

TRADE DIRECTORATE

Cancels & replaces the same document of 08 March 2005

Arrangement on Officially Supported Export Credits

BACKGROUND REPORT: AGREEMENT ON UNTIED ODA CREDITS TRANSPARENCY

This document contains background to the Agreement on Untied ODA Credits Transparency, concluded in the 93rd Participants' Meeting held in Paris during 2-5 November 2004, together with the full text of the Agreement, i.e. the Attachment which includes Annex 1.

The Participants are invited to confirm by written procedure their agreement to make public on the OECD Web site the Agreement.

This document is noted in the OECD Programme of Work and Budget and Output Group 3.1.4: Arrangement on Export Credits.

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BACKGROUND REPORT: AGREEMENT ON UNTIED ODA CREDITS TRANSPARENCY

I. Introduction

1. During their 93rd Meeting held on 2-5 November 2004, the Participants to the Arrangement on Officially Supported Export Credits agreed a two-year pilot programme which would provide greater transparency and efficiency in the use of untied ODA credits. The agreement was subsequently titled the "Agreement on Untied ODA Credits Transparency"; it receives the administrative support of the OECD Export Credit Secretariat. The Participants agreed to implement the Transparency Agreement from 1 January 2005.

2. The Transparency Agreement requires that the Participants, when extending untied ODA credits with the conditions specified therein, (i) to make unclassified *ex ante* and *ex post* notifications pertaining to those untied ODA credits, (ii) to utilise, in principle, internationally recognised competitive bidding procedures and (iii) to secure, in principle, adequate bidding periods as defined in the Agreement.

II. Background

3. At the 78th Participants' Meeting held in November 2000, the United States proposed disciplines for untied aid which would be comparable to those applicable under the Arrangement for tied aid, *i.e.* the "Helsinki" discipline, with the aim of (i) eliminating trade distortions, (ii) avoiding the circumvention of the Helsinki disciplines and (iii) expanding opportunities for market financings to developing countries. Generally, the proposal from the United States attracted much interest amongst the Participants. However, there were also concerns that (i) the proposed discipline might adversely affect the amount of untied aid flows to developing countries, *i.e.* there was no certainty that this would be substituted by private financings, (ii) untied aid was deemed to be fully accessible to all potential bidders, therefore, the transparency aspect of untied aid programmes should be sufficient and (iii) discussion by the Participants on this issue might not be appropriate, *i.e.* it should be in the forum of the DAC.

4. In their subsequent Meetings, the Participants intensively discussed the issue with input from the DAC Secretariat and in the Participants' 87th Meeting, the United States brought forward a modified proposal which focused on the transparency aspect of untied aid programmes; this led to the eventual Transparency Agreement among the Participants concluded at their 93rd Meeting.

III. Next Steps

5. In light of the fact that the *ex ante* and *ex post* notifications will be made publicly available and given the enquiries received by the Secretariat to date about the Transparency Agreement, and taking into account that there could be a certain administrative impact on the recipient countries who receive the untied ODA credits from the Participants, the Participants may wish to make the text of the Agreement publicly available in order to meet those public attentions. In this connection, In this regard, the Secretariat proposes that the Agreement, *i.e.* the Attachment which includes Annex 1, hereto be put on the OECD Web site with the following explanatory note:

“During their 93rd Meeting on 2-5 November 2004, the Participants to the Arrangement on Officially Supported Export Credits agreed on a two-year pilot programme which would provide a greater transparency and efficiency in the use of untied ODA credits. The Participants agree to implement this Agreement from 1 January 2005. The programme, subsequently titled the Agreement on Untied ODA Credits Transparency, receives the administrative support of the OECD Export Credits Secretariat.”

6. The Participants are invited to advise the Secretariat of any objections to the proposal in paragraph 5 above **by the end of March 2005**. If no objections are raised, the Agreement will be publicly disseminated as proposed.

ATTACHMENT

THE AGREEMENT ON UNTIED ODA CREDITS TRANSPARENCY

1. Untied ODA is one of the favoured forms of development assistance among a growing number of OECD donor governments. This form of ODA can offer enhanced development benefits from increased efficiency in procurement of goods and services, and better value for money to the recipient. In their continuing effort to enhance transparency on untied ODA credits generally, and to enhance confidence in, and therefore the use of, untied aid as a developmental tool, OECD Participants¹ agree to implement a pilot programme to provide *ex ante* and *ex post* transparency over the use of untied ODA credits that finance the provision of goods and services in developing countries. This pilot programme would run for two years from the beginning of implementation, after which Participants would consider its extension and/or modification, as well as the inclusion of grants into the scope of the exercise.

2. Specifically, OECD Participants agree to:

- Provide unclassified prior notification regarding the details of upcoming bids, as well as transparency over the outcome of the bidding process;
- Commit to utilise (where possible and practical) internationally recognised competitive bidding procedures (*e.g.* OECD procurement practices).

3. The modalities and scope of this transparency are laid out in Annex 1. The modalities correspond to the transparency provisions of the existing DAC Recommendation on Untying Official Development Assistance to the Least Developed Countries, adopted in April 2001. The scope corresponds to that agreed by Participants for tied and untied aid credits in 1991, with special transparency for FEED, A&E and PRTA.

4. OECD Participants request that the OECD Export Credit Secretariat in cooperation with the DAC Secretariat create an integrated notification system.

¹ The Participants are: Australia, Canada, the European Community, Japan, Korea, New Zealand, Norway, Switzerland and the United States.

ANNEX 1

I. Modalities of Transparency

1. OECD Participants offering untied ODA credits commit to enhance transparency as follows:

(a) *Ex ante notification*

2. This unclassified transparency among OECD Participants would follow the timing and format adopted by OECD governments as part of the DAC Recommendation on Untying Official Development Assistance to Least Developed Countries as follows:

- Notifying Member, agency and contact point.
- Recipient country.
- Project description.
- Sector/activity and DAC purpose code.
- Project value (in donor currency and SDR).
- Bidding period (start and closing date).
- Procurement regime (if not International Competitive Bidding, state regime and justification).
- Details of agency responsible for procurement and from which further information or details (*e.g.* bidding periods, procurement regimes, bidding documentation) can be requested.
- Terms of financing (*e.g.* credit terms – interest rate, currency, grace period, repayment terms), or grant element and concessionality level (at time of notification).
- And all other information that the OECD Participant deems appropriate.

3. Notifications of project loan commitments should be made to the Export Credit Secretariat and will normally precede the opening to the bidding period by not less than 30 calendar days. In the exceptional case where, due to recipient government constraints, the Participant is unable to provide the full 30-day period, the Participant should include this fact in the notification as well as the precise circumstances that require the shorter period within the Participant's best knowledge at the time of notification. Bidding periods should ensure sufficient time to all suppliers to prepare and submit bids and should normally be not less than 45 calendar days, except for large projects (with a value of, or exceeding SDR 50 million), where bidding periods should normally be not less than 90 calendar days.

4. Notifications should be made available to Participants through the Export Credit Secretariat and the DAC's Internet bulletin board. OECD Participants may also, in addition, use their own facilities to publicise the aid offers contained in notifications.

(b) Ex post transparency

5. OECD Participants should follow the timing and format adopted by OECD governments as part of the DAC Recommendation on Untying Official Development Assistance to Least Developed Countries as follows:

- Information on contract awards will be provided to the OECD Export Credit Secretariat. This information should reference the original notification and include the name, address, and country of incorporation of the firms awarded the contract (or the prime contractor, where a syndicate of firms is concerned). The above information should be provided on an annual basis.

6. OECD Participants request that the Export Credit Secretariat, in cooperation with the DAC Secretariat, create an unclassified register of such notifications.

II. Exchange of Information Procedures

7. OECD Participants which have received an enquiry from another Participant concerning an individual untied ODA credit notification should, on a best efforts basis, respond promptly (*e.g.* within 14 calendar days) and fully, providing all information relevant to the request, including information concerning donor financing of services related to the design and implementation of the project.

III. Scope of Notifications to Minimise the Administrative Burden

8. To minimise the administrative burden of these notifications on donors and recipient countries, the following thresholds for transparency should be applied:

(a) Ex ante

9. Unclassified transparency would be required for untied ODA credits with a value of SDR five million or more unless they have a concessionality level of 80 per cent or more.

(b) Ex post

10. Annual *ex post* transparency for contract awards would apply only to ODA credits that require(s) *ex ante* notification as described above. Where large prior-notified untied ODA credits are comprised of more than one bidding contract, only those underlying contracts with a value of SDR two million and above would be subject to *ex post* transparency.

11. Least Developed Countries will continue to be subject to the *ex ante* and *ex post* transparency provisions of the 2001 DAC Recommendation on Untying Official Development Assistance to the Least Developed Countries.

IV. Technical Assistance

12. Front-end engineering and design (FEED), architect engineering (A&E), and procurement-related technical assistance (PRTA – administering the bid process), have been formally recognised by the OECD as an integral part of project cost to examine commercial viability in "*Ex Ante* Guidance for Tied Aid". As the tying status of a contract does not alter the technical scope of a project, this same project definition also applies to untied ODA projects. All contracts for these types of technical assistance above a threshold of SDR 130 000 will be subject to *ex ante* and *ex post* transparency.

V. Competitive Bidding

13. Finally, OECD Participants commit to utilise international competitive bidding procedures, where possible and practical.