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Ms. Birgitta Nygren, Chair
Ms. Janet West
Working Party on Export Credits and Credit Guarantees
OECD
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October 23, 2003

Dear Ms. Nygren and Ms. West:

We are disappointed about not being given the opportunity to comment on the latest “Revised Draft OECD Recommendation on Common Approaches on Environment and Officially Supported Export Credits” at the next Export Credit Group meeting beginning November 3. Without disclosure of draft texts and adequate stakeholder consultation on them, the current review process is not sufficiently informed and could lose much of its legitimacy and credibility.

Nevertheless, since some of our organizations have, despite the ECG’s official refusal, obtained the draft text, we are determined to communicate the position of our civil society organizations on the draft Recommendation. We request that this letter be circulated to the Members of the Working Party.

In our view, in some respects this draft represents a significant improvement over earlier drafts, while in other respects the text remains unsatisfactory. Indeed, in some respects the draft falls substantially below the environmental practices increasingly accepted by the private sector. For example, to date, seventeen leading international commercial banks have committed (in the “Equator Principles”) to base their environmental assessment of large-scale project finance on World Bank/International Finance Corporation (IFC) standards and safeguard policies, something to which this draft still does not commit ECAs. (Cumulatively, the Equator Principle

banks have arranged over three quarters of project finance loans worldwide over the past two years.)

Meanwhile, the draft perpetuates the failure of the ECG to deal with a broader range of significant negative impacts of Export Credit Agency-supported transactions, including those addressed in the May, 2000 Jakarta Declaration and the “Revision7BIS” proposal submitted by non-governmental organizations in advance of the September 15, 2003 consultation with the ECG. These include, *inter alia*, the adoption of explicit human rights criteria; labor rights violations in ECA-supported projects; and placing financing decisions in the context of sustainable development, rather than just the environment. Meanwhile, the ECG’s actions on the problems of corruption and excessive developing-country debt associated with ECA-supported transactions have been incomplete and inadequate. To avoid significant negative impacts and promote sustainable development, we also recommend developing “exclusion criteria” specifying the types of transactions that ECAs will not support because of their potential to constrain good governance and sustainable development, as well as a “positive list” of the types of transactions to which ECAs should give priority because of their potential beneficial impacts.

Specifically relating to the environment, below we discuss some of the main environmental issues and concerns that have yet to be satisfactorily addressed in the revised draft. We follow the format of previous communications.

1. Transparency, public access to environmental information, and stakeholder consultation prior to project approval. The requirement for disclosure of environmental information and EIAs at least 60 days prior to a final commitment (paragraph 17) is significant progress towards current international good practice. We also welcome paragraph 11’s disclosure and consultation requirements for locally affected residents and other stakeholders in the preparation of EIAs.

However, we are concerned that Members would be allowed to circumvent the EIA disclosure requirement by disclosing only a summary. Since 1998, the IFC has required full disclosure of both the draft EIA (for Category A projects) and of the final EIA at least 60 days before project approval.

Also, we are concerned about the ambiguities inherent in the word “should” in paragraph 17 and the paragraph’s qualifying clause “Taking into account the competitive context in which they operate and constraints of commercial confidentiality of contracts...” Other sections of the Revised Draft use the terms “required” or “shall.” The inconsistent use of different terms creates ambiguity as to the rigor of what “is required to” or “shall” be done, as opposed to what “should” be done (the term “should” conveying a sense of possibly being conditional or optional). We would recommend that the terms “shall” and “is required” be consistently used in the draft, including in paragraph 17, replacing the term “should”.

An unambiguous requirement for access to full environmental impact assessments for the public and project-affected communities, *prior* to project approval, is a fundamental element of credibility for any agreement that comes out of the ECG. The above-mentioned allowance for disclosing only a summary of the EIA, as well as these other ambiguities and qualifications, make the practical outcome of the draft's *ex-ante* disclosure requirement a matter of guesswork. Moreover, a principal goal of *ex-ante* release of EIAs is obtaining more useful technical information from affected stakeholders and the public; we believe this objective would be better served by a 120-day prior disclosure period.

Recommendation: All project sponsors or applicants shall release final Environmental Impact Assessments for Category A and B projects to the public in both the project (host) country and the ECA (home) country no less than 120 days prior to final commitment. To be coherent with current international good practice, draft EIAs shall also be made available to the public and affected populations in the project country and in the local language, as well as in the ECA home country. ECAs will not require the release of information that is business confidential but also shall not approve a project unless a final EIA that meets international standards is released to the public for comment 120 days prior to final commitment.

2. The lack of a commitment to common, predictable minimum internationally recognized standards and operational policies. While paragraph 12 represents an improvement insofar as it requires the more stringent of host country or “international” standards, it maintains the inadequate and ambiguous “benchmarking” approach with respect to different so-called “international standards”. Allowing Members to choose among such varying sets of standards does not achieve the “predictability”, “equivalence”, or reduced trade distortion that are called for in the draft's own stated objectives.

Moreover, Regional Development Banks (RDBs) are listed as acceptable sources for international standards, even though there are RDBs with extremely weak policy frameworks that cannot be seen as providing acceptable international standards. (For example, the Inter-American Development Bank's environment policy consists primarily of four “criteria”, each just an ambiguously drafted single sentence; in fact, the Inter-American Development Bank only has one safeguard policy with the specificity and rigor that meets good international practice: its policy on involuntary resettlement.)

In contrast, 17 of the largest global commercial banks, involved in over 75% of the project finance market, have committed themselves to one single, predictable, common set of international environmental standards and safeguard policies: those of the IFC, the private-sector arm of the World Bank Group.

Furthermore, there are several important ambiguities in paragraphs 11 and 12 that, together with the preceding points concerning benchmarking, make the current draft unacceptably lacking in rigor and specificity:

- (a) Members are to benchmark against host country standards and against international standards “such as” the World Bank Group, EU, WHO, Regional Development Banks etc. Does the “such as” imply other, unnamed, international and regional standards? What are the criteria for determining what are acceptable “international standards” and what are not? In effect, in this draft there are no explicit criteria. As noted, some of the organizational and institutional standards that might be invoked do not meet current international good practice.
- (b) What happens if one set of “international standards,” say the standards of the World Health Organization (WHO) or the Inter-American Development Bank (IDB), does not have standards or policies with respect to a particular project impact or issue, such as resettlement or indigenous peoples? Must the Member seek out a set of international standards, such as those of the World Bank Group, that does have standards or policies addressing that issue, or can the Member claim to be applying WHO or IDB standards and not need to do anything more?
- (c) Although reference is made to safeguard policies in paragraph 12, it remains ambiguous whether projects must meet standards *and* safeguard policies or whether Members have discretion to benchmark against whatever standards or safeguard policies from whatever international institutions they wish. Technical standards for pollution and other items, together with safeguard policies addressing issues like natural habitats and indigenous peoples, form an indivisible whole; and compliance with both is required for environmental protection. In effect, only the IFC has a generic minimum set of standards and safeguard policies.
- (d) The minimum elements of a Category A EIA are also unclear. Paragraph 11 says that “an EIA should address the relevant issues referred to in the guidelines of International Financial Institutions (as referenced in footnote 3)” and cites Annex II, the World Bank/IFC EIA guidelines, only as an “illustrative example.” But this gives members the freedom to apply the procedures and guidelines of regional and other international financial institutions, whose guidelines may not be in accordance with international good practice. Because the draft allows for the application of these differing procedures, the necessary content of EIAs, and what critical issues would or would not be addressed, remains unclear.

Furthermore, although IFC standards, guidelines, and safeguard policies are the clearest, most comprehensive, and most widely accepted minimum international norms and should be the minimum acceptable standards, there are some gaps in IFC policies. Where there are gaps in IFC policies on a given environmental or natural resource issue, ECAs should incorporate relevant and applicable home-country standards, World Health Organization standards, and standards set by other international authorities and laws into ECAs’ environmental assessment and decision-making processes. Examples of such standards include sustainable forestry guidelines developed under the auspices of the Forest Stewardship Council and the Recommendations of the World Commission on Dams.

We welcome the reporting requirement in paragraph 13 for instances of non-compliance with international standards—this is vital in order to encourage implementation—but the lack of public

disclosure (as opposed to disclosure to ECG Members) undermines much of the usefulness of this measure and effectively means that citizens and affected communities will have no knowledge of when (and which) international standards are being applied or not applied. The standards applied (and any instances of non-compliance with standards) should be publicly disclosed 30 days prior to final commitment.

Recommendation: Projects shall comply with the more stringent of either host country or IFC standards, guidelines, and safeguard policies. Where there are gaps in IFC guidelines on a given environmental or natural resource issue, ECAs shall incorporate other relevant and applicable international standards, guidelines, and policies as a supplementary measure. In all cases, ECAs must publicly disclose the standards that have been applied to a particular project and any instances of non-compliance with international standards (and justification thereof) 30 days prior to final commitment.

3. The *scope* of the agreement continues to be limited. The agreement only applies to projects of which the Member's share is above SDR 10 million, with a payback period of over two years (or qualifying for such terms). In addition, the deletion, in paragraph 4, of “and, where appropriate, should also seek to identify the overall project(s), if any, to which capital goods and/or services are related” raises the concern that projects to which capital goods or services are related may not be screened, reviewed, and assessed as the overall project but rather as just the ECA-supported exports of goods or services. These loopholes might permit ECAs to approve support for potentially environmentally destructive projects without any environmental screening, let alone assessment and review.

Recommendation: Remove any screening criteria based on share value or loan duration, and classify all projects, for purposes of environmental review and assessment, solely by the potential environmental and social impacts of *the overall project* to which exports are related. The OECD mandate calls for common approaches on environment and export credits, not common approaches applied to an arbitrary subset of ECA-supported projects.

4. Accountability and Compliance Mechanisms. All ECAs should develop independent accountability and compliance mechanisms. Multilateral development banks like the World Bank, Asian Development Bank, Inter-American Development Bank, and European Bank for Reconstruction and Development have established such accountability mechanisms. Accountability and compliance mechanisms play a key role in ensuring compliance with agreed-upon standards and policies. Among Members, Canada and Japan have also established accountability mechanisms.

Recommendation: Each Member shall adopt an independent and publicly accessible accountability and compliance mechanism. Its objectives shall include:

- **Ensuring external, independent administrative review of the implementation of environmental, social, human rights, disclosure, and corruption policies and procedures adopted by the Member;**
- **Where implementation is lacking, ensuring that the necessary specific actions are taken to remedy the problem;**
- **Acting as an independent fact-finding organ to which local communities and other stakeholders can appeal in case of problems with an ECA-supported project; and providing them as appropriate with effective remedy; and**
- **Ensuring that transactions supported by the ECA respect the rights and the environment of affected peoples.**

5. Other concerns:

- (a) Late review.** We are concerned that the next review would be scheduled for 2006. If progress is to continue and the common approaches are not to fall even further behind evolving international environmental practice, a two-year review (no later than the end of 2005) is the maximum acceptable review period.
- (b) Screening detail eliminated.** We are concerned about the elimination of paragraphs 6 and 7, given that those elements of screening are necessary in order to properly classify a project.

6. Lastly, we call on the ECG to establish a norm and expectations for improved stakeholder consultation and transparency, both in ECG's own deliberations and in the development on national policies on environmental approaches and guidelines for export credits. As communicated during the civil society consultation on September 15, 2003, the ECG's unwillingness to officially disclose the most recent draft texts sets a disturbing new low in the struggle for openness and accountability between governments and their citizens. We hereby also reiterate our request that a new consultation on officially disclosed draft texts be held prior to any final revision of the common approaches.

We welcome the progress made with this draft, but the draft does not meet acceptable levels of current international good practice relating to sustainable development and environmental review and assessment. We strongly urge the ECG to continue discussions and negotiations until progress is made on these key issues and gaps, which in the environmental area in particular constitute the most basic elements of credible environmental review and assessment. An agreement without this progress would lack technical credibility and international support among key stakeholders. It would leave the ECG Members in the untenable position of lagging increasingly behind the commitments of a growing number of private international banks to a level environmental playing field, as well as lagging behind Members' own commitments in development finance and under international environmental agreements. We encourage the ECG to show leadership by adopting the above recommendations for the benefit of local communities and the global environment.

Sincerely,

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