



JUBILEE AUSTRALIA
Digging to the roots of poverty

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20 March 2012

Productivity Commission
Locked Bag 2 Collins Street East
Melbourne VIC 8003

Attention: Australia's Export Credit Arrangements
Ms Patricia Scott, Presiding Commissioner
Dr Warren Mundy, Commissioner

By email: exportcredit@pc.gov.au

Dear Commissioners Scott and Mundy,

Thank you for your invitation to provide comment on the Productivity Commission's draft report of February 2012 on Australia's Export Credit Arrangements.

The inquiry covered a lot of ground and forms a considerable step forward in the assessment of the purpose, methods and impacts of Australia's Export Finance and Insurance Corporation (EFIC). The current AFP investigations into allegations of bribery by two of EFIC's large, long-standing client companies, as well as the fatal landslide on 24 January 2012 at the site of the EFIC-financed PNG LNG project,¹ have confirmed that a thorough consideration of Australian export credit arrangements is warranted. The inquiry has the opportunity to generate momentum for reforms that will make export credit arrangements in Australia a) more responsible and accountable particularly in regard to the impact of EFIC-financed transactions on individuals, communities and countries overseas, b) more aligned with Australia's domestic and international obligations, and c) focused on serving the interests of Australian taxpayer's, not simply the balance sheets of a small number of companies.

Our specific comments on the draft report are as follows:

- Jubilee Australia is pleased that the Commission has questioned the market failures in financial markets that purportedly give rise to EFIC involvement. Jubilee Australia believes that where the private sector has elected not to provide a financial product then it suggests that the risk of the exposure is excessive and cannot be managed at any price. We would not consider that outcome to be a market failure and we question whether EFIC's provision of these products constitutes responsible finance. The Commission's reform seeking a withdrawal of EFIC from the provision of all products other than guarantees and some reinsurance for SMEs will test our assertion.
- Jubilee does not take complete comfort in the limitation of the EFIC product range to financial guarantees and reinsurance. This limitation does not address our concern that EFIC credit assessment systems lack adequate due diligence mechanisms for fully revealing the risk to people, communities and the environment arising from the projects that benefit from the provision of EFIC credit enhancement.
- We strongly endorse the Commission's recommendation that EFIC cease to provide finance to large corporate clients on the commercial account. We believe that the private market will, indeed, step into EFIC's place and that Australian MNEs will, therefore, not fail to find funding for their export projects following the implementation of this recommendation. Following on from it, however, we would advocate strongly for the Australian government to take immediate action to implement the UN

¹ <http://www.guardian.co.uk/environment/2012/mar/06/exxon-papua-new-guinea-landslide>

Framework on Business and Human Rights and thus provide Australian companies of all sizes with an urgently needed methodology for assessing, planning for, operating and monitoring their overseas investment projects.

- Jubilee is pleased that the Commission has challenged the rationale of the national interest account, is seeking a public statement of justification for having a national interest account and recommends a further inquiry to assess what alternatives to EFIC might exist for managing the national interest account. Notwithstanding, Jubilee Australia believes that the process of approving exposures under the national interest account should include an accommodation for parliamentary inquiry and public scrutiny.
- Jubilee acknowledges the Commission's efforts to assess the make up of the EFIC board, although we were disappointed that the recommended reforms did not include the appointment of a board member with specialist knowledge and experience in corporate social responsibility.
- We are especially pleased that the Commission recognises the risks arising from the EFIC Freedom of Information Act exemptions, as they limit the ability of the public and the Government to scrutinise transactions for their environmental, social and human rights impacts. We anticipate that amendments to the EFIC Act can maintain the secrecy of market sensitive financial information whilst also bringing critical transparency to matters that are of public concern.
- Jubilee applauds the Commission's call for full public disclosure of a) EFIC's process for assessing, classifying, benchmarking, approving and monitoring projects with potentially environment and social impacts and b) EFIC's actual involvement in projects with these risks. Further, we support the mandatory completion by all EFIC applicants of robust due diligence processes to prevent or minimize harm to communities, people and the environment. Where the potential for harm exists applicants would establish Action Plans for managing risks. The Action Plans would be, ideally, developed in consultation with affected communities, be agreed between EFIC and its client ahead of the approval of the support and be monitored by EFIC for compliance, with a condition of non-compliance being the withdrawal of EFIC support.
- Jubilee concedes there are multiple international protocols for governments and business to apply to the management of their environmental and human rights obligations. We believe that the operations of EFIC should be conducted with reference to the revised OECD Guidelines for Multinational Enterprises and we agree with the Commission that compliance against the Guidelines should be subject to independent audit and compliance review every 2 years.

We hope these remarks are useful, and we look forward to raising them directly during the Commission's hearings in Sydney.

In light of current AFP investigations into bribery at two of EFIC's major clients, Leighton Holdings and Tenix, Jubilee would like to raise a further issue for the Commission's consideration.

Illegitimate Debt

Borrowing for productive investments that promote sustainable and equitable development can be an important strategy for less-developed countries. However, there are many cases which reveal that all too often official credit or guarantees provided to public or private entities in less-developed countries involve breaches of fiduciary duty, illegality, and even criminality surrounding the loan contraction process.

In some cases the illegitimacy of the transactions has been blatant, such as where ECA credit or guarantees are acquired for political purposes by an authoritarian regime or are linked to

severe human rights abuses of the local population. Requiring taxpayers in less-developed countries to repay loans with contested legitimacy, in the absence of an independent arbitration mechanism through which such contests can be heard, is unacceptable - particularly when the export credit deals have been driven by the interests of exporters in the home country rather than a genuine need in the debtor nation.

While some of the poorest and most heavily indebted countries have received partial debt cancellation through international debt relief mechanisms like HIPC, most less-developed countries are not eligible. Furthermore, these debt relief initiatives have not taken into account the legitimacy of debts.

Debt Audits

In response to the lack of loan scrutiny, the idea of debt audits was launched by civil society as a means for indebted countries to investigate the legitimacy of their national debts and refuse to repay those deemed invalid. A national debt audit is a process in which a country reviews outstanding debts to or from the country in order to establish whether the loans from which the debts stem comply with a set of rules, regulations and standards.

Norway remains the only country to have voluntarily acknowledged its complicity in irresponsible export credit financing. In 2006 Norway cancelled the debts owed by five countries that were shown to have arisen from loans that were made more for the purpose of boosting domestic exports than for serving the legitimate needs of the recipient country.

EFIC role in Creating and Collecting Debts

With the exception of the 2001 Tsunami Loan to Indonesia, all sovereign debt currently owed to Australia has been generated through the activity of EFIC, predominately on the National Interest Account. Yet accessing data on these EFIC-supported transactions is extremely challenging and in most cases impossible. EFIC is secretive about amounts recovered and outstanding claims, which are only reported on highly aggregated levels.

For example, recent evidence that has come to light supports claims made by the Philippine Senate and Philippines civil society groups that a 2001-02 EFIC-guaranteed deal made by Australian company Tenix to supply search-and-rescue vessels for the Philippine Coast Guard involved bribes to senior officials and politicians. On the basis that the Tenix deal was illegal and that no provision for the vessels had ever been made in the national budget, the Philippines stopped making repayments on its loan, leaving Australian taxpayers liable. Yet further information pertaining to this transaction, including the amount still outstanding, is not made available by EFIC.

Indonesia, Transfield and the case for debt cancellation

As of 2010, over 97 per cent of the money owed by Indonesia to Australia was loaned during the 1980s and early-1990s as part of the Development Import Finance Facility (DIFF) scheme. A policy of the Department of Foreign Affairs and Trade operated jointly by EFIC and AusAID, DIFF was intended to open up new foreign markets for Australian exporters while at the same time assisting the 'development needs' of importing countries. Recipient governments were offered EFIC loans partially supported by AusAID aid grants to fund the import of goods and services from Australian companies.

DIFF was contentious and heavily criticised for misusing the overseas development assistance program to promote Australian exports. In 1996 the policy was discontinued following a change of government and a subsequent Senate Inquiry into the scheme's effectiveness. The new Treasurer, Peter Costello, reportedly described DIFF as a 'subsidy paid to domestic business'.

Although DIFF loans were made to a variety of countries over the sixteen-year period of the scheme, Indonesian-based exporters received the bulk of the loans – primarily big-ticket deals. Over 95 per cent of Australian loans to Indonesia originated from the DIFF program. It is arguably the case, however, that many of Indonesia's debts to Australia may be said to fall into the same category as the Norwegian loans.

Over the nine-year period between 1984 and 1993, Australian construction company Transfield received the benefit of approximately one-third of the taxpayer-raised DIFF funds. Transfield used the funding to operate a joint venture with Indonesian trading partner, PT Bakrie & Brothers. The JV was established to build around 2,500 prefabricated steel bridges in Indonesia. PT Bakrie & Brothers was owned by Aburizal Bakrie, a controversial Indonesian government figure and one of Indonesia's richest men. Bakrie secured his fortune through his close links to the Suharto regime and has since been implicated in serious charges of corruption, tax evasion and maladministration.

In 2010 more than 50 per cent of the loans to the JV remain unpaid. These preliminary findings warrant further investigation, including a proper audit of the existence, locations and development purpose of these bridges. This information did exist within AusAID documentation; but these records may have since been destroyed as part of the routine sorting process of government agencies, making an audit from the Australian side of the deal challenging. Unless and until such an audit is undertaken, questions will remain about whether these bridges served genuine development needs in the country and, therefore, whether it is appropriate that the debt be kept on the books.

Recommendations:

- The Australian Government should ensure that official export credits and guarantees provided by EFIC are open to public scrutiny and, while protecting market-sensitive commercial information, make sure that the contraction process in the borrowing country is transparent and compliant with legal requirements.
- The Australian Government should consider separating the role of EFIC as provider of insurance, guarantees and credit, from its role as Australian debt collector.
- Based on an assessment of the origins, purposes and impacts of outstanding claims on less-developed countries originating from EFIC finance, Australia should share responsibility for past failures in responsible financing and cancel debts that have breached fiduciary duties, involve illegality (including bribery payments), or not benefitted the citizens in the borrowing countries.

Jubilee Australia is grateful for the opportunity to provide broader comment to the Commission on the impact of EFIC undertakings and the adverse consequences that arise for less-developed nations when client company dealings are not fully understood. The cost of examining transactions after the fact, in order to establish their legitimacy, is compounded by the cost of remedies (debt cancellation) and can be avoided with practices that promote and policy that ensure responsible and accountable financing.

Regards,

Carmelan Polce
Deputy Director
Jubilee Australia