



17 March 2010

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Letter to companies and organisations that have responded to the Public Consultation on proposed revisions to ECGD's Business Principles and ancillary policies

A complaint has been made by certain consultees in this Consultation that, in relation to Environmental, Social and Human Rights (ESHR) aspects of the proposals consulted upon, no Impact Assessment has been made or attached to the Consultation Document. An Impact Assessment with a further brief opportunity to comment on it, has been requested by one consultee.

No Impact Assessment was appended because it was felt that no such Impact Assessment could be drawn up. The reasons for this were outlined in a Written Parliamentary Answer on 25th January 2010 to a Parliamentary Question asked of Lord Davies of Abersoch, the Minister for Trade, Investment and Small Business, by Lord Lester of Herne Hill. In part, that response stated:

“No assessment has been made of the potential impact of such a proposal on the protection of social and human rights, including protection against the exploitative use of child workers and the use of forced labour overseas, because ECGD does not know, and cannot estimate, the level of future demands for support for exports falling into the above category. Without such prior knowledge, ECGD cannot estimate the proportion of those within that category that might have possible environmental and social impacts, including on human rights, or determine the classification between A, B or C impacts and whether such impacts would satisfy international standards as specified in the OECD recommendation on common approaches and, therefore, be eligible in principle for ECGD support.”

ECGD stands by the answer that Lord Davies gave and does not, contrary to what has been submitted to us, consider that the level or size of past applications provides a basis for extrapolating the future level and size of applications, either in the round or of

those which have previously been subject to ESHR impact assessment, but which in future are proposed not to be so subject.

Nonetheless, ECGD is prepared to give certain information and accede to the request made for a brief further opportunity to make comments about what may, in consultees' views, be the effect of the proposed changes to the field of operations of ESHR impact reviews by virtue of the adoption of the threshold tests set out in the OECD Common Approaches. It follows from what was said above that ECGD makes no representation about the value or meaningfulness of the facts below but, without prejudice to its position about Impact Assessment, simply sets out a number of facts regarding applications to it.

As a matter of context, as the National Audit Office reported to the Environmental Audit Committee ("EAC") (11th Report of Session 2007-08) that, by 2007, ECGD supported less than 1% of UK exports and its portfolio was increasingly dominated by defence and civil aerospace contracts. Since the latter two types of contracts are not within the OECD Common Approaches, the impact of the proposed changes (that is to say not conducting impact reviews for ESHR impacts where the repayment period is less than two years or the value less than SDR 10 million (unless the project is in a sensitive area)) will be upon that proportion of ECGD-supported exports which concerns neither defence nor civil aerospace.

ECGD's Annual Report (a publicly available document) shows that, in 2007-08, 30% of the value of its business was aerospace and 57% defence with 13% as business outside the aerospace and defence sectors ("civil"). Figures for 2008-09 are 73% aerospace, 1% defence and 26% civil. If the proportion of UK exports which ECGD supports were to prove to be, in the current financial year (ending on 31 March 2010), 0.5%¹, then, applying the 2007-08 figures, 0.065% of UK exports would be ECGD civil business. Applying the 2008-09 figures, 0.13% of UK exports would fall in that category. Within those figures, many cases are likely under the proposals being consulted upon to continue to fall within the Common Approaches for the purposes of screening categorisation, and, potentially, review, and it is only a proportion, although impossible to quantify, which will be excluded from review by those proposals. ECGD makes no attempt to predict how many cases will be OECD Category A or B, how many Category A or B cases might not meet standards of assessment, how an exporter might be able to influence his purchaser, or whether the contract would go ahead without ECGD support.

With regard to the historic position on contracts having a repayment term of less than two years, and therefore falling outside the application of the Common Approaches, a Written Answer from Lord Mandelson to a Parliamentary Question of Lord Taylor of Holbeach gave the following details:

<u>Year</u>	<u>Number</u>	<u>Value</u>
2005	8	£50.4m

¹ In evidence to the EAC, the Chief Executive of ECGD explained that ECGD then supported very approximately 0.5% of UK exports.

2006	13	£100.54m
2007	5	£6.17m
2008	1	£0.42m
2009	<u>7</u>	<u>£19.69m</u>
	34	£177.22m

In reply to another Parliamentary Question from Lord Taylor, details of the number of contracts with a value of less than £10m, which under the OECD Common Approaches are not subject to categorisation, except where the project is at or near a sensitive site, were provided as follows:

<u>Year</u>	<u>Number</u>	<u>Value</u>
2005	11	£45.7m
2006	15	£33.41m
2007	7	£7.39m
2008	4	£15.5m
[2009	<u>7</u>	<u>£19.69m]</u> ²
	44	£121.69m

It should be noted that some contracts will be included in both lists because the terms of payment were under 2 years credit and the value less than £10m. Defence export contracts are included in the above lists. There are no aerospace contracts in the lists.

Over the same period, as published in its Annual Reports, ECGD wrote business in total as follows:

<u>Year</u> ³	<u>Value</u>
04/05	£1,995m
05/06	£2,230m
06/07	£1,798m
07/08	£1,830m
08/09	<u>£1,460m</u>
	£9,313m

There is, further, a matter which needs to be understood for the purpose of such comment as consultees may wish to make. An incorrect impression about the degree of change which is implicit in the proposed policy alteration appears to have been formed by some consultees. It seems to be thought in some quarters that ECGD would not carry out child and forced labour assessments where it carried out an ESHR review pursuant to the OECD Common Approaches. Paragraph 5 of the Summary of the Consultation Document makes clear that the impact of the proposed changes would be to exempt from review only those applications falling outside the OECD Common Approaches criteria for environmental impact review. All other applications will continue to be subject to ESHR review. Such reviews would apply all the standards ECGD

² The figures for 2009 were inadvertently not published in Hansard (this is being corrected).

³ The above periods are ECGD Financial Years

currently applies, including those appertaining to an analysis of any child or bonded labour issues that might arise.

The criticisms levelled in relation to the absence of an Impact Assessment go to the proposals to change the field of potential operation of ESHR impact reviews as a result of adopting the OECD Thresholds and are, in particular, argued on the basis of the impact on child workers and bonded labourers.

The Consultation Document dealt with a number of matters. For the avoidance of any doubt, HMG will be producing an Interim Response in relation to matters unaffected by ESHR impacts and the Common Approaches, which will be final as to those matters with which it deals.

As far as ESHR/OECD Common Approaches impacts are concerned, ECGD is asking for any further comment on the issue of the ESHR impact of its proposals to be provided to it by 5pm on Tuesday 30 March. Thereafter it will consider its final response. Responses should be sent to Nina Lefley at the above address or to consultation@ecgd.gsi.gov.uk

Yours faithfully

STEVE DODGSON