



# BRITISH EXPORTERS ASSOCIATION

2<sup>nd</sup> May 2019

## UK EXPORT FINANCE (UKEF) CONSULTATION ON FOREIGN CONTENT POLICY

<https://www.gov.uk/government/consultations/public-consultation-on-foreign-content-policy>

### Overview of BExA

The British Exporters Association (BExA) is an independent national trade association representing the interests of the UK's exporters. Our membership is drawn from across the exporting community, including capital goods manufacturers and international traders (large corporates, MSBs, SMEs and Micro exporters), and their bank, credit insurance and other service providers. BExA seeks to promote the interests of its members and all UK exporters, with a particular focus on trade finance and export credit insurance.

## **BEXA'S POSITION**

BExA supports the UK Government's Export Strategy and the UK Government's objective:

*"... to unlock the great potential of UK business, and [realise] the prosperity, stability and security benefits of trade. ..."*

(Foreword, "Export Strategy: supporting and connecting businesses to grow on the world stage" Theresa May, HM Prime Minister).

BExA supports the UK Government's "... *new national ambition to transform [the UK's] export performance, raising exports as a proportion of GDP from 30% to 35% ... [and its] ... desire for the UK to be at the forefront of global trade. ...*" (Foreword, "Export Strategy: supporting and connecting businesses to grow on the world stage" Theresa May, HM Prime Minister).

BExA welcomes UKEF's Public Consultation on Foreign Content Policy.

BExA agrees that UKEF's "... *Foreign Content policy needs to evolve to cater for scenarios that do not directly relate to a specific export contract, but which would be conducive to supporting UK exports more broadly ...*" (paragraph 5.1).

BExA notes that "... *the current 80:20 rule ...*", the so-called "Principle One", is outside the scope of UKEF's current consultation (paragraph 5.3).

BExA welcomes the proposed Principles Two and Three and proposes a Fourth Principle.

BExA believes that the "Secretary of State's Discretion"<sup>1</sup> should form a separate, stand alone, Principle.

BExA believes that there should be no discrimination between UK applicants and overseas applicants. As currently drafted, BExA believes that the definitions used by UKEF<sup>2</sup> run the risk of excluding some UK exporters and put "UK applicants" at a potential disadvantage to "overseas applicants".

BExA believes that to ensure that the three Principles are effective and relevant UKEF needs to update the definitions that it uses to underpin the Principles. These definitions need to be updated to better reflect the breadth, diversity and ambition of UK exporters. To this end, BExA has proposed revised definitions.

BExA believes that UKEF should seek to maximize flexibility and should expressly consider "UK economic interest". Making explicit what is implicit in its three Principles.

BExA believes that consideration of "UK economic interest" should be expressly set out in its guidance notes in much the same way as other ECAs do. Furthermore, consideration of "UK economic interest" should be expressly set out in each Principle. When applied, each Principle would specifically take into account "UK economic interest". BExA believes that this would be consistent with the powers granted to the Secretary of State by Parliament

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<sup>1</sup> See paragraph 5.12 "... where appropriate, UKEF may, with the consent of the Treasury, depart from the outlined Principles if it is concluded that it is rational and within its statutory powers to do so. ...".

<sup>2</sup> Annex B of UKEF's Public Consultation on Foreign Content Policy.

under the amended Export and Investment Guarantees Act 1991<sup>3</sup>. Moreover BExA believes that this is consistent with the UK Government's Export Strategy.

BExA welcomes UKEF's acknowledgement that it "... expects the Foreign Content policy to evolve in the future to ensure the Department is best placed to utilise its support flexibly, and to accomplish its mission to ensure that no viable UK export fails for lack of finance or insurance. ..." (paragraph 6.1 Future changes). BExA would encourage regular engagement by UKEF on this with interested industry groups such as BExA on a regular basis.

BExA welcomes UKEF's acknowledgement that it should be able to "...depart from the ... Principles if it is concluded that it is rational and within its statutory powers to do so ..." (paragraph 5.12). BExA believes that the "Secretary of State's Discretion" should form a separate, stand alone, Principle.

BExA notes that the UK Government's Export Strategy highlights the important roles that UKEF, the DIT, the FCO, BEIS, and DFID have to play in supporting UK exporters. In addition, BExA wishes to underline the import role that HM Treasury has in ensuring the effectiveness of UK Government support for UK exporters and that ensuring its active support is critical for the success of these initiatives.

## **THE PROPOSED SCENARIOS TWO AND THREE**

As to whether support can be provided under a given scenario, BExA would recommend that the examples given be expressed in a way that does not give the impression that the size of an applicant should be a determining factor.

In the examples given in support of Principle Three (Examples C and D) reference is made to "large international companies".

As a matter of policy, size should not be the determinant of support and BExA would recommend the deletion of the reference to "... large ..." in its examples.

Further, rather than use terms such as "... non-UK domiciled ..." <sup>4</sup> to avoid confusion and uncertainty UKEF should use terms consistent with (and interpreted in accordance with) the underlying legislation. So, for example, reference should be made to "... persons carrying on business ..." (whether in the UK or outside the UK) rather than domicile <sup>5</sup>.

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<sup>3</sup> Section 1 (1) of the Export and Investment Guarantees Act 1991 (Arrangements for the support and development of supplies, etc).

<sup>4</sup> Example

<sup>5</sup> Likewise with regard to the use of the term "... persons ordinarily resident outside of the UK ..." in its definitions (Annex B).

## **PRINCIPLE FOUR – THE ABILITY TO PROVIDE COVER FOR GOODS MANUFACTURED OUTSIDE THE UK BY SUBSIDIARIES OF A UK REGISTERED APPLICANT**

Not only are supply chains “globalized” so are companies’ research and development “chains”.

This is partially acknowledged in Principle Three which refers to “... [a] large international company operating in multiple sectors, has a significant UK supply chain, with research facilities, manufacturing facilities and employees based in the UK ...”.

Many UK companies have research facilities in the UK and manufacturing facilities globally. This is something which is both recognized and encouraged in the UK Government’s Export Strategy.

“... We also want to support UK businesses to undertake Overseas Direct Investment (ODI) to set up a presence overseas and expand into new markets. ...”<sup>6</sup>.

“... DIT, the FCO, BEIS, and DFID will work to ensure UK businesses are aware of and ready to compete for the opportunities created by the £1.2bn Prosperity Fund, international research funds, and wider Official Development Assistance (ODA) spend and we are combining efforts in-country, including through the use of these funds, **to maximise outward trade and investment, build markets and deliver mutual prosperity.** ...”<sup>7</sup> (BExA’s highlighting).

BExA notes “...UKEF’s commitment in the Government’s Export Strategy to review its products and policies to ensure they reflect the full breadth of its capabilities and the needs of business. ...” (paragraph 2.1.1).

BExA believes that UK businesses who have undertaken ODI should not then be penalised by UKEF by its exclusion from “UK Content” “... on goods manufactured in foreign countries by subsidiaries of a UK registered applicant ...” (paragraph 3.2.3 page 15 UKEF Public Consultation on Foreign Content Policy<sup>8</sup>).

Such blanket exclusion risks disregarding the importance of UK research and development input and puts UK research and development at a competitive disadvantage when compared to the support provided by other ECAs.

BExA is of the view that “... goods manufactured in foreign countries by subsidiaries of a UK registered applicant ...” should not be excluded when determining UK content.

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<sup>6</sup> Page 49 “Export Strategy: supporting and connecting businesses to grow on the world stage”.

<sup>7</sup> Page 64 “Export Strategy: supporting and connecting businesses to grow on the world stage”.

<sup>8</sup> “...The Government’s decision, and policy since the 2007 Response to the Consultation, was to remove the distinction between credit contracts above or below £10m and bring credit contracts in line with the policy for cash contracts. This policy can be expressed as:

3.1. “in all credit contracts, the maximum level of support for all Foreign Content will be 80% of the contract value where ECGD risk capacity is available, thus requiring a minimum 20% UK content”.

3.2. In addition:

... **3.2.3. UK Content status would not be conferred on goods manufactured in foreign countries by subsidiaries of a UK registered applicant; ...**”

UKEF's current policy is at odds with other ECA<sup>9</sup>s and should be revised to reflect international business practice and to ensure that UKEF is as competitive as other ECAs.

## **NO DISCRIMINATION BETWEEN UK APPLICANTS AND OVERSEAS APPLICANTS**

As drafted, BExA believes that the current definitions (Annex B) run the risk of excluding some UK exporters<sup>10</sup> and that they put "UK applicants" at a potential disadvantage to "overseas applicants".

BExA believes that UKEF's definitions should not discriminate between "UK applicants" and "overseas applicants". A "UK applicant" should not be at a disadvantage to an "overseas applicant". BExA is concerned that such an approach might mean that a "UK applicant" could lose out to an "overseas applicant". This is not an acceptable approach.

## **THE NEED TO UPDATE THE DEFINITIONS**

The powers granted to the Secretary of State under the amended Export and Investment Guarantees Act 1991<sup>11</sup> are broad and, as UKEF notes allows the Secretary of State to:

*"... make arrangements ... which the Secretary of State considers are conducive to supporting or developing (whether directly or indirectly) supplies or potential supplies by persons carrying on business in the United Kingdom of goods, services or intangible assets (including intellectual property) to persons carrying on business outside the United Kingdom. ..."* (paragraph 4.1).

As the UK Government's Export Strategy recognizes UK exporters are diverse and as a country:

*"... the UK has a significant number of large, internationally competitive sectors. We are relatively specialised in areas as diverse as financial services, insurance and pensions services, cultural and recreational services, chemicals (including pharmaceutical products), other business services (which includes R&D, consultancy and trade-related services), transportation (including vehicles, aircraft and spacecraft), food products and defence equipment. ..."*<sup>12</sup>

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<sup>9</sup> See for example, EKF (<https://www.ekf.dk/en/Pages/default.aspx>). The following list contains the elements which form part of the evaluation of Danish economic interest.

The list is not exhaustive:

- > Goods and equipment produced in Denmark
- > Dividends, interests, licenses and royalties from the transaction
- > Reduced costs
- > Good and equipment produced by Danish owned associated companies in third countries

<sup>10</sup> See "The need to update the Definitions" below.

<sup>11</sup> Section 1 (1) of the Export and Investment Guarantees Act 1991 (Arrangements for the support and development of supplies, etc).

<sup>12</sup> See page 24 "World-class sectors" UK Export Strategy.

BExA believes that UKEF's current definitions<sup>13</sup> used to determine what constitutes UK content miss what many UK exporters actually "do". This is particularly so across sectors such as life sciences, the "creative sector", AI, procurement, e-commerce, data technology and R&D. Traditional concepts of "goods" and "services" may no longer be accurate descriptions of what these companies "produce" or "do".

This is something that the amended Export and Investment Guarantees Act 1991 has sought to address but which, in the view of BExA, has not been followed through in the definitions used by UKEF.

BExA members (across sectors) regard the current definitions as being confusing and outdated<sup>14</sup>.

An exporter may "carry on business in the UK" putting its balance sheet at risk with a view to making a profit and carrying out taxable activities<sup>15</sup> but may find it difficult to fit within any of the categories as currently defined.

As noted above, BExA welcomes UKEF's proposed "Principle" based approach to the provision of support for UK exporters.

In parallel with UKEF's proposed "Principle" based approach, BExA believes that not only does UKEF's Foreign Content policy need "... *to evolve to cater for scenarios that do not directly relate to a specific export contract, but which would be conducive to supporting UK exports more broadly ...*" but, in addition, so do the definitions used by UKEF to determine whether support should be provided.

BExA believes that definitions need to be updated to properly reflect UKEF's statutory powers and the nature and diversity of UK exporters.

In particular, reference should be made to "... *goods, services [and] intangible assets (including intellectual property) ...*".

For many sectors the concepts of "production", "industrial processing" or "performance" is outdated or simply not relevant.

UK exporters cover a range of sectors and industries which do not necessarily fit into the category of "goods" and "services".

BExA believes that UKEF's definitions should be updated to better reflect the powers granted by Parliament to the Secretary of State and to better enable UKEF address the changes in global trade and the composition of UK exporters.

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<sup>13</sup> See Annex B: Definitions.

<sup>14</sup> A number of definitions are circular. Others have not been updated to reflect the amended Section 1 (1) of the Export and Investment Guarantees Act 1991 (Arrangements for the support and development of supplies, etc). Others are unclear, whilst the definition of Non-UK Services refers to "... *intellectual property originating in the UK and exported electronically ...*" it is unclear what this means in practice.

<sup>15</sup> Thereby falling within the powers granted to the Secretary of State by Parliament under the amended Section 1 (1) of the Export and Investment Guarantees Act 1991.

BExA believes that definitions used unnecessarily restrict the Secretary of State. To this end, BExA believes that the definitions should be updated as follows:

**Foreign Content**

*The cost to the applicant of goods, services or intangible assets (including intellectual property) supplied by persons carrying on business outside the United Kingdom (inclusive of Local Content).*

**UK Content**

*The cost to the applicant of goods, services or intangible assets (including intellectual property) supplied (whether directly or indirectly through third parties) by persons carrying on business in the United Kingdom.*

**Local Content**

*The cost to the applicant of goods, services or intangible assets (including intellectual property) supplied by persons carrying on business in the buyer's country.*

**[Export/Total] Contract Value**

*The total amount to be paid by or on behalf of the buyer or applicant under the underlying export contract..*

These proposed changes address the uncertainty in the current definitions and would give UKEF more flexibility. This would clearly be “... conducive to supporting or developing (whether directly or indirectly) supplies or potential supplies by persons carrying on business in the United Kingdom of goods, services or intangible assets (including intellectual property) to persons carrying on business outside the United Kingdom ...”.

These proposed changes are consistent with the UK Government’s Export Strategy, the powers granted to the Secretary of State by Parliament under the Export and Investment Guarantees Act 1991 and the definitions used in the OECD Agreement on Officially Supported Export Credits