



UK Export
Finance

Government response to consultation on UK Export Finance's Foreign Content policy

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Introduction

1. UK Export Finance (UKEF) in the Government's Export Strategy committed to both *"analyse the full range of UKEF's statutory powers to identify where we can consider creating new products and enhancing existing ones"* and *"review its products to ensure they reflect the full breadth of its capability and the needs of business"*.
2. Taking into account these commitments, the Chancellor in Spring Statement 2019 announced a consultation on the rules prescribing the amount of UK and non-UK goods, services and intangible assets contained within contracts supported by UKEF (Foreign Content policy).
3. UKEF's proposals, as set out in the consultation, considered the emergence of increasingly globalised supply chains and 2015 amendments to the Export and Investment Guarantees Act (EIGA) that widened the ability of UKEF to support the exporting activities of firms carrying on business in the UK, those in exporting supply-chains or aspiring exporters.
4. The consultation sought comments and feedback to a series of proposals on Foreign Content policy with one additional open question to allow respondents the opportunity to respond as fully as possible. As a result, the Government is not able to provide a simple summation of those 'in favour' or 'opposed' to the proposals in a binary way. However, a sense of responses overall has been given through a selection of typical responses.
5. The specific comments and responses have been grouped according to themes relating to the different aspects of the proposals outlined in the consultation paper.
6. Two respondents requested for their response to remain anonymous.
7. The consultation paper elicited a range of feedback from different perspectives and expertise, which has provided a useful insight into the various elements of the proposals. The responses have been analysed and they have helped UKEF review the proposed Foreign Content Principles set out in the consultation paper. A list of respondents is provided in Annex A.
8. Nine respondents responded late to the consultation. These were received either after 11:30 am on the Friday of the deadline or on the Tuesday following the Early May Bank Holiday. It was decided to accept these responses on the basis that the consultation ran over both Easter and the Bank Holiday, which may have delayed those attempting to respond within the deadline.
9. The Government's post consultation response sets out a summary of the feedback received, the Government's response to points raised and the Government's intentions going forward with regard to its Foreign Content policy.

Background

10. The 2007 Government consultation response determined the previous Foreign Content policy by setting limits on the amount of non-UK goods and services in export contracts supported by UKEF.

11. The proposed policy set out in the consultation paper published on the 3rd April 2019 sought to address scenarios that did not directly relate to a specific export contract, but nevertheless would be conducive to supporting UK exports more broadly.
12. The Government proposed supplementing existing Foreign Content policy, 'Principle One', with 'Principles Two' and 'Three' to enable the consideration of the context around the business UKEF is being asked to support. The proposed approach set out in the consultation paper is described in Annex B.

Executive Summary

13. The consultation received 28 responses, including from twelve businesses, seven business representative organisations, two consultancies, three banks, two members of the public and two responses that have not been categorised in order to maintain their anonymity. The Government welcomes the range of responses to the consultation and is grateful to all those that took the time to respond.
14. In addition to the views and comments on the proposals, the Government also received a substantial amount feedback on issues out of scope of the consultation. These were also useful to generate a greater understanding on points of interest and concern from the general public.
15. This included comments on UKEF's Direct Lending Facility, Country Limits, Local Content, collaboration between UKEF and the Department for International Development, products and processes for support below Tier One suppliers, awareness of UKEF's products and services amongst businesses, UKEF's approach to fossil fuel projects and UKEF's prospective General Export Facility to which concepts of Foreign Content do not apply in the same way as it involves non-contract specific support.
16. This response affirms the Government's commitment in the Export Strategy to supporting and developing the manufacture of goods, rendering of services and trading of intangible assets in the UK for export whilst supporting and developing the involvement of UK suppliers within global supply chains.
17. **As part of this commitment the Government can confirm that UKEF will implement a 'Principles' approach to Foreign Content policy.**
18. These are summarised as follows:
 - 18.1. Principle One: the maximum level of support for all Foreign Content is 80% of the contract value, thus requiring a minimum 20% UK Content.
 - 18.2. Principle Two: The proportions of Foreign Content to UK Content set out in Principle One (the current 80:20 rule) will apply to the value of UKEF's support of a contract or a project, which may consist of multiple contracts.
 - 18.3. Principle Three: UKEF may also provide support if it can be demonstrated that the proposal is conducive to supporting or developing UK exports.
19. The Government has also listened to the views submitted on UKEF's application of Foreign Content policy. Therefore, **UKEF will update the definitions in line with changes to the Export and Investment Guarantees Act to make the availability of**

support for intangible assets including intellectual property clearer in future publications setting out UKEF's Foreign Content definitions.

20. Given the rapidly changing nature of the global economy and global supply chains, UKEF will, as part of the regular course of its engagement with businesses and industry, collaborate with relevant stakeholders on the implementation of its Foreign Content policy. In doing so, UKEF will adhere to the Cabinet Consultation Principles in deciding when and if it is appropriate to consult further on changes to UKEF's Foreign Content policy approach.

Analysis of Responses and Government Response

1. Government's proposed approach to supplement Principle One with Principles Two and Three

- 1.1. Most respondents were explicitly positive about supplementing Principle One with Principles Two and Three with 19 respondents providing positive comments in their response. No alternative approaches to the Principles were suggested and there were no explicitly negative comments on UKEF's proposed approach. The Federation of Small Business (FSB), for example, stated that:

"We support UKEF's current proposal to supplement existing Foreign Content policy, i.e. Principle One, with adding Principle Two and Three to expand their support potential."

- 1.2. Among those supporting the approach the Government had proposed, some highlighted the benefits of the flexibility the Principles would give UKEF. For example, Commerzbank commented as follows:

"Certainly, I would welcome UKEF's proposals to take a more flexible approach in certain circumstances whilst retaining the principle of supporting contracts with at least 20% UK content"

- 1.3. Other supportive respondents highlighted the potential benefits for UK supply chains of the approach proposed. For instance, UK Finance commented as follows:

"We anticipate this increased flexibility will encourage banks to further explore UK supply chain opportunities with their customers (UK suppliers and overseas buyers), potentially opening avenues of UKEF support that would not be apparent under a narrower FCP [Foreign Content Policy] approach."

- 1.4. Some respondents suggested certain changes or sought clarifications on the Government's proposed approach.

- 1.5. Two respondents questioned whether the decision to apply each Principle in turn and individually was applicable to certain scenarios. For instance, UK Finance proposed a scenario which in its determination could be eligible for support on the basis of Principles Two and Three:

"In this regard, there are scenarios where the interpretation of FCP [Foreign Content Policy] can potentially bridge both Principles Two and Three as noted below.

- *Contract 1:*
 - *Overseas subsidiary of a "Blue Chip" multinational company enters into a contract in a developed low risk market. The contract has a high level of UK Content (60%).*
 - *ECA support is not required as there is sufficient commercial funding available.*

- *Contract 2:*
 - *UK subsidiary of the same “Blue Chip” multinational company enters into a contract in a high-risk developing market with a government buyer / borrower. The contract has a low level of UK Content (10%).*
 - *ECA support is required due to insufficient commercial debt appetite.*
 - *The supply matrix is diverse across multiple countries, pointing to no one specific ECA.*
- *In this scenario, all other things being equal, we would envisage that UKEF, through its application of Principles Two & Three, could potentially consider support for the second contract based on:*
 - *The aggregated UK content across the two contracts.*
 - *Sustaining the multinational company’s UK operations.”*

1.6. Another respondent asked “Can you please clarify the following: Section 5.3 implies that UKEF’s ability to support possible opportunities will be evaluated serially.... Yet under Principle Three Example C may provide UKEF latitude to recognise the full extent of the UK value added”.

1.7. The description of the Secretary of State’s discretion was another area that respondents commented upon. The British Exporters Association (BExA) suggested that the section entitled “the ‘Secretary of State’s Discretion’ should form a separate, standalone Principle”. While another respondent asked, “Section 5.12 allows for departures from the outline Principles. Can you provide examples of situations where such a departure would be warranted?”

1.8. Two respondents queried potential restrictions on the Principles approach. UK Finance sought a clarification that the examples do not set defined limits for how the Principles can be applied. Stating; “Whilst the examples provided in the consultation are appropriate, noting 5.9 we assume that they do not necessarily set parameters for how principles can be applied?”. Whilst Siemens stated that:

“We have seen examples with other ECAs in theory broadening their foreign content guidelines only to impose other restrictions on these deals. We hope this will not be the case with UKEF as consistency is key for us in planning long term projects”.

1.9. BExA suggested that UKEF should emphasise any consideration of UK economic interest. It stated that:

“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.”

1.10. One respondent sought to address what it perceived were the targets of the approach the Government had proposed.

“We encourage UKEF to ensure that its Principles also enable it to have greater impact in other high value sectors and are not just a response to changes in its core sectors”.

Government response

- 1.11. **The Government maintains that each Principle will be considered individually and in turn**, beginning with the first Principle which remains the foundation of Foreign Content policy. Where UKEF can support the whole contract if there is a minimum of 20% UK Content. This is to clearly delineate between the processes required for each application under each Principle. In the specific scenario outlined by UK Finance above, support may be provided on the basis of Principle Three given the request in the scenario to consider the company's UK presence and the apparent independence of the two contracts from one another.
- 1.12. The Government wishes to clarify its intention in response to the respondent's question about Principle Three considering the full extent of the 'UK value add' and therefore considering aspects of Principle One or Two. It is the processes outlined in the Principles which are considered individually and in turn. This is opposed to elements of 'UK value add' which if considered as 'UK Content' in Principle One would still if necessary be eligible to be considered as part of the request for support under Principle Three.
- 1.13. In response to the suggestion that the Secretary of State's discretion should form its own stand-alone Principle, the Government believes that such an approach would be unnecessary as ultimately ministerial discretion is not fettered by the Foreign Content Policy. The original intention of the paragraph was to notify readers of the powers of the Secretary of State rather than to formally incorporate them in the Foreign Content approach.
- 1.14. In terms of providing examples of situations where such a departure would be warranted, the Government would not wish to presume where the Secretary of State might find it appropriate to depart from the outlined Principles.
- 1.15. In response to Siemens' concerns that Foreign Content policy will be broadened only for further restrictions to be placed on deals involving the revised Foreign Content policy the Government would state that amendments to the Export Investment Guarantees Act were intended to broaden UKEF's powers to support UK exports. The revised Foreign Content policy is designed to support that objective.
- 1.16. However, it should be noted that Foreign Content policy is not the only consideration UKEF takes into account when determining the provision of support for a specific deal and other factors including allocating UKEF's risk capacity may dictate certain requirements of an individual deal.
- 1.17. UK Finance is correct in its assumption that the examples provided in the consultation document were not intended to set the parameters for how the Principles will be applied and the examples were provided to engage readers with the potential real-world applications of the 'Principles'.
- 1.18. The Government considers that outlining considerations of 'UK economic interest' at each Principle would be an unnecessary and complex addition to each of the Principles and such an addition is unlikely to be able to capture all aspects of potential 'UK economic interest' in all transactions. Therefore, consideration of 'UK

economic interest' may occur on a case by case basis when utilising Principle Three.

- 1.19. The Government acknowledges BExA's comments on guidance and **UKEF will update its website, which will include information on Foreign Content policy.**
- 1.20. The Government accepts PwC's response that UKEF should ensure that the 'Principles' should enable it to have a greater impact in other high value sectors. **The Government has chosen to replace the word 'financing' in Principle Two with 'support of'.** This is to ensure that Principle Two is applicable to sectors where it may be more appropriate to provide other forms of support rather than UKEF's involvement in the financing of a contract.
- 1.21. The Government also considers that the revised Foreign Content policy will potentially broaden the provision of UKEF's support for sectors including those in which it has not traditionally provided substantial support.

2. Principle Two: The proportions of Foreign Content to UK Content set out in Principle One (the current 80:20 rule) will apply to the value of UKEF's support of a contract or a project, which may consist of multiple contracts.

- 2.1. In practice, when considering the amount of support that can be made available for a contract, UKEF can base the amount of support on the level of UK Content in that contract if it is under 20% or can take account of UK content contained in a related project or related current, past or prospective contracts.
- 2.2. In general, respondents were in favour of Principle Two with eight respondents stating that they supported the Principle and no respondents explicitly opposing the Principle. For example, General Electric (GE) commented:
"policies that allow UKEF to look to aggregate the level of UK content across a number of individual contracts within a given project and provide a wider level of support compared to the allowed support on an individual basis, should be embraced".
- 2.3. Most respondents, when expressing their support for Principle Two, focused upon the benefits of taking a project-based approach often referencing maintenance contracts, the UK's technical expertise or trends in the infrastructure sector. For example, Commerzbank stated:
"Principle Two will give the UKEF underwriters more opportunity to take into account the wider picture of UK involvement and be responsive. One of UK's strengths is a deep pool of technical consultants from various disciplines who can be involved up front. If their involvement can be used to encourage sponsors to think harder about sourcing from the UK for the more costly development stages then UKEF financing can bring real value added to the UK economy".

- 2.4. Two respondents supportive of Principle Two referenced the benefits of providing support that was proportionate to the amount of UK Content within a contract or project. Lloyds Banking Group, for instance, commented:

“Example A we welcome the proportionate approach that UKEF outline in the example - scaling support up or down in line with the quantum of UK Content within a given project”.

- 2.5. Additionally, two respondents, while not explicitly stating their support for Principle Two, both described and supported scenarios where UKEF currently envisages that Principle Two would be applicable. PwC stated:

“It is therefore in our [the UK's] interest that overseas customers unbundle major contracts into a series of smaller contracts for different parts of the supply chain, rather than go for a 'one stop shop' approach which invariably favours countries which have major contractors”.

Colas suggested:

“A separate and perhaps optional approach could be to consider the total value of similar projects awarded in stages, such that for example Phase One for £50m with UK Content £15m and Phase Two for £50m with UK Content £5m might qualify for a Direct Lending Facility, although they may be awarded separately and sequentially.”

- 2.6. Some respondents expressed support for Principle Two, but in doing so sought clarification on the connection required between contracts to enable UK Content to be aggregated.
- 2.7. Two respondents queried whether UK Content in previously awarded contracts would be eligible to be aggregated into current contracts under consideration:

“As an example, we are currently positioning for a project in East Africa where there has been various scopes of work undertaken by multiple UK contractors and the customer is seeking UKEF support for the next phase. Our understanding is that under your proposed changes the customer would be able to group together these related but contractually unlinked work scopes, to help boost the level of UK Content and therefore financial support.”

- 2.8. Another respondent asked about the connection required between a current contract under consideration and a potential future contract in order to aggregate UK Content:

“Sections 5.6 and 5.7 address UK Content in related (but not directly financed or supported) contracts. To the extent related contracts are not executed simultaneously, can you provide insight into how a contractor can take credit for future related contracts containing significant UK Content and what is the window (i.e., what period of time could pass between contract execution) for determining contract interdependence?”

- 2.9. GE sought to query whether Principle Two could be used to support scenarios where contracts are unrelated and proposed a scenario where the percentage of UK Content could be averaged across multiple contracts with multiple buyers.

“Whilst we acknowledge the efforts of Principle Two to provide support for contracts that may not otherwise qualify, many companies will engage in contracts with

significantly different levels of UK Content depending upon the specific scope of supply. By way of an example a company can bid for two contracts with different scopes of supply Contract A with 75% UK Content, Contract B with 10% UK Content. We believe it is logical that UKEF provides support for Contract B as well as Contract A. Principle Two will provide the basis of support as long as the contracts are related to the same project. We would argue that this same principle should apply even if the contracts and buyers are un-related as long as 1) there remains an element of UK Content in Contract B and 2) the objective of a minimum of 20% UK contained is maintained across the portfolio of projects with that UK exporter”.

- 2.10. Mace Group sought to clarify whether an aggregation could inadvertently lead to a decrease in UKEF financing available:

“However, looking at example B, there is a reverse situation where the primary contract, which is related to a secondary contract, reduces the element of UK Content when aggregated. Typically, during early inception, costs and project preparation can be heavily focussed ‘on the ground’, outside of the UK. This can negatively impact on the ‘aggregate’ position and ability to apply for UKEF financing in phase 2.”

- 2.11. One respondent asked two questions which relate to the specific application of Principle Two:

“Section 5.7 addresses a multiple contract scenario where there may not be a single point of consolidation but a clear path to link the multiple contracts with a specific opportunity. How would this arrangement be presented in an application for support?”

“Under Example A, to the extent that UKEF can only support a portion of the required financing, can you confirm that lenders providing any uncovered commercial financing would receive equal (pari-passu) rights to all available security?”

Government response

- 2.12. Given that Colas and PwC responses reference scenarios that UKEF may consider eligible for Principle Two though not specifically referred to them as able to be supported under Principle Two. **The Government has taken the opportunity to clarify Principle Two. By making the following addition:**
- 2.13. **“In practice, when considering the amount of support that can be made available for a contract, UKEF can base the amount of support on the level of UK Content in that contract if it is under 20% or can take account of UK content contained in a related project or related current, past or prospective contracts.”**
- 2.14. In addressing the responses that queried the aggregation of UK Content contained in contracts already awarded, UKEF would, in the application of Principle Two, consider UK Content in contracts already awarded as eligible to be aggregated. This would follow considerations of the transaction that the support for a current contract would be in line with UKEF’s statutory powers outlined in the EIGA.

Namely arrangements that 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*”. **In addition, the contracts in question, in UKEF's determination, would have to be related to the same overall endeavour and have a certain degree of dependence for the UK Content to be eligible to be aggregated.**

- 2.15. **Where UKEF support is being provided on the basis of future contracts with UK Content and the applicant is wishing to aggregate that UK Content, such contracts will have to be, in UKEF's determination, related to the same overall endeavour and have a certain degree of dependence.** This may include an assessment of timescales for the execution of contracts. However, prior to the consideration of the transaction it would not be appropriate to define the amount of time that can pass between contracts to determine their eligibility to be aggregated. This is because such defined timescales could unintentionally preclude certain scenarios or contracts from being eligible to be aggregated and in doing so arbitrarily reduce the availability of support for UK exports.
- 2.16. In response to GE's suggestion that Principle Two should capture scenarios where UK Content is averaged across multiple unrelated contracts with multiple buyers. The Government intends for Principle Two to link the value of UK Content within a contract or related contracts/projects to the value of support available. The scenario described by GE does not align with this description as it suggests averaging the percentages of UK Content rather than aggregating the value of UK Content.
- 2.17. However, the Government acknowledges the validity of such a scenario which may be more appropriate for consideration under Principle Three following an assessment of the merits of the proposal by UKEF.
- 2.18. In response to Mace's query about the possibility of aggregation reducing the level of financing available, the Government would reiterate that it is the value of UK Content within a related contract that is aggregated rather than the value of the whole contract during considerations of the availability of support for a project. This is to ensure that UKEF is still able to provide proportionate support related to the value of UK Content within a project even if that project contains a series of large contracts with low UK Content.
- 2.19. In response to the questions asked on the specific application of Principle Two, raising points about how to display an aggregation of UK Content within multiple contracts in an application for support and whether uncovered commercial lenders would receive equal rights to all available security, UKEF will address technical application of the overarching Principles on a case-by-case basis in the light of the specific features of each transaction.

3. Principle Three: UKEF may provide support if it can be demonstrated that the proposal is conducive to supporting or developing UK exports.

3.1. When providing support under this Principle, in order to demonstrate such support or development, UKEF may impose additional measures, such as incentivisation mechanisms, whereby the level of support available from UKEF will be directly linked to current or future supply chain spend or commitments made by the applicant to increase the benefit to the UK and UK exports. Examples of this could include increasing future production in the UK, increasing the value or proportion of spend in the UK supply chain in the future, or increasing the number of jobs created in the UK in the future.

3.2. A decision under this principle will involve a statement by the applicant supporting the application of this Principle, which in UKEF's determination justifies UKEF's provision of support.

3.3. Eight respondents expressed their support Principle Three. No respondents rejected the Principle. For example, Premier Oil stated:

"Principle Three is broadly drafted to bring into consideration the wider benefits of a project. We believe that this is beneficial giving the increasingly complex nature of international investment projects, which frequently have multiple consequences for the UK."

3.4. Many respondents in expressing their support for Principle Three particularly referenced the benefits for UK supply chains. The Federation of Small Businesses, for example, commented:

"Principle Three would be beneficial for smaller businesses in global supply chains ... FSB's research Chain Reaction shows that those that supply at a global level are more likely to report improvements to reputation, credibility and profile (46%), increased market share (38%), and increased business resilience (23%), compared to the population averages (39%, 25% and 16% respectively)".

3.5. Wilben and Siemens acknowledged that UKEF would need to assess proposals on a case by case basis. As Siemens said:

"the benefits or use of these we expect can only be assessed when live projects are discussed".

3.6. PwC and GKB Ventures Ltd supported UKEF having such discretion in the application of Principle Three. For example, PwC commented:

"We think this is a good thing, and we would trust UKEF to make the right decisions as to whether a proposal would be 'conducive to supporting or developing UK exports'".

3.7. Many respondents also suggested specific factors that could be considered as part of UKEF's assessment of an application for support under Principle Three. For instance, Colas suggested:

“On such projects it might be more appropriate to consider alignment to other ECAs whereby a mix of parameters is considered such as

- *Wages paid (in UK)*
- *Research and Investment (in UK)*
- *Corporate tax paid (in UK)*
- *Value of goods and services sourced (in UK).*

le, rather than only considering the ratio of UK Content in relation to the project value, the monetary overall contribution to the UK economy is considered. This approach would perhaps align closer to your suggested Principle Three”.

- 3.8. PwC and Lloyds similarly highlighted the potential to link support to capital investment in the UK. In doing so referencing the possibility of supporting inward investment directly. For example, PwC stated:

“For example, does UKEF’s involvement have to be linked to specific export contracts or can it be linked to capital investments that will lead to greater exports in due course? I am unclear whether this is the purpose of Principle Three, but for the avoidance of doubt could there be an explicit set of products which helps UK based companies invest in export focused capabilities? This could cover the development of export focused IP in technology for example as well as more traditional production facilities. UKEF guarantees or other involvement could make a larger number of investments viable”.

“As a subset of the above is there room for an explicit link to inbound investment? Data from DIT shows that inbound investment helps drive productivity and exports...How explicit or proactive could UKEF be in providing support to foreign owned businesses looking to build export focused facilities or IP in the UK?”

- 3.9. While both BExA and GE mentioned the scope for recognising research and development contributions of companies:

“Not only are supply chains ‘globalised’ 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...’” - BExA

“Some of GE’s investments in the UK is in Research and Development arena, developing new products and establishing advanced research partnership. Whilst the ultimate manufacturing of these products may not be in the UK, we believe that UKEF should be able to recognise the role of R&D investment made and be able to provide support for the ultimate manufacturing of these products” - GE

- 3.10. Some respondents raised queries on how Principle Three would be implemented, in doing so suggesting a variety of areas for consideration.

- 3.11. UK Finance and Lloyds Banking Group raised concerns around the monitoring and process by which UKEF linked its support to prospective job or spending increases. For example, Lloyds Banking Group stated:

“However, our support for Principle three is subject to several caveats: further work is needed to understand how performance or compliance with the terms of the facility would be monitored. We would need to understand where the burden of proof would lie, and the expectations that UKEF would place on participating banks.”

“Once UKEF has satisfied itself that a borrower under the buyer or supplier credit facility (for example) meets the criteria it is essential that the banks providing these facilities are not exposed if the proposed support or development of UK exports does not materialise. The participating banks would need confidence that UKEF would maintain the guarantees provided”.

3.12. Whereas Colas stated: *“We strongly believe that Principle Three should maintain UKEF funding access limited to UK-based companies, in order to protect national priority and ensure transparent benefits to the UK economy. To remain faithful to its mission toward both UK businesses and taxpayers, it seems critical that UKEF continue helping UK exporters enhance their international direct influence.”*

3.13. One respondent requested that Principle three have mechanisms to reward those with already significant footprints in the UK, in doing so stating: *“We applaud the approach that Principle Three will have to reward those companies that wish to grow their supply chains in the UK. That said, we believe that this Principle Three should also reward those with existing footprints in the UK and already make a significant contribution to the UK economy. These companies are equally deserving of support even if they do all they can to maintain jobs and investment as part of their commitment not merely if they increase it.”*

3.14. Two respondents specifically questioned the suitability of the language of the examples provided in Principle Three. Mace’s response referenced Example C stating that the commitment to increase spend in the UK was ambiguous and unsuitable, in doing so stating:

“With regard to Principle Three, it is unclear as to the rationale behind the statement within example C, as to ‘the company is willing to increase the future level of spend within the UK supply chain...’. The initial premise is that the company is already a large international company in multiple sectors, has a significant supply chain and research facilities and employees in the UK. As such a UK parented company of an international group, in the construction sector, faced with the challenges of investment in R&D, embracing innovation and technology, skills/talent/labour resource, capability, and narrow margins, we frequently export services overseas. Indeed, we are currently present in 72 countries, with 6,000 employees, almost 2,000 of those being dispersed throughout our wider international offices. Given that our aspiration is to remain a market leader, to develop and embrace Modern Methods of Construction to align our commercial direction with the Governments Industrial Strategy 4.0, whilst leading and driving new practices throughout the UK supply chain, the requirement to ‘increase spending’ seems not only vague, but not an incentivisation that will lead to improved productivity and value added for the UK economy. The sentiment of the proposal is welcomed, but the potential qualification process needs clarification.”

3.15. Respondents also made comments on the terms ‘large’ and ‘non-UK domiciled’. For example, BExA stated that: *“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' 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."

Government response

- 3.16. Many respondents suggested factors that Principle Three should be assessed against, including: capital investment within the UK; research and development in the UK alongside wages; corporate tax paid and value of goods and services sourced. **The Government will apply Principle Three on a case by case basis for each proposal considering all relevant facts when determining the extent of support for a proposal including if appropriate those mentioned above.** This ensures that certain sectors or business sizes are not unfairly discriminated against by a determination of limited factors at the outset.
- 3.17. On the concerns raised by respondents around the monitoring of commitments made by an applicant under Principle Three. The Government intends to work closely with UK exporters, financial institutions and other interested parties to ensure such arrangements and issues are satisfactorily accounted for prior to the provision of support under Principle Three.
- 3.18. **The Government determines that Principle Three cannot apply only to UK companies as the Government considers that it is possible to provide assistance which is conducive to supporting or developing UK exports through support to an overseas company.** Precluding overseas applicants under Principle Three will therefore limit the potential albeit indirect support for UK exports.
- 3.19. **The Government accepts the determination of a respondent that suggests that mechanisms should be available to support those with existing footprints under Principle Three.** In doing so, the Government would reiterate that it is not the intention of Principle Three to preclude such groups and would cite the wording of the consultation paper which states "support will be directly linked to current or future supply chain spend".
- 3.20. The Government acknowledges the response that expressed concern over the wording "increase... spend in the UK" which was included as part of an example and not a prescription for the only mechanism by which Principle Three will determine the availability of support. The application of Principle Three will take into account the merits of each proposal individually.
- 3.21. **The Government accepts respondents' suggestions to not use the wording 'large' in future examples of Principle Three and to replace descriptions of non-UK domiciled with persons not carrying on business in the UK in future examples of Principle Three.**

4. Other responses

Shipping Industry

- 4.1. A number of other responses were received that were unrelated to the previous themes. Maritime London described a scenario for how services related to the shipping industry may be supported under either Principle Two or Principle Three:

“However, both ‘Principle 2 and ‘Principle 3’ have utility as they pertain to shipping, by viewing the export content as derivative of the original deal. This is due to the fact that the shipowner themselves through the operation of the ship in international waters, supporting the international trade in goods is a UK exporter. It is the contention of this paper that UKEF should consider the value derived from the employment of the ship as dependent on the original contract that facilitated the purchase of the ship. Depending on the nature of the charters upon which the ship is employed, there is scope to consider 100% of the ship’s employment as an export activity. This paper is not advocating for the applicability of UKEF products for vessels operating in UK coastal waters or inland waterways”.

Definitions

- 4.2. BExA stated that they considered that UKEF’s definitions had not been updated to reflect the amended Export and Investment Guarantees Act and therefore did not take into account exports beyond ‘goods’ or ‘services’:

“BExA believes that UKEF’s current definitions used to determine what constitutes UK Content miss what many UK exporters actually ‘do’. This is particularly 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... In particular reference should be made to ‘... goods, services and intangible assets (including intellectual property)”.

- 4.3. GKB Ventures Ltd also commented that UK Content should *“include Advisory Fees, Legal Fees, Bank Fees, Insurance Fees, and any other services by persons carrying on business in the UK...The ability for premium payable to UKEF to be deemed as UK content would also be helpful”.*

Consideration of UK and Overseas applicants

- 4.4. BExA also expressly referred to the differing definitions of UK applicants and overseas applicants for UK and Foreign Content and stated that UK applicants were disadvantaged by such definitions.

“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”.

- 4.5. In raising an issue with UKEF’s definitions BExA proposed the following alternatives:

“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 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.”

- 4.6. Another respondent queried “how will UKEF prioritize and determine whether to support a UK prime contractor over a non-UK contractor relying on significant UK content, particularly if said firms are bidding for the same contract?”

Government response

Support for the Shipping Industry

- 4.7. The Government acknowledges issues raised in the response from Maritime London and would consider such a scenario in the context of the revised Foreign Content policy, in, recognising that it may also be applicable to other sectors involving leasing or the export of financial or professional services.

Definitions

- 4.8. The types of export described by BExA would have previously been considered either ‘goods’ or ‘services’ by UKEF. However, **the Government will update the definitions in line with changes to the Export and Investment Guarantees Act to make the availability of support for intangible assets including intellectual property clearer in future publications setting out UKEF's Foreign Content definitions.**
- 4.9. In response to GKB Ventures Ltd's comments on services and UK content, the Government considers many of the services mentioned to be potentially eligible as UK Content following a determination that they meet our definitions and align with the ‘Principles’ approach.

Consideration of UK and Overseas applicants

- 4.10. In response to BExA's view that the definitions in Annex B outlined in the consultation paper put UK applicants at a potential disadvantage to Overseas applicants and as such UK applicants are treated unfairly, the Government would state that while there is some contrast in approach for UK and Overseas applicants, this is directly linked to differences in the process by which UK goods, services and intangible assets are likely to be supplied.
- 4.11. Overseas applicants derive their UK content from UK sub-contracts, whereas UK applicants can derive their UK content from UK sub-contractors and/or through

evidence of their own operations (i.e. manufacturing goods, rendering services, making material changes to overseas goods in the UK). Therefore, the treatment of UK and Overseas applicants at the same level of a supply chain, with similar subcontracting options, would result in broadly similar results with regard to the level of 'UK Content' derived from the subcontract.

- 4.12. It should also be noted, that in the exercise of this approach to UK and Overseas applicants, UKEF takes appropriate measures to ensure that such supply contracts are not simply mechanisms by which applicants can potentially increase the value of 'UK Content' without seeking to genuinely source goods, services and intangible assets from the UK.
- 4.13. Therefore, UKEF intends to remain vigilant to the highly unlikely circumstances where a potential UK applicant may be prejudiced, in an application for support, by the treatment of a potential competitor UK company in an overseas supply chain under UKEF's current approach. If UKEF were to become aware of such a scenario UKEF would undertake appropriate processes to ensure each application was considered on its merits taking into account, all relevant factors.
- 4.14. Where a UK and Overseas Applicant both requested support for the same contract. UKEF would undertake a proportionate and appropriate assessment of the merits of each application in order to determine the provision of support.

5. Delivery of Principles Two and Three

- 5.1. Two respondents had suggestions or queries about the delivery of Principles Two and Three. UK Finance stated that:

"These impacts [of the Principles] will be partially dependent upon UKEF's practical approach to and delivery of the new Principles."
- 5.2. Specifically, PwC suggested that UKEF should be "*considering any required changes in culture or process needed*". Whereas UK Finance identified that there was "*potential resourcing impacts for UKEF insofar as any more flexible approach as outlined in Principles Two & Three (particularly three), may require an additional discretionary lens than applies under the more traditional approach outlined in Principle One.*"
- 5.3. UK Finance also enquired about how the Principles would work with the delegation model introduced for the Export Working Capital Scheme and Bond Support Scheme, in doing so stating:

"In due course, it would need to be confirmed how a more flexible approach to FCP would be managed alongside the delegation model introduced for these guarantee programmes in Q4...However, Principle Three (and potentially Principle Two depending upon specific parameters confirmed) would presumably require UKEF review given the potential subjective element of the Principle i.e. any use outside of Principle One would be routed via Manual Inclusion Application for UKEF's consideration."

Government response

- 5.4. The Government accepts that potential impact of the Principles is likely to be dependent on the practical aspects of, and delivery of Principles Two and Three. The Government is also considering any required changes in culture, process and resource that implementation of the Principles may require.
- 5.5. **The Government accepts UK Finance's considerations of the delegation model and initially expects the delivery of both Principles Two and Three to be implemented through a Manual Inclusion Application, meaning that UKEF would review relevant transactions.**

6. Future consultation on Foreign Content policy

- 6.1. Two respondents mentioned the prospect of further engagement on future changes to Foreign Content policy. BExA stated:

"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".

- 6.2. Another respondent asked: *"Section 6.2 suggests that UKEF would continue to evolve its principles and policy to ensure UK industry remains competitive internationally. How do you envision communicating this ongoing evolution to those contractors best positioned to offer opportunities that benefit UK industry? Do you plan to engage on a regular basis with Industry to monitor evolving models and potential areas for increased support?"*

Government response

- 6.3. The Government values the input and support of industry, businesses and industry bodies in formulating UKEF policies. UKEF adheres to Government guidelines (including currently, and specifically, the Consultation Principles published by the Cabinet Office in 2018, a copy of which can be found [here](#)). Therefore, and irrespective of past practice, that is the basis on which UKEF intends to make consultation decisions going forward. There should be no expectation that UKEF will always consult on changes to Foreign Content policy; or indeed any other expectation beyond that UKEF will consider any such change on a case by case basis in line with then current guidelines.
- 6.4. UKEF regularly engages with industry, businesses and industry bodies through the regular course of its activities. Therefore, the Government expects opportunities for collaboration with external stakeholders to be available. UKEF will also endeavour to communicate and engage with stakeholders if it is deemed appropriate on relevant changes to Foreign Content policy.

7. The inclusion of a 'Principle Four'

- 7.1. Both UK Finance and BExA suggested the possibility that the Government could seek to supplement the Principles with a 'Principle 4'
- 7.2. BExA suggested *"PRINCIPLE FOUR – THE ABILITY TO PROVIDE COVER FOR GOODS MANUFACTURED OUTSIDE THE UK BY SUBSIDIARIES OF A UK REGISTERED APPLICANT."*
- 7.3. In doing so, it expressed the following rationale: *"BExA believes that UK businesses who have undertaken ODI should not be penalised by UKEF for its exclusion from 'UK Content'.... Many 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 to set up a presence overseas and expand into new markets'..... BExA believes that UK businesses who have undertaken ODI should not then be penalised by UKEF by its exclusion from 'UK Content' Such blanket exclusion risks disregarding the importance of UK research and development input."*
- 7.4. UK Finance instead focused on potential 'UK Economic Interest' as the basis for a Principle Four, stating: *"there may subsequently be merit in also considering a further Principle (Principle Four). Principle Four could overlay a UK economic interest lens to the min. UK Content requirement, helping to ensure UKEF's approach responds to the needs of UK plc and remains competitive globally vis-à-vis other leading ECAs."*

Government response

- 7.5. The Government addresses BExA's points raised on the scope for Foreign Content policy to take into account research and development spending in the UK, in the section grouping responses relevant to Principle Three.
- 7.6. In addition, the Government would reiterate that if the proposal satisfies UKEF's eligibility criteria UKEF can consider providing support the trading of intangible assets from a UK Company to an overseas subsidiary.
- 7.7. The Government considers that the inclusion of a 'Principle Four' that conferred UK Content status on goods manufactured outside the UK by subsidiaries of a UK registered applicant to be an unwanted extension to Foreign Content policy. UKEF's mission as the UK's ECA is to ensure no viable UK export fails for lack of finance or insurance, while operating at no net cost to the taxpayer. The Government does not regard conferring UK Content status to goods manufactured overseas, and in doing so potentially provide support for activities for which there is no UK export, to align with this mission.
- 7.8. In addition, such an approach has the potential to conflict with current local content rules, which are set by the OECD, if the overseas buyer and overseas subsidiary

are situated in the same country. UK content may in this scenario be synonymous with local costs thereby reducing or precluding UKEF support.

- 7.9. Though it should be noted UKEF can consider applications for support from overseas subsidiaries who source significant goods services and intangible assets from the UK. Therefore, an overseas subsidiary could apply to UKEF directly and potentially receive support.
- 7.10. The Government has determined that UK Finance's suggestion for a 'Principle Four' that takes into account 'UK Economic Interest' would be unnecessary as such consideration of such factors are likely to be done so on a case by case basis through Principle Three.

8. Conclusion

- 8.1. The Government has carefully considered each of the contributions to the consultation and would like to thank the respondents for the valuable input they have provided. This feedback has helped to develop the three 'Principles' alongside other aspects of UKEF's approach to Foreign Content policy.
- 8.2. This 'Principles' approach ensures that UKEF can look beyond a specific export contract in determining the provision of its support to consider the context around the business it is being asked to support.
- 8.3. This will revise Foreign Content policy to enable UKEF to respond flexibly to changes in global supply chains and consider a more nuanced approach to certain sectors or industries where a contract-specific approach may not be appropriate to realise the full extent of the UK involvement within a transaction.
- 8.4. The Government has also noted the views of respondents who wish to see UKEF do more to support and develop the services sector and trade in intangible assets. Therefore, UKEF will be revising its definitions to clarify UKEF's ability to support such activities and believes the 'Principles' allow the Government sufficient flexibility to more easily support these sectors.

9. Next Steps

- 9.1. UKEF will update its website which will include information on Foreign Content policy.

ANNEX A

List of Respondents

- Confederation of British Industry
- Federation of Small Businesses
- Lloyds Banking Group
- Barclays
- MBDA Systems
- British Insurance Brokers' Association
- UK Finance
- Caterpillar Inc
- Wilben Trade
- Premier Oil
- Maritime London
- Commerzbank
- Siemens
- PricewaterhouseCoopers LLP
- Colas Limited
- GKB Ventures Ltd
- British Exporters Association
- Mace Group
- GE Capital Limited
- Wood Plc
- ASGC Group
- Coltraco Ultrasonics
- Fire Industry Association
- PJ Valves Holdings Ltd
- Two anonymous responses
- Two members of the public

ANNEX B

Proposals outlined in the April 2019 consultation paper

Developments both in global trade and UKEF's statutory powers have led UKEF to review the extent to which its current Foreign Content policy reflects the breadth of UKEF's capabilities and the needs of UK business. UKEF has concluded that its 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, further to UKEF's mission to ensure that no viable UK export fails for lack of finance or insurance, while operating at no net cost to the taxpayer.

It is intended that these proposed changes, or any changes subsequently adopted, will apply to all UKEF's products subject to the Foreign Content policy.

UKEF proposes supplementing existing Foreign Content policy (Principle One) – see section 3 above, which is out of the scope of this consultation, with Principles Two and Three to enable a consideration of the context surrounding the business UKEF is being asked to support.

Applications will be assessed against each Principle individually and in turn. If not falling within or failing the requirements of Principle One, the application will be assessed against Principle Two. If failing the requirements of Principle Two, UKEF may consider if it can provide support under Principle Three.

Principle Two: If Principle One is not met:

The proportions of Foreign Content to UK Content set out in Principle One (the current 80:20 rule) will apply to the value of UKEF's participation in the financing of a contract or a project, which may consist of multiple contracts.

This Principle will enable UKEF to take into account the amount of UK Content contained within related (but not directly financed or supported) contracts or projects when forming a view about a specific contract or provide support for a share of a contract where there is a specified amount of UK content.

This Principle may also enable UKEF to more easily support transactions that fall outside of a traditional one-buyer / one-supplier / one-contract model, where UK content is distributed across multiple contracts within related projects, by facilitating the aggregation of UK Content relative to a financing tranche.

The application of this principle will continue to take into account the fact that UKEF would normally support no more than 85% of a contract, in accordance with current OECD Arrangement rules.

Example A

A UK exporter has a contract with an overseas buyer worth £100m, containing £10m UK content.

UKEF could consider providing up to £50m of support to reflect the level of UK goods and services in the contract. Considering UKEF would normally support no more than 85% of a contract, this may mean maximum support available for contractual amounts is capped at £42.5m.

The outstanding proportion of the contract could be financed in a variety of ways, for example, by equity investment, by the support of another ECA or by uncovered commercial lending or similar.

Example B

There are two contracts that are supporting an overall project, but which are not contractually linked.

The first contract, consisting of design, project management, engineering etc, has £19 million of UK Content and a contract value of £20 million. This contract is being funded by commercial financing. The second contract has UK Content of £1 million but a larger contract value of £100 million. This contract is experiencing greater difficulties in obtaining commercial financing due to its complexity and size. Without financing for the second contract the project would not go ahead putting the total £20 million of UK content at risk.

UKEF would consider providing support for all or a proportion of the second contract on the basis that it would be conducive to UK supply in the first contract and proportional to the total level of UK goods and services within the overall project.

Principle Three: If the proposal cannot be supported under Principles One and Two:

UKEF may provide support if it can be demonstrated that the proposal is conducive to supporting or developing UK exports.

When providing support under this Principle, in order to demonstrate such support or development, UKEF may impose additional measures, such as incentivisation mechanisms, whereby the level of support available from UKEF will be directly linked to current or future supply chain spend or commitments made by the applicant to increase the benefit to the UK and UK exports. Examples of this could include increasing future production in the UK, increasing the value or proportion of spend in the UK supply chain in the future, or increasing the number of jobs created in the UK in the future.

A decision under this principle will involve a statement by the applicant justifying the application of this Principle, which in UKEF's determination justifies UKEF's provision of support.

Example C

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.

Due to modern and complex manufacturing methods, the UK involvement in the company's export contracts is spread throughout the supply chain. This means under Principle One and Principle Two, UKEF would be unable to recognise the full extent of the UK value added.

In order to access UKEF support, the company is willing to increase the future level of spend with the UK supply chain. Under Principle Three, UKEF may be able to provide an amount of support for the company's export contracts across a variety of sectors proportional to the UK supply chain spend, supporting the development of future exports.

Example D

A large non-UK domiciled international company has won a £100m contract to complete a major project overseas. In order to complete this project this company wishes to sub contract £20m to various UK companies in order to utilise their goods and services to in various phases of the project.

UKEF may, in order to encourage UK companies' involvement within global supply chains and facilitate the development of UK exports, be able to provide up to £85m of support in line with the Department's policy on the amount of spend by the international company on the UK subcontracts and the OECD Arrangement.

Secretary of State's Discretion

Providing support for UK exports by assisting their financing or the financing of related contracts involves the Secretary of State's discretion under s.1 (1) of the EIGA. Therefore, 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.

Additional question

The Department would welcome examples of scenarios from Respondents that might not be supported by UKEF in our current approach but that may be eligible for support under the Principles as described in sections 5.5. - 5.11. to enable the Department to assess the potential for increased support to UK business.

Future changes

UKEF will continue to use the Department's statutory powers, the scope provided by the Arrangement and adaptations in internal policy to address changes in global trade to support goods and/or services exported from the UK. UKEF 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.

UKEF makes it clear that the Department will determine whether, to what extent, and how it should consult on any changes to its Foreign Content policy. This will be in accordance with applicable government guidelines (including currently, and specifically, the Consultation Principles published by the Cabinet Office in 2018, a copy of which can be found [here](#)). Therefore, and irrespective of past practice, that is the basis on which UKEF intends to make consultation decisions going forward. There should be no expectation that UKEF will always consult on changes to Foreign Content policy; or indeed any other expectation beyond that UKEF will consider any such change on a case by case basis in line with then current guidelines

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