



11 Goodwin Street
Finsbury Park
London N4 3HQ
Tel: 020 7281 0297
Fax: 020 7281 4369
e-mail: enquiries@caat.org.uk
<http://www.caat.org.uk>

Dear Mr Llewellyn,

Interim Response to ECGD's Consultation on Changes to ECGD's Anti-Bribery and Corruption Procedures introduced in December 2004

1. Campaign Against Arms Trade (CAAT) has carefully studied the above document. Following are CAAT's representations on three of the five major changes which are the subject of further consultation: Details of Agents, Replacement of the Concept of Affiliate, and Power of Audit.

Details of Agents

2. In summary CAAT largely welcomes ECGD's proposed actions. We would advocate that ECGD adopts the proposal in paragraph 65 of the interim consultation document and rejects the proposal in paragraph 66.
3. ECGD's bribery procedures ought to ensure that taxpayers' money does not underwrite any contracts tainted with corruption, whether or not the bribe (or "commission") itself is underwritten. The percentage of commission paid on any contract is of secondary importance – whether or not the "commission" amounts to a bribe depends on the purpose for which it is paid. We therefore strongly endorse ECGD's view that there is no good reason to retain the exceptions in the December 2004 provisions regarding declaration of agents.
4. CAAT strongly believes that agents are the most common conduits through which bribes are paid. In fact, recent historical research shows that this view has been privately held by the Government for many years. In CAAT's view, therefore, in order to prevent ECGD underwriting contracts tainted by corruption, maximum transparency is needed about the activities and identities of the agents employed by applicants for ECGD support. We are therefore pleased to see that the proposed new disclosure requirements about agents are much closer to the May 2004 provisions than the December 2004 provisions.
5. Paragraph 60 of the interim consultation document sets out some reasons as to why those to whom the December 2004 provisions were unacceptable object to the principle set out above. CAAT would like to comment on these as it informs the basis of our view that ECGD should adopt the proposal in paragraph 65 and reject the proposal in paragraph 66.

6. The suggestion has been made that agents' identities are unnecessary because ECGD is not an investigative body. We accept that ECGD is not an investigative body (paragraphs 11 – 22). However, as you state in paragraph 61, "that knowledge has value, including in terms of deterrence". Deterrence is important: as your Regulatory Impact Assessment (RIA) states, there are significant financial risks to ECGD in underwriting contracts tainted by corruption. If allegations of corruption were made on any contract underwritten by ECGD, then the more knowledge ECGD has about the agents employed and their activities, the more effective any investigation by those bodies to whom ECGD would refer such allegations is likely to be. Further, knowledge of agents could assist ECGD in ensuring that underwritten contracts are not tainted by corruption. If, for example, it came to light that an agent had behaved corruptly on a contract (whether or not ECGD had underwritten it, and whether or not the agent was based in the UK or not), this information could be cross-checked against details held by ECGD of agents involved in contracts ECGD had underwritten. This could assist ECGD in evaluating whether any of its existing underwritten contracts were likely to be tainted with corruption, and if referral to investigative bodies was necessary. If ECGD did not hold details of agents, a scenario could arise where ECGD continued to underwrite contracts involving agents whose participation in corrupt activity had been established in other instances, because it would have no way of knowing if the agent was involved in (other) ECGD contracts. Contrary to BAE Systems (paragraph 50 of their submission), we are of the view that holding such information would increase the deterrent and thereby increase confidence that contracts are not tainted by corruption. This would therefore reduce the financial risks of underwriting contracts tainted with corruption that ECGD has identified.
7. The other two arguments in paragraph 60 are ably disposed of by your paragraph 62, and we endorse ECGD's comments. Further we would suggest ECGD makes clear to exporters that they should make clear to any agents that they employ that ECGD cover is dependent on certain conditions being met, and that they should bear this in mind when negotiating "confidentiality agreements" with agents. CAAT is strongly opposed to confidentiality agreements between agents and exporters being allowed to take precedence over ECGD requests for transparency (see paragraph 19 for a further explanation of why we take this position).
8. In paragraph 62 you raise the issue of competitive advantage. We do not see this can be a concern if disclosure of information about agents is mandatory (as we would favour). As you state, procedures are in place to prevent details reaching the public domain. And if there is no wrong-doing then agents need themselves not fear disclosure, and so there is no reason why disclosure may drive them into the arms of competitors not supported by ECGD. The only possibility we can think of where competitive advantage may become an issue is where agents were engaging or intended to engage in corrupt activity. In those cases disclosure would be a deterrent for them acting for a company supported by ECGD, and could drive them into the arms of competitors. And in this case it is surely preferable that the contract is lost rather than ECGD risking underwriting corrupt activity.
9. CAAT strongly endorses the principle that the taxpayer must not assume any liability without undertaking all reasonable enquiries about Agents. In a legal sense the

proposal in paragraph 66 would transfer liability from ECGD in a case where corrupt activity took place and where an Applicant declined to provide the name of an Agent. However, we believe paragraph 66 is both unnecessary and also increases the risks of ECGD underwriting contracts tainted by corruption.

10. We believe paragraph 66 is an unnecessary proposal as the concerns expressed by exporters about disclosure of information about agents are not valid (see paragraphs 6 – 8 above).
11. The proposal in paragraph 66 increases the risk of ECGD underwriting contracts tainted by corruption. Given that agents are the main conduit for bribes (accepted by most observers and the Government as already discussed), we believe that the greater the reluctance of the exporters to disclose information about agents the greater the likelihood corrupt activity is taking place. The effect of the proposal in paragraph 66 would be to weaken drastically the deterrent effects referred to in paragraph 6 of this letter, and also hinder any investigations of allegations of corrupt activity.
12. We therefore favour the proposal in paragraph 65 as it maximises transparency, deterrence, the efficacy of any potential investigations, and therefore lessens the risk of ECGD underwriting contracts tainted by corruption compared with paragraph 66.

Replacement of the Concept of Affiliate

13. In summary, we broadly welcome ECGD's proposals but want ECGD to require exporters to make more extensive enquiries of all those who play any part in obtaining a supply contract. We strongly support ECGD requiring exporters to report instances of corrupt activity they become aware of to ECGD.
14. We broadly welcome ECGD's proposals on replacement of the concept of affiliate and its recognition that "co-venturers are unlikely not to have made, either for their own reasons or possibly pursuant to the US Foreign Corrupt Practices Act, enquiries about the nature and behaviour of co-venturers". We welcome the proposal that representations about "controlled companies" should be as unqualified as representations about the applicant itself.
15. ECGD is proposing that reasonable enquiries only need be made of Board Directors of co-venturers. CAAT believes that this is inadequate and propose that enquiries should be made both of Board Directors and also (at least) those who have had substantial involvement in relation to the obtaining of the contract, and that this stipulation should apply to all companies who have involvement in obtaining the supply contract. We would reiterate our view in paragraph 13 of our original submission that no responsible company would enter into arrangements with other companies without a thorough understanding of the relationship and the tasks to be performed, and who would perform the tasks. We do not therefore feel this would pose an undue burden on exporters. The lower the level of enquiries required by exporters, the greater is the likelihood of corrupt activity being underwritten by ECGD.
16. We strongly endorse your views in paragraph 47 and the inclusion of paragraph

11.2 in Annex C(i) A of the interim consultation documents. We believe it would be irresponsible to allow companies whose contracts are underwritten by public funds to be permitted to turn a blind eye if they become aware that the contracts underwritten are tainted by corruption. We find it hard to understand how a company like BAE Systems would be happy to report instances of corrupt activity to NCIS but not to ECGD (paragraph 8 of BAE Systems' submission); indeed the view of BAES is grossly irresponsible.

Power of Audit

17. In summary we are disappointed by ECGD's proposals regarding power of audit, and would advocate a much stronger audit regime.
18. You state that the audit powers in the May 2004 provisions were excessive, and that "if parties who contract with ECGD were prepared to cede powers of audit, there is no limit in theory to the powers that ECGD could ask for". While this is technically true, CAAT would hope that ECGD would not take excessive powers, and have regard for the risk of unnecessary interference in industry's business. We do not believe asking for powers of audit is unnecessary interference or excessive – we share BAE Systems' views that "ECGD is providing guarantees underwritten by taxpayers' money, and consequently that ECGD should be able to take steps to verify that it is not supporting contracts tainted by bribery". We fail to understand why ECGD believes powers of audit are not necessary to verify supporting contracts are tainted by bribery – how else could verification be obtained?
19. There is a further point. Generally in the wider economy and society customers are obliged to accept the terms offered by those whose services they use. No bank or insurer would, in general, expect the terms of loans or insurance products to be dictated to it by its customers. As stated above there is a reasonable purpose for powers of audit to be demanded. If companies object to these powers, they do not have to apply for ECGD support. Companies should not be allowed to dictate the terms of ECGD support.
20. The December provisions restrict the right of audit to instances where ECGD has reasonable grounds for suspecting corrupt activity, and has confirmed this to applicants in writing. We believe this restriction should be removed. We would hope that if ECGD has reasonable grounds for suspecting corrupt activity, it would refer these to investigatory bodies and not undertake audits with its lesser powers. It would be foolhardy in the extreme, if ECGD had reasonable grounds to suspect corrupt activity, to write to the applicant to tell them and then conduct an audit! This would clearly seriously compromise any potential criminal investigation by other bodies. If, as exporters like BAES accept, "ECGD should be able to take steps to verify that it is not supporting contracts tainted by bribery" then there is no reason why ECGD should not be able to audit a company before any suspicions are aroused. This should be seen as a standard confidence-building measure.
21. We do acknowledge the legitimate concerns of exporters that under the May provisions ECGD could appoint auditors without appropriate security clearances or who may have a conflict of interest. However, it should not be problematic for ECGD to overcome this, while avoiding having auditors "vetted" by the companies they are

auditing.

22. With regard to the "unnecessary disruption" to the business of exporters alluded to by BAE Systems, it is very hard to understand how an audit (presumably carried out by only a handful of individuals) could produce disruption at a level which could justify objection. As you state the vast majority of ECGD's customers are not small businesses and should easily be able to cope with an audit regime (no doubt they are already subject to regular audit processes on other subjects). It would be no mean feat if ECGD could devise an audit regime that would cause significant disruption to BAES with its 90,000-odd employees.

23. We agree with you that there should be no discrepancy in procedures depending on whether auditing is looking at how the Supply Contract was obtained and how it has been performed, with the proviso that our proposals in paragraphs 18-22 are adopted. As set out in paragraph 22 we do not believe doing this would create "unnecessary disruption" to the business of exporters.

We trust you find these comments helpful. We look forward to the publication of the final response to the consultation in December.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'N Gilby', written in a cursive style with a large loop at the end.

Nicholas Gilby
On behalf of Campaign Against Arms Trade