

HUMAN RIGHTS AND LABOUR STANDARDS: THE DUTY OF EXPORT CREDIT AGENCIES



John Evans

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John Evans is General Secretary of the Trade Union Advisory Committee (TUAC), which is the official voice of the labour movement at the OECD. TUAC has played an important role in OECD work for more than 40 years, bringing the voice of more than 60 million workers in 31 countries to the international policy debate. TUAC was founded in 1948 as a trade union advisory committee for the Marshall Plan. When the OECD was created in 1961 TUAC continued its work in the new organisation. As the OECD's role has changed to take in new members and become a leading forum for policy making to shape globalisation, TUAC has worked with the OECD to help ensure that global markets are balanced by an effective social dimension.

Just as export credit agencies (ECAs) played a vital role in keeping trade and investment flowing throughout the global financial crisis, so the crisis has changed the economic landscape for ECAs. Buoyed by the G20's injection of a massive USD 250 billion for trade finance, ECAs have stepped into the gap left by the retreat of private sector investors, launching new products and entering into new co-financing arrangements. In November 2010, the International Union of Credit and Investment Insurers (the Berne Union) reported that "... members are anticipating their support for global trade and investment to reach pre-crisis levels or beyond this year".¹ In short, the crisis appears to have given ECAs a new lease of life which promises to make them more relevant than before.

A stronger future, making it fairer

TUAC strongly welcomes the co-ordinated and innovative measures undertaken by ECAs to support the recovery in trade flows, thereby helping to build a recovery and maintain and create jobs. However, if indeed ECAs are poised to play a greater role in global trade and investment, then it is vital that they also exercise greater responsibility. As the economic and financial crisis continues to wreak havoc on the lives of citizens and workers, millions of whom have lost their livelihoods, jobs, incomes and rights in the face of companies closing or scaling back operations, there is a real danger that hard won gains in social standards will be lost.

Given their significant role in supporting international business, ECAs must show leadership in supporting responsible business conduct and building fairer global trade and investment. Meeting common responsibilities depends on adopting a collective approach that involves all ECAs. The pressure on public budgets and the need for accountability requires the same. TUAC considers that the OECD Working Party on Export Credits and Credit Guarantees (ECG) is ideally placed to carry this agenda forward.

Progress so far

Over the past decade, the ECG has made progress in moving forward the collective agenda of responsible business conduct and fairer trade and investment.

Engaging with civil society

The ECG has increased its engagement with non-governmental actors, not only TUAC and BIAC as institutional partners, but wider civil society and in particular anti-corruption and environmental non-governmental organisations (NGOs). This has traditionally taken the form of annual consultations, although since 2008 the ECG has sought to engage civil society more substantively in its assessment of the progress made by members in deterring international bribery and reviewing social and environmental impacts. This engagement represents an important step towards building transparency and the trust necessary for ECAs to succeed in delivering a fairer future.

Deterring international bribery

The ECG has also undertaken measures to co-ordinate approaches to tackle international bribery, reflecting the priority given by the OECD to the OECD Anti-bribery Convention. Efforts to date have culminated in the 2006 OECD Council Recommendation on Bribery and Officially Supported Export Credits which includes measures that require exporters to provide no-bribery guarantees, verify that they have not been debarred, charged, or convicted as a result of corruption offences and disclose agents and commission payments on demand. Importantly, given the growing concerns of business surrounding the “level playing field”, parties to the OECD Anti-bribery Convention that are not members of the ECG can also adhere to the Recommendation.

Preventing negative impacts

The ECG has also developed common procedures on social and environmental issues. Under the 2007 Revised Council Recommendation on Common Approaches on the Environment and Officially Supported Export Credits (Common Approaches) – which is currently under review – ECAs should screen projects for their potential social and environmental impacts and benchmark

them against international standards, including the ten World Bank Safeguard Policies and the eight International Finance Corporation (IFC) Performance Standards, which covers labour and working conditions.

Promoting the OECD MNE Guidelines

ECAs have also taken steps to support responsible business conduct in trade and investment by promoting the OECD Guidelines for Multinational Enterprises (Guidelines). Action includes: publishing the Guidelines on ECAs' websites (Australia, Finland, Japan and Korea); providing applicants/exporters with copies of the Guidelines (Portugal); translating the Guidelines into local languages (Slovenia); referencing the Guidelines in export credit and investment guarantees (Belgium); encouraging applicants/exporters to act in accordance with the Guidelines (Denmark); requiring applicants/exporters to sign a letter stating that they are aware of the Guidelines (France) and requiring applicants/exporters to state that they are aware of the Guidelines and that they will comply with them to the best of their ability (Austria and the Netherlands).

The Austrian ECA, Oesterreichische Kontrollbank (OeKB), provides a good practice example of promoting the Guidelines. Following a campaign by, *inter alia*, the Austrian Chamber of Labour, the OeKB requires applicants to declare in writing that they have taken note of the Guidelines and will do their best to comply with them in their international business activities. If the Austrian National Contact Point (NCP) determines that there has been a breach of the Guidelines, then this will be considered negatively by the Ministry of Finance and the OeKB in the context of any application for official export credits.

Existing gaps

Yet, despite progress, the procedures of the Common Approaches still lag behind other standards in key areas, including human rights and labour standards (*e.g.* development banks, the IFC and some of the individual ECA's policies and practices).

Protecting human rights

“... no one expects ECAs – or business, for that matter – to solve all the world's problems. But both are expected to not make them worse” (United Nations Special Representative for Business and Human Rights, Professor John Ruggie).

Professor Ruggie has singled out ECAs for their failure to address human rights, underlining their duty to ensure that public funds are not used to fund business activities that contribute to human rights abuses in other countries:

“ECAs may be State agencies or privatised, but all are mandated by the State and perform a public function” and “... relatively few ECAs explicitly consider human rights at any stage of their involvement or require their clients to undertake due diligence on their potential human rights impacts”.²

Professor Ruggie has called on the ECG to upgrade the Common Approaches by incorporating references to all internationally-recognised human rights, including the eight International Labour Organisation’s core labour Conventions and requiring ECAs and applicants/exporters to undertake human rights due diligence. Professor Ruggie has also called on ECAs to introduce consequences and withhold public advantage from companies that have “... engaged in egregious human rights abuses”.

Supporting labour standards

A debate in the United Kingdom on labour standards has also exposed weaknesses in the Common Approaches. The question of the observance of international labour standards in supply chains was first raised by NGOs following a change in the rules of ECAs on foreign content. As the Common Approaches only impose discretionary and partial obligations on ECAs in relation to reviewing the social and environmental impacts of projects, the NGOs were concerned that – in the absence of comprehensive screening – the increase in sourcing overseas would increase the risk of negative environmental and social impacts.

Next steps

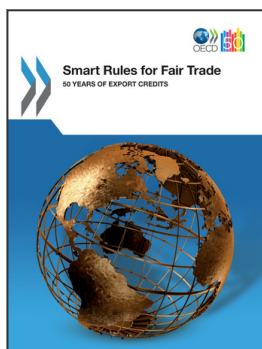
The ECG has already taken steps to meet some of these challenges in the context of its ongoing review of the Common Approaches: it has created an informal group on human rights to take forward the recommendations of Professor Ruggie. In addition, the UK Government has taken up the call for consequences, proposing that the revised Common Approaches require ECAs to take account of any negative final statement of a NCP under the Guidelines.

TUAC considers that the ECG must go much further; it must show leadership and ambition in the review of the Common Approaches and upgrade its procedures on labour standards in line with best practice. The ECG should also improve its anti-bribery measures and introduce peer review across all its agreements, which goes beyond the current system of self-assessment and uses tried and tested methods practiced successfully by the OECD in other policy areas.

Finally, TUAC recommends that the revised Common Approaches be re-named Recommendation on Common Approaches on Human Rights, Labour Standards and the Environment in order to reflect better its full scope.

Notes

1. www.berneunion.org.uk/pdf/Press%20Release%20November%202010.pdf.
2. *Protect, Respect and Remedy: a Framework for Business and Human Rights*, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Professor John Ruggie, 7 April 2008.



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