Underwriting Bribery

Export Credit Agencies and Corruption

THE CORNER HOUSE

"Politicians and public officials from the world's leading industrial countries are ignoring the rot in their own backyards and the criminal bribe-paying activities of multinational firms headquartered in their countries."

Peter Eigen
Chairman of Transparency International
May 2002[1]

Corruption – broadly defined as "the abuse of public or private office for personal gain"[2] – takes many different forms, from routine bribery or petty abuse to the amassing of spectacular personal wealth through embezzlement or other dishonest means.

The international community is adamant that corruption must be stopped. It is demanding that the governments of poorer countries eradicate corruption within their countries if they want to be considered eligible to receive Western aid.[3] Yet there is a deep hypocrisy in the international community's approach, at the heart of which are the taxpayer-backed export credit agencies of industrialised countries.

Export credit agenices are government departments, found in most Western countries, which use taxpayers' money to insure their domestic companies doing business abroad against risks such as the company not being paid or the whole project collapsing. These agencies support many of the large, mainly Western, companies that continue to bribe their way into getting government contracts from poorer countries. This bribery is taking place despite a major international convention on combating bribery signed by 34 countries in 1997 and in effect from February 1999.

The price of Western companies' bribery is ultimately paid for by not by Western governments but by the people of the Southern countries in which the companies operate. They pay for it in the form of increased debts incurred for overpriced and poorly planned projects that often provide little benefit to people or country.

This briefing outlines the ongoing problem of bribery and corruption in international business, the role of export credit agencies in perpetuating this corruption, its cost to poorer countries, and what measures governments export credit agencies should be taking to tighten their anti-corruption procedures.

THE CORNER HOUSE
STATION ROAD
STURMINSTER NEWTON
DORSET DT10 1YJ
UK
TEL: +44 (0)1258 473795
FAX: +44 (0)1258 473748
EMAIL
<cornerhouse@gn.apc.org>
WEBSITE
www.thecornerhouse.org.uk

Bribery – Business As Usual

Between 1994 and 2001, the US government received reports of 400 international contracts worth US$200 billion signed between governments and businesses worldwide that purportedly involved bribery.[4] Between May 2001 and April 2002 alone, the US government learned of 60 contracts worth a total of US$35 billion that had been affected by bribery.[5] Some 70 per cent of the allegations that the US government received in 2000-2001 involved companies from countries that had signed the OECD's 1997 anti-bribery Convention.[6]

Transparency International (TI), an international NGO working against corruption, found from its 2002 Bribe Payer's Index that, of the 15 leading exporting countries that had ratified the OECD Convention, companies from Australia, Sweden, Switzerland, Austria, Canada, The Netherlands and Belgium were perceived as less likely to pay bribes, while those from South Korea, Italy, Japan, the US, France, Spain and Germany were perceived as more likely to do so. Companies from the UK came right in the middle.[7] But while companies from most of these exporting countries were perceived to have become slightly less likely to bribe in recent years, companies from the US and the UK were reported to have become more likely to do so.

Foreign firms receive substantial benefits from paying bribes.

World Bank research, meanwhile, shows that one-third (35 per cent) of foreign companies operating in the countries of the former Soviet Union pay kickbacks to obtain government contracts, of which US and European companies are among the worst offenders. Despite US anti-corruption legislation,[8] 42 per cent of US companies reported paying bribes in these countries, compared to 29 per cent of French firms, 21 per cent of German firms, and 14 per cent of British ones.[9] In those countries with particularly high levels of corruption, meanwhile, over 50 per cent of multinationals admitted to paying public procurement kickbacks.[10]

While companies often defend their bribes by claiming that they are the victims of greedy officials or "'sitting ducks' for rapacious politicians", the World Bank research showed that foreign firms received substantial benefits from paying bribes, evidence that did not, therefore, "support the view of coercion of foreign investors to pay bribes".[11] The research also concluded that transnational laws, such as US anti-corruption legislation and the OECD anti-bribery Convention, were not leading "to higher standards of corporate conduct among foreign investors".

British companies seem familiar with traditional bribery practices and with more subtle and less traceable means.

Meanwhile, *The Economist*'s report into anti-bribery laws introduced in the UK in 2002 suggested that many in the business community continue to "believe that in large parts of the world a company that does not pay bribes does not do business".[12] Gary Campkin of the Confederation of British Industry, the UK's employers' organisation, has confirmed this in comments to the UK's *Daily Telegraph*: "British business is totally against bribery, corruption and extortion. But these sort of issues are often about the way you do business".[13]

British companies appear familiar with the traditional bribery practice of making payments into offshore bank accounts, but may also use more subtle and less traceable means such as buying villas or homes for influential decision-makers, paying for children of public officials to attend private schools or universities in Britain, paying for lavish holidays, or lending the company credit card to the relevant official. They are also, according to a former chief executive officer of UK energy company Premier Oil and Gas, Roland Shaw, "very good at finding

other ways of doing it [bribery] – perhaps investing in a college so that the politician can stand up and say they bought the equipment, but look at the benefit we got for the country."[14]

Export Credit Agencies

In their operations abroad, many of these companies are supported in various ways by Export Credit Agencies (ECAs), governmental or semi-governmental departments that use taxpayers' money to help their country's firms win investment and export business overseas.[15] ECAs are the largest source of public finance for private sector projects in the world. ECAs typically provide export finance in the form of guarantees and insurance (although some also provide direct loans). Their main purpose is to protect companies against the key commercial and political risks of not being paid while operating abroad.[16]

There can be little doubt that ECAs are now large and powerful players in international business. They underwrite 10 per cent of global exports from large industrial countries, whose exports account for three-quarters of total world exports.[17] Between 1982 and 2001, ECAs supported $7,334 billion worth of exports, primarily to developing countries, and $139 billion of foreign direct investment.[18] In 2000, export

Export credit agencies are the largest source of public finance for private sector projects in the world.

Export Credit Agencies

There are now 76 export credit agencies in 62 countries; 51 of these agencies are members of the Berne Union, the international trade association for export and investment insurance business, also known as the International Union of Credit and Investment Insurers.

Newly-established ECAs that have not yet qualified for Berne Union membership – of which there are currently 25 – belong to a pre-membership training group called the Prague Club, all of whose members are presently Middle Eastern, Eastern European or Third World countries.

The largest and most influential ECAs are:

- the **Export Import Bank** (Ex-Im) of the **US**, which provides $12-15 billion of loans, guarantees and insurance a year, and the Overseas Private Investment Corporation (OPIC), which provides $1-2 billion a year in loans, guarantees and insurance;
- **Export Development Canada** (EDC), which gives short-term and medium- to long-term export and investment support worth $30 billion a year;
- the **Japan Bank for International Cooperation** (JBIC – formerly JEXIM, Japanese Export Import Bank), which provides $20-25 billion per year, and Nippon Export Investment Insurance (NEXI), which gives $8 billion in medium- and long-term support and $86 billion in short-term insurance per year;
- the **Export Credits Guarantee Department** (ECGD) of the **UK**, which issues $5-6 billion of guarantees a year for medium- to long-term business (its short-term business was privatised in 1991);
- **Compagnie Française d'Assurance pour le Commerce Exterieur** (COFACE) of **France** which issues $5-6 billion of support for medium- and long-term business and $40-2 billion for short-term business a year;
- **Hermes** of **Germany**, which provides $8-10 billion in guarantees for medium- and long-term business and $5-9 billion in guarantees for short-term business a year, and KfW (Kreditanstalt für Wiederaufbau), which provides export insurance, loans for exports and tied aid to the tune of $10-11 billion a year. (Germany also uses the company PwC Deutsche Revision, affiliated to international accounting firm PricewaterhouseCoopers, to administer the federal government's Overseas Investment Insurance Guarantee Scheme jointly with Hermes. PwC Deutsche Revision has an annual turnover of $5 billion.)
- **Istituto per i Servizi Assicurativi per il Commercio Estero**, formerly Sezione Speciale per l'Assicurazione del Credito all'Esportazione (SACE), of **Italy**, which gives $5.5 billion of support for medium- to long-term business each year and $200 million for short-term business. (Italy also has another organisation, SIMEST (Societa Italiana per le Impresse All'Estero), which is a joint stock company controlled by the Ministry of Foreign Trade to help raise funds to support exports and foreign investment.)

Sources: "G-7 Export Credit Agencies Vary in Mission in Structure: an overview of Ex-Im Bank's Counterparts: A Special Report", *Ex-Im Bank News*, September 2002, Vol. 2, Issue 10; various ECA websites. Figures are drawn mainly from business in 2000.

Export credit agencies have been underwriting with impunity the bribery carried out by their domestic companies.

credit agencies were providing a total of $500 billion in guarantees and insurance to companies operating in developing countries, and issued $58.8 billion worth of new export credits that year alone.[19] This compares to a total of $60 billion given out globally in overseas development assistance that year and the $41 billion provided as loans by multilateral development banks (such as the World Bank or Asian Development Bank) in 2000.[20] Moreover, ECAs play a crucial role in the privatisation of developing countries' public enterprises: they provide Western companies with investment insurance when they bid to buy or run such enterprises. ECA investment insurance has rocketed from $9 billion in 1990 to $58 billion at the end of 2000 largely because of this privatisation.[21]

As the sole purpose of ECAs is to support their domestic companies in the export market, they have had a poor history of taking into account the potential environmental or social impacts of projects they support.[22] Because their approach has been to support domestic business at any cost in the fierce world of export competition – the mantra is "if we don't, they will" – export credit agencies have furthermore closed their eyes to large-scale bribery and corruption on the part of the companies they support in their race against other companies to win contracts. In so doing, they have, in effect, been underwriting with impunity the bribery carried out by their domestic companies. Indeed, Transparency International has suggested that export credit agency behaviour has been "close to complicity with a criminal offence".[23]

Underwriting Bribery

"It is safe to assume that many contracts financed, insured or guaranteed by ECAs in the past have been tainted by corruption."

Michael Wiehen
Transparency International[24]

ECA underwriting of "commissions" is an indirect encouragement to bribe.

Export credit agency complicity with corruption takes various forms, both direct and indirect. It is most direct when commissions are involved. The payment of commissions to a local agent or fixer to help win a contract has long been a legal part of business practice. But commissions have also long been used as a means of hiding bribes. A legitimate commission might be 2-3 per cent of the total cost of a project, paid to a local bank account of a respected local business person with no personal ties to decision-makers on the project. A dubious commission containing a bribe, however, might be in the region of 10-20 per cent, paid into an offshore account or secret trust, or paid to a minister or official (whether public or private) directly involved in decision-making on the contract to be awarded.[25]

When ECAs underwrite a company's contracts, it has been common practice for them to include the cost of commissions the company has paid to win the contract in the overall sum underwritten. Indeed, only four ECAs (Turkey, Greece, Hungary and Poland) that are party to the OECD's Working Party on Export Credits and Credit Guarantees[26] do not underwrite commissions as part of the export contract, while only six out of the 28 countries monitored by the OECD Group set any kind of limit on the amount of agents' commissions they can cover.[27] As a former Director-General for Development at the EU, Dieter Frisch, puts it, the practice of underwriting commissions "constitutes an indirect encouragement to bribe".[28]

ECAs have also been complicit with corruption when they pay out insurance claims to companies whose contracts have been cancelled by Southern governments because of allegations that the company has paid bribes. In July 1998, for instance, Canada's export credit agency, the Export Development Corporation, reimbursed a Canadian power generation company, BC Hydro, after the Pakistani government cancelled BC Hydro's contract for the Raiwand power plant project, alleging that bribes had been paid to officials of the previous government.[29]

In May 2001, the US's public investment insurance agency, the Overseas Private Investment Corporation (OPIC), compensated MidAmerican Energy Holdings Co after the Indonesian state electricity company, PLN, reneged on buying power from one of the company's power plants and suspended a second plant being built by the company after a new government came to power. OPIC went on to force the new Indonesian government to pay it $260 million for this compensation. MidAmerican's contracts for the plants had been signed in the early 1990s during the notoriously corrupt regime of President Suharto without competitive tender. Indonesian officials in the new government said that the way in which the contracts were won smacked of corruption, and that the power the Indonesian government had contracted to buy from MidAmerican was over-priced.[30] MidAmerican took the Indonesian government to an international arbitration court and won. The corruption allegations have never been fully investigated.

In India in March 2002, meanwhile, the US export credit agency, the Export-Import Bank, called in guarantees from Indian banks after it paid out $298.2 million to the Dabhol Power Company in the Indian state of Maharashtra, set up by US energy giant Enron.[31] Dabhol had long been subject to allegations of corruption and governance failure (*see* Box, pp.14-15).

ECAs have also pressured Southern governments to drop corruption investigations into companies that ECAs have backed. In Pakistan in 1998, for instance, aid donors such as the World Bank and various Western countries including Britain put pressure on the government to abandon investigations into the Hubco power plant, built in Pakistan in 1997, owned by a consortium that included British energy company National Power, and backed by the ECAs of France, Italy and Japan. Pakistan's Accountability Bureau had claimed that Hubco's project costs were marked up by $400 million, and there were suggestions that the companies involved had paid kickbacks to Benazir Bhutto's government.[32] Hubco has always denied the charges, which were dropped after the more pro-Western General Musharraf became President of Pakistan in late 1999.

ECAs have pressured Southern governments to drop corruption investigations into companies that ECAs have backed.

In July 1999, the ECAs of Japan, Germany, Switzerland and the US took another approach and put considerable pressure on the new post-Suharto government in Indonesia to honour contracts awarded to Western companies to supply power to Indonesia during Suharto's regime. The total cost of these contracts had been inflated by as much as 37 per cent on average, the contracts had not been won through competitive tender, and there were strong suspicions that they were infused with corruption. If corruption was in fact involved, the Indonesian people ended up paying for it in the form of higher power tariffs.[33]

More indirect ways in which ECAs back corruption include turning a blind eye to the track-record of companies that have been involved in corruption scandals, failing to investigate corruption allegations made against a company, and failing to ensure that the countries awarding the contracts that ECAs underwrite have fair, public and competitive

ECAs are underming local attempts to stamp out corruption.

tendering systems and transparent public accounting systems. Many ECAs, for instance, do not require the contracts they back to have been won through competitive tender, despite the fact that competitive tendering can be one of the surest ways for buying or importing countries to ensure that they get value for money. Moreover, as Transparency International's Michael Wiehen puts it, "some of the destination countries with the highest levels of ECA coverage are also well known to have necessitated . . . significant bribery as part of any export deal".[34] By providing export credits to companies to operate in countries in which governments have little commitment to transparency or fair procurement, ECAs are effectively undermining local attempts in these countries to stamp out corruption or to hold their governments to account.

Finally, a lack of transparency and accountability within ECAs

Subsidies and the UK's Export Credits Guarantee

The ECGD has always tried to break even; it is required by law to to do so every three years rather than every year. It claims that it does not draw on taxpayers' money, holding its premiums at a level "sufficient to cover" risks and administration costs.

But between 1995 and 2001, ECGD's premium income usually covered only between one-third and one-half of claims paid out. In 2000-2001, for instance, the agency earned £109.5 million ($175 million) in premiums, but paid out nearly triple that, £298 million ($475 million) worth of claims. Likewise, a year later, in 2001-02, the ECGD earned £76.8 million ($122 million) in premiums and paid out £250 million ($398 million) in claims.

So how does it break even? The answer is that it relies on counter-guarantees from importing countries. If the ECGD has to pay out a claim, it seeks to recover the cost from the importing country. For ECAs in general, these recoveries now account for almost double what ECAs receive in premiums from the exporter or investor in the first place. In 2001-2002, the ECGD made recoveries worth £504 million ($868 million), and in 2002-2003 recoveries of £489.4 million ($842 million). As a result, the ECGD, with the help of taxpayers in importing countries, has been able to make net contributions to the UK exchequer in the past few years.

But the fact that the ECGD merely has to break even, rather than show a positive return of 8 per cent, as other public sector enterprises such as London Underground have to do, still means that the ECGD provides an implicit estimated annual subsidy to the companies it supports of around £400 million ($640 million) per year. (As a private sector enterprise, ECGD would have to make a still higher return of about 11 per cent.)

It also means that the ECGD is able to keep premium charges much lower than they would be in the private sector. A January 2003 report on the economic costs and benefits of the ECGD by National Economic Research Associates concluded that ECGD support constituted an unnecessary subsidy, and that removing it would "have a negligible effect on UK capital goods exports". There was a "strong rationale for eliminating any subsidy in ECGD's current pricing regime," the report concluded.

Thus while UK taxpayers may not be losing money through the activities of the ECGD, they are subsidising the activities of UK companies operating abroad by providing cut-price insurance. ECGD ought, therefore, to be accountable to them for how it uses their money and be able to demonstrate a clear sustainable development purpose.

Subsidies to the Arms Industry

Even if an export credit agency as a whole has to break even, its activities supporting particular industries are not required to do so. ECGD's support for Britain's arms trade is a case in point.

Since 1990, the premiums that ECGD has earned from arms exports, combined with claims recovered, has never even approached the amount that the agency has paid out in claims to arms traders. In fact, the ECGD has made a loss on the defence sector in every one of the last 12 years.

As Michael Bartlett from the Religious Society of Friends states: "it is precisely by the losses that [the ECGD] makes in this sector of insurance that it is providing subsidies". By failing to break even, and therefore to cover its losses, the ECGD is in effect providing a subsidy to the defence sector.

Figures provided by the ECGD or Department of Trade and Industry to Parliament illustrate the point. Overall aggregate figures show that, for all business, premiums cover one-third to one-half of claims paid out by the ECGD. For the defence sector, however, the percentage of claims covered by premium payments drops to between one-fifth and one-quarter. In 2000-01, for instance, premiums earned in defence projects amounted to £38 million ($60 million), while claims paid out came to nearly five times this amount at £181 million ($288 million).

Recoveries from the defence sector, meanwhile, have been very low. For the ten years 1990-2001, premiums earned on defence business amounted to £251 million ($410 million), and claims paid out amounted to £970 million ($1.58

themselves has fostered an institutional culture within the agencies that tacitly accepts bribery and corruption as a necessary albeit ugly means for companies to achieve their goal of winning contracts abroad. Despite the fact that they are backed by taxpayers' money, for instance, most ECAs are highly secretive. Most still refuse to make public information about the contracts that they back unless the companies agree. Even Members of Parliament cannot obtain this information. Most governments that have ECAs have signed up to a declaration issued in 2001 by the Global Forum on Fighting Corruption, the biannual intergovernmental conference on corruption started in 1999,[35] that "corruption cannot prosper in the full light of openness. Transparency and impartial forms of public control . . . are of the utmost importance".[36] Few governments, however, apply these criteria to ECAs.

Department: The Case of Arms Exports

billion), but only £122 million ($199.7 million) was recovered. The ECGD was left with a £597 million ($977 million) shortfall for its defence business over this ten-year period, a shortfall that in recent years it appears to have made up for by its business in other industry sectors.

The subsidy that the ECGD provides the UK arms industry has been calculated in other ways as well. NGOs Saferworld and the Oxford Research Group have compared ECGD premium rates with the premiums that private lending organisations would charge to companies exporting arms. It concludes that the ECGD provides an annual subsidy of £227 million ($362 million) to the defence sector.

Yet the ECGD not only applies different financial criteria to the defence export sector; it also applies different impact screening criteria. Defence exports are not subject to the ECGD impact assessment that all other sectors go through. (The ECGD argues that this is because defence exports are already subject to scrutiny through the government's export licence process, overseen by the Department for Trade and Industry. This process is supposed to check whether the defence exports could lead to human rights violations, be used for internal repression or external aggression, or threaten regional security.)

NGOs and Members of Parliament have been arguing on moral grounds for some years now that that the ECGD should not back defence exports at all. At present, the defence sector is entirely dependent on the agency's support. Government officials and supporters of the arms industry counter by asserting that if the UK government were not to provide this kind of support, many thousands of jobs would be lost and the British economy would suffer.

But analysis by the University of York Centre for Defence Economics published in November 2001 suggests that, while a halving of defence exports would lead to the loss of 49,000 jobs in the defence industry, another 67,000 new jobs would be created in the civil economy over the following five years. It also states that "the economic costs of reducing defence exports are relatively small and largely one-off".

It is not inherently wrong for the ECGD to provide subsidies, provided they are in the public interest. Subsidies could, for instance, be an appropriate tool to kick-start a domestic renewable energy export market – a market that could benefit developing countries importing crucial technology and could help the UK meet its Kyoto Protocol commitments to ensure that export credit agencies support the transfer of climate-friendly technologies. But the ECGD should not contravene its own commitments to ensure that its activities mesh with other UK government objectives on sustainable development, human rights and good governance by subsidising an industry that contributes nothing to these goals – an industry, moreover, that is generally uncompetitive, profoundly secretive and riddled with corruption.

At the very least, the ECGD should broaden its current prohibition on selling arms to the 63 poorest developing countries to *all* developing countries. It should also ensure that its defence business, like its other activities, breaks even, and that the premium rates it charges for the sector are commensurate with the special risks involved in backing defence exports.

Sources: Bagci, P., Powell, S., Grayburn, J., Kvekvetsia, V. and Venables, A., "Estimating the Economic Costs and Benefits of ECGD: A Report for the Export Credits Guarantee Department", NERA, January 2003, pp.ii, viii; Chalmers, M., Davies, N., Hartley, K. and Wilkinson, C., "The Economic Costs and Benefits of UK Defence Exports", University of York Centre for Defence Economics, November 2001, www.york.ac.uk/depts/econ/rcdefence_exports_nov01.pdf; Bartlett, M., "The case against ECGD underwriting of arms sales", paper given at "Beyond Business Principles" Seminar on Export Credit Reform, House of Commons, 23 May 2002, www.thecornerhouse.org.uk/documents/subsidy/html; Ingram, P. and Davis, I., *The Subsidy Trap*, Saferworld and Oxford Research Group, July 2001, www.saferworld.co.uk/pubsubsidy.pdf; Courtney, C., "Corruption in the Official Arms Trade", Transparency International, Policy Research Paper 001, April 2002.

Almost one-third of ECGD backing goes to the defence industry.

Half of all bribes paid in recent years involved defence contracts, even though defence accounts for just one per cent of world trade.

The UK's Export Credits Guarantee Department: Backing Industry Sectors Prone to Corruption

The UK's Export Credits Guarantee Department (ECGD) illustrates many of these problems through its history and culture of institutional failure concerning corruption. The Department was set up in 1919, the first export credit agency in the world, and its original mandate was to support British exports, especially to Russia, because private banks refused to do so.[37] Between 1995 and 2000, the ECGD underwrote £17 billion ($27 billion) worth of British exports – an average of £4-5 billion ($6.5-8 billion) a year.[38] This compares with the UK's Department for International Development's annual aid budget of around £3 billion ($4.7 billion). The ECGD now covers three per cent of the UK's total exports (down from about 30 per cent in the late 1960s).

Although all industry sectors can apply for ECGD support to do business abroad, the department primarily provides support to six of them: military and defence; civil aerospace; power generation and transmission; water; energy and transport. (Only one or two per cent of ECGD support goes to education and medical projects). Several of these sectors have some of the worst records on corruption.[39]

Almost one-third (30 per cent) of ECGD backing goes each year to defence projects – almost half between the years 1998 and 2001.[40] The defence industry has consistently been one of the worst corruption offenders, second only to construction and public works in Transparency International's Bribe-Payers Index. According to the US Department of Commerce, half of all bribes paid between 1994 and 1999 involved defence contracts, despite the fact that arms constitute only one per cent of world trade.[41] Research by the UK's Religious Society of Friends shows that the defence part of ECGD's business appears to be heavily subsidised by returns from the civil business it backs (*see* Box, pp.6-7).[42]

Of the civil (rather than military) projects that the ECGD supports, the highest percentage (25 per cent in 2000/01 and 41 per cent in 1999/2000) is in the power generation sector – a sector ranked sixth in Transparency International's list of corrupt industries. Meanwhile, the oil and gas industry – another key, related area for the ECGD and the focus of its new "Good Projects in Difficult Markets"[43] initiative[44] – is the third most corrupt industry in Transparency International's Index.

It is hardly surprising, therefore, that the ECGD has been implicated in some of the worst scandals involving British business operating abroad. In the mid-1980s, it backed the Al Yamamah deal with the government of Saudi Arabia, a deal that included the sale of Hawk and Tornado jets. British defence companies are alleged to have either agreed to pay or actually paid commissions ranging anywhere from 5 per cent to 25 per cent of the contract price to middlemen and officials in connection with the deal. Throughout the 1990s, there were persistent rumours of corruption.[45] A 1992 report by the UK's National Audit Office investigating the deal has yet to be published despite repeated requests from Parliament. Despite these unresolved allegations, the ECGD gave further support to aircraft and weapons manufacturer BAE Systems in September 2003 for a new contract under Al Yamamah, even though new evidence had emerged of excessive hospitality to Saudi officials in relation to the previous Al Yamamah contract that same month.[46]

In 1991, the ECGD was involved (through the UK government's now defunct Aid and Trade Provision[47]) in supporting the involvement

of a consortium led by UK company Balfour Beatty to build the Pergau dam in Malaysia. The construction of the dam, which was funded by the then Overseas Development Administration (ODA) of the UK government, was linked to an arms deal with Malaysia worth £1 billion ($1.6 billion). Officials at the ODA described the dam as "uneconomic", a "very bad buy" and a burden on Malaysian consumers, who would end up paying £100 million ($160 million) more for electricity than other, cheaper power generation alternatives could have supplied.[48] The contract was not won through competitive tender. During the process of investigating the spiralling price of the contract, ODA officials urged

KAFCO Fertiliser Plant, Bangladesh

Three ECAs are involved in financing the Karnaphuli Fertiliser Company (KAFCO) Fertiliser Complex in Chittagong, Bangladesh. Japan's former Export Import Bank (JEXIM), now the Japan Bank for International Cooperation, was the largest lender, providing $271 million; Italy's SACE provided $32.73 million; and the UK's ECGD gave investment insurance worth $32 million to Citibank UK for its investment in the project.

KAFCO is the largest private foreign investment project in Bangladesh and the single largest industrial project in the country. The Complex produces high-grade ammonia and granular urea out of Bangladesh's natural gas for export to the international market.

The $500 million contract to build the plant, signed in 1990 between KAFCO, Japanese companies Chiyoda and Marubeni and the Italian Petro-Chemical Manufacturers Association, was hailed as the "Deal of the Year". In early 1992, however, a government minister described it as "the most corrupt deal in Bangladesh's history".

According to former KAFCO insiders, it was common knowledge in Bangladesh that KAFCO involved extensive bribery of government ministers and officials. One of KAFCO's largest foreign investors, Japanese company Marubeni, allegedly continues to give personal financial support to Mosharraf Hossain, the Permanent Secretary at the Ministry of Industries who negotiated the deal. One person familiar with the KAFCO deal concluded that "the misshapen nature of KAFCO's contractual structure could not have come about without serious high-level corruption".

The government of Bangladesh granted KAFCO extraordinary concessions that were far more in the interests of the foreign investors than of the country. For instance, Marubeni and a US trading company, Transammonia AG, secured monopoly agreements allowing them to sell all the ammonia and urea produced by KAFCO – and to charge KAFCO a 2-5 per cent commission on each sale without being required to sell the products at any minimum price.

The government of Bangladesh is one of KAFCO's major purchasers – but it has to buy fertiliser from KAFCO in foreign exchange and at international prices, and KAFCO still has to pay the commission to Marubeni and Transamonia for these sales.

Moreover, it is the government of Bangladesh that supplies KAFCO in the first place with gas from which the fertiliser is made – and supplies it at half the price of gas supplied to fertiliser companies in the public sector.

Government ministers have thus called the plant "a complete sell-out of national interests".

The terms of the KAFCO deals were so unfavourable to Bangladesh that Khaleda Zia's new government, which took over from former dictator General Ershad in 1991, concluded that the whole arrangement should be revised. But strong pressure from Japan ensured that only a few revisions were made. This pressure also led the government of Bangladesh to issue guarantees itself on the project in 1992 against $250 million of loans and guarantees to KAFCO from various export credit agencies.

According to a paper produced for the government of Bangladesh in 2001, the plant was overpriced and had cost overruns of more than 26 per cent. The project did not get a green light to proceed with production until five years after it was completed because of defective machinery that caused 37 shutdowns in five years. Estimates of the net drain on Bangladesh's resources because of the KAFCO project are now in the region of $350 million. The project can now run at a profit but only because of the gas subsidies it receives from the government of Bangladesh.

ECA involvement in this project shows considerable disregard for the interests of Bangladesh and for the impact that corruption can have on the design and implementation of a project. A former KAFCO insider said of the UK's ECGD:

> "I think they were half asleep when they went into this project. I think they were transfixed by the wonder of how the plant looked on paper and didn't stop to take a look at the details".

All the ECAs involved appear not to have ensured that safeguards were built into the contract to ensure that the project would function adequately. None appear to have taken any action concerning the corruption allegations. In early 1999, meanwhile, Japan's Eximbank threatened to seek repayments from the Bangladeshi government when KAFCO failed to pay its loans, placed pressure on the government to accept the plant even though it would not function properly, and refused to attend a key meeting of shareholders and lenders called by the government to seek a settlement to the plant's problems.

Balfour Beatty to lower its fees for agency services for the project, which it regarded as excessive.[49] ODA officials were effectively overridden by the UK's Foreign Office, which pushed the government to keep supporting the dam. A UK NGO, the World Development Movement, successfully challenged the use of British aid money for this project in the UK courts in November 1994.[50] The case set a precedent making it illegal to use British aid money for uneconomic projects.[51]

These high-profile cases are not just one-offs. An institutional culture has existed within the ECGD of almost completely disregarding corruption as a serious risk factor that could undermine the viability of projects backed and could increase the costs both for UK taxpayers

Lesotho Highlands Water Project, Lesotho

The ECAs of France, Germany, Italy and the UK (COFACE, Hermes, SACE and the ECGD respectively) were all involved in providing export credit financing for the Lesotho Highlands Water Project, the biggest water scheme of its kind in the world, and its associated Muela and Katse dams.

The £5.5 billion ($8.7 billion) project, which is due to be completed in 2020, was designed to divert water from the mountains of Lesotho through a series of dams and tunnels to South Africa's industrial province of Gauteng.

Suspicions of bribery first surfaced in 1994, when the Lesotho government sought to suspend Masupha Sole, the chief executive of the Lesotho Highlands Development Authority, which was responsible for the project, and another Authority official, while it carried out a management audit prompted by irregularities in the Authority's accounts. Major irregularities were confirmed in early 1995 following the audit, and internal disciplinary proceedings started.

In 1999, the Lesotho government initiated civil prosecutions against Sole. These led to criminal proceedings, and in May 2002, Lesotho's Judge Cullinan found Masupha Sole guilty of receiving nearly £3 million ($5 million) worth of bribes over the course of a decade from companies involved in constructing the project and sentenced him to 18 years in prison.

In all, nine European companies were directly supported by their respective ECAs for their involvement in the first phase of the Lesotho Highlands Water Project. All nine companies (Spie Batignolles, Campenon Bernard and Bouyge from France; Hochtief and Ed Zublin from Germany; Impregilo from Italy; and Balfour Beatty, Kier International and Sterling International from the UK) were involved in two main consortia: the Lesotho Highlands Project Consortium (LHPC) and the Highlands Water Venture.

When convicting Sole, the Judge found that LHPC had made payments totalling $50,870.59 to Sole. These payments, according to the charges laid before the court, were made via the Swiss bank account of a Panamanian company, Universal Development Corporation, controlled by an agent, Max Cohen. The bribery charge stated that:

> "LHPC and/or one or more or all of its constituent members corruptly offered payment(s) to [Sole] in return for [his] exercising his influence/powers in his official capacity for the benefit of LHPC."

Sole was also found guilty of another bribery charge, which stated that the lead contractor in LHPC, French construction company Spie Batignolles, paid Sole (through the same agent, according to the charges) £6,027.02 ($11,263.00).

Judge Cullinan also found that the Highlands Water Venture, headed by the Italian construction and engineering company, Impregilo, had paid $375,000 to Sole between October 1991 and September 1992.

Following Sole's conviction, the Lesothan government initiated criminal proceedings against several of the companies for paying the bribes. The Canadian company, Acres, was convicted of bribery in October 2002, and fined $2.2 million. In August 2003, the company lost its appeal against its conviction, although its fine was reduced by one-third.

In that same month, the German company, Lahmeyer International, was convicted of bribery and fined $1.46 million – a sentence it is appealing – and a third company, France's Spie Batignolles was formally charged with bribe-paying. Spie Batignolles' sentence is due before the end of 2003.

In September 2003, an intermediary who acted on behalf of the Italian company, Impregilo, was also convicted. A further seven companies face possible prosecution, including Italy's Impregilo and the UK's Balfour Beatty.

In several instances, it is clear that the ECAs involved continued to give financial support to the companies concerned *after* the government of Lesotho had first raised its concerns about bribery. None of the ECAs, meanwhile, have publicly taken any action so far against the companies involved. The UK's ECGD appears to be satisfied for the time being with "assurances from [the companies involved] that they had no involvement in any unlawful conduct", but has said that if any of them are convicted of bribery, this may be a grounds for refusing them further cover. Germany's Hermes has said that, in the event of a German company being convicted, it will require the company to undertake "obligatory measures to take care that similar cases will not occur in the future", and will reject any claims for compensation should they be made.

and for the citizens of countries in which the projects are carried out. The Department has since introduced anti-corruption measures, but the extent of corruption involved in the projects is only now (in some instances) coming to light and still requires appropriate action on the part of ECGD.

Backing Countries With Corruption Problems

One major reason why export credit agencies have ignored corruption is that some of the best opportunities for their country's exports are in those countries with serious corruption problems. In 1995, the top three recipients of export credits among developing and transition countries were Russia, China and Indonesia.[52] In 2003, the top three recipients among these countries for medium- and long-term export credits were China, Turkey and Mexico; for short-term export credits China, Hong Kong and Brazil; and for investment insurance, Brazil, China and Argentina.[53] Other countries that feature prominently in the portfolios of the major ECAs include Saudi Arabia, Indonesia, Russia and Nigeria.

Yet China, Turkey, Saudi Arabia, Indonesia, Russia and Nigeria are all countries noted for high levels of corruption in business transactions and public procurement.[54] China, for instance, has consistently been in the bottom half of Transparency International's Corruption Perceptions Index, usually scoring an average of 3.5 out of 10 (where 10 indicates "highly clean" and 0 suggests "highly corrupt"). According to a report by the Hong-Kong based Political and Economic Risk Consultancy (PERC), "Graft is endemic in China: according to the most conservative estimates, the magnitude of corruption ranges from 3 to 5 per cent of GDP".[55] According to PERC's annual survey of business opinions on corruption in Asia, China was perceived as one of the most corrupt countries in Asia, beaten only by Indonesia and India, and corruption there was only getting worse.[56] Turkey, Mexico and Brazil have, likewise, tended to fall in the lower half of TI's Index with scores of 3.1, 3.6 and 3.9 respectively. In July 2003, a Turkish parliamentary committee investigating corruption reported that corruption was costing Turkey more than $150 billion each year – five times the country's total annual exports.[57]

ECAs are exacerbating bribery in countries renowned for corruption in business transactions and public procurement.

By backing their national companies to operate in countries with corruption problems without requiring additional safeguards, ECAs could well be exacerbating corruption in these countries. World Bank research shows that corruption increases when foreign firms work in corrupt environments:

> "In misgoverned settings, rather than importing higher standards of governance, FDI [Foreign Direct Investment] firms would appear to magnify the problems of state capture [corrupt forms of political influence] and procurement kickbacks."[58]

The World Bank concludes, in addition, that corrupt environments tend to attract "lower quality investment in terms of governance standards". This conclusion would suggest that ECAs may be tacitly accepting not just poor corporate governance but also poor quality investment when they support corporate involvement in countries with corruption problems.

Supporting investments in high corruption countries involves high risks for all parties concerned. But as the UK's former Executive Director to the IMF and World Bank between 1994 and 1997, Huw Evans, put it to the UK Parliament's Trade and Industry Select Committee in

Corruption increases inequality and poverty.

Corruption undermines democratic accountability and diverts resources away from the public good.

The price of Western companies' bribery is paid for by the people of the countries in which the companies operate.

2000 when it was looking into the future of the ECGD, final decisions about whether the ECGD should support projects "often owe more to political weight than to fine calculations of risk assessment."[59] A good example of this is the considerable pressure that industry groups, such as BP, the Export Group for Constructional Industries and the Engineering Employers Federation, have exerted on the ECGD to provide insurance cover to operate in oil-rich Angola. The country has been off cover for 15 years because of political and economic instability, owes the ECGD £131 million ($208.5 million) and is considered to be one of the most corrupt countries in the world. It is beaten to bottom place only by Nigeria and Bangladesh in Transparency International's 2002 Corruption Perceptions Index that surveys 102 countries.[60] Despite the risks, however, the ECGD stated in November 2001 that it was considering including Angola under its new "Good Projects in Difficult Markets" scheme.[61]

The ECGD is not alone among ECAs as far as Angola is concerned. The US Export-Import Bank (Ex-Im) provided $150 million worth of financing to politically-influential US oil and oil service companies in Angola between 1996 and 1999, despite the Angolan government's dire corruption record and despite the fact that Ex-Im would not provide financing for any other business to operate in the country because of the high risks involved.[62]

Who Picks Up the Tab?

"Corruption is not a charitable game; 'winners' have every intention of recovering their bribery costs."

Donald Strombom
former chief of procurement for the World Bank

Corruption has a major impact in all countries of the world. It undermines democratic accountability, diverts resources away from the public good and into private pockets, and "redistribut[es] wealth and power to the undeserving".[63] Corruption increases inequality and poverty. A 1998 IMF study shows that an increase of just 0.78 per cent in corruption reduces the income growth of the poorest 20 per cent of the people in a country by 7.8 per cent a year.[64]

Indeed, it is the people of the South, particularly the poor, who have paid the heaviest price for the "business at any cost" approach of ECAs and for the bribery that ECA-backed companies engage in. Companies paying a bribe aim to recover it by charging governments more for what they provide. Corruption can add an average of 20-30 per cent to the cost of government procurement.[65] In some Asian countries, according to Asian Development Bank research, it doubles the cost of goods and services.[66] This means that every year governments waste millions of what little public money they do have, money that could be spent on education, health and poverty eradication. The World Bank estimates that the Philippines loses $47 million a year because of corruption, and has lost a total of $48 billion between 1977-1997.[67] A recent report from the African Union[68] suggests that Africa loses $148 billion a year to corruption.[69] And in Latin America, in countries such as Colombia and Brazil, corruption has been estimated to cost each person some $6,000 a year.[70]

Recent scandals in both the US and Europe – from the bankruptcy and collapse of energy company Enron in the US to political financing

scandals in Germany involving former chancellor Helmut Kohl to corruption allegations against President Jacques Chirac in France and President Silvio Berlusconi in Italy, to mention but a few – indicate that corruption is just as pervasive and institutionalised in the North as in the South, although the forms it takes may differ. Corruption is perceived to be on the increase across the world because of policies such as privatisation and public-private partnerships that give multinational corporations ever-greater access to governments and that have led to "increased interface between public officials and private business".[71]

In poorer countries, however, corruption has a more devastating and immediate impact. It diverts public expenditure away from areas such as health and education in which bribery returns may be small,[72] to more lucrative sectors such as construction, defence, and oil and gas.[73] The poor end up paying directly for the consequences of contracts that have been signed in corrupt circumstances. They are most affected by "white elephant" projects such as power plants or dams that fail to meet their stated objectives[74] and that dislocate local communities and cause environmental damage. In the energy sector, they are affected by contracts awarded in dubious circumstances that have locked governments into paying excessively high rates for electricity, which are often passed on to the consumer in the form of higher tariffs.

Corruption is perceived to be on the increase worldwide because of privatisation and public-private partnership policies.

Export Credit Agencies, Debt and Corruption

Even more critically, the people of Southern countries often end up paying directly for ECA involvement in dubious, corrupt or economically-unviable projects. When ECAs give backing to a company or bank, they almost always require the importing country to offer a counter-guarantee. In the event of a default, such as if a contracting party does not pay up or if the project proves unviable, the ECA pays the affected exporter or investor, and then seeks to recover from the importing country the claims it has paid out. These recoveries account for almost double what ECAs receive in premiums from the exporter or investor in the first place and thus represent a large slice of ECA income.[75]

If the importing country does not or cannot pay compensation to the ECA, the amount owed is added to the importing country's official debt as a bilateral (government to government) debt. Export credit debt is charged at commercial rates of interest, not the lower rates incurred by bilateral or multilateral loans.[76] Export credit debt is therefore particularly onerous for poorer countries. One-quarter of the $2.2 trillion debt owed by developing countries and one-half of all debt owed by developing countries to official creditors (such as Multilateral Development Banks, the International Monetary Fund (IMF) and other governments rather than to private creditors such as banks) is owed to ECAs.[77] Some 95 per cent of the debt owed to the UK government by Southern countries is export credit debt. Between one-third and one-half of this debt is interest owed on original debts and penalties.[78]

Some 95 per cent of Southern country debt to the UK government is export credit debt.

This build-of up debt owed by Southern countries to ECAs has been exacerbated by the "moral hazard" that lies at the heart of the export credit process.[79] Companies know that they will be rescued by ECAs from "the consequences of their own decisions"[80] – they will be bailed out by the public purse with few questions asked if things go wrong with their business decisions. They may not, therefore, be as prudent in their investment decisions or as cautious in their risk assessments as

Dabhol Power Plant, Maharashtra, India

At least five ECAs were involved in the financing of the Dabhol Power Plant in India. The US OPIC and Ex-Im provided $640 million in loans and guarantees for the project, while Japan's JBIC and Belgium's OND also provided backing. The UK's ECGD provided Overseas Investment Insurance for three UK banks (ANZ Bank, Standard Chartered Bank and ABN Amro) that have invested in the plant. It also provided re-insurance in early 2000 for the involvement of a UK company, Kier International, in building a liquefied petroleum gas port terminal for the Dabhol Power Plant. Other ECAs may well have given undisclosed investment insurance to banks on the project. Banks from Austria, France, The Netherlands, and Switzerland, including Erste Bank, Credit Lyonnais, BNP Paribas and PSFB, are known to have lent money to the project.

The Dabhol Power Plant, a $2.9 billion project in the Indian state of Maharashtra, is the largest foreign investment project in India and one of the biggest electricity generating plants in the world. The Dabhol Power Company (DPC), which built and ran the plant until it closed in June 2001, was initially a joint venture between three US energy companies: the now collapsed Enron, General Electric and Bechtel Corporation, until the Maharashtra State Electricity Board subsequently took a stake in the project as well.

Soon after a Memorandum of Understanding for the project was signed in June 1992 between Enron and the Maharashtra State Electricity Board, a World Bank review commissioned by the Maharashtra government found many irregularities and concluded that the Memorandum was very one-sided in Enron's favour. In April 1993, the World Bank refused to provide funds for the plant, questioning its economic viability. According to documents released under the US Freedom of Information Act, staff at the US Ex-Im were not convinced about the viability of the project either. But Ex-Im came under intense pressure from the former chair of Enron, Kenneth Lay, in 1994 to provide financing. The then chair of EXIM, Kenneth Brody, personally helped to hurry through a finance package.

The Maharashtra State Electricity Board (MSEB) was locked into a Power Purchase Agreement with the plant, signed in 1993, that ensured that it would pay for power even if it did not need it and even if the power was not produced by the plant. The MSEB was required to pay between $1.2 and $1.3 billion a year for Dabhol's electricity – a tariff that the Central Electricity Authority described as more than twice as high as it should be.

The haste with which the project was agreed, the lack of transparency and the absence of competitive tendering resulted in a plethora of corruption allegations surrounding the project from the outset. In May 1995, a newly elected Maharashtra government filed a court case in September 1995 against both the Dabhol Power Company and the Maharashtra State Electricity Board, alleging that bribes had taken place in the awarding of the contract and thus pleading for the contract to be declared void.

But in early 1996, after extensive negotiations with Enron, the new Maharashtra government withdrew its case and accepted a renegotiated deal for an even larger power plant than that originally planned with almost equal haste and on equally, if not more, disadvantageous terms.

By the end of 2000, power from Dabhol was four times more

Companies know they will be rescued by ECAs if their business decisions go wrong.

they might otherwise be, particularly if they do not have to consider fully whether a project is commercially viable or not because of ECA insurance. The substantial debt owed to ECAs suggests that this has indeed been the case. Southern governments would have incurred far fewer debts had companies backed by ECAs made more financially viable investment decisions.[81] A decision made in July 2001 by all ECAs not to back "unproductive" expenditure – expenditure that does not contribute to social and economic development, poverty reduction or debt sustainability[82] – in poorer countries in future is a tacit acknowledgement of this fact.

The people of Southern countries are thus paying debts incurred for some projects that have been of little or no value to either the country or its people. Furthermore, if ECA backing for contracts includes the cost of bribes hidden in commission payments, when ECAs recover compensation from importing governments for amounts they have paid out or add this amount to official debt, ECAs are in effect requiring taxpayers of the importing country to pay for the bribes made by the exporting company. The debt that Southern countries owe to ECAs may well include hidden millions of dollars worth of bribes.

Yet poorer countries have little choice but to use the financing facilities of export credit agencies. Few overseas companies will operate in poor countries without ECA support. In 2000, for instance, ECA

expensive than from domestic power producers. The state of Maharashtra was spending more on payments for power from Dabhol than its entire budget for primary and secondary education. It was buying power from the plant at 8 rupees per unit but selling it on for only 2 rupees.

In June 2001, the Dabhol Power Company shut down the plant after the MSEB decided not to buy any more power from it because the Company had failed to provide power at full capacity and within the time-frame agreed in the Power Purchase Agreement (PPA). Nonetheless, the Company carried on billing the MSEB $21 million a month, and in September 2001, Enron demanded that the Indian government pay it $2.3 billion for its investment and debts on the project.

After Enron's collapse following its bankruptcy in December 2001, Dabhol was put up for sale. Among the foreign bidders were BP, British Gas, Royal Dutch/Shell and Gaz de France, alongside four Indian companies. But disputes between domestic lenders and the Indian government on the one hand and foreign lenders on the other have left the plant standing idle for over two years.

Foreign banks have a total exposure on Dabhol of $372 million. Most of the foreign finance is guaranteed by domestic Indian banks, while the Indian government has given a counter-guarantee for the project. Foreign investors have been blocking ideas put forward by domestic lenders and the Indian government as to what to do with Dabhol while at the same time aggressively pursuing compensation for their investment losses. They claim that Dabhol has been effectively expropriated by the Indian government, even though the problems arose because the plant did not perform adequately and even though foreign lenders are implicated in the failure so far to find a solution to the Plant's problems.

In September 2003, a US arbitration panel ruled that OPIC should pay GE and Bechtel compensation of $28.57 million each. In November 2003, OPIC paid out compensation of $30 million to Bank of America under its political risk insurance cover. OPIC has a total exposure of $340 million on the project. Ex-Im has already paid out $298.2 million to Enron for Dabhol in March 2002. The US government, meanwhile, represented by top officials such as Vice President Dick Cheney, has been exerting strong pressure on the Indian government to come to a solution that would benefit Enron and protect US taxpayers' money. The US government has reportedly threatened to withdraw aid to India; it has also warned that the dispute would "spell death to potential investment in India" if the Indian government did not do so.

It is not just US investors who are seeking compensation. In November 2003, ANZ Bank, Standard Chartered Bank and ABN Amro filed claims for political risk insurance with the UK's ECGD for about $60 million and six European banks, including those backed by the ECGD, filed claims worth $200 million with the Indian government. Belgium's OND has been approached by three banks for $90.8 million worth of insurance compensation.

OPIC, Ex-Im, OND, the ECGD and any other ECA involved will seek to recover any claims they do pay out from the Indian government. The Indian government, and ultimately the Indian people, now face a huge compensation bill for a project that has brought far more harm than good to India. But both the foreign investors and the ECAs that backed them were extremely negligent in making their risk assessments on this project. In consequence, they should accept mutual responsibility for the crisis now surrounding it.

support for exports and investment to poor countries accounted for 80 per cent of private finance to those countries.[83] Some 30 per cent of Foreign Direct Investment (FDI) to poor countries was covered by official investment insurance from ECAs, compared to a figure of 12 per cent for all developing countries. This means that export credit agencies have a huge and disproportionate say in what projects get backed in poor countries. As the World Bank puts it:

> "In poor countries, official guarantees are nearly always required to access external finance for large projects; every major bank commitment over $20 million over the past five years has had some official guarantee".[84]

Yet, despite their dependence upon export credit for external finance, the poorest countries receive little of it. Only eight per cent of overall ECA exposure is in poor countries: the vast majority of export credit goes to a few middle-income countries such as Brazil, China, Indonesia, Mexico, the Philippines and Turkey.

Public outcry over the fact that national debt is crippling many poorer countries has led to international efforts to tackle the problem. In 1999, the countries of the G7 (Canada, France, Germany, Italy, Japan, the UK and the USA) agreed to write off 90 per cent or more of export credit debt owed by the poorest countries as part of international debt

relief efforts. They subsequently agreed to write off 100 per cent of these debts. But countries were eligible for such write-offs only under the World Bank and IMF's Highly Indebted Poor Country (HIPC) Initiative, which imposed strict structural adjustment programmes[85] on poorer countries in exchange for helping them to reduce their debts to "sustainable" levels. And actual debt relief has been slow in coming: four years on, only 8 out of 42 countries have become eligible for debt cancellation.[86] Middle-income countries that did not qualify for relief have, meanwhile, been left to struggle under their large debt burdens.

The debt that Southern countries owe to ECAs may well include hidden millions of dollars worth of bribes.

Most importantly, debt relief initiatives have not ensured that ECAs accept mutual responsibility for the bad business deals they have backed. As the UK Executive Director at the IMF and World Bank for the years 1994-1997, Huw Evans, put it, genuine debt cancellation:

> "require[s] governments (and their export credit agencies) to admit past mistakes . . . [L]oans that turn out badly mean poor decisions by both lenders and borrowers."[87]

Recognising such mistakes would entail the ECAs of richer countries conducting a thorough audit of their export credit debt portfolios to identify projects that failed because of corruption on the part of Western companies and because of their own negligence. ECAs should immediately write off any relevant amounts from the debt portfolios of all developing countries and not just the poorest ones.

Tackling Corporate Bribery and Corruption

Bribery is notoriously difficult and potentially expensive to prove.[88] It often requires a dissatisfied party to the bribe turning whistleblower for any information to come out in the first place. Or it requires extensive forensic auditing and investigations in various places, including offshore tax havens, to come up with sufficient evidence for a prosecution. Companies, meanwhile, almost always hide behind the defence that the bribe was either a legitimate commission or, in cases in which the bribe was made through an agent or subsidiary, that they had no knowledge of the bribe. Western governments are often reluctant for investigations into bribery to go ahead for fear of upsetting trade or diplomatic relations with the country in which a foreign official is alleged to have taken a bribe. And law enforcement agencies still tend to have the attitude that bribe-giving companies are simply the victims of greedy foreigners who demand bribes – or that bribery is just the way of doing business abroad.[89]

ECAs have not accepted responsibility for the bad business deals they have backed.

In the US, the 1977 Foreign Corrupt Practices Act (FCPA) criminalised the payment of bribes to foreign government officials and political parties by US businesses and individuals and required companies to keep accurate and detailed accounts reflecting all transactions. Yet the pursuit in the courts of companies paying bribes outside the US has been limited. Since the FCPA came into force, there have been 32 criminal prosecutions and 14 civil enforcement actions with 21 convictions – an average of just one conviction a year.[90] Lack of funds for proper enforcement, high standards for initiating prosecutions, the self-regulation approach of the US Securities and Exchange Commission, and fluctuating political will have all been cited as reasons why the FCPA has not been as effective in bringing American companies to book as it might have been.[91]

On paper, the OECD anti-bribery Convention, operational since 1999, would seem to set out sufficient rules to combat Western companies' paying bribes. The Convention requires each signatory country to

enact national legislation making it a criminal offence to bribe a foreign public official.[92] But it seems to have had little impact on company behaviour. The annual Bribe-Payers Index for the year 2002 collated by Transparency International shows that 42 per cent of 835 business experts interviewed had not even heard about the OECD Convention.[93] Only one in five senior managers of foreign firms based in emerging market countries, where the available evidence suggests that bribery is most likely to take place, were aware of the Convention.[94]

Why has the OECD Convention had so little impact? Several answers suggest themselves. One reason is that no company in any OECD country has been prosecuted for or convicted of bribery since the Convention came into effect (with the exception of companies in the United States). As John Githongo, formerly of Transparency International Kenya, puts it: "Until people are brought before the courts, the OECD Convention will not make a difference to the developing world".[95]

Another reason is that monitoring its implementation has been slow. The OECD was meant to have reviewed both compliance with the Convention and the effectiveness of legislation introduced by each country by the year 2005, under a process known as Phase 2.[96] Between November 2001 and November 2003, however, the OECD had reviewed under Phase 2 just 7 of the 34 countries that have ratified the Convention. It is able to review only three to four countries a year. At this rate, it will be 2010 at the earliest before all signatories to the Convention have been assessed.

Anti-corruption legislation does not hold companies responsible for the actions of their subsidiaries or agents.

But the main reason that the OECD Convention, and anti-corruption legislation in general, has had little effect is, in the words of *The Economist,* that "there are holes in the anti-bribery laws that are big enough for a half-blind elephant to blunder through.[97] The biggest of those holes is that companies are not held responsible for the actions of their subsidiaries or of agents acting on their behalf.[98] As a 1997 survey by Control Risks Group (a UK-based business risk consultancy specialising in providing companies and governments with political and commercial risk analysis and business intelligence) found, 56 per cent of European companies and 70 per cent of US companies said they "occasionally" used middlemen such as agents, joint venture partners or subsidiaries to make corrupt payments, while 44 per cent of European firms and 22 per cent of US ones admitted to doing so regularly.[99] Even the OECD recognises that its Convention's omission of subsidiaries is a major weakness in the agreement.[100]

The business world in general prefers voluntary self-regulation rather than legislation to tackle a problem. But a 2002 survey of business practice by EU firms carried out by the UK investment company Friends Ivory and Sime (FIS), found that while 87 per cent of companies responding to their survey did have internal codes of conduct governing bribery and corruption, less than 25 per cent had proper enforcement mechanisms within the company that would make such codes effective.[101] Some of the codes ruled out receiving bribes but not giving them, or allowed "local customs" to take precedence over the company's anti-corruption rules.

John Bray, an anti-corruption expert at Control Risks Group, notes that "experience shows that [anti-corruption] codes will have little impact unless they are actively supported by top management."[102] But even this, he says, is not enough. As long as promotion within companies depends on winning business rather than observing company "rules", staff will remain under considerable pressure to bring in business to the company and to win contracts – at whatever cost.

Defence Equipment, South Africa

Five European ECAs – France's COFACE, Germany's Hermes, Italy's SACE, Sweden's EKN and the UK's ECGD – were involved in financing a huge £2.88 billion defence package to South Africa signed in December 1999 that included frigates, submarines, corvettes, helicopters and fighter jets. The companies given ECA backing include France's Thales (formerly Thomson CSF), Germany's Thyssen and Ferostaal, Italy's Augusta, Sweden's SAAB and the UK's BAE Systems.

The arms deal has been highly controversial in South Africa and has been embroiled from the beginning in numerous allegations of corruption. Allegations of impropriety have surrounded nearly every contract involved and continue to do so despite an official investigation in South Africa. Critics allege that this investigation was a whitewash, not least because the country's premier anti-corruption body, the Special Investigating Unit, was excluded from it.

The German Frigate Consortium, encompassing Thyssen and Ferostaal, won the bid to supply corvettes despite the fact that its bid should, according to legal opinion, have been discounted during the initial evaluation process. Thyssen appointed Futuristic Business Solutions Ltd (FBS) as its local agent; it agreed to pay FBS a $200,000 success fee if Thyssen won the contract and an agreed percentage of any savings FBS helped it secure on its obligations to provide "offset investments" into the country. (Offset agreements require a supplier to direct some benefits back to the purchaser in the form of work, technology, counter-trade agreements, or investment in the country. They are widespread in the defence sector and have a reputation for raising the cost of a deal by around one-fifth; being difficult to monitor; failing to bring the benefits promised at the time of sale; and contributing to corruption.) FBS has shares in another company, African Defence Systems (ADS), the head of which, Shabir Shaikh, is the financial adviser to South Africa's Vice-President, Jacob Zuma, and brother of the country's chief of weapons acquisitions.

Several criminal prosecutions are now pending in South Africa in connection with the German Frigate Consortium's contract, and the contract for the information management system for the corvettes, which was awarded to Thomson CSF (now Thales). The South African authorities are pursuing criminal charges for receipt of gifts from bidders against the South African head of the navy responsible for overseeing the corvette programme. Shabir Shaikh of African Defence Systems is facing prosecution for corruption. The charge sheet against Shaikh alleges that Vice-President Zuma came to an agreement with Thomson CSF to receive $80,000 a year in return for protecting the company from official investigations into allegations of bribery on the defence package. Zuma is believed to have used his influence to ensure that South Africa's Special Investigating Unit, was excluded from taking part in the official investigations. The French authorities are reportedly considering a request from the South African authorities for help with their investigation into the claims involving Thomson CSF.

BAE Systems, meanwhile, in a joint venture with SAAB, won the contract for trainer jets despite the fact that its bid was $720 million more expensive than that made by Italian defence company Aermacchi for its MB339FD jet and despite the fact that senior South African airforce personnel were said to favour the Aermacchi jets.

Critics of the deal have observed that in March 1998, one month before defence minister Joe Modise intervened in the negotiations in BAE's favour, BAE Systems donated five million rand ($982,400) to the ANC's MK Veteran's Association, of which Modise was a founding trustee and steering committee member, through an organisation called the Airborne Trust. It was revealed in July 2003 that Modise had enjoyed a trip to the UK at the expense of the Airborne Trust. Allegations emerged a month earlier, in June 2003, that BAE Systems had paid a direct bribe of £500,000 to Modise and made secret contributions to ANC election coffers.

Another contractor on the deal, EADS (European Aeronautic Defence and Space Company), which had won small contracts for exocet missiles and radars, admitted to helping 30 South African public officials obtain cheap Mercedes Benz cars. In March 2003, the former African National Congress chief whip, Tony Yengeni, was sentenced to four years in jail for defrauding parliament by lying about the origin of the Mercedes Benz that he had been given by EADS. The head of EADS in South Africa, Michael Woerfel, was suspended from his post and may yet face prosecution in Germany for bribery.

In South Africa, opposition to this defence deal has emphasised that South Africa did not need and cannot afford it. A South African NGO, Economists Against the Arms Race, is currently taking legal action against the South African government, seeking cancellation of the arms deal on the grounds that it is strategically, economically and financially irrational and therefore unconstitutional.

Some of the ECAs involved in this deal would clearly have known about the corruption allegations that arose before it was finally signed in December 1999. The UK's ECGD has admitted that it gave support despite knowing that an official investigation in South Africa into the allegations was pending. None of the ECAs seem to have instigated any action or investigation against the companies involved.

Improving ECA Practices on Corruption

Export credit agencies' active negligence towards corruption has revealed a hypocrisy at the heart of government: Western countries are blatantly ignoring their responsibilities under international treaties, such as the OECD anti-bribery Convention, while strongly pushing a "good governance" agenda on developing countries. This policy incoherence has led to a flurry of activity at the OECD. In December 2000, the OECD's Working Party on Export Credits and Credit Guarantees (ECG) issued an Action Statement on Bribery and Officially Supported Export Credits[103] – a major step forward in recognising the role of ECAs in corruption. Members of the Group agree to ensure that their ECAs:

- Inform applicants about the legal consequences of bribery in international business transactions;
- "Invite" applicants seeking export credit guarantees to declare that neither they nor anyone acting on their behalf has engaged in or will engage in bribery;
- Refuse to approve credit, cover or other support where there is "sufficient evidence" of bribery;
- Take appropriate action against a company whose bribery is "proved" after credit, cover or other support has been provided, such as not making any further payments, trying to recover previous sums provided and referring evidence of such bribery to national investigation authorities.

From November 2002, the ECG agreed to publish a survey it had conducted since January 1998 of member country procedures to combat bribery. The 2002 survey comprehensively covers the measures that ECAs have put in place to fulfil their requirements under the Action Statement; the procedures that they have established to deal with suspected bribery, sufficient evidence of bribery and cases of proven bribery; and details of what their actual experience with bribery has been.[104] The survey shows that ECAs are beginning to take anti-corruption procedures seriously, albeit in a rather patchy and arbitrary manner.[105]

Out of 30 ECAs which responded to the survey from the 28 OECD member countries, all but four (Australia, New Zealand, Turkey and the UK) now inform applicants of the legal consequences of bribery in international business transactions. Only two ECAs (Turkey and Korea's KEIC) have not taken the second step outlined in the Action Statement of introducing a warranty procedure that invites companies to state that neither they nor anyone acting on their behalf has or will engage in bribery in the transaction to be supported.

But one in three of the ECAs that responded (including Italy, Japan, Switzerland and the UK)[106] have yet to implement the third step of the Action Statement: to make it required institutional practice to withhold support for transactions if there is sufficient evidence of bribery. Four ECAs (Korea, Poland, Turkey and the UK) have made no institutional commitment not to support a company if a legal judgement of bribery has been passed against it.

The final step of the Action Statement requires an ECA to take appropriate action if bribery is proved after an ECA has given support for a transaction. But nine ECAs (one in three of those that responded to the survey, including Japan, Switzerland, the UK and the US)[107]do not yet have an institutional requirement to deny compensation to companies in instances where bribery has been proven in a legal case, while two in three ECAs (21 in total)[108] would not do so even when

Western countries ignore their own anti-corruption responsibilities while pushing a "good governance" agenda on others.

Many OECD export credit agencies have barely implemented measures to enforce anti-bribery policies.

The ECAs' stance against corruption seems more rhetorical than practical.

there was sufficient evidence of bribery. Over half the ECAs that responded (16),[109] meanwhile, have not yet committed themselves institutionally to seeking to recover sums provided to the company concerned when there has been a legal judgement of bribery. And just over one-third (12 of the 30 ECAs)[110] have yet to be required institutionally to inform the appropriate national authorities if they have sufficient evidence of bribery after they have given support.

The results of the 2002 OECD survey suggest that, while almost all ECAs have instituted the simplest and least demanding requirements of the Action Statement, they have implemented only half-heartedly those measures that would actually lead to anti-bribery policies being properly enforced.

Moreover, the proof of whether any of these measures are effective or not is in the proverbial pudding. Since December 2000, only five ECAs have taken any action on bribery.[111] Every other ECA claims to have had no suspicion, sufficient evidence or legal judgement concerning bribery.

It lacks credibility, however, and certainly contradicts US intelligence information on bribery, that the major exporting countries have come across only one or two suspicions of bribery in the past two years in their dealings with their major exporting companies. This suggests that the ECAs' stance against corruption may be more rhetorical than practical at present. It also seems to reflect an ongoing and deep reluctance on the part of Western governments to take bribery too seriously for fear of losing business for their country.[112]

A recent case involving the UK's export credit agency provides a good example of this. In November 2003, it was revealed that the ECGD provided cover to weapons and aircraft manufacturer BAE Systems even though the company would not comply fully with the ECGD's new anti-corruption procedures introduced earlier in April 2003. In particular, BAE Systems, ECGD's most frequent customer and the UK's largest defence exporter, reportedly refused to provide ECGD with documents giving details of agents and commission payments relating to a defence contract with Saudi Arabia.[113] Credible information had emerged just days before ECGD supplied the cover that BAE Systems, in connection with an earlier and related Al Yamamah defence contract, had been bestowing excessive hospitality on Saudi Arabian public officials, including yachts, sports cars and prostitutes.[114] ECGD, rather than denying further support unless the documents were provided, or awaiting the outcome of pending investigations by the UK's Serious Fraud Office and National Audit Office into the hospitality allegations, asked the company to submit a new application "whereby no agents' commission was to be paid under the project", after which it approved cover.[115]

"Best Practices"

In November 2003, the OECD's Working Party on Export Credits and Credit Guarantees issued a new document on "Best practices to deter and combat bribery in officially supported export credits." The document suggested that 11 "best practices", many of them already adopted by some ECAs, should be made official practice within all ECAs. Some of these involve strengthening measures already agreed in the December 2000 Action Statement, for instance, requiring rather than simply inviting companies to sign a "no bribery declaration" in order to obtain

ECA support. Other best practices are that ECAs should:

- Require companies to provide details of agents' commissions that amount to more than five per cent of a project's cost and should consider introducing a cap on commissions and applying enhanced due diligence for commissions over five per cent of a project's cost;
- Require companies to state on application for ECA support whether they have been debarred by any multilateral or bilateral financial institution, such as the World Bank,[116] from contracts with that institution, or found guilty in a national court of bribery, with a view to ECAs either withholding support or applying enhanced due diligence (investigating the history, performance and value of a company before investing in it or extending financial support to it);
- Require ECAs to inform national investigative authorities of any suspicion or sufficient evidence of bribery both before and after they have decided to support a company;
- Apply enhanced due diligence and suspend an application if suspicion or sufficient evidence of bribery arises;
- Suspend payments to a company and deny access to further support where there is sufficient evidence of bribery until an official investigation has been concluded; and
- Apply all possible measures, such as suspending payment to a company, seeking compensation from it and debarring it from further support for a certain number of years, where there is a legal judgement of bribery.

In addition, the OECD Best Practices document suggests that ECAs should consider making it a prerequisite for official support that a company adhere to the OECD Guidelines for Multinational Enterprises,[117] apply an anti corruption company code of conduct and have won contracts to be supported through a transparent procurement process.

The Best Practices document is a significant advance on the ECG's earlier Action Statement. If accepted by ECG members in full, it could lead to much higher standards on corruption in officially-supported exports. But the document will not be discussed by ECG members until April 2004, when some ECAs may well push for weaker measures.

The Best Practices document, however, is already weak in three areas. The first involves its suggestions concerning agents and commission payments. Commission payments to agents are a well-known route to disguise bribes. Given that most ECAs directly underwrite commission payments, it is essential that they have the highest standards of due diligence concerning them.

The Best Practices document, however, suggests that details of agents and commissions, such as the amount paid, services rendered, purpose of the commission and name of the agent, should be required only when the commission represents more than five per cent of a contract. It also suggests that ECAs should consider introducing a cap on the proportion of commission payments in a contract that they will support – a cap that Transparency International has recommended should be five per cent. This would certainly improve existing ECA practice. According to the OECD's 2002 survey, one-third of ECAs (11)[118] do not currently require any details of agents' commissions and just one in five ECAs (6)[119] apply any kind of ceiling on commissions.

Genuine best practice, however, would require ECAs to demand details of agents' commissions on *all* transactions, regardless of the percentage of the contract that they represent.[120] More important than

OECD "Best Practices" could lead to higher standards on corruption in officially-supported exports.

ECAs should require details of payments to agents on **all** *transactions before agreeing to support.*

Threatening to withdraw export credit support in future is a highly effective sanction against corporate bribery.

introducing a cap on commission payments would be to require ECAs to:

- Ensure that the agents' commission represents value for money on genuine services provided; and
- Establish a basic set of "red flags" for due diligence on agents' commissions (including not supporting commission payments if they are paid offshore, if the agent does not reside in the country where the project is taking place, or if the agent has little experience in the specific industry or has relatives in a government position).[121]

Australia's Export Finance and Insurance Corporation (EFIC) is ahead of all other ECAs in its due diligence in this area: it requires companies to provide, in addition to information about commission payments, a written declaration of any payment and incentives given to a third party each time ECA funds are received, detailing the amount, purpose and recipient of the payments.

A second area of weakness, which ECAs may well dispute in future negotiations on the Best Practices document, concerns company debarment. The threat of withdrawing future export credit support for a company for a set period of time is one of the most effective sanctions available against corporate bribery. As Kirstine Drew of the Trade Union Anti-Corruption Network UNICORN, puts it:

> "debarring . . . imposes economic costs and introduces an economic disincentive. Advancing the case for, and challenging barriers to, debarring should be a key priority".[122]

The Best Practices document recommends debarring a company among its list of "all possible measures" to be applied when there is a legal judgement of bribery against a company. But nine ECAs[123] say they cannot legally adopt this measure *before* giving support, while 13[124] do not do so despite being able to when there is a legal judgement against a company. Where support has *already* been given, 17 ECAs[125] say they are not legally able to debar a company, while 10[126] do not do so despite being able to. This is despite the fact that commentaries on the OECD anti-bribery Convention, which all members of the OECD's ECG Working Party have signed, specifically suggest that "exclusion from entitlement to public benefits" is an appropriate sanction when a company or individual is found guilty of bribery of a foreign public official.[127] Moreover, the OECD's 1997 Revised Recommendations of the Council on Combating Bribery states that "member countries' laws and regulations should permit authorities to suspend from competition for public contracts enterprises determined to have bribed foreign public officials in contravention of that Member's national laws."[128]

Curiously, many European countries (including Germany, Italy, The Netherlands, Spain and the UK) have stated that they are not able legally to exclude companies from ECA support. In May 2000, however, the European Commission recommended that a new European public procurement directive currently under discussion include an *obligation* to exclude any company that has been convicted of corruption from tending for public contracts.[129] At some point in the near future, therefore, European ECAs will probably have to review their legal position.

ECA unwillingness to impose the sanction of debarment on their domestic companies is illustrated by Canada's ECA, Export Development Canada (EDC). The EDC refused to debar the Canadian construction company, Acres, a frequent recipient of EDC support, after it had been convicted of bribery in a large-scale water project in Lesotho

(*see* Box, p.10). Although the EDC did not directly support Acres on the Lesotho project, its refusal is a clear breach of the spirit, if not the letter, of the OECD anti-bribery Convention. Another company, Germany's Lahmeyer, has also received a conviction (currently under appeal) of bribery in the Lesotho water project, while the French company, Spie Batignolles, is currently being prosecuted for bribery, and seven other European companies, including Italy's Impregilo and the UK's Balfour Beatty, also face possible prosecution. How ECAs respond to bribery convictions in Lesotho, in particular, whether they debar any companies convicted, irrespective of whether they were direct recipients of official export credit support or not, will be a crucial test of their willingness to tackle bribery.

A final weakness of the Best Practices document, as Michael Wiehen of Transparency International pointed out to the OECD's Export Credit Group in November 2003, is that it does not address disclosure. ECAs are in most instances backed by public money; it is essential, therefore, that they operate to the highest standards of transparency. Transparency International recommends that ECAs disclose publicly the name of applicants, amount applied for and country to which goods or services are to be sold at the time of application.[130] At present, many ECAs do not reveal details of the projects they support; those that do usually disclose details only if the company consents. Between 2001 and 2003, for instance, 62 per cent of companies supported by the German ECA, Hermes, did not consent to disclosure. In the UK, during the financial year 2002/3, three exporters refused consent for disclosure on guarantees that represented nearly one-quarter (23 per cent) of the total value of ECGD guarantees issued that year. Besides disclosure of projects, ECAs should be encouraged, both through the OECD and at a national level, to make an annual disclosure of how many allegations of bribery they have received, and what action they have taken on them. Only if ECAs are more transparent in how they deal with bribery allegations can they be genuinely accountable to the public and the international community for their anti-corruption procedures.

ECAs should operate to the highest standards of transparency because they are backed by public money.

Conclusion

ECAs are central to efforts to combat corporate bribery worldwide. They operate at the coalface of exporter behaviour abroad, and thus have enormous power to influence the companies they support. They have the power to determine the quality of investment that Southern countries receive and whether Southern countries will be saddled with debts for unviable or unproductive projects. They also have the power to influence whether companies will exacerbate corruption problems around the world, or be part of the solution.

In an era of increasing international commitments to eradicate corruption,[131] ECAs can no longer afford to support their domestic businesses at any cost. They are slowly beginning to take note of their responsibilities, but it seems that only under sustained pressure from NGOs, Parliamentarians, the press and the public, both at a national and international level, will real and lasting changes come about. ECAs can and must be held accountable to those that help pay their bills: ordinary people in the North and in the South.

ECAs are central to efforts to combat corporate bribery worldwide.

Notes and References

1. Transparency International, "Transparency International releases new Bribe Payers Index (BPI) 2002", press release, 14 May 2002.
2. Asian Development Bank, *Anti-Corruption Policy: Description and Answers to Frequently Asked Questions*, Manila, 1999, p.5.
3. The US has introduced a "Millennium Challenge Account", for instance, which will give aid only to countries that prove that they are fighting corruption and introducing market-friendly policies. The UK government has also announced a new source of funding for development, the International Finance Facility, which will be accompanied by "tough conditionality – [insisting] on corruption-free regimes that pursue stable, equitable and sustainable economic growth". *See* Brown, G., "An assault on poverty is vital too", *The Guardian*, 13 February 2003, p.22.
4. "The Short Arm of the Law", *The Economist*, 28 February 2002. The US government, as the only government that had legislation (the 1977 Foreign Corrupt Practices Act) actively prohibiting bribery of foreign public officials until the 1997 OECD anti-bribery Convention, has monitored bribery in international contracts on a regular basis for many years, not least to assess how much business it loses as a result of its legislation. It produces an annual report, *Battling International Bribery*, which monitors other countries' compliance with the OECD Convention and includes a classified annex listing foreign companies about which the US government has received credible information that they have engaged in bribery.
5. Control Risks Group, *Facing Up To Corruption–Survey Results 2002*, London, 2002, p.5.

   In July 2003, however, the US government reported that the number of contracts on which it had received reports of bribery had fallen to 40, the contracts worth $23 billion in total. But it concluded that it was too early to say whether this drop was a one-off dip from the annual average of 60 reports or a result of the OECD anti-corruption Convention. *See* US Department of Commerce, "Addressing the Challenges of International Bribery and Fair Competition, 2003", July 2003.
6. US Government, "Third Annual Report to Congress: Implementation of the OECD Anti-bribery Convention", 29 June 2001, www.usinfo.state.gov/topical/econ/group8/summit01/wwwh01062905.html.

   The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions was signed by all 30 OECD countries as well as four non-OECD countries (Argentina, Brazil, Bulgaria and Chile) in 1997 and came into effect in February 1999 after six of the major OECD countries ratified it. The Convention now has 35 signatory countries (Slovenia signed in late 2001), of which 34 have ratified it.

   The Organisation for Cooperation and Development (OECD) comprises 30 of the world's richest countries, including EU countries, the US, Japan, Australia, New Zealand, Mexico, the Czech Republic, Hungary, Poland and Korea. Based in Paris, with an annual budget of $200 million, the OECD calls itself a "club of like-minded countries" that believe in market economics and pluralistic democracy. It provides a forum for discussion on economic and social policy issues for governments, as well as producing research, policy papers, and international treaties and agreements. *See* http://www.oecd.org/about/general.
7. Transparency International Bribe Payers Index 2002, Berlin, 14 May 2002.
8. The 1977 Foreign Corrupt Practices Act (FCPA) criminalises the payment of bribes to foreign government officials and political parties by US businesses. It requires companies to keep accurate and detailed accounts reflecting all transactions. But it specifically excludes facilitation payments.
9. Hellman, J., Jones, G. and Kaufmann, D., "Are Foreign Investors and Multinationals Engaging in Corrupt Practices in Transition Economies?" *Transition*, May-June-July 2000, pp.5-6.
10. Hellman, J., Jones, G. and Kaufmann, D., "Far from Home: Do Foreign Investors Import Higher Standards of Governance in Transition Economies?", World Bank, draft document, August 2002, p.16.
11. Ibid., p.4.
12. *The Economist*, op. cit. 4.
13. "No Baksheesh please, we're British", *The Daily Telegraph*, 11 February 2002.
14. Ibid.
15. For a full analysis of export credit agencies, *see* Hildyard, N., *Snouts in the Trough: Export Credit Agencies, Corporate Welfare and Policy Incoherence*, Corner House Briefing No. 14, June 1999, www.thecornerhouse.org.uk/briefing/14ecas.html. *See also* www.ecawatch.org.
16. These risks include war, nationalisation/expropriation, a moratorium on external debt, break off in trade relations, foreign exchange shortages, the risk that the project will not be completed or is not commercially viable, insolvency of the buying institution, a refusal by the buying institution to pay, or importing government interference with the project. They also include political risks such as civil disturbances or actions by overseas governments affecting performance of the contract, or political, economic or administrative events occurring abroad that prevent payment.

   While the terms of loans supported by ECAs to developing countries are similar to commercial terms, ECAs generally provide cover for larger sums, longer periods and for higher risk countries than the private sector is willing to do. Like the private sector, they charge companies a premium, but premium charges have generally been low, and income from premiums has only ever covered a portion of the losses made by ECAs. Historically, ECAs have operated at a loss, paying out far more in claims than what they have received in the form of premiums and recoveries on claims. Between 1982 and 1997, export credit agencies lost taxpayers from their respective countries a total of $64.5 billion.

   Since 1995, however, ECAs have been slowly moving into the black and achieved a net operating surplus of $2.8 billion in 2001. The Subsidies and Countervailing Measures (SCM) Agreement of the World Trade Organisation requires ECAs to break even in the long-term in order to eliminate any subsidy that their support might provide. The 1978 OECD Export Credit Arrangement (*see* below) sets minimum premium rate benchmarks below which ECAs cannot charge (except for military equipment and agricultural products that are exempted from the agreement). Thus while ECAs still *use* taxpayers' money, they are less likely today to *lose* it, even though they are still providing subsidies in various ways (*see* Box, pp.14-15). Moreover, many ECAs operate a "national interest account", which allows them to back projects with no regard to breaking even or even to normal underwriting criteria.

   See S. Estrin, S. Powell, P. Bagci, S. Thornton, P. Goate, "The Economic Rationale for the Public Provision of Export Credit Insurance by ECGD: a report for the Export Credits Guarantee Department", National Economic Research Associates, April 2000, Appendix D; OECD, "2001 cashflow report from the Export Credit Group Members", www.oecd.org/pdf/M00038000/M00038847.pdf.

   The OECD Export Credit Arrangement is an informal agreement among OECD members with export credit agencies that provides a framework for medium- to long-term officially-supported export credits. The Arrangement is intended to avoid an export credit race in which export credit agencies seek to provide the best possible terms for their domestic companies. It does this by setting minimum interest rates to be charged and maximum repayment periods, and by harmonising country classification. The Arrangement is policed through peer pressure and self-regulation. It has, however, subsequently been adopted in law via the EU and is therefore legally binding for EU countries.
17. Kohler, H., "Reforming the International Financial System", in *The Berne Union 2001 Yearbook*, February 2001.
18. Brown, V., "Looking to the future", *The Berne Union Yearbook 2003*, February 2003, p.5.
19. World Bank, *Global Development Finance 2002*, Chapter 4; OECD, "Officially supported export credits – levels of new flows and stocks", data for 1999 and 2000.
20. Figures from OECD DAC Statistics and US Treasury note on Multilateral Development Banks, www.ustreas.gov/omdb/tab9.pdf. The World Bank, for instance, makes $20-25 billion of new loan commitments a year.
21. World Bank and OECD, op. cit. 19.
22. There has been some change in the last few years, however, in response to heavy criticism from NGOs and because ECAs lagged far behind development banks such as the World Bank in their social and environmental guidelines. In July 2001, the OECD's Export Credit Group announced a set of principles for discouraging the use of official export credits for "unproductive" expenditure to Highly Indebted Poor Countries (HIPC) – defined as expenditure that does not contribute to social and economic development, poverty reduction or debt sustainability (although the definition and principles explicitly still allow expenditure on national security). OECD Export Credit Group members are now required to inform the group of all export credit transactions with HIPC countries that are monitored annually.

   In December 2001, meanwhile, the OECD's Export Credit Group announced a set of proposals for common approaches to officially supported export credits and the environment to be implemented by ECAs in early 2002. These include proposals that projects should be screened for environmental impact and classified according to potential impact; that projects should be benchmarked against international standards such as those of the World Bank; and that there should be disclosure of information to relevant stakeholders. The proposals have been criticised, however, as being too weak, too reliant on host country legislation and for not being binding. The US delegation to the OECD Export Credit Group voted against the proposals because it considered them to be too weak. *See* Coutts, S., "The Catastrophe Market: Export Credit Agencies", *ABC Radio National Background Briefing*, 16 February 2003.
23. Frisch, D., "Export Credit Insurance and the Fight Against International Corruption", Transparency International Working Paper, 26 February 1999.

24. Wiehen, M., "TI Working Paper: OECD Working Party on Export Credits and Credit Guarantees", Informal Consultation in Paris, 16 November 2000.
25. There is considerable secrecy surrounding commission payments. Businesses rarely disclose such payments, or indeed company guidelines on commission payments, because they regard them as commercially confidential. Scandals over large commission payments in the Middle East, particularly for defence equipment, have led to most Middle Eastern countries introducing laws on disclosure of commission payments or, in the case of Bahrain, seeking to phase out commission payments altogether (www.ustr.gov/pdf/1999_gcc.pdf). "Basic Rules" on combating extortion and bribery, drawn up by the International Chamber of Commerce (ICC) in 1996 as a means of self-regulation by international business, state that companies should ensure that "any payment made to any agent represents no more than an appropriate remuneration for legitimate services rendered", and that all such payments are recorded by the company (http://iccwbo.org/home/statements_rules/rules/1999/briberydoc99.asp). An ICC manual on corruption and bribery, meanwhile, states that companies should beware of paying commissions in a third country, to a numbered bank account or to another person other than the agent, and of paying commissions either in advance of or immediately upon award of contract (Davies, M.N., "The Role of Agents and Sales Representatives", Chapter 4, *Fighting Bribery: a corporate practices manual",* International Chamber of Commerce, undated).
26. The Working Party on Export Credits and Credit Guarantees (ECG) is a subgroup of the OECD trade group focusing on and negotiating policy issues relating to OECD member country export credit agencies.
27. OECD Working Party on Export Credits and Credit Guarantees, "Responses to the 2002 Survey on Measures Taken to Combat Bribery in Officially Supported Export Credits – as of 30 April 2003", 21 May 2003, www.oecd.org/pdf/M00040000/M00040397.pdf.
28. Frisch, D., op. cit. 23.
29. Klein, N., "A chance to practice what we preach", *The Toronto Star*, 28 January 1999, quoted in Hildyard, N., op. cit. 15; *Canada Asia Commentary,* No.14, July 2000, Asia Pacific Foundation of Canada, www.asiapacific.ca/analysis/pubs/pdfs/cac14/pdf. BC Hydro subsequently sold its share in Raiwand at a significant loss.
30. Schuman, M., "Indonesia to pay reduced claim to US in long-disputed overseas insurance case", *Wall Street Journal*, 11 May 2001.
31. Giriprakash, K., "Financial Institutions pay RS 70 crore to US Exim", *India Finance,* 19 March 2002; PSIRU, "Export credit agency threaten to call in guarantees to Enron", PSIRU news item 4609, September 2001, www.psiru.org/news.
32. Taylor, A. and Nicholson, M., "Hubco seeks World Bank Intervention", *Financial Times* special report, 14 October 1998.
33. Fried, S. and Soentoro, T., "Export Credit Agency Finance in Indonesia: Ecological Destruction and Corruption", Environmental Defense and Bioforum, December 2000; Bosshard, *P., Publicly Guaranteed Corruption – Switzerland*, www.eca-watch.org/bosshard7.html.
34. Wiehen, M., op. cit. 24.
35. *See* http://usinfo.state.gov/topical/econ/integrity and www.adb.org/Documents/Events/2003/Anticorruption?Corruption_Integrity/default.asp. The Global Forum on Fighting Corruption brings together government ministers responsible for controlling corruption and experts from all over the world. It was initiated largely by the US government. The first Forum was held in Washington, the third in May 2003 in Korea.
36. Final Declaration, Global Forum on Fighting Corruption and Safeguarding Integrity II, The Hague, 28-31 May 2001.
37. Stephens, M., "The Changing Role of Export Credit Agencies", IMF, 1999, Introduction.

    The Export Credit Guarantees Department is a free-standing government department, which is not answerable to the UK Parliament directly, but rather indirectly through the Secretary of State for the Department of Trade and Industry.
38. In 2000/2001, that figure had increased to £5.6 billion ($9 billion), but for 2001/02 it dropped to £3.2 billion ($5 billion). Except where stated otherwise, currency conversions in this report were calculated according to April/May 2003 exchange rates.
39. Transparency International, op. cit. 1.
40. ECGD, *Annual Report and Resource Accounts 2000/01*, p.40.

    Nearly 55 per cent of the ECGD's defence portfolio goes to the Middle East and 38 per cent to Asia. The bulk of military cover is for aircraft (58.2 per cent), vehicles (23 per cent) radar and radios (12 per cent) and ancillary equipment (6 per cent). *See* Hildyard, N., op. cit. 15.
41. Courtney, C., "Corruption in the Official Arms Trade", Transparency International, Policy Research Paper 001, April 2002, p.3; "Odd Industry Out", *The Economist*, 18 July 2002.
42. Bartlett, M., "The case against ECGD underwriting of arms sales", paper given at "Beyond Business Principles" Seminar on Export Credit Reform, House of Commons, 23 May 2002, www.thecornerhouse.org.uk/documents/subsidy/html.
43. The "Good Projects in Difficult Markets" scheme is for projects in countries for which the ECGD would not usually accept projects because of the risks of non-payment by the importing government in case of default. The scheme is primarily designed for projects in Africa, the Caspian Area and the Middle East and for those in the oil and gas, petrochemical, mining, telecommunications, and airport and port construction sectors. Projects under this scheme must be financially viable, generate hard currency, use escrow accounts (special bank accounts in which money is held to pay for taxes, premium on insurance and other ongoing costs on time), and have majority private sector ownership. So far, UK company involvement in the Blue Stream Gas Pipeline between Russia and Turkey; in a £1.24 billion ($1.98 billion) Liquid Natural Gas Plant on Bonny Island in Nigeria; and in the construction of the Kotoka airport in Ghana has been funded under this scheme.
44. "Image and Reality: ECA Review", *Project Finance*, 1 November 2001, p.44.
45. Campaign Against the Arms Trade, "Memorandum submitted to the International Development Committee hearing on corruption", March 2001 (http://www.caat.org.uk/information/issues/corruption-submission-0900.php); Ingram, P., and Davis, I., *The Subsidy Trap: British Government Financial Support for Arms Exports and the Defence Industry,* Saferworld and the Oxford Research Group, July 2001, www.saferworld.co.uk/pubsubsidy.pdf.
46. "Millions risked on BAE Contract", *The Guardian,* 27 November 2003.
47. The Aid and Trade Provision – a tied aid scheme that started in 1977 and was run jointly by the Department of Trade and Industry and the Overseas Development Administration – was specifically aimed at supporting overseas aid projects with developmental value that were of particular commercial importance to the UK. It was abolished by the New Labour Government in 1997.
48. National Audit Office, "Pergau Hydro-Electric Project", October 1993, para 20, p.5.
49. Ibid, para 19, p.5l. The price first quoted by an Australian company for building the dam was £140-150 million ($223-240 million). The Balfour Beatty/Cementation International joint venture originally quoted for £200-300 million ($320-480 million) in 1988. By 1989, they had revised the contract proposal, first to £316 million ($503 million) and then, a couple of months later, to £397 million ($632 million). By 1991, the contract price had become £417 million ($664 million).
50. *R v Secretary of State for Foreign Affairs ex parte World Development Movement* [1995] 1 All ER 611, at 617e-620h.
51. Information taken from Chaterjee, P., "British aid for Malaysian Dam", *World Rivers Review*, 11 November 1993; and FIVAS (Association of International Water and Forest Studies), "Court Cases in Dam Projects", Norway, 1999, http://www.solidaritetshuset.org/fivas/rettsskr/nyrettsindex.htm; National Audit Office, "Pergau Hydro-Electric Project", October 1993.
52. Drummond, P.F.N., "Recent Export Credit Market Developments", IMF Working Paper, IMF, March 1997, p.9.
53. Information provided by the Berne Union, 26 November 2003.
54. In Transparency International's Corruption Perceptions Index for 2003, most of these countries come in the bottom half of the 133 countries surveyed. The Index ranks countries from 1 (the least corrupt) to 102 (the most corrupt) according to surveys that assess the perception of the degree of corruption in each country by business people, academics and risk analysts. The top country, which is perceived to be the least corrupt, has consistently been either Finland or Denmark. A country must have at least three surveys to draw on before it can be included in the list.
55. "China's Corruption Crackdown", 16 March 2003, www.friedlnet.com/news/03031602.html
56. Ibid.
57. "Turkey's corruption bill put at $150 billion", NTV MSNBC (Turkey), 1 July 2003
58. Hellman, J., Jones, G. and Kaufmann, D., op. cit. 10, p.21.
59. Trade and Industry Select Committee report, "The Future of the Export Credits Guarantee Department", 11 January 2000.
60. *See* BP Amoco Plc, Memorandum to International Development Committee's report "The Export Credits Guarantee Department – Developmental Issues", 30 November 1999; Trade and Industry Select Committee, Third Report, "The Future of the Export Credits Guarantee Department", 11 January 2000; Engineering Employers Federation, "Budget Representation to HM Treasury for 2001". For Corruption Perceptions Index, *see* Transparency International's press release, 13 September 2002.
61. *Project Finance*, op. cit. 44.
62. Sustainable Energy and Economy Network (SEEN), "Ex-Im Oil Dealings in Angola: Fuelling War, Poverty and Corruption," www.seen.org/pages/ifis/exim/angola.shtml (accessed 26 November 2003).

63. Klitgaard, R., “Subverting Corruption”, *Finance and Development*, June 2000, Vol. 37, No. 2.
64. Gupta, S., Davoodi, H. and Alonso-Terme, R., “Does Corruption Affect Income Inequality and Poverty?” IMF Working Paper, May 1998.
65. Strombom, D., “Corruption in Procurement”, *USIA Economic Persp*ectives, November 1998; Asian Development Bank, op. cit. XX, *Anti-Corruption Policy: Description and Answers to Frequently Asked Questions*, Manila, Philippines, 1999.
66. quoted in Coté-Freeman, S., “False Economies”, *Developments*, 4th quarter, 1999.
67. Nugent, N., “High cost of corruption in Philippines”, *BBC News*, 6 December 2000, news.bbc.co.uk/1/hi/world/asia-pacific/1057716.stm.
68. The African Union, which comprises 53 African countries, was set up in 2001 to replace the Organisation of African Unity, and became operational in 2002. The Union is loosely modelled on the European Union and states that one of its main goals is to promote democratic principles and institutions, popular participation and good governance.
69. “African Union approves anti-corruption policy”, *Reuters*, 19 September 2002.
70. “Shedding light on shady dealings”, *Business News Americas*, 4 October 2002.
71. Brittan, S., “The Third Way is a temptation to corruption”, *Financial Times,* 20 June 2002.
72. With increased privatisation of health and education services, however, the possibility that companies will pay bribes to win contracts in these sectors could well increase. The health and education sectors are by no means corruption free even when in state hands. But contracts tend to be smaller than in sectors such as construction, defence, and oil and gas; in these areas, the size of the contracts means that the addition of a few million dollars to cover the cost of a bribe is less likely to attract attention.
73. Tanzi, V. and Davoodi, H., *Corruption, Public Investment and Growth*, IMF Working Paper, October 1997.
74. For examples, *see* Box, p.9. on the KAFCO Fertiliser Complex in Bangladesh and Box, pp.14-15, on the Dabhol Power Plant in India. *See also* Hawley, S., *Turning a Blind Eye: Corruption and the UK Export Credits Guarantee Department*, The Corner House, June 2003, www.thecornerhouse.org.uk/document/correcgd.html and .pdf
75. OECD, “2001 cashflow report from the Export Credit Group Members”, www.oecd.org/pdf/M00038000/M00038847.pdf.
76. Multilateral debt is owed to institutions such as the World Bank and the International Monetary Fund (IMF) or to regional development banks like the African Development Bank or Asian Development Bank. Bilateral debt is government-to-government debt. Private debt is owed to commercial banks and other private creditors. Multilateral and bilateral debt usually incurs far lower interest rates than other types of debt.
77. Kohler, H., op. cit. 17.
78. Much of the debt now owed to the ECGD has been incurred because of a lack of hard currency with which to repay British companies, debt that the ECGD has described as incurred as a result of political, rather than commercial, risk. Often overseas companies or governments have been able to repay British companies in local currency by depositing money into a local bank, only to run into the obstacle that the bank is unable to convert the local currency into sterling or US dollars. Export credit agency activity can thus lead to a balance of payments crisis for the borrowing country and macroeconomic instability. *See* Joyner, K., “Export Credit and Debt”, unpublished report.
79. *See* Van Voorst, M., “Debt Creating Aspects of Export Credits”, Eurodad, August 1998, www.eca-watch.org. *See also* Harman, J.A., Chair of US Export Import Bank (Ex-Im), “Post-Crisis World Economic Development: lessons learned and thoughts for reform”, speech to World Economic Development Congress, 22 September 1999.
80. Stephens, M., “Export Credit Agencies, Trade Finance and South East Asia”, IMF Working Paper, December 1998, p.36.
81. Joyner, K., op. cit. 78.
82. For an explanation of “unproductive expenditure”, *see* footnote 22.
83. World Bank, op. cit. 19.
84. Ibid.
85. In 1999, the World Bank and IMF renamed structural adjustment programmes as Poverty Reduction and Growth Facility programmes. Under these programmes, countries must prove that they are implementing a poverty reduction strategy, as well as continuing structural reforms such as liberalisation and privatisation.
86. These countries are Benin, Bolivia, Burkina Faso, Mali, Mauritania, Mozambique, Tanzania and Uganda. While G7 countries committed themselves to 100 per cent debt cancellation for the poorest countries, overall debts have not been 100 per cent cancelled, but rather cancelled to a level that World Bank and IMF economists deem to be “sustainable” (150 per cent of exports). In practice, this means that the World Bank and IMF will cancel only around 35 per cent of the debts owed to them by these countries. Countries receive this debt cancellation when they reach what is called “completion point” (that is, when they have fully proven that they have implemented structural reform and a poverty reduction programme). When the HIPC Initiative was first introduced in 1996, however, 19 out of 38 countries were to have received substantial debt cancellation by the end of 2002. Now 24 countries of the 38 have reached “decision point” at which stage they receive interim debt relief and a commitment from the World Bank and IMF for fuller debt cancellation if they stay on track.

    The HIPC Initiative has been heavily criticised for being too slow and too miserly. Critics state that World Bank and IMF estimates of “sustainable” debt levels are based on unrealistic forecasts that have not taken into account the impact of falling commodity prices and other global economic developments that are entirely beyond the control of the HIPC countries. (This criticism has been acknowledged by the Operations Evaluation Department of the World Bank.) *See* Jubilee Research press release, “Ethiopian Prime Minister says HIPC is failing”, 5 March 2003; World Bank Operations Evaluation Department, “OED Review of the HIPC Initiative”, *OED Reach,* 24 February 2003.
87. Evans, H., “Debt Relief for the Poorest Countries: why did it take so long?” *Development Policy Review*, September 1999.
88. Bribery has also become more sophisticated. Companies now are as likely to pay for the medical or educational expenses of a relative, or lend the company credit card to the foreign public official as to make a direct payment.
89. Interviews that the author conducted with various senior law enforcement officials in the UK in the autumn of 2002 regarding enforcement of the UK law on bribery confirmed that such cases are not high priority because of the expense involved in launching an investigation and the fear that the chances of prosecution are low.
90. Response of the United States, Questions Concerning Phase 2 [of OECD Convention on Bribery – monitoring], www.usdoj.gov/criminal/fraud/fcpa/phaseII.htm.
91. Goel, R., “Anti-Corruption Measures at Export Development Canada”, Independent Study Course, 22 April 2002, p.2. In 1988, amendments to the FCPA made under the Reagan administration weakened its force by raising the threshold for prosecution and redefining facilitation payments in a looser way. The fact that no other country had similar legislation has also effectively undermined political will by successive administrations to enforce the FCPA with much rigour.

    Ironically, US actions may be exacerbating the need perceived by companies based elsewhere in the world to bribe. US companies are also able to rely on the US government exerting heavy political pressure to win contracts for them. In some instances, the US has threatened to sever diplomatic links with a country and even development aid if it does not award a contract to a US company. In 1995, the US government threatened to cut off aid to Mozambique if its government did not award a contract to Enron for constructing a natural gas pipeline (Clifford, M., and Engardio, P., “Enron hasn’t made many friends in the Third World”, *Business Week*, 12 February 2001). In Uganda in 1999, the US Secretary for Trade, Denis William, warned that US-Ugandan relations would be damaged if legislation that would enable a US company to build a dam in the country was not enacted (Nganda, S., “Who reaps from new power law”, *The Monitor*, 29 September 2000). There is some suggestion that some European and Asian companies feel that the only way they can compete against this political pressure is to resort to bribery. *See* “Laws fail to halt international business bribery”, *Financial Times*, 15 October 2002.
92. The term “foreign official” is meant to include anyone holding a “legislative, administrative or judicial post in a foreign country” as well as anyone in public sector companies and international organisations. Bribery is prohibited not just in procuring orders but also in regulatory proceedings (including those involving environmental permits), tax and customs matters, and judicial proceedings. The Convention also requires governments to:

    – ensure proper punishment for bribery of a foreign official (including prison sentences and fines);

    – tighten accounting and auditing requirements by prohibiting “the establishment of off-the-book accounts, the making of off-the-books or inadequately-identified transactions, the recording of non-existent expenditures, the entry of liabilities with incorrect identification of their object, as well as the use of false documents by companies . . . for the purpose of bribing foreign public officials or of hiding such bribery” (OECD Convention, article 8.1)

    – provide for international legal cooperation, including extradition of guilty parties;

    – take steps to end tax deductibility for illicit payments.
93. Transparency International, op. cit. 1.
94. Eigen, P., “Anti-bribery convention needs support”, Letter to the Editor, *Financial Times*, 17 October 2002. The top emerging market countries are Brazil, China, India, Indonesia, Mexico, Poland, South Africa, South Korea, Taiwan and Turkey.
95. Transparency International, op. cit. 1.

96. The OECD Convention is accompanied by two stages of monitoring that are carried out by "peer" review. Phase 1 monitoring assesses whether the legislation passed in each country to implement the Convention was adequate. By the end of 2002, all 31 countries that had introduced legislation had been reviewed, three countries (Brazil, Chile and Turkey) had yet to put such legislation in place, and Slovenia was yet to be reviewed. The UK's initial stance that its existing corruption legislation was sufficient to implement the Convention was heavily criticised in this review process, leading to the hasty inclusion of clauses prohibiting bribery of foreign public officials in the 2001 Anti-Terrorism, Crime and Security Act, which came into effect on 14 February 2002. Phase 2 of monitoring, which began in November 2001, assesses enforcement of the implementing legislation.
97. *The Economist*, op. cit. 4.
98. In the UK, companies can be found guilty under the law of conspiracy of "conspiring to make corrupt payments". Juries are able to infer a shared corrupt intention between an agent or subsidiary and the company. But it is exceptionally hard for the prosecution to provide hard evidence of such a shared intention. (*See* Herbert Smith lawyers, "Bribery and Corruption: Oiling the Wheels: Addressing Bribery Overseas in UK and US Legislation", *Power Economics*, 30 April 2002). Under the US Foreign Corrupt Practices Act, meanwhile, a US business can be prosecuted for bribery carried out by a third party on its behalf only if it can be proved that the company might reasonably have known that the third party was going to make a corrupt payment. That knowledge is exceptionally hard to prove if the company denies it vigorously enough.
99. Bray, J., "Beyond Compliance: Corruption as a Business Risk", paper presented to conference on *Fighting Corruption in Developing Countries and Emerging Countries: the role of the private sector*, Washington, February 1999.
100. OECD Directorate for Financial, Fiscal and Enterprise Affairs, *Questionnaires on bribery acts in relation to foreign political parties, party officers and candidates, and on the role of foreign subsidiaries*, 20 September 2001.
101. Friends Ivory and Sime, "Governance of Bribery and Corruption: A survey of current practice", February 2002, http://www.friendsis.com/uploadFiles/Area%20of%20Engagement%20-%20Bribery%20%20Corruption%20%20Report%20Feb%2002.pdf. 33% of companies did not respond at all to the survey.
102. Bray, J., op. cit. 99.
103. Action Statement on Bribery and Officially Supported Export Credits, OECD Working Party on Export Credits and Credit Guarantees, December 2000, www.oecd.org/EN/about/0,,EN-about-355-10-no-no-no-0,00.html. Prior to this and in response to the OECD Convention on Combating Bribery, the ECG had agreed since January 1998 to exchange information by surveying members' procedures to combat bribery in export credit transactions. This survey was updated following the ECG's Action Statement.
104. OECD Working Party on Export Credits and Credit Guarantees, "Responses to the 2002 Survey on Measures Taken to Combat Bribery in Officially Supported Export Credits – As of 31 January 2003", 10 February 2003, www.oecd.org/pdf/M00038000/M00038795.pdf. This survey is a working document and is continually being updated.
105. For an excellent and detailed analysis of the survey, *see* Drew, K., "Working Party on Export Credits and Credit Guarantees. Responses to the 2002 Survey on Measures Taken to Combat Bribery in Officially Supported Export Credits – As of 3rd October 2003", UNICORN, forthcoming (December 2003).
106. The full list is: Italy, Japan (JBIC), Japan (NEXI), Korea (KEIC), Poland, Slovak Republic, Switzerland, Turkey and the UK.
107. The full list is: Japan (JBIC), Korea (KEIC), Korea (Eximbank), Poland, Slovak Republic, Switzerland, Turkey, UK and the US.
108. Belgium, Czech Republic, Denmark, Finland, France, Italy, Japan (JBIC), Japan (NEXI), Korea (KEIC), Korea (Eximbank), Luxembourg, Mexico, New Zealand, Poland, Slovak Republic, Spain, Sweden, Switzerland, Turkey, the UK and the US.
109. Australia, Belgium, Canada, Czech Republic, France, Greece, Korea (KEIC), Korea (Eximbank), Luxembourg, Mexico, Poland, Slovak Republic, Spain, Switzerland, Turkey and UK.
110. Austria, Belgium, Canada, Finland, Germany, Korea (KEIC), Luxembourg, Poland, Slovak Republic, Sweden, Switzerland and Turkey.
111. Australia reported that it had sought clarification from exporters on more than one occasion when there were "inconsistencies between declarations and payments"; France withheld support for a specific transaction due to suspicion of bribery; Germany reported receiving a few allegations and investigating them but found insufficient evidence to take any further measures; the UK notified investigative authorities of one suspicion of bribery; and the US notified investigative authorities and sought recourse in one case of sufficient evidence of bribery.
112. High Level Panel of the Trans-Atlantic Environmental Dialogue, Brussels, May 2000, quoted in "Export Credit Agencies Explained", ECA-Watch, www.eca-watch.org. This view is clearly reflected in a statement by the Minister for Trade, Richard Caborn, to the UK Parliament during a November 2000 House of Commons debate: "I understand and share the concern of business that the ECGD's policy and process for handling sensitive cases should not get ahead of other ECAs" (*Hansard*, 2 November 2000, House of Commons Debate, Column 267WH, Export Credits Guarantee Department).
113. *The Guardian*, op. cit. 46.
114. "BAE accused of arms deal slush fund", *The Guardian*, 11 September 2003.
115. "*The Guardian*, op. cit. 46.
116. In 1998, the World Bank set up a sanctions committee to investigate cases of corruption by companies involved in bidding for or carrying out a World Bank-backed contract. The Sanctions Committee meets regularly to review investigations and to debar firms found guilty. It also publishes a comprehensive list of debarred firms, "The World Bank Listing of Ineligible Firms". In December 2002, there were 78 companies on this list, 36 of them British. *See* http://www.worldbank/org/html/opr/procure/debarr.html.
117. The OECD Guidelines for Multinational Enterprises are recommendations from governments to multinational enterprises operating in or from OECD member countries, plus Argentina, Brazil and Chile. They provide voluntary principles and standards for responsible business conduct in a variety of areas including employment and industrial relations, human rights, environment, information disclosure, competition, taxation, and science and technology. *See* http://www.oecd.org/document/58/0,2340,en_2649_34889_2349370_1_1_1_1,00.html
118. Canada, Germany, Hungary (MEHIB), Hungary (Eximbank), Italy, Japan (NEXI), Korea (KEIC), Korea (Eximbank), Mexico, Poland and Sweden.
119. The six that do apply ceilings are: Canada (10 per cent), Italy (5 per cent) New Zealand (decided case by case), Slovak Republic (judged according to standard practice in particular markets), Spain (5 per cent) and the US (determined according to whether they represent regular fees for services provided).
120. *See* Note from NGOs to the Working Party on Export Credits and Credit Guarantees on "Best Practices to Deter and Combat Bribery in Officially Supported Export Credits," 30 October 2003; and Wiehen, M., "Implementation of the ECG's Action Statement of December 2000 on Export Credit Support: Comments on Best Practices Proposals", presentation by Transparency International to the ECG, 4 November 2003.
121. *See* Transparent Agents and Contracting Entities (TRACE), *The TRACE Standard: Doing Business with Intermediaries Internationally*, 2002, pp.14-15; International Chamber of Commerce, *Fighting Bribery: A Corporate Practices Manual*, Chapter Four: "The role of agents and sales representatives", undated.
122. Drew, K., op. cit. 105, p.18.
123. Austria, Czech Republic, Finland, Germany, Italy, Netherlands, Slovak Republic, Spain and the UK.
124. Canada, France, Japan (JBIC), Japan (NEXI), Korea (KEIC), Korea (Eximbank), Mexico, Norway, Sweden, Switzerland, Turkey and the US. The US response to the survey is curious given that, under its new mandate of June 2002, Ex-Im, is required to hold a list of and debar for three years all companies that have violated the 1977 Foreign Corrupt Practices Act or other named legislation.
125. Australia, Belgium, Czech Republic, France, Germany, Greece, Hungary (MEHIB), Hungary (Eximbank), Italy, Japan (JBIC), Luxembourg, Netherlands, Poland, Slovak Republic, Spain, Sweden, and the UK.
126. Canada, France, Japan (NEXI), Korea (KEIC), Korea (Eximbank), Mexico, Norway, Switzerland, Turkey and the US.
127. OECD, "Convention on Combating Bribery of Foreign Public Officials in International Business Transactions", Commentaries on Article 3, para 24.
128. Revised Recommendation of the Council on Combating Bribery in International Business Transactions, Adopted by the Council on 23 May 1997, article IV, ii.
129. Commission of the European Communities, "Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee on a Comprehensive EU Policy Against Corruption", Brussels, 28 May 2003, p.17.
130. Wiehen, M., op. cit. 120.
131. In December 2003, the latest such commitment, the UN Convention Against Corruption, will be signed, coming into effect once it has been ratified by 30 countries.

This briefing was written by Dr Susan Hawley, a research consultant who has been working on issues of corruption for several years with The Corner House. It is an edited extract of her report, *Turning a Blind Eye: Corruption and the UK Export Credits Guarantee Department*, published in June 2003 by The Corner House, www.thecornerhouse.org.uk/www.thecornerhouse.org.uk/document/correcgd.html and .pdf. Printed paper copies also available. Dr. Hawley is the author of *Exporting Corruption: Privatisation, Multinationals and Bribery*, Corner House Briefing 19, June 2000, www.thecornerhouse.org.uk/briefing/19bribe.html and .pdf.

NEW book

The vast majority of refugees today flee conflict, or social or economic oppression. In many cases, British companies, taxpayers and the government directly and indirectly support the human rights abuses that accompany British investment and policies abroad. Many of these abuses ultimately force people to flee their homes and then their countries.

This publication includes stories, poems and drawings from refugees and asylum seekers, including Kurds, Colombians, Afghans, Nigerians, Burmese and Somalis, about why they have been forced to flee their countries. The book highlights broader links between enforced migration and global economic processes, poses key questions about trade and development policies and corporate accountability, and addresses the effects of the current "war on terrorism" on different communities.

Co-published by the Ilisu Dam Campaign Refugee Project, The Corner House and Peace in Kurdistan.
132 pages, A5, price £5/15 euros/US$15.
Cheques payable to 'Corner House Research'.
Please send orders to:
The Corner House, Station Road, Sturminster Newton, Dorset DT10 1YJ.
Tel: +44 (0)1258 473795. Email: cornerhouse@gn.apc.org.
Website: www.thecornerhouse.org.uk/document/refinves.html and .pdf

This briefing is printed by RAP Spiderweb, Clock Street, Hollinwood, Oldham, Lancashire OL9 7LY, UK.