Review Requirements

These environmental review reports are the key part of the Framework. A major concern with these requirements is the lack of transparency. The Review Framework does not address how the public

will know when there is an opportunity to provide comments to EDC about the potential environmental impact of the project. There is no duty of the project proponent to consult with affected groups either in Canada or in the country where the project will be located to obtain this type of input. Coupled with section 10.0 on disclosure/confidentiality, in which EDC declines to provide any information to the public that is not already publicly known, this results in a closed and narrow procedure, excluding the public from any meaningful input on projects with potential harmful environmental results.

WCEL Recommendation:

11. The Environmental Review Framework should include a procedure for public disclosure and consultation both within Canada and in the country where the project will be located.

2.1 Environmental Review Reports assessing the Environmental Effects and Environmental Risks, if any, associated with the Project in respect of which EDC support has been requested will be provided to EDC by the party requesting EDC support.

2.2 The submission of existing acceptable documentation is encouraged to improve the efficiency of the review process and to minimize duplication of effort. The environmental review for the purposes of the Environmental Review Report must be undertaken by qualified sources with respect to the nature of the project.

2.3 At a minimum, the scope of an Environmental Review Report should focus on activities within the control of the party seeking EDC support.

2.4 Consideration should also be given to the cumulative Environmental Effects and Environmental Risks, if any, that are likely to result from other Projects or activities that have been or will be carried out, to a degree that is feasible and reasonable under the circumstances.

While it is extremely important to assess cumulative impacts, this section cannot work if the limits imposed on the screening by s. 1.1 of the Framework are not deleted. That section provides that EDC is only required to assess environmental risks and effects if their support will have an impact on whether the project proceeds.

WCEL Recommendation:

- The qualifier "to a degree that is feasible and reasonable under the circumstances" in s.2.4 of the Framework renders this provision of little use, and should therefore be deleted.

2.5 EDC may nevertheless request additional information in addition to what is contained in the Environmental Review Report.

It is important for EDC to retain the power to request additional information in addition to what is contained in the environmental review report. However, there are no criteria here for circumstances under which EDC will require additional information. Such criteria could, for example, include concern of the public, either in Canada or in the host country, about the potential harmful effects of the project.

WCEL Recommendation:

13. The Environmental Review Framework should include criteria for circumstances under which EDC will require information on potential impacts in addition to that provided by the project proponent.

2.6 EDC will consider internationally recognized environmental standards and industry best practices as benchmarks in determining whether significant adverse Environmental Effects and Environmental Risks, if any, associated with a Project have been appropriately mitigated.

As the Gowlings legislative review concluded:

"in essence, the EDC approach appears to be in the nature of an internal EDC process for examining the environmental implications of transactions and projects. While there is an intent to adopt "best practices", it stops short of setting objective criteria or benchmarks which would apply. It is, for example, considerably less specific than the standards developed by the World Bank, which set out specific guidelines, either qualitative or quantitative, in certain sectors."

In particular, the Bank's comprehensive 1998 Pollution Prevention and Abatement Handbook, and its Industry Sector Guidelines are widely used. Compliance with these standards should be required as part of the EDC's Review Framework.

WCEL Recommendation:

- The Environmental Review Framework should set objective criteria and standards for environmental performance, and require compliance with the World Bank's 1998 Pollution Prevention and Abatement Handbook, and its Industry Sector Guidelines.

1. Elements of an Environmental Review Report

3.1 EDC recognizes that the breadth and depth of analysis undertaken to prepare an Environmental Review Report will depend on such factors as the magnitude, range and complexity of the potential Environmental Effects and Environmental Risks associated with a Project.

3.2 An Environmental Review Report will demonstrate that a Project has been proposed in compliance with host-country environmental regulations and requirements such as provisions for public consultation, licenses, permits and other approvals.

It is important to describe the regulatory requirements of the host country. However, due to the wide enforcement gaps in many countries, providing a description of the laws alone will not address the true regulatory context. In addition, the enforcement availability and capability in the host country should be addressed.

WCEL Recommendation:

- Section 3.2 of the Review Framework should include an assessment of the host country's enforcement availability and capability.

3.3 *An Environmental Review Report will also cover measures that are technically and economically feasible to mitigate significant adverse Environmental Effects and Environmental Risks resulting from a Project.*

3.4 *Notwithstanding that the content and format of an Environmental Review Report will vary depending on the nature of the Project, the site and other project-specific aspects, the following elements should be considered in preparing an Environmental Review Report, to a degree that is feasible and reasonable under the circumstances:*

Scope of Review

Description of the current or proposed Project and its potential area of impact including impact receivers.

WCEL Recommendation:

- Section 3.4 of the Review Framework on scope of review should also include a description of the need for the project and alternatives to the project, including the option of not proceeding. The full range of the project, including future plans for expansion, should be disclosed by the project proponent during the initial scoping process.

Methodology

Description of the objectives and procedures of studies contained in the report.

Regulatory Context

Description of requirements pursuant to host-country environmental regulations and requirements such as provisions for public consultation, licenses, permits, and other approvals.

Baseline Conditions

Description of existing environmental conditions.

Impact Assessment

Evaluation of current and potential Environmental Effects and Environmental Risks, if any, associated with a Project including an analysis of the socio-economic benefits and costs, the impact of potential malfunctions or accidents that may occur in respect of the Project and the likelihood of the same occurring, the cumulative Environmental Effects and Environmental Risks that are likely to result from the Project in combination with other Projects or activities that have been or will be carried out, and the impact of the Project on renewable resources.

Mitigation Measures

Description of mitigation measures that are technically and economically feasible to deal with current or potential Environmental Effects and Environmental Risks associated with a Project, as well as alternative means of carrying out the Project to reduce these effects and risks.

Emergency Preparedness and Response Plan

Description of measures to be undertaken in the event of an environmental emergency in relation to the Project.

Environmental Management Systems and Training

Description of environmental management systems (EMS) including the use of internal and

external audits. Identification of the need and provisions for employee training to support the implementation of the EMS.

Environmental Monitoring

Description of measures to be undertaken to monitor and report Environmental Effects and Environmental Risks associated with a Project.

Appendices

Sources, credentials and other information.

4.0 Consideration of Other Sources of Information

4.1 As part of its risk assessment and decision-making process, EDC may consider environmental information on Projects which is provided by sources other than the party seeking EDC support, including, without limitation, other lenders or insurers to the Project and/or non-governmental organizations.

The EDC needs to develop a process for obtaining this information, through public participation procedures enshrined directly into the Framework. There are numerous public consultation models available, for example in Canada, those of CEAA, and internationally, those of the World Bank Group.

Transparency and public consultation will reduce the risks of the project, and are essential requisites of sustainable development.

WCEL Recommendation:

- Section 4.1 of the Review Framework should require the EDC to consider other sources of information, not allow them to consider the additional information at their sole discretion.

4.2 Where appropriate, EDC may request outside expertise to supplement its internal technical capacity to assess the Environmental Effects and/or Environmental Risks associated with a Project.

5.0 Decline for Support or Conditional Support

5.1 EDC will decline support for Projects which, after taking into account the implementation of mitigation measures, are, in its opinion, likely to cause significant adverse Environmental Effects that cannot be justified by anticipated positive effects of such Projects.

5.2 Where details essential to EDC's decision have not been provided to EDC at the time a commitment is required, EDC may decline, or make conditional, its support for the Project.

These are important parts of the framework, recognizing the possibility that EDC will decline support based on potential environmental harm.

6.0 Environmental Covenants

6.1 EDC can make its support for a Project conditional on the acceptance of environmental covenants to be determined by EDC on a case-by-case basis, taking into consideration the degree of influence EDC and other parties involved have on the Project and the nature of the Project.

6.2 Environmental covenants, if any, will be developed in consultation with contractual parties. Such covenants will, at a minimum, be consistent with the laws of the host jurisdiction, objective and verifiable, and will provide parties with an opportunity to remedy any breach thereof prior to suspending any support.

7.0 Monitoring and Reporting

7.1 Where environmental covenants regarding project monitoring have been negotiated for the contract, monitoring reports will be reviewed on a regular basis throughout EDC's financial exposure to the Project. Additional reports may be required in the event of an environmental emergency. In any circumstances, EDC may request and review such reports on any Projects where EDC has a financial exposure.

7.2 Monitoring reports should address whether the Environmental Effects and Environmental Risks, if any, associated with a Project are as predicted in the Environmental Review Report and provide specific information in the event of an environmental emergency related to the Project.

7.3 If monitoring were to indicate the occurrence of an environmental emergency related to the Project, EDC will leverage the influence it may have over the Project to bring the appropriate parties together to address the problem or accident and to mitigate any significant adverse Environmental Effects.

8.0 Progress Reporting

8.1 EDC, in its annual report, will report on the implementation of the Framework in a manner that respects the confidentiality of information related to its clients and other parties.

It is difficult to imagine how progress will be reported, if the EDC treats all information about its decisions as confidential. Certainly there is a need to protect proprietary and sensitive business information as confidential, but reporting on the implementation of the Environmental Review Framework is unlikely to involve disclosure of this information. Most environmental assessments required by law are public documents, so disclosing summaries of these documents will not involve breaches of confidentiality.

WCEL Recommendation:

- Reporting on the implementation of the Framework, for example, through a Report to Parliament is an important requirement that should be legally mandated.

9.0 Accountability

9.1 The implementation of the Framework will be audited on a regular basis. In this regard, it should be noted that EDC's Board of Directors is responsible for ensuring that management fulfills its responsibilities for financial reporting and internal control, and exercises this responsibility through the Audit Committee of the Board, which is comprised of Directors who are not employees of the Corporation. The Audit Committee meets with EDC's management, EDC's internal auditors

and EDC's external auditor, the Auditor General of Canada, on a regular basis.

There is a lack of public accountability in this section. The usual constraints of a Board of Directors, an Audit Committee and occasional attention from the external auditor, the Auditor General of Canada, does not meet the public's need for greater accountability for EDC support for and financing of projects with potentially environmentally and socially harmful consequences.

10.0 Disclosure / Confidentiality

It will be difficult for the public to monitor or assess how well EDC is implementing its framework if this confidentiality exclusion is maintained. Again, this is in contrast to the policies of OPIC and the Export-Import Bank of the United States, both of which list projects, locations and the availability of an EA for public comment on their web pages. Only proprietary information about the proposed US export is protected as confidential information.

WCEL Recommendation:

19. The Environmental Review Framework should include a Disclosure Policy similar to that used by OPIC and the Ex-Im Bank.

10.1 Consistent with commercial practice, EDC considers any transaction information that is not known to the public as confidential and will not disclose such information without the permission of the relevant party or parties, as the case may be.

This provision is extremely wide, far beyond the necessary constraints of protection of sensitive business and proprietary information.

WCEL Recommendation:

- Section 10.1 of the Framework should be amended to require the EDC not to disclose sensitive business and proprietary information.

11.0 Effective Date

11.1 The Framework is effective as at April 12, 1999, and will be subject to review no later than April 12, 2002.

Annex 1 - Environmental Screening Document

This document is Annex 1 to EDC's Environmental Review Framework. This questionnaire is designed to assist EDC in its screening process under the Framework. Copies of the Framework are available upon request.

The Project requesting EDC support, in EDC's opinion, may potentially result in significant adverse Environmental Effect(s).

Project, as defined in the Framework, refers to a physical, industrial, commercial or infrastructure development.

1. Provide a brief description of the Project and its potential to:

- a) generate significant air emissions, liquid effluents, wastes or noise;**
- b) demand significant resource requirements (energy, materials, water, land); and**
- c) result in significant adverse social impacts**

In this paragraph the proponent is asked to provide a brief description of the project and its potential to cause some environmental impacts. However, no mention is made of the proposed location of the project and what effect that project will have on that location. There is no need to discuss alternatives to the project.

There is no requirement to meet environmental benchmarks, or to give any preference to environmentally beneficial projects. Using the policies of the Export-Import Bank of the United States as a comparison point, there is no commitment by the EDC to provide any preference for environmentally sound projects. The Ex-Im Bank is "committed to increasing its support for projects and products that are environmentally beneficial, including those which result in the reduction of greenhouse gases." The European Bank for Reconstruction and Development (EBRD) also provides preferential treatment for operations with primarily environmental objectives. EDC's recently announced Environmental Exports program is a good step forward towards this goal, but not sufficient.

WCEL Recommendation:

- The Environmental Screening Document should require the proponent to address:
 - the need for the project;
 - alternatives to the project;
 - the location of project; and,
 - how the project will contribute to EDC's environmental goals.

2. Describe your role and level of influence in the Project with respect to design, construction and operating responsibilities, where applicable.

3. Does the Project involve the relocation of a local community? Explain.

Will the Project be located in or near a geographic area designated for environmental protection including, without limitations, national parks, tropical rainforests, coral reefs, World Heritage Sites or World Biosphere Reserves?

WCEL Recommendation:

- The Environmental Screening Document should expand the list of sensitive sites to include temperate rainforests, habitat of species at risk and Ramsar sites. It is also too restrictive to require that a site be "designated" for environmental protection, as many sites of high ecological value located in the developing world may not be formally designated for protection.

5. Provide a brief description of the Project site and surrounding geographic area. Specify any geographic characteristics of the site (e.g. topography, seismicity, hydrology, etc.) that may affect the mitigation measures of the Project.

The information required by the screening document is minimal.

WCEL Recommendation:

The Environmental Screening Document should include additional information such as:

- potential contribution to greenhouse gas emissions;
- infrastructure require for the project, such as roads, mill or plant sites, airstrips, or other transportation requirements;
- use or generation of toxic substances, or toxic waste, or waste disposal;
- pollution prevention
- environmental management systems; and,
- conformity with international standards such as ISO14000.

Summary of WCEL Recommendations

1. The EDC should be required by regulation to report to the Commissioner of Environment and Sustainable Development pursuant to s.24 (3) of the *1995 Amendment to the Auditor General Act*.
2. Crown Corporation regulations which would include the EDC should be established as soon as possible under CEAA. Alternatively, the Projects Outside Canada regulation under CEAA should be amended to include, at a minimum, the Canada Account administered by the EDC.
3. The *Export Development Act* should be amended to:
 - A. mandate the promotion of sustainable development and ensure that there are opportunities for public participation in the EDC decisionmaking process as two additional purposes of the Corporation.
 - B. require environmental assessment procedures to be applied "as early as is practicable in the planning stages of the project and before irrevocable decisions are made."
 - C. require the EDC to refuse support for projects that have unacceptable environmental consequences through the use of a list of categorical prohibitions including projects which aggravate environmental problems that treaties have been designed to solve.
 - D. require the EDC to increase its support for projects that are environmentally beneficial, such as those that will result in the reduction of greenhouse gases.
 - E. prohibit the EDC from supporting projects that violate Canada's environmental treaty obligations.

4. The Environmental Review Framework should include procedures for public participation and public disclosure, in accordance with domestic and international law.
5. The Environmental Review Framework should include an independent appeal mechanism similar to the Inspection Panel of the World Bank or the Ombudsperson used by IFC and MIGA.
6. The definition of "risk" used in the Environmental Review Framework should be expanded.
7. The definition of "project" used in the Environmental Review Framework should be expanded.
8. Section 1.2 (b) of the Environmental Review Framework should be deleted.
9. The Environmental Review Framework should be augmented by:
 - a Policy on Natural Habitat, similar to the Policy of the IFC, and
 - a Policy on Climate Change, including a commitment to track CO₂ emissions from power sector projects it supports and from other projects with the potential to cause significant effects on CO₂ emissions.
10. Preferable wording for Section 1.4 of the Framework would be "projects located in or near geographic areas of environmental sensitivity or high ecosystem value." Additional criteria should also be added, including:
 - forests of high ecological value, a criteria used by the World Bank.
 - the habitat of endangered species, a criteria used by the US Export Import Bank.
 - sites designated under the Ramsar Convention on Wetlands.
 - The Environmental Review Framework should include a procedure for public disclosure and consultation both within Canada and in the country where the project will be located.
 - The qualifier "to a degree that is feasible and reasonable under the circumstances" in s.2.4 of the Framework renders this provision of little use, and should therefore be deleted.
 - The Environmental Review Framework should include criteria for circumstances under

which EDC will require information on potential impacts in addition to that provided by the project proponent.

- The Environmental Review Framework should set objective criteria and standards for environmental performance, and require compliance with the World Bank's 1998 Pollution Prevention and Abatement Handbook, and its Industry Sector Guidelines.

- Section 3.2 of the Review Framework should include an assessment of the host country's enforcement availability and capability.

- Section 3.4 of the Review Framework on scope of review should also include a description of the need for the project and alternatives to the project, including the option of not proceeding. The full range of the project, including future plans for expansion, should be disclosed by the project proponent during the initial scoping process.

- Section 4.1 of the Review Framework should require the EDC to consider other sources of information, not allow them to consider the additional information at their sole discretion.

- Reporting on the implementation of the Framework, for example, through a Report to Parliament is an important requirement that should be legally mandated.

- The Environmental Review Framework should include a Disclosure Policy similar to that used by OPIC and the Ex-Im Bank.

- Section 10.1 of the Framework should be amended to require the EDC not to disclose sensitive business and proprietary information.

- The Environmental Screening Document should require the proponent to address:
 - the need for the project;
 - alternatives to the project;
 - the location of project; and,
 - how the project will contribute to EDC's environmental goals.

- The Environmental Screening Document should expand the list of sensitive sites to include temperate rainforests, habitat of species at risk and Ramsar sites. It is also too restrictive to require that a site be "designated" for environmental protection, as many sites of high

ecological value located in the developing world may not be formally designated for protection.

- The Environmental Screening Document should include additional information such as:
- potential contribution to greenhouse gas emissions;
- infrastructure require for the project, such as roads, mill or plant sites, airstrips, or other transportation requirements;
- use or generation of toxic substances, or toxic waste, or waste disposal;
- pollution prevention
- environmental management systems; and,
- conformity with international standards such as ISO14000.