House of Commons
International Development Committee

Development and Trade: Cross-departmental Working

Second Report of Session 2007–08

Report, together with formal minutes and oral and written evidence

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International Development Committee

The International Development Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department for International Development and its associated public bodies.

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Committee staff
The staff of the Committee are Carol Oxborough (Clerk), Matthew Hedges (Second Clerk), Anna Dickson (Committee Specialist), Chloë Challender (Committee Specialist), Ian Hook (Committee Assistant), Jennifer Steele (Secretary), Alex Paterson (Media Officer) and James Bowman (Senior Office Clerk).

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Footnotes
In the footnotes for this Report, references to oral evidence are indicated by ‘Q’ followed by the question number. References to written evidence are indicated by the page number as in ‘Ev 12’.
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Summary

The machinery of government changes to the management of trade policy made in June 2007 are broadly positive, although we have some reservations. The development emphasis, new lines of ministerial responsibility and cross-departmental structures have the potential to improve trade and development policy coherence to the benefit of developing countries. On the other hand, excessive complexity, unclear lines of accountability and new layers of bureaucracy risk undermining any improved coherence resulting from the changes. It remains unclear how the changes will be evaluated for their ability to deliver a trade policy which complements UK development objectives and ensures effective ‘joined-up Government’. In essence, there continues to be an unhelpful lack of clarity and transparency over the mechanics of trade policy decision-making.

The increase in the number of DFID ministers reflects the new roles and responsibilities that the Department has taken on and is to be welcomed. But given the challenges ahead in international trade, the Trade Policy Minister’s brief may be too wide and should be reviewed. The new cross-departmental Trade Policy Unit reporting to him will need clear and responsive leadership at ministerial and official levels if it is to succeed.

The critical issues for the World Trade Organisation Doha Round remain the same as at the time of our last Report in March 2007. The process should either be reinvigorated, with unilateral moves if necessary, or the negotiations should be brought to a close. Time is also rapidly running out for the EU’s Economic Partnership Agreement talks with African, Caribbean and Pacific countries. The European Commission has belatedly recognised the need for interim goods-only deals by the end of the year but some countries may simply not be in a position to reach even these by that deadline. The Government must endeavour to ensure that pro-development alternatives are available to countries that request them.

The UK has been too slow to act on recommendations from the Organisation for Economic Co-operation and Development’s Anti-Bribery Working Group. Outstanding issues need to be resolved during the forthcoming review by the Working Group. The Government should make a clear commitment that time will be found in this or the next parliamentary session to enact the legislation which the Working Group has been recommending for nearly a decade.

The National Contact Point is a key instrument for national-level implementation of the OECD Guidelines for Multinational Enterprises. The UK Contact Point needs to be a well-resourced, credible body. There are concerns about both the effectiveness and impartiality of the National Contact Point and we will follow closely and with interest the progress of specific test cases.

Further progress both on establishing the Extractive Industries Transparency Initiative as a global standard and towards reaching an internationally agreed definition of conflict resources should be high priorities across relevant Government departments in 2008.
Background and acknowledgements

In July 2007, we announced that we would conduct a short inquiry into cross-departmental working on development and trade. The aim was to assess DFID’s place in the new departmental trade policy structures announced in June and to examine how this policy area would be managed across government in practice. We were keen to look in particular at the likely effect of the changes on aspects of policy which affect developing countries, including bribery and corruption, major international trade negotiations and natural resources.

This inquiry also followed up on issues raised in our Report on Conflict and Development: Peacebuilding and Post-Conflict Reconstruction. In particular, we revisited recommendations we had made about matters which were the specific responsibility of the former Department of Trade and Industry in relation to the regulation of the activities of UK companies operating in developing countries.

We received written evidence from 14 organisations and individuals. We subsequently held two evidence sessions to hear from Ministers and five other witnesses. We would like to thank the witnesses who gave evidence in those sessions and those who provided us with written contributions.

1 Changes to Government machinery

1. In June 2007, machinery of government changes made by the new Prime Minister saw a shift in the Government’s management of trade policy, including giving the Department for International Development (DFID) a clear formal role in this policy area for the first time. In addition, a new Cabinet sub-Committee was created to oversee trade policy across Government.

2. A stated aim of the changes is to ensure greater policy coherence for development.² DFID defines such coherence as,

   "the need to consider the implications relevant government policies have for development and the reduction of poverty. It is important to ensure that broader UK policies do not have an adverse effect on the development prospects of poor countries."

We have frequently stated that international trade is a policy area with clear implications for development and this led us to inquire further into these new arrangements.

Changes to ministerial responsibilities

3. Until recently, the Government’s trade portfolio was the preserve of a single Minister for Trade and Investment under the supervision of the Secretary of State for Trade and Industry. Mirroring the lines of responsibility for the trade promotion body, UK Trade and Investment (UKTI), this Minister had, since 2001, been a joint Minister between the former Department of Trade and Industry (DTI) and the Foreign and Commonwealth Office (FCO). The June 2007 changes saw the trade portfolio split into two parts: trade policy and trade promotion.

4. Trade policy is now the responsibility of one Minister, Gareth Thomas MP, who is shared between DFID and the new Department for Business, Enterprise and Regulatory Reform (BERR), the successor department to the Department for Trade and Industry, rather than being joint between the DTI and the FCO. DFID told us that the Minister leads on:

   • the UK’s positions on EU and international trade policy and operational issues (e.g. market access, import restrictions, WTO rules and trade defence);
   
   • current trade negotiations, for example the Doha Development Round, regional trade agreements and Economic Partnership Agreements (EPAs) between the EU and African, Caribbean and Pacific (ACP) countries;
   
   • building the capacity of developing countries to utilise the benefits of trade to reduce poverty through aid for trade, capacity building, policy development and research.⁴

2 Ev 32 [DFID]
3 Department for International Development, Annual Report 2007, page 192
4 Ev 31 [DFID]
5. In addition to these, the Minister has further responsibilities in both departments, including: EU competitiveness, the single market and the EU services directive, consumer affairs and competition in BERR; and climate change, water and the Environmental Transformation Fund in DFID.  

Two further Ministers were appointed to DFID roles in the same machinery of Government changes, increasing its ministerial complement to four.  

6. We welcome the increase in the number of DFID ministers, which reflects the new roles and responsibilities that the Department has taken on. However, we are concerned that the Trade Policy Minister’s brief may be too wide, including as it does areas as varied as consumer affairs and climate change. We recommend that the Secretary of State review the alignment of ministerial resources and departmental priorities within one year of the new arrangements having taken effect.  

7. A separate minister, Lord Jones of Birmingham, is now responsible for trade promotion and inward investment, including UKTI. As previously, this remains a joint post between BERR and the FCO. Appearing before the Trade and Industry Committee in July, Lord Jones said that he saw his role as promoting British business abroad and that he had plans for extensive and frequent overseas visits.  

**Ministerial titles**  

8. The new arrangements appear to have brought a degree of confusion in official use of ministerial titles. For example, while the Government’s written evidence uses the title Minister for Trade Policy for Gareth Thomas, the BERR website uses Parliamentary Under Secretary of State for Trade and Consumer Affairs. The Minister also recently referred to himself as the Minister for Trade and Development in correspondence with a national newspaper. The Minister told us that he was “clear that my prime responsibilities are in the trade and development area” and that his “title is the Minister for Trade and Development.”  

9. Similarly, the Government’s evidence refers to Lord Jones as the Minister for Trade Promotion, and Lord Jones himself used this title in oral evidence. However, the BERR, FCO and UKTI websites all refer to the Minister for Trade and Investment, while the Ministers List in Hansard uses the title Trade Promotion and Investment Minister.  

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6 On 12 June 2007, the Chairman of the International Development Committee wrote to the then Chancellor, Rt Hon Gordon Brown MP, to call for an increase in the ministerial complement of the Department for International Development.  

7 Oral evidence taken before the Trade and Industry Committee on 16 July 2007, HC 923, Q 79 [Lord Jones]  

8 Ev 31 [DFID]; and BERR, Ministerial responsibilities page, http://www.dti.gov.uk/about/ministerial-team  


10 Qq 73 and 74 [Mr Thomas]  

11 Ev 32 [DFID]; and oral evidence taken before the Trade and Industry Committee on 16 July 2007, HC 923, Q 71 [Lord Jones]  

10. We are concerned that there is inconsistent use of ministerial titles in official materials. While some variation may be unavoidable, we believe that it is important that Ministers’ titles should correctly reflect their roles and responsibilities, and that these should be used consistently across Government. This is particularly true during a period of change and transition when stakeholders and the public need to be given clarity and certainty. We therefore recommend that the Ministers review the use of their titles by their departments and resolve any confusion quickly.

Cabinet Sub-Committee on Trade

11. With two Ministers with trade responsibilities across three departments, co-ordination between them and their departments will be essential. A cross-departmental Cabinet sub-Committee on trade has been established to "bring all the interests in terms of trade around the table" and to "give strategic direction and political oversight to UK trade policy". We were told that the sub-Committee had met twice since its creation, with the Doha Round at the World Trade Organisation (WTO) and Economic Partnership Agreement (EPA) negotiations being discussed. The sub-Committee is chaired by the Secretary of State for International Development, Rt Hon Douglas Alexander MP. In addition, its membership is the Minister for Trade and Development, the Secretary of State for Business, Enterprise and Regulatory Reform, the Secretary of State for Environment, Food and Rural Affairs, the Foreign Secretary and the Chief Secretary to the Treasury. Despite the International Development Secretary’s chairmanship, the Minister told us that the Secretary of State for International Development and the Secretary of State for Business, Enterprise and Regulatory Reform “are equals.”

12. The Government’s evidence stated that the sub-Committee would “oversee all the work of Government on Trade Policy and Promotion”, but the sub-Committee membership as outlined in the Government’s written evidence seemed to suggest that Lord Jones did not attend its meetings. In his evidence to the Trade and Industry Committee in July 2007, Lord Jones appeared to exclude himself, saying the sub-Committee was “on the trade policy side, not on what I am doing.” We raised these concerns with Gareth Thomas, who noted that while the sub-Committee was “predominantly for trade policy issues”, the Trade Promotion Minister could attend its meetings and indeed had taken part in one. He also said that he would welcome his counterpart’s feedback on any trade policy issues raised during trade promotion visits.

13 Q 86 [Mr Thomas]; and new Trade Policy Unit pages on BERR site: http://www.dti.gov.uk/europeandtrade/Trade%20Policy%20Unit/page41941.html
14 Q 91 [Mr Thomas]
15 Ev 31 [DFID]
16 Q 86 [Mr Thomas]
17 Ev 31 [DFID]
18 Oral evidence taken before the Trade and Industry Committee on 16 July 2007, HC 923, Q 79 [Lord Jones]. He also indicated a wish for Douglas Alexander to accompany him on one or two trade promotion visits a year.
19 Q 89 [Mr Thomas]
20 Q 93 [Mr Thomas]
13. The Trades Union Congress (TUC) raised concerns about the Trade Promotion Minister’s involvement in trade policy. The TUC told us that it was “unclear how much this will be a roving ambassadorial role promoting British exports and inward investment compared to how much the post will be involved in trade policy formulation”, and called for the role to “be fully integrated into the development objectives of the trade agenda.”

14. We welcome the Minister’s assurances regarding the coordination of trade policy formulation and trade promotion activities. We recommend that the Trade Promotion Minister be invited to attend all meetings of the Cabinet sub-Committee on trade to ensure that overall trade and development coherence is not undermined by divergent approaches.

15. Another concern raised by the TUC was the lack of clarity over which Minister would lead on different trade matters. We were told that the sub-Committee’s ‘lead interlocutor’ would vary according to the issue at hand. The International Development Secretary would lead on matters “where there is a very clear and very strong development dimension”, including the World Trade Organisation Doha Round and EU Economic Partnership Agreements. The BERR Secretary would lead on “some of the original trade agreements” and “trade defence issues”.

16. We are concerned that ad hoc decisions made by committee on which Minister is leading on which issues could result in a less responsive system, undermining any coherence benefits of the new arrangements. We recommend that the Government publish a comprehensive list of which Minister has lead responsibility for each individual issue or negotiation to increase transparency and minimise confusion.

**Joint Trade Policy Unit**

17. The Ministerial-level changes are to be supported at official level by a new single, but “dually-located”, Trade Policy Unit (TPU) with “some teams based in DFID and others in BERR” and joint teams on “issues with a strong development focus.” Others throughout Government are to be consulted on specific issues.

18. The Government says that the TPU brings together around 70 officials working on trade and development in both BERR and DFID and that it will “bridge the two departments, tapping into the best skills, networks and resources available to promote this agenda at home, internationally and through activities in partner countries.” The Director of the TPU, who was formerly the UK’s lead trade negotiating official, told us that he would be spending approximately one day a week in DFID’s TPU office and four in the BERR office, and that,

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21 Ev 57 [TUC]
22 Ev 57 [TUC]
23 Q 71 [Mr Thomas]
24 Q 86 [Mr Thomas]
25 Ev 32 [DFID]
“some people from BERR […] will be spending most of their time in DFID and a few people from DFID […] will be spending most of their time in BERR. The net effect is more people working in DFID than was previously the case and the precise working arrangements will be for the teams themselves to sort out.”\textsuperscript{27}

19. The Confederation of British Industry (CBI) was critical of the TPU’s formation but said that,

“while we would question the value of merging the DFID and BERR trade teams in the first place, we are pleased to note that the new team will be headed by the senior BERR official who has had the policy lead in the former Department of Trade and Industry.”\textsuperscript{28}

20. We support the concept of a joint Trade Policy Unit as a component of improved trade and development policy coherence, and we hope that the Government can make the Unit work in practice. We recommend that the Minister for Trade Policy monitor closely the impact on coherence and effective team-work of the Head of the Trade Policy Unit spending the large majority of his working week at BERR and only one day a week at DFID.

21. In his evidence to us, Professor Winters of the University of Sussex noted a “lack of transparency over the last three months” after the changes were announced, a view shared by Traidcraft.\textsuperscript{29} We regret that interested parties have had to wait until mid-October, more than 100 days since the changes took effect, to gain a better understanding of how the changes and new structures are likely to work in practice. We are concerned that there continues to be a lack of clarity and transparency over the mechanics of trade policy decision-making. We believe the Government should have been—and should in future be—more transparent and pro-active in setting out clearly the implications of such changes.

22. One example of this lack of transparency was that, prior to the evidence sessions for this inquiry, there was no mention of the TPU on the DFID website, and only a single reference on the BERR website, despite over three months having elapsed since the machinery of government changes were announced.\textsuperscript{30} The Minister said that the TPU was “established and it is doing an awful lot of work”, and assured us that this matter would be looked into.\textsuperscript{31} We are pleased to note that the Minister has quickly ensured that the BERR and DFID websites both now feature new pages and sections on the Trade Policy Unit and its work, in response to our call for the out-dated material previously available to the public to be replaced. This matter is of particular importance given the role of departmental websites in informing the public of how Government works.

\textsuperscript{27} Q 78 [Mr Hosker]
\textsuperscript{28} Ev 42 [CBI]
\textsuperscript{29} Qq 2 and 3 [Professor Winters; Mr Gidney]
\textsuperscript{31} Q 76 [Mr Thomas]
The changes in practice: ensuring improved coherence

23. Professor Winters noted that, under the previous departmental arrangements, there had been a tension between DTI’s remit to promote British business and UK international development priorities. The Government’s evidence said that development was “at the heart of UK trade policy” and that the new arrangements would give “more joined up working and shared leadership will promote even more policy coherence”, “reinforce the role of trade in our development policy and programmes” and “bring more trade expertise into our development discussions”. The Minister said the changes “will lead to much better coherence across Government.”

24. Views on whether the new arrangements would be an improvement were mixed in the evidence we received. Christian Aid suggested that the “shift in responsibility” from DTI to DFID “should mean an international development lead in all external trade negotiations and trade policies affecting developing countries […] So far this development priority has been lacking.” However, the CBI saw “no reason at all why these changes should shift the direction of UK trade policy and expect it not to do so.” Indeed, they took the view that it was “difficult to conceive how much more development-friendly the UK’s trade policy could be”, raising concern about the risk that the changes could be interpreted as a sign that the UK “now views development as the engine of trade policy, rather than trade the engine of development policy.” Traidcraft, along with the “NGO community broadly”, saw the new arrangements as “a good thing”. Traidcraft also said that if attempts were made to lock DFID into trade policy processes “then there is a greater chance of actually bringing about this rather difficult thing of making trade and development work together.” Both Traidcraft and Professor Winters believed it to be too early to tell what the outcome of the changes would be.

25. The Trade and Development Minister said that it was his responsibility “to make sure that a ball is not dropped between the two departments in trade policy terms”. Traidcraft proposed a “work plan, some kind of accountability for how this new role is going to be played.” One World Action suggested that a “common DFID/DBERR cross-departmental position on sustainable and equitable development and trade justice” be elaborated. As regards departmental annual reporting, the Minister suggested that trade issues would be reported on by BERR (as previously by the DTI), although he also seemed
to leave open the possibility of DFID also doing so.\textsuperscript{44} DFID is required by the International Development (Reporting and Transparency) Act 2006 to report on policy coherence.

26. We broadly welcome the machinery of Government changes, though we have some reservations about the way in which these have been carried out. We believe that the development emphasis, the new lines of responsibility, and new Cabinet and official-level structures have the potential to improve trade and development policy coherence to the benefit of developing countries. We are concerned, however, that excessive complexity and new layers of bureaucracy may have the effect of undermining any improved coherence resulting from the changes. We remain unclear as to how the changes will be evaluated for their ability to deliver a more coherent trade policy and more effective ‘joined up Government’. We support suggestions for a clear work plan for DFID under the new arrangements and for a publicly elaborated cross-departmental strategy for the future of UK trade policy. We hope to see far greater visibility of the new structures than has been hitherto the case. We recommend that the Government ensure that both DFID and BERR include trade in their annual departmental reporting.
2 International trade negotiations

27. In March 2007, we published our Report on *EU Development and Trade Policies: An update*. The Report’s final conclusion on the European Union’s two main trade negotiations at the time was:

“The essential building blocks needed to secure fair and effective deals are clear. Political will is now needed to put those blocks in place. As the WTO and EPA negotiations enter their final phases, we believe that progress will be made if they are conducted between equal partners who are willing to make compromises, conscious of what is at stake and, above all, committed to making trade work for the benefit of the poor.”

This inquiry offered a further opportunity to review progress towards agreements in the Doha Round at the World Trade Organisation (WTO), and in the Economic Partnership Agreement (EPA) negotiations between the European Union and African, Caribbean and Pacific (ACP) countries.

28. The Government’s evidence to us said that the UK’s Doha and EPA positions were the product of “close working between DFID and BERR, which will now be consolidated in the new structural arrangements”. However, Traidcraft told us that that there was “no confidence that the richer countries are listening to the poorer countries in the [Doha and EPA] negotiations.”

We were concerned to hear that developing countries may have lost confidence in the response of developed countries to their views. Now that DFID has been granted greater influence over the UK’s trade policy, we hope that, in the UK’s case at least, lost confidence can be restored.

WTO Doha Development Round

29. Our March 2007 Report warned that the window of opportunity for reaching a Doha Round agreement was narrow. Progress since has been painfully slow, and that window has narrowed still further. The current aim appears to be to agree a framework deal by the end of 2007, some two years after this should have been agreed at the Hong Kong WTO Ministerial in December 2005.

30. The Traidcraft view was that “Doha is pretty much a dead duck”, with no agreement possible “without a substantial move by the richer countries, a demonstration of political goodwill”. In Professor Winters’ view, further progress was needed on agriculture, although, he said, “I would not want to guarantee that would be enough to reach even a fairly modest agreement overall, I think it is clear that without further steps we are not

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46 Ev 32 [DFID]
47 Q 9 [Mr Gidney]
49 Qq 3 and 9 [Mr Gidney]
going to get one.”\textsuperscript{50} As both Professor Winters and Traidcraft told us, unilateral moves are needed from developed countries.\textsuperscript{51} Without signs of progress, Professor Winters said the Doha Round should be drawn to a close soon because “it is riddled with a lack of trust and there is no point keeping it alive for another three or four years without evidence that it is going to be quite different”.\textsuperscript{52} However, the Minister was relatively up-beat:

“I do not think it is right to say they are as dead as a dodo; quite the opposite actually. A lot of activity is taking place. All the major players have recognised that we are in a critical moment and that we do not have that much time left if we want to secure an agreement by the American presidential elections.”\textsuperscript{53}

31. The critical issues for the Doha Round remain the same as at the time of our last Report. As we noted in March 2007, World Trade Organisation members need to show the requisite political will to reach a deal. Developed countries should reinvigorate the process with unilateral moves or draw the process to a close if it is irretrievably moribund. The Government should continue to make the case for unilateral moves with other EU Member States. Again, we encourage the UK, EU and all negotiators to approach Doha with sufficient flexibility to succeed.

**EU Economic Partnership Agreements**

32. Our March 2007 Report highlighted our concerns that the EU could be “abusing its position” to push African, Caribbean and Pacific (ACP) countries to include the new, or ‘Singapore’, issues in their Economic Partnership Agreements with the EU and implying penalties for their rejection.\textsuperscript{54} We welcomed assurances from the European Commission on both their voluntary inclusion in each region’s negotiations and on long implementation periods for any agreement.\textsuperscript{55} But, even with flexibility on this point, some ACP regions, such as the Pacific and West Africa, have stated that they do not see themselves as able to agree EPAs as originally envisaged by the end of 2007.

**Alternatives to comprehensive Economic Partnership Agreements**

33. Under the terms of the EU-ACP Cotonou Agreement, EPAs will replace the current trade arrangements from 2008. With this deadline approaching, the Trade and Development Minister has urged the EU’s other Member States “to focus on what is necessary… and leave other issues off the negotiating table until later”, a view that he told us commanded some support.\textsuperscript{56}

\textsuperscript{50} Q 10 [Professor Winters]
\textsuperscript{51} Qq 11 and 9 [Professor Winters; Mr Gidney]
\textsuperscript{52} Q 11 [Professor Winters]
\textsuperscript{53} Q 105 [Mr Thomas]
\textsuperscript{54} See glossary.
34. Since then, the EU Trade Commissioner has outlined the Commission’s proposed ‘Plan B’ which recognises the threat of serious disruption to developing country exports resulting from sudden loss of tariff preferences at the end of 2007 and accepts that the deadline need only apply to the “goods market access element” of EPAs. The Commissioner remains committed to comprehensive EPAs, and believes some EPA regions will be able to reach such agreements in time, with the Caribbean and Central African regions looking most likely to be able to do so. However, interim ‘goods-only’ agreements would now be offered to those ACP regions that are in a position to reach them, and to individual ACP countries in those regions that are not able to do so as a group. The new, or ‘Singapore’, issues would then be considered in later talks leading to a second stage ‘full EPA’ deal. We welcome the European Commission’s belated recognition of the need for a ‘Plan B’ in the form of agreement on the goods-only element of Economic Partnership Agreements, given the imminent threat of disruption to exports facing developing countries at the end of the year.

35. The European Commission has concluded that WTO-compliant free trade areas are the “only way to ensure legal certainty for any goods market access arrangement between the Community and an EPA region”. Addressing the European Parliament’s Trade Committee, the Trade Commissioner said he had “explained before why extending Cotonou, seeking a further waiver, or amending ‘GSP+’ criteria are not alternative options.” The Commission therefore has concluded that it “has no option available” but to offer future goods access to those countries not able to agree EPA deals either through the standard Generalised System of Preferences (GSP) or, for Least Developed Countries (LDCs) in the ACP regions, through ‘Everything But Arms’ (EBA). The Trade and Development Minister saw one possible alternative course of action—extending the negotiating period under a WTO waiver—as “very unrealistic” and believed that offering enhanced GSP arrangements (GSP+) was not a “particularly attractive” alternative option. He said GSP+ would give worse market access than the EU’s EPA offer of duty- and quota-free access (with transition periods for sugar and rice) and a narrower range of eligible products, while requiring adherence to international labour and environmental...
standards, which have not yet been ratified and implemented by any ACP country. However, before the Commission’s announcement, the Minister told us: “We have made clear to the European Commission that their suggestion that GSP will be the only thing on offer […] is not acceptable to us.”

36. A recent letter to the Financial Times co-authored by NGOs said that “the Commission is incorrect to claim that it has no legal choice but to raise tariffs in January 2008 […] the Commission may not like the choices it has—but they are legal”. Oxfam believes that using the GSP “would entail heavy costs for ACP countries”, primarily non-LDC ACP countries given that the EBA arrangements for the LDCs “provides better access than the Cotonou Agreement and is equivalent in tariff coverage to the EU’s offer under EPAs”.

37. Time is rapidly running out for the Economic Partnership Agreement talks, with the approach of the end-of-year deadline. In our previous Report, we called on the EU to undertake planning to request a waiver extension should EPAs not be concluded in time. We note that views vary on whether a waiver extension is realistic, but we also note that there has been little sign of any preparations by the European Commission for this wholly predictable situation until very recently. Some countries will simply not be ready to reach even a goods-only EPA deal by the end of the year. The Everything But Arms option available to Least Developed Countries is, in our view, a viable alternative. But there appears to be no viable, pro-development alternative plan for those non-LDC countries that do not agree ‘goods only’ deals with the EU by the end of the year. The difficulties facing these countries is a matter of great concern to us. We agree with the Trade and Development Minister that the basic Generalised System of Preferences in particular is not an acceptable alternative. We expect the UK Government to make this case vocally in its discussions with other Member States and the Commission, and to ensure that a more acceptable alternative is offered.

Second-stage EPA deals

38. The Commission sees any interim goods-only agreements as “a stepping stone”, containing “rendezvous clauses and binding commitments to continue negotiations in outstanding areas.” However, concerns have been raised that this approach could be dangerous for developing countries: final deals might never happen once the fixed deadline set by waiver expiry has passed, while the ACP countries would have opened themselves up to reciprocal trade with the EU and “would lose all their bargaining power vis-à-vis the EU.”

65 Q 100 [Mr Thomas]; and “An open letter to anti-poverty campaigners from EU Trade Commissioner Peter Mandelson and EU Development Commissioner Louis Michel”, 27 September 2007; http://trade.ec.europa.eu/doclib/docs/2007/september/tradoc_136108.pdf. He also said that “bending the rules” for ACP countries “would break our commitment to countries that have gone through the rigorous application and vetting procedure”, and risk further WTO challenge, while giving worse market access.

66 Q 104 [Mr Thomas]


to achieve their objectives” in the second-stage.\textsuperscript{70} Developmental components, such as aid for trade, would probably also be missing in interim deals and therefore aid to help with adjustment costs may not be forthcoming when it is needed most. We are uncomfortable with the implication that goods-only EPAs are only ‘stepping stones’ to full agreements, given the EU’s previous commitments to include other issues only where individual countries or regions actively seek to do so. We are also concerned about the possibility that these interim deals may lack development components. We recommend that the Government push for inclusion of aid for trade provisions within these deals.

\textbf{Rules of origin}

39. The Commission proposes new rules to determine eligibility of goods for access to the EU under EPAs: EPA-specific rules of origin.\textsuperscript{71} These will only apply to the countries and regions that reach comprehensive or goods-only agreements, which suggests that others will be forced to use existing GSP rules of origin, which Oxfam notes are “slightly stricter” than what is currently available to ACP countries, known as Cotonou rules of origin.\textsuperscript{72} However, the Commission accepts that there may be a delay in implementing the new rules, and that in the interim, Cotonou rules of origin “with certain unilateral improvements”, covering fisheries, textiles and potentially agriculture, will apply.\textsuperscript{73}

40. We welcome the fact that new rules of origin, which we expect to enhance developing countries’ ability to benefit from improved market access, are to be an integral part of Economic Partnership Agreements. However, the loss of Cotonou rules of origin for any country not reaching a goods-only or full EPA by the end of 2007 serves to compound the potential disruption for these countries in moving to less generous arrangements, such as GSP. We recommend that, in its reply to this report, the Government gives its view as to whether Cotonou rules of origin could be maintained for countries unable to agree a goods-only deal.

\textsuperscript{70} “EU offers ACP ‘two-step’ EPAs: Where does development stand?”, ICTSD Trade Negotiations Insights 6, 7, November 2007, page 2

\textsuperscript{71} See glossary.

\textsuperscript{72} Oxfam, “Urgent need for change in Europe’s approach to trade negotiations”, EPAs Factsheet 1, page 2; http://www.oxfam.org.uk/resources/policy/trade/downloads/epasfactsheets.pdf

\textsuperscript{73} Oxfam, “Urgent need for change in Europe’s approach to trade negotiations”, EPAs Factsheet 1, page 2; http://www.oxfam.org.uk/resources/policy/trade/downloads/epasfactsheets.pdf.
3 Promoting responsible trade

Bribery and corruption

Ministerial Champion

41. In July 2006, the Prime Minister asked Rt Hon Hilary Benn MP, then Secretary of State for International Development, to lead the Government’s work on combating overseas corruption. The role was widely publicised and launched at a high-profile event. This ‘Ministerial Champion’ would lead implementation of the UK’s first annual action plan on combating international corruption.74

42. Evidence we received in this inquiry revealed some confusion about this role under the new structures. Transparency International (UK) said that “it is understood that the role now falls to the Secretary of State for Business, Enterprise and Regulatory Reform but nowhere is this set down”.75 The TUC had come to the same conclusion and said that “so far there has been no announcement that John Hutton is the new Ministerial Champion”.76 The Government’s evidence to this inquiry stated that the role had indeed moved to the Secretary of State for Business, Enterprise and Regulatory Reform.77 In response to a question about why the transfer of responsibilities had not been publicised, the Minister told us:

“It is a little unfair, if I may say so, to expect my Secretary of State for Business, Enterprise and Regulatory Reform in a sense to have advertised his responsibility in this area immediately. […] I know he appreciates having the responsibility but he has been concentrating on the detail of work in that area rather than on seeking to advertise the post.”78

43. We welcome the continuation of the role of Ministerial champion for combating international corruption. We would be concerned, however, if the transfer of responsibility from the Department for International Development to the Department for Business, Enterprise and Regulatory Reform meant that these matters were now seen largely from a trade perspective and that development concerns were neglected. We do not agree with the Government’s view that the visibility of the role is of secondary importance: championing an issue by definition requires a high-profile. We recommend that the Government prepare a plan for promoting the role and the associated action plan and that it share this with the Committee within two months.

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75 Ev 64 [Transparency International (UK)]
76 Ev 58 [TUC]
77 Ev 34 [DFID]
78 Q 96 [Mr Thomas]
OECD Anti-bribery Convention

44. The United Kingdom ratified the OECD Anti-bribery Convention in 1998. This legally-binding instrument is viewed internationally as a key tool in tackling corruption. The Convention notes that corruption is not a one-sided process; those who bribe are as guilty as those who are bribed. The Convention states:

“Investigation and prosecution of the bribery of a foreign public official […] shall not be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved.”

45. The Anti-Terrorism, Crime and Security Act 2001 made bribery committed overseas by UK nationals and companies a criminal offence. We are aware that the Serious Fraud Office has investigated a number of allegations of trans-national bribery but we are concerned that none of these have so far been brought to court. We ask the Government to inform us in response to this Report: how many cases and allegations of trans-national bribery have been referred to the Serious Fraud Office for investigation; how many have been investigated by the SFO and closed without charges being brought; how many cases are currently under investigation; and when the Government expects the first case of trans-national bribery to be brought before a UK court.

46. In a statement in December 2006 on the decision to halt the investigation into BAe Systems Plc’s Al Yamamah defence contract, the Solicitor-General said:

“This decision has been taken following representations that have been made both to the Attorney-General and the Director [of the Serious Fraud Office] concerning the need to safeguard national and international security. It has been necessary to balance the need to maintain the rule of law against the wider public interest.”

In its June 2007 Report on the UK, the OECD Working Group on Bribery, which monitors implementation of the Convention, stated that it had concerns about “whether the decision was consistent with the OECD Anti-bribery Convention.” In his evidence to us, Professor Mark Pieth, Chairman of the Working Group, said “We came to the conclusion that this might be the tip of the iceberg and we would want to have a totally new look at the entire outfit.”


80 Organisation for Economic Co-operation and Development, Convention on Combating Bribery of Foreign Public Officials in International Business Transaction, November 1997, Article 5

81 HC Deb, 14 December 2006, col 1119


83 Q 42 [Professor Pieth]
47. The Corner House, Campaign Against Arms Trade, and Unicorn all pointed in their evidence to what they saw as damaging wider implications of the decision. For example, Unicorn said that these events,

“have not only damaged the UK Government’s reputation as a credible anti-corruption player, but, critically, have also undermined the collective political will of governments to tackle international bribery.”

48. The OECD Working Group’s June report also repeated its concern at continued shortcomings in UK anti-corruption legislation. These had been raised in earlier reports which had recommended that the UK enact modern foreign bribery legislation and address issues linked to corporate liability at the earliest possible date. Professor Pieth told us of the Working Group’s concern that these key recommendations remained unimplemented:

“I must be very frank with you, this is really worrying everybody because we believe that one can in half a year write a bill and give it to Parliament, and we are worried that this has not happened since 1999, to put it in very straightforward words.”

Moreover, despite several investigations by UK authorities into allegations of corruption overseas, the lack of any consequent prosecutions caused the Working Group to wonder if there was “an inherent or a systemic impediment” between investigation and prosecution. As a result of these various concerns about the UK’s implementation of the Convention, the Working Group resolved to conduct a further review of the UK and that there would be a visit to the UK by March 2008 in connection with that review.

49. There are questions for the Government to answer about the UK’s implementation of the OECD Anti-bribery Convention and whether the decision to halt the BAe Al Yamamah investigation is consistent with the Convention. We are concerned that the UK has failed to act expeditiously on recommendations from the OECD Working Group on Bribery. We recommend that the Government make every effort to resolve all these issues during the forthcoming review conducted by the Working Group and that it make a clear commitment that time will be found in this or the next parliamentary session to enact the new legislation recommended by the Working Group.

**OECD Guidelines and Risk Awareness Tool**

50. The OECD Guidelines for Multinational Enterprises are non-binding recommendations addressed by governments to multinationals. They provide voluntary principles and standards for responsible business conduct consistent with applicable laws. Under OECD Guidelines, participating governments are required to set up a National...
Contact Point (NCP) to handle enquiries and complaints on all issues covered by the Guidelines. A restructured UK NCP was launched in August 2006 with shared responsibility between the Department for Trade and Industry (now Business Enterprise and Regulatory Reform), the Foreign and Commonwealth Office and DFID, with DTI taking the lead. Complaints are brought when a company is alleged to be involved in activities that are inconsistent with the Guidelines and can be brought by anyone with relevant evidence. The NCP then mediates between the complainant and the company.

51. The Confederation of British Industry in its evidence welcomed the changes to the NCP’s structure.\(^89\) The OECD Secretariat told us that the UK NCP was “one of the better” ones.\(^90\) However, according to evidence from the Trades Union Congress:

“There are a number of issues relating to the implementation of the guidelines and the acceptance of cases which continue to cause us concern, including; the speed at which cases are assessed, the training provided to officials forming part of the NCP on industrial relations, the issue of parallel proceedings and overall how the NCP views its role as a proactive mediator once cases have been raised.”\(^91\)

52. The Corner House claimed in its evidence, citing a complaint which it had submitted jointly with other non-governmental organisations (NGOs) against BP, that the NCP’s handling of complaints favoured business interests and “continues to be dogged by bias, delays and a failure to adhere to stated procedures”.\(^92\) It goes on to recommend that the “NCP is reconstituted as an independent body”. Gavin Hayman of Global Witness told us that they also had concerns about the investigative capacity of the NCP and the fact that it was staffed by three part-time, junior staff: “It is still very much that we have to present all the evidence and do all the running and all the work”\(^93\).

53. The National Contact Point is a key instrument for national-level implementation of the OECD Guidelines for Multinational Enterprises. It is therefore of paramount importance that the UK Contact Point is a well-resourced, credible body. We share the concerns that some key stakeholders have raised about both the effectiveness and impartiality of the NCP. We recommend that the Government undertake a review of the impact of the 2006 restructuring of the NCP and of the resources available to it.

54. In our Report on Conflict and Development, we referred to evidence we had received from two NGOs about the activities of two UK companies, Afrimex and Alfred Knight, in the Democratic Republic of Congo which might be inconsistent with the Guidelines.\(^94\) We did not take a view on the detail of these cases but were surprised that the Government at that time had not investigated them. We heard during this inquiry that Global Witness has brought a complaint against Afrimex and that this was being investigated by the NCP. However, despite our Report and the evidence taken during our previous inquiry,

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\(^89\) Ev 44 [CBI]
\(^90\) Q 62 [Mr Ley]
\(^91\) Ev 58 [TUC]
\(^92\) Ev 46-47 [Corner House]
\(^93\) Q 27 [Mr Hayman]
particularly from Rights and Accountability in International Development, the Government had not undertaken an investigation of Alfred Knight because, it told us, it had not received a formal complaint.\textsuperscript{95} Moreover, we understand that Alfred Knight has not even been interviewed or contacted by the Government to discuss these allegations.

55. \textit{We will follow with interest the progress of the Global Witness complaint against Afrimex as a test case for the restructured UK National Contact Point. We believe it is unacceptable that the Government has not investigated the activities of Alfred Knight, nor even contacted the company, despite the findings in our Conflict and Development Report and the evidence taken in that inquiry. We call on the Government to be proactive in these matters generally and to investigate the case of Alfred Knight’s activities in the Democratic Republic of Congo in particular. We expect the Government to provide us with a full report of its past, current and planned action in connection with the Alfred Knight case within six months.}

56. In June 2006 the OECD launched its Risk Awareness Tool.\textsuperscript{96} This was developed in response to a request made by governments at the Group of Eight (G8) Summit at Gleneagles in 2005 for "OECD guidance for companies operating in zones of weak governance". It is designed to help companies to think about the risks and dilemmas they may face in such zones and how they can respond to them. Its aim is to be a more practical, accessible complement to the OECD Guidelines.

57. As we said in our Conflict and Development Report, “Tools are of little use if they do not change behaviour”. OECD members have agreed to promote its active use.\textsuperscript{97} Robert Ley of the OECD Secretariat told us that the Canadian and American authorities had taken some interesting steps to promote the Tool and that the UK Government might usefully look at these.\textsuperscript{98} Mr Ley also said that a web-portal, a sophisticated website where companies could share experiences of working in such zones, could be a way of ensuring that the Tool became “more operational”.\textsuperscript{99} He indicated that the Netherlands had offered to contribute towards the estimated annual €160,000 needed to fund the portal but that other contributions would be needed. The CBI supports the idea of a web-portal.

58. \textit{We recommend that the Government assess the initiatives taken by Canada and the USA to promote the OECD Risk Awareness Tool, with a view to drawing up a UK plan for its promotion within six months. We also recommend that the Government look at the case for contributing to a fund for a web-portal for the Tool, which we believe could encourage its active use.}

\textsuperscript{95} International Development Committee, First Special Report of Session 2006-07, Conflict and Development: Peacebuilding and Post-conflict Reconstruction: Government response, HC 172, response to paragraph 116

\textsuperscript{96} OECD, Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones, 2006

\textsuperscript{97} OECD, Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones, 2006

\textsuperscript{98} Q 64 [Mr Ley]

\textsuperscript{99} Q 64 [Mr Ley]
Extractive Industries Transparency Initiative

59. The UK’s Extractive Industries Transparency Initiative (EITI) supports improved governance in resource-rich countries through the verification and publication of company payments and government revenues from oil, gas and mining. The Initiative is now supported by the G8 and major donors including the USA, France and Germany. At the meeting of the EITI Board in September 2007, it was announced that 15 resource-rich countries had agreed to implement EITI and nine others were working towards meeting the criteria. The CBI said that the EITI model “could be extended into other areas which would benefit from increased transparency and good practice”. The Minister told us that such initiatives had been discussed for the construction industry and medicines.

60. The Government’s Interim Progress Report on the UK Action Plan for Combating International Corruption 2006-07 says that the UK is “supporting further development of EITI, including a UN General Assembly resolution to establish EITI as a global standard for transparency in the extractives sector”. This is now also reflected in a new Public Service Agreement target announced in October. Global Witness acknowledged that the Government had been “cheerleading” on behalf of a UN General Assembly resolution but queried whether the commitment needed of FCO, as well as DFID, was there.

61. We welcome the progress on encouraging resource-rich countries to adopt the Extractives Industries Transparency Initiative. We recommend that the Government continues to pursue this actively and to promote the Initiative as a model for other sectors. We also recommend that Ministers at the Foreign and Commonwealth Office and DFID make greater effort to agree and coordinate an active lobbying strategy for a UN General Assembly resolution which would establish the EITI as a global standard.

Conflict resources

62. DFID’s Preventing Violent Conflict policy paper opens with the assertion that scarcity of and competition for natural resources are key triggers of armed conflict. Our Report on Conflict and Development noted that creating systems to identify and license resources produced legally was one way of limiting the ability of competition for natural resources to act as a driver of conflict. The Kimberley Process, for example, created a market of certified legitimately-sourced diamonds to squeeze the finances of rebel movements trading in illegitimately-sourced diamonds. Our Report concluded that while it would be cumbersome to develop a Kimberley Process for every category of natural resources, there was virtue in agreeing,

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100 “15 Countries to Implement the Extractive Industries Transparency Initiative”, EITI Secretariat Press Release, 2 October 2007, (www.eitransparency.org/content/article/detail/899)
101 Ev 44 [CBI]
102 Q 132 [Mr Thomas]
104 HM Treasury, PSA Delivery Agreement 29:Reduce poverty in poorer countries through quicker progress towards the Millennium Development Goals, October 2007, page 17
105 Q 38 [Mr Hayman]
106 Department for International Development, Preventing Violent Conflict, 2006, p 5, paragraph 2
“a definition of conflict resources which would assist the international community in differentiating between natural resources used to fund conflict legitimately, and natural resource extraction and trade used to fund illegitimate activities.”

We are aware of efforts at the UN to agree such a definition. However, Mr Hayman of Global Witness told us that, not only had the UK Government failed to lead this effort to define conflict resources at the UN, it had been,

“absurdly passive […] and] overtaken by the Germans and the Belgian Government. They had a debate in the Security Council where the UK made vaguely supportive noises but, in fact, the UK Government has been almost missing in action.”

63. We reiterate our view stated in our Conflict and Development Report that the Government needs, as a matter of urgency, to push for an internationally agreed definition of conflict resources. We encourage the Government to work closely and actively with those of a like mind towards agreement at the UN and to make more visible to stakeholders its support for the initiative.
4 Conclusion

64. The rationale behind the changes to the UK’s handling of trade policy is laudable. Trade and development policy must work in concert to lift the poor out of poverty. But lessons will need to be learnt from the confusion of the months following the announcement of the changes. The process for implementing the changes and the implications of them should be set out right at the start, rather than piecemeal and over a period of months.

65. Confusion must now give way to focused and serious work on priority dossiers such as the World Trade Organisation Doha Round, EU-ACP Economic Partnership Agreements, and demonstrating UK compliance with the OECD Anti-bribery Convention. We will be looking for real progress in these dossiers over coming months as a means of measuring the effectiveness of the changes announced in June 2007.
Recommendations

1. We welcome the increase in the number of DFID ministers, which reflects the new roles and responsibilities that the Department has taken on. However, we are concerned that the Trade Policy Minister’s brief may be too wide, including as it does areas as varied as consumer affairs and climate change. We recommend that the Secretary of State review the alignment of ministerial resources and departmental priorities within one year of the new arrangements having taken effect. (Paragraph 6)

2. We are concerned that there is inconsistent use of ministerial titles in official materials. While some variation may be unavoidable, we believe that it is important that Ministers’ titles should correctly reflect their roles and responsibilities, and that these should be used consistently across Government. This is particularly true during a period of change and transition when stakeholders and the public need to be given clarity and certainty. We therefore recommend that the Ministers review the use of their titles by their departments and resolve any confusion quickly. (Paragraph 10)

3. We welcome the Minister’s assurances regarding the coordination of trade policy formulation and trade promotion activities. We recommend that the Trade Promotion Minister be invited to attend all meetings of the Cabinet sub-Committee on trade to ensure that overall trade and development coherence is not undermined by divergent approaches. (Paragraph 14)

4. We are concerned that ad hoc decisions made by committee on which Minister is leading on which issues could result in a less responsive system, undermining any coherence benefits of the new arrangements. We recommend that the Government publish a comprehensive list of which Minister has lead responsibility for each individual issue or negotiation to increase transparency and minimise confusion. (Paragraph 16)

5. We support the concept of a joint Trade Policy Unit as a component of improved trade and development policy coherence, and we hope that the Government can make the Unit work in practice. We recommend that the Minister for Trade Policy monitor closely the impact on coherence and effective team-work of the Head of the Trade Policy Unit spending the large majority of his working week at BERR and only one day a week at DFID. (Paragraph 20)

6. We regret that interested parties have had to wait until mid-October, more than 100 days since the changes took effect, to gain a better understanding of how the changes and new structures are likely to work in practice. We are concerned that there continues to be a lack of clarity and transparency over the mechanics of trade policy decision-making. We believe the Government should have been—and should in future be—more transparent and pro-active in setting out clearly the implications of such changes. (Paragraph 21)
7. We are pleased to note that the Minister has quickly ensured that the BERR and DFID websites both now feature new pages and sections on the Trade Policy Unit and its work, in response to our call for the out-dated material previously available to the public to be replaced. This matter is of particular importance given the role of departmental websites in informing the public of how Government works. (Paragraph 22)

8. We broadly welcome the machinery of Government changes, though we have some reservations about the way in which these have been carried out. We believe that the development emphasis, the new lines of responsibility, and new Cabinet and official-level structures have the potential to improve trade and development policy coherence to the benefit of developing countries. We are concerned, however, that excessive complexity and new layers of bureaucracy may have the effect of undermining any improved coherence resulting from the changes. We remain unclear as to how the changes will be evaluated for their ability to deliver a more coherent trade policy and more effective ‘joined up Government’. We support suggestions for a clear work plan for DFID under the new arrangements and for a publicly elaborated cross-departmental strategy for the future of UK trade policy. We hope to see far greater visibility of the new structures than has been hitherto the case. We recommend that the Government ensure that both DFID and BERR include trade in their annual departmental reporting. (Paragraph 26)

9. We were concerned to hear that developing countries may have lost confidence in the response of developed countries to their views. Now that DFID has been granted greater influence over the UK’s trade policy, we hope that, in the UK’s case at least, lost confidence can be restored. (Paragraph 28)

10. The critical issues for the Doha Round remain the same as at the time of our last Report. As we noted in March 2007, World Trade Organisation members need to show the requisite political will to reach a deal. Developed countries should reinvigorate the process with unilateral moves or draw the process to a close if it is irretrievably moribund. The Government should continue to make the case for unilateral moves with other EU Member States. Again, we encourage the UK, EU and all negotiators to approach Doha with sufficient flexibility to succeed. (Paragraph 31)

11. We welcome the European Commission’s belated recognition of the need for a ‘Plan B’ in the form of agreement on the goods-only element of Economic Partnership Agreements, given the imminent threat of disruption to exports facing developing countries at the end of the year. (Paragraph 34)

12. Time is rapidly running out for the Economic Partnership Agreement talks, with the approach of the end-of-year deadline. In our previous Report, we called on the EU to undertake planning to request a waiver extension should EPAs not be concluded in time. We note that views vary on whether a waiver extension is realistic, but we also note that there has been little sign of any preparations by the European Commission for this wholly predictable situation until very recently. Some countries will simply not be ready to reach even a goods-only EPA deal by the end of the year. The Everything But Arms option available to Least Developed Countries is, in our view, a
viable alternative. But there appears to be no viable, pro-development alternative plan for those non-LDC countries that do not agree ‘goods only’ deals with the EU by the end of the year. The difficulties facing these countries is a matter of great concern to us. We agree with the Trade and Development Minister that the basic Generalised System of Preferences in particular is not an acceptable alternative. We expect the UK Government to make this case vocally in its discussions with other Member States and the Commission, and to ensure that a more acceptable alternative is offered. (Paragraph 37)

13. We are uncomfortable with the implication that goods-only EPAs are only ‘stepping stones’ to full agreements, given the EU’s previous commitments to include other issues only where individual countries or regions actively seek to do so. We are also concerned about the possibility that these interim deals may lack development components. We recommend that the Government push for inclusion of aid for trade provisions within these deals. (Paragraph 38)

14. We welcome the fact that new rules of origin, which we expect to enhance developing countries’ ability to benefit from improved market access, are to be an integral part of Economic Partnership Agreements. However, the loss of Cotonou rules of origin for any country not reaching a goods-only or full EPA by the end of 2007 serves to compound the potential disruption for these countries in moving to less generous arrangements, such as GSP. We recommend that, in its reply to this report, the Government gives its view as to whether Cotonou rules of origin could be maintained for countries unable to agree a goods-only deal. (Paragraph 40)

15. We welcome the continuation of the role of Ministerial champion for combating international corruption. We would be concerned, however, if the transfer of responsibility from the Department for International Development to the Department for Business, Enterprise and Regulatory Reform meant that these matters were now seen largely from a trade perspective and that development concerns were neglected. We do not agree with the Government’s view that the visibility of the role is of secondary importance: championing an issue by definition requires a high-profile. We recommend that the Government prepare a plan for promoting the role and the associated action plan and that it share this with the Committee within two months. (Paragraph 43)

16. We ask the Government to inform us in response to this Report: how many cases and allegations of trans-national bribery have been referred to the Serious Fraud Office for investigation; how many have been investigated by the SFO and closed without charges being brought; how many cases are currently under investigation; and when the Government expects the first case of trans-national bribery to be brought before a UK court. (Paragraph 45)

17. There are questions for the Government to answer about the UK’s implementation of the OECD Anti-bribery Convention and whether the decision to halt the BAE Al Yamamah investigation is consistent with the Convention. We are concerned that the UK has failed to act expeditiously on recommendations from the OECD Working Group on Bribery. We recommend that the Government make every effort to resolve all these issues during the forthcoming review conducted by the Working Group and
that it make a clear commitment that time will be found in this or the next parliamentary session to enact the new legislation recommended by the Working Group. (Paragraph 49)

18. The National Contact Point is a key instrument for national-level implementation of the OECD Guidelines for Multinational Enterprises. It is therefore of paramount importance that the UK Contact Point is a well-resourced, credible body. We share the concerns that some key stakeholders have raised about both the effectiveness and impartiality of the NCP. We recommend that the Government undertake a review of the impact of the 2006 restructuring of the NCP and of the resources available to it. (Paragraph 53)

19. We will follow with interest the progress of the Global Witness complaint against Afrimex as a test case for the restructured UK National Contact Point. We believe it is unacceptable that the Government has not investigated the activities of Alfred Knight, nor even contacted the company, despite the findings in our Conflict and Development Report and the evidence taken in that inquiry. We call on the Government to be pro-active in these matters generally and to investigate the case of Alfred Knight’s activities in the Democratic Republic of Congo in particular. We expect the Government to provide us with a full report of its past, current and planned action in connection with the Alfred Knight case within six months. (Paragraph 55)

20. We recommend that the Government assess the initiatives taken by Canada and the USA to promote the OECD Risk Awareness Tool, with a view to drawing up a UK plan for its promotion within six months. We also recommend that the Government look at the case for contributing to a fund for a web-portal for the Tool, which we believe could encourage its active use. (Paragraph 58)

21. We welcome the progress on encouraging resource-rich countries to adopt the Extractives Industries Transparency Initiative. We recommend that the Government continue to pursue this actively and to promote the Initiative as a model for other sectors. We also recommend that Ministers at the Foreign and Commonwealth Office and DFID make greater effort to agree and coordinate an active lobbying strategy for a UN General Assembly resolution which would establish the EITI as a global standard. (Paragraph 61)

22. We reiterate our view stated in our Conflict and Development Report that the Government needs, as a matter of urgency, to push for an internationally agreed definition of conflict resources. We encourage the Government to work closely and actively with those of a like mind towards agreement at the UN and to make more visible to stakeholders its support for the initiative. (Paragraph 63)
Everything But Arms

The European Union’s Everything But Arms agreement allows least developed countries to have complete duty free access to EU markets for all exports, except for arms.

Generalised System of Preferences (GSP)

The Generalised System of Preferences provides for a wide range of industrial and agricultural products originating in developing countries to be given preferential access to the markets of the European Union. Preferential treatment is given in the form of reduced or zero rates of customs duties.

GSP+

The GSP+ is a special arrangement offering additional trade preferences, beyond the EU’s Generalised System of Preferences, to countries committed to sustainable development and good governance, including basic human rights and labour standards.

Rules of origin

Rules of origin aim to limit the benefits of preferences offered by the EU specifically to designated developing countries by requiring a minimum value added content in order to qualify. There are different rules of origin for different agreements and arrangements, such as: Cotonou rules of origin; GSP rules of origin; EBA rules of origin.

Singapore issues (or ‘new issues’)

The “Singapore issues” refers to four working groups set up during the WTO Ministerial Conference of 1996 in Singapore, namely investment protection, competition policy, transparency in government procurement and trade facilitation.
Formal Minutes

Thursday 22 November 2007

Members present:

Malcolm Bruce, in the Chair

John Battle  
John Bercow  
Richard Burden  
Mr Stephen Crabb

James Duddridge  
Ann McKechn  
Jim Sheridan  
Sir Robert Smith

Draft Report (Development and Trade: Cross-departmental Working), proposed by the Chairman, brought up and read.

Ordered, That the Chairman’s draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 65 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Second Report of the Committee to the House.

Ordered, That the Chairman make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence was ordered to be reported to the House for printing with the Report, together with written evidence reported and ordered to be published on 11 October 2007.

[Adjourned till Tuesday 4 December at 10.00 am]
Witnesses

Wednesday 17 October 2007 (HC 1076-i of Session 2006-07)

Mr Michael Gidney, Director of Policy, Traidcraft, and Professor L. Alan Winters, Department of Economics, University of Sussex

Professor Mark Pieth, Chairman, OECD Working Group on Bribery, and Mr Robert Ley, Counsellor to the Director for Financial and Enterprise Affairs, Organisation for Economic Cooperation and Development (OECD)

Thursday 18 October 2007 (HC 1076-ii of Session 2006-07)

Mr Gareth Thomas MP, Parliamentary Under-Secretary of State, Departments for International Development (DFID) and for Business, Enterprise and Regulatory Reform (BERR), Mr Edmund Hosker, Director, Trade Policy Unit, DFID/BERR, and Mr Piers Harrison, Team Leader, Anti-Corruption, Financial Accountability and Anti-Corruption Team, DFID

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Oral evidence

Taken before the International Development Committee

on Wednesday 17 October 2007

Members present

Malcolm Bruce, in the Chair

John Bercow
James Duddridge
Ann McKechin
Sir Robert Smith

Witnesses: Mr Michael Gidney, Director of Policy, Traidcraft, and Professor L. Alan Winters, Department of Economics, University of Sussex, gave evidence.

Q1 Chairman: Good morning. Sorry for keeping you waiting slightly. The Members of our Committee are slightly diminished because there are rather a lot of meetings this week but the quality, I can assure you, is not in any way diminished. This is an interesting and important inquiry from our point of view. We are grateful to you for coming in and offering to give evidence. Could you briefly introduce yourselves, who you are and what your special interests in this are and then we will carry on from there.

Mr Gidney: Hello. I am Michael Gidney. I am the Policy Director of Traidcraft. Traidcraft is two things: it is a fair trade company and also an NGO1 specialising in fighting poverty through trade. 

Professor Winters: I am Alan Winters. I am Professor of Economics at the University of Sussex. I have spent most of my life working in international trade and until recently I was Director of Research at the World Bank.

Chairman: Thank you for that. Robert Smith wants to put an interest on the record.

Sir Robert Smith: Before we start, in the Register of Members’ Interests I have recorded an interest as a shareholder in Shell and RTZ. I am also Vice-Chair of the UK Offshore Oil and Gas All-Party Group, mainly related to UK operations but still an extractive industry.

Q2 Chairman: Thank you for that. Obviously in this particular session we are looking at the way the Government is changing the approach to trade policy and in terms of where the ministerial lead responsibility is. I just wonder what your views are about that area, first of all changing the lead from, I suppose you could say, Trade and Industry with a sort of cross-party interest in the Foreign Office, to a lead within the Department for International Development but with the Trade Minister not on the Cabinet Committee and answerable to two different Secretaries of State. On the face of it that looks slightly complicated. What is your judgment of what is behind it and how do you think it might actually work out in practice and how it might affect trade effectiveness or benefit?

Professor Winters: I think the first piece of context is to remember that most trade policy that affects the United Kingdom is made in Brussels, so we are already one step removed from the instruments of trade policy that one typically thinks about. Insofar as the organisation within the British Government is concerned, it is certainly too early to say with any great confidence what the outcome will be and, indeed, there has been something of a lack of transparency over the last three months (since it was announced) as to exactly how it is going to be implemented. I have found it very difficult to find out what the facts of the situation are. It has been the case over the last five or six years that DFID2 and the former DTI3 have worked fairly closely and the whole of government has been fairly coherent on issues of trade policy and DFID have played a larger role than development ministries in many countries and that has been reflected in some of the stances and some of the statements that the Government has made. One interpretation of what has happened is that is, as it were, just swinging the balance a little bit more towards the view that argues trade and aid policy, trade and international development policy, should be even more coherent. I am not sure that we should necessarily read it like that; it might have more short-term, more pragmatic origins than in a sense a predetermined change in policy. Remember, the policy positions are evolving all the time and I think my reading of the last three or four years of statements about trade policy within Britain suggests that we have been through a period of some caution about globalisation for developing countries and perhaps we are moving out of that with recent statements about the importance of growth as a way of addressing poverty and the centrality of trade in achieving that. I am not so sure that the bureaucratic changes, the changes in organisation, reflect a predetermined view about where policy should evolve so much as a more pragmatic view as to who might want to do what and where expertise might lie. Of course, some elements of trade policy remain with the Business and Enterprise Ministry, trade promotion for instance, so it certainly has not all moved to the DFID side.

1 Non-governmental Organisation (NGO)
2 Department for International Development (DFID)
3 Department of Trade and Industry (DTI)
Q3 Chairman: I do not know, Mr Gidney, if you want to comment on that but I think the interest for us as a Committee, taking the point about the EU being the lead, is whether they have significance in terms of the Government’s priority towards using trade to promote development or using trade to promote the British economy, putting it at its crudest. The implication behind the change is that it is leaning towards the former rather than the latter. In your position, do you interpret it that way and think it will actually work that way?  
Mr Gidney: I think Alan is right, it is too soon to say how it is going to play out. There has not been much light shed in the last few months since the decision was announced, so we are also waiting to see what is going to come out of it. I would say we think it is a good thing, that the NGO community that works on trade sees this as a good thing, because if you think of the Doha Development Agenda, if you think of Economic Partnership Agreements, they have been an attempt to put development centrally within the trade policy-making process but this has not worked. Doha is pretty much a dead duck and EPAs are still hugely controversial, as the Committee knows very well. If there is now an attempt at a ministerial level to lock DFID in some way into the trade policy process, and even to give it authority over the process, then there is a greater chance of actually bringing about this rather difficult thing of making trade and development work together. That said, because there has not been anything publicly announced on this in the last few months, I am concerned that we have all structure and no content. It is not just a question of changing hats or putting a new minister in charge, what we need to see is a work plan, some kind of accountability for how this new role is going to be played. I think there is a real opportunity with EPAs, where the development impacts have been so controversial, for DFID in its new role to say, “Hang on a minute, let’s develop some red lines, some lines in the sand, which the trade negotiations cannot go past without taking account of what is coming through”. If we capture that it could be a real step forward, but it is too soon to say whether that will happen.

Q4 Ann McKechin: Notwithstanding your welcome for development to be involved in trade I think there has been some question raised about the fact that the International Development Secretary of State chairs the Cabinet Sub-Committee on Trade Policy and Promotion and although Gareth Thomas is the Trade Policy Minister on that Sub-Committee, the Trade Promotion Minister, Lord Jones, does not attend. Does this suggest to you that we still have not quite fully thought out in Government what the relationship is between both areas?  
Mr Gidney: I do not know because since 1997 when DFID was created, DTI led on trade and increasingly DFID was expected to have a role in trade recognising the impact of globalisation and the fact that globalisation is an inescapable factor of our lives. I think it would be as unimaginable now for DFID to develop a robustly pro-poor trade policy which ignored the interests of UK businesses as it would be for DTI, as it was, to go around promoting naked free market mercantilist approaches. Trade and industry are not so easily separated.

Professor Winters: I think that is correct. We are talking about a middle of the range, a little bit balanced this way and a little bit balanced that way. I guess my view is that these things tend to go in fashions and the fashion just at the moment has been to elevate the development focus perhaps a little bit above the trade promotion focus. My guess is that the form of organisation will resolve just one or two debates more in the direction of, shall we say, development and responsibility towards poor countries than towards promotion of British businesses. In fact, it seems to me, we ought to remember that trade policy primarily should be about the burgeoning interests of British consumers and residents, not business or particularly other countries. It is all a balance. One would want to ask whether there is a consumer affairs representative on this committee, an issue which I gather both Gareth Thomas and Lord Jones have some responsibility for.

Mr Gidney: Could I just add another comment to that, thinking about what Alan said at the beginning. Recognising that trade policy is still Brussels led and recognising the particular and fairly inflexible approach that DG Trade has taken on recent multilateral and bilateral trade policy. I think it is really valuable to have a Member State looking at it in a new way.

Q5 Ann McKechin: Do you think this is more a signal to Europe about where the UK stance is?  
Mr Gidney: I hope so.

Q6 Ann McKechin: As much as it is in terms of internal departmental arrangements?  
Mr Gidney: I would hope so because I know that DFID has tried very hard over the last few years to influence the trade policy that has been made in Brussels and I do not see a huge amount of success yet. If we look at EPAs, we are still going to have pretty much the EPA that was envisaged by the European Commission at the outset. Anything that signals some kind of rebalancing I think will give a very powerful message to the Commission.

Professor Winters: Whether it was intended as a signal or not, that is the instrument through which we have to operate and, in a sense, the counterparts that will feel this rebalancing most directly will be the people in Brussels through whom we are trying to implement most of our ideas on trade policy.

Q7 Sir Robert Smith: You really do not see that the Promotion Minister not tied in to what is happening in that Sub-Committee could be going off at a tangent and promoting British trade from the policy direction?  
Professor Winters: It is always possible for governments to get incoherent. My view is that we are talking about very small amounts of rebalancing. Remember that nearly every policy area has very,  
4 European Commission’s Directorate-General for Trade (DG Trade)
very many interested parties and not all of them can be represented on the Cabinet Committee. Much will depend on the structures beneath to make sure that proper attention is paid to the interests of trade promotion and that trade promotion, in a sense, is kept on-side with the rest of trade policy. It is not just about a Cabinet Committee.

Q8 Chairman: The fact that he is openly going round saying, “I am a cheerleader for British business”, and I have actually heard him make deep and profound statements about his commitment to development—presumably he will be travelling half the time rather than attending committees.

Professor Winters: You would know better than I whether that was an important barrier to effectiveness. There has always been something of a tension within DTI between promoting British business and protecting the interests of British consumers or British consuming industries and international development. One clearly needs a serious effort at senior Civil Service level and at senior political levels to make sure it does not get too incoherent.

Q9 John Bercow: Neither of you is overflowing with optimism about the prospects for ambitious pro-development outcomes from the Doha Trade Round or, it would seem, for an agreement on the EU Economic Partnership Agreements. Instead you seem to be thinking in terms of incremental gains and what I think Professor Winters has described as a slight shift in the balance which, if he will forgive me saying so, he said with a certain world weary cynicism as though he has seen all of these things before, which I am sure he has in the course of his illustrious career. I wonder whether either of both of you could say something more specific and explicit about what the British Government should do to ensure that the political will that is needed for countries to make concessions and come to some sort of agreement is maintained both in the European Union and in the United States? Also, I wonder whether I might tempt either of you to give us a hint as to where you think specific agreements might be reached in relation either to particular developing countries or to specific sectors?

Mr Gidney: A role for the British Government? One of the things that we have been repeatedly told over the last few years is, “What can we do, we are one of 27 now, don’t blame us, blame” whoever it might be according to the circumstances. That is a real problem and I do understand that, and DFID have made various attempts, I think, to influence the process but I do not think this influence has amounted to that much, as I say. We need to make a choice in Britain about whether we are prepared to stand up a little more to Brussels. I have heard from people in DTI, on EPAs, that Brussels has repeatedly said to them “get your tanks off my lawn”. After the UK position paper in March 2005 on EPAs there was a lot of effort by UK government officials, and we were told this frankly, at mending fences with the Commission because the Commission were unhappy about it for various reasons. That is, if you like, a local problem but it does not actually address the bigger picture. As a Member State with particular development interests and a particular mandate for looking at the popular interests and the consumer interests that we have here in the UK, we should encourage our ministers to speak out more publicly on the developmental consequences of trade policy. Okay, it might upset Brussels but it is not the end of the world, I am sure they are capable of dealing with it. If we do not have some kind of public reflection on where trade policy is going then we do not do anything for the trust which is essential between developing country groupings and the richer countries. We all know that part of the problem with Doha has been the lack of trust and part of the problem with EPAs has been the lack of trust. There is no confidence in the process, no confidence that the richer countries are listening to the poorer countries in the negotiations. Given Britain’s historical links with many developing countries, surely there is a role for her as something of an honest broker. When the Cotonou Agreement was concluded in 2000 with lots of good language about poverty reduction, there was an opportunity then for the British Government to say, “Okay, this is what we are going to be looking for because this is what we hear is wanted amongst the parties” and then tracking that, setting some indicators around that. If we can do that with some of the new agreements, like the EU-India bilateral and some of the other regional trade agreements which are gathering momentum at the moment, then I think we will help encourage and retain trust amongst the negotiating parties. Being silent publicly, although not in private, does no service to the development content. In terms of how you are going to get an agreement, I simply do not see an agreement on WTO5 without a substantial move by the richer countries, a demonstration of political goodwill actually, and similarly with EPAs. There was an interesting letter from Commissioners Mandelson and Michel, which you may have seen, to the West African grouping dated 11 October where the West Africans were saying they wanted more time, they were not in a position to conclude the EPA by the end of the year, and the two Commissioners just said “No”. It was said in a number of different ways but they just said “No”. With an honest broker looking at that, “No” is not an acceptable answer if you are looking for a development agreement. The development approach would be, “Okay, why not? What can we do? What manoeuvrability is there? How can we help you?”, rather than just, “No, sign”. That kind of role for the UK I think would be very valuable.

Professor Winters: I have some sympathy with the way Michael has characterised it. There is not too much attraction in, as it were, preserving our pride and our reputation for saying all the right things but achieving nothing at all in Brussels. We do have to be sufficiently on-side that we are influencing the process quietly as well as grandstanding. It is a very difficult balance to call. I do believe that clear public

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5 World Trade Organisation (WTO)
statements by the British Government of its beliefs based on evidence about what role trade and other aspects of globalisation and, therefore, the various agreements could play in development is always useful and this Committee has played part of that role in laying out some of the issues and clearly we have to continue to do that. The volume at which the Government will speak is to some extent affected by the organisation. Having said that, my own view is that in Doha we very clearly need to have further progress on agriculture. I would not want to guarantee that that would be enough to reach even a fairly modest agreement overall, but I think it is clear that without further steps we are not going to get one. For myself, I hope that we do try to bring the Doha process to a close fairly soon just because it is riddled with a lack of trust and there is no point keeping it alive for another three or four years without evidence that it is going to be quite different.

Q10 John Bercow: I understand that, but can I put it to you in these terms: although the developing countries are in no sense a homogenous bloc and we know that now, there have been very substantial developments in recent years with the emergence of new and, in some cases, even competing blocs, nevertheless, as a broad statement I think it is true to say that the need—not desire, the need—for a successful outcome to the Doha Round is that much greater amongst the developing countries that have suffered as a consequence so far from its absence than is the need of Britain, Europe and the United States. You look suitably sceptical, Professor Winters, at my proposition. Let me put it to you that if you are at least partially sympathetic to the view that there is well nigh an imperative for the developing countries to get a successful round which assists them then there ought to be a move away from the rather tedious game of table tennis and buck passing which has been indulged in by the European Union and the United States, and there needs to be a recognition of the case for some unilateral initiatives by either the European Union or the United States, in other words a unilateral willingness to tear down the barriers that are damaging developing countries irrespective of what their response on other matters might be. Is that a position to which you would sign up?

Professor Winters: Yes, I have a great deal of sympathy with that. I certainly did not mean to be sceptical; I was looking interested.

Q11 John Bercow: I am sorry if I misjudged your body language.

Professor Winters: What exactly have I got to say about need? Developing countries have much greater needs for development, for economic advance, and I believe that a liberal trading regime almost always is going to be a strong part of the cocktail that helps in advance. I believe that a satisfactory Development Round calls on developing countries to do quite a lot themselves. I believe that developing country liberalisation is a very important part of development, it is not just that the wicked West is doing them down. How do we get there? I do not believe that we can actually browbeat developing countries in the Doha Round into doing more liberalisation than the rather small amount they have indicated over the last few years. That is one of the reasons why I am quite keen to see it drawn to a close and we can start, as it were, another conversation. How might we do it? I think you are exactly right that we ought to walk the talk that we care about development, we ought to be prepared to confront some of the groups within Europe and the US who resist liberalisation and I think unilateral actions would be one of the ways of really signalling intent. It has become a very stylised gavotte, we know the moves, we know the music but it does not go very far. If we could energise the European Union—we the British or anybody else. I suppose—into unilaterally and unconditionally taking one more step and saying, “This is the analysis, we have got to make it work, we have got to make it work soon”, I think that would be very constructive. It may or may not work.

Q12 John Bercow: Thank you very much.

Mr Gidney: I think you are right, leadership and some kind of unilateral action is absolutely needed or we should just stop the dance because everyone is agreed that it is a huge waste of energy and time. A role for DFID would be to support that other aspect of development that is so important which is not being addressed at the moment and is perhaps being compromised, which is regional co-operation in developing countries. At the same time as having to negotiate at the WTO and bilaterally with the EU many developing countries are also trying to improve the economic efficiency of their regional blocs recognising the increasing importance of regional trade to their economies. That is a vastly important process. We need to be conscious of the degree to which liberalisation with the EU, for example, is happening at the wrong stage—is that the right approach and what would happen? We need to think of the consequences for regional cooperation. Also, DFID really could be helping through its activities, through its funding, to support regional integration effort more, protecting the space to allow that to happen but also giving the technical and research capacity which it is well known to have channelled in that area. That would help developing countries see more clearly an international economic strategy in many cases.

Q13 Chairman: I just wonder if we could turn, finally, to issues of bribery and corruption because this morning in the three evidence sessions we are looking at that as well. I attended an event at the Foreign Office after Hilary Benn had been appointed the champion against corruption. Transparency International told us that under the new arrangements it is understood that this role now falls to the Secretary of State (DBERR), but nowhere is this set down. First of all, is that your understanding? Then they say that it is incoherent
I found it difficult to understand what was happening to trade policy, which I do understand. If Transparency International thinks that it is unclear that certainly reflects my position that it is not at all clear. How has the British Government as a whole in the last year performed on issues of corruption? I think the truth is “not in a terribly distinguished way”. That may be incoherence, it may be something else, but to the extent that we are serious in our scrutiny of the British Government’s attitude towards corruption seems to be lacking in energy, to put it mildly. The Corner House puts it rather more bluntly than that when looking at the Saudi investigation: “the UK’s anti-bribery policy is nothing short of a shambles—legally, institutionally and politically.”9 From your perspective, how effective do you think this Ministerial Champion has been, in other words the role that Hilary Benn had, and what is your understanding of where the centre of gravity is about to move to and how it might concern you?

Mr Gidney: This is not a specialisation of Traidcraft; our focus has been much more on trade policy rather than anti-corruption.

Professor Winters: Nor is it a specialisation of mine. I found it difficult to understand what was happening to trade policy, which I do understand. If Transparency International thinks that it is unclear that certainly reflects my position that it is not at all clear. How has the British Government as a whole over the last year performed on issues of corruption? I think the truth is “not in a terribly distinguished way”. That may be incoherence, it may be something else, but to the extent that we are serious in our statements that solving issues of corruption is one of the really principal necessities for development, and given that every corrupt transaction has two parties, it seems to me that more coherence and more energy and more focus would be desirable. Again, whether the reorganisations will make much difference, I suspect the leadership has to come right from the very top.

Mr Gidney: It really does depend on what they do. This is what we are saying, that in many parts it is too soon to say. If I might suggest, it might be something which the Committee might come back to after a period of time to see what has changed, whether the new ministerial structure and regrouping of responsibility has made any difference at all in terms of the development and accountability agenda.

Chairman: There is one change, we have a minister coming in to see us tomorrow and it is the fourth attempt to actually get a minister to appear to explain the Government’s trade and anti-corruption policies.

Q15 James Duddridge: To a degree if you have to ask the question and you have got the answer: it does not make a difference. Professor Winters, you talked about the Government’s poor performance on corruption and said it was perhaps “incoherence or something else”. What was the “something else”? Professor Winters: I certainly do not want to claim to understand, as it were, the full set of motivations of senior levels of Government but sometimes things go wrong because they are not organised properly or different people are pulling in different directions. Sometimes they go wrong because someone has said, “Frankly, I think we won’t bother about that, let’s lie low”. Whether it is a manifestation of some conscious view, mistaken I suspect, that in the long run British interests are not served by very active pursuit of certain inquiries or whether it is, in fact, that different parts of the Government neutralise each other and it has been a muddle and is falling on stony ground, I guess I would not want to say. It is important to realise that one can have similar looking outcomes from essentially incoherence leading to a process that just does not work or from a more conscious view that having a process that does not work is actually quite convenient.

Q16 Sir Robert Smith: From the development point of view, if we cannot tackle corruption then we are never going to get an effective development policy delivered.

Professor Winters: I am not a corruption absolutist. To say that unless we can get corruption sorted it is not worth bothering about anything is incorrect. It is quite clear that the sophistication of transactions and the level of trust that is required to run and develop harmoniously in Britain, Denmark and the US is way beyond the levels that most developing countries have reached and, therefore, if they are to achieve the sorts of economic activity that we have achieved at some stage they will have to, as it were, very much improve their performance in those areas. I absolutely do not believe that we should put corruption as the first thing before we move to other things. All of these things should go in steps, a little step on this side and another step on that side, and there are very, very many useful things that one can do even in regimes that are fairly unpleasant. However, we ought to walk the talk, we ought to be clear that there are two sides to a corrupt transaction and we actually sometimes have jurisdiction over one of those sides.

Q17 Chairman: A comment made many times is that if British companies are not whiter than white then it is very difficult to lecture developing countries. I think that is really a point of concern.

Mr Gidney: That is right. Another contributor to this whole debate is the degree to which companies are encouraged to report on their environmental and social as well as economic impacts. The new Companies Act, of course, now encourages directors to be mindful of that sort of data and those kinds of impacts. Again, this is something that DFID could support because there are very clear developmental benefits for clarity and accountability.

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8 Organisation for Economic Co-operation and Development (OECD)
9 Ev 12
Q18 Chairman: Can I thank you both. Obviously, as you have both said, this has some way to work through, which we will be following with interest. Clearly for us, as a Committee, we think it is a positive development to put trade in the Department for International Development but at the same time we need to see how that works in practice and how the three departments work together effectively and how they resolve any tensions that arise. You are quite right that we have to keep an eye on it and maybe come back to it at a later stage. Can I thank you both very much for your clear answers. Thank you.

Professor Winters: Thank you very much.

Witness: Mr Gavin Hayman, Campaigns Director, Global Witness, and a Board Member of the Extractive Industries Transparency Initiative, gave evidence.

Q19 Chairman: Good morning, Mr Hayman. Thank you very much for coming in. Perhaps for the record you would like to introduce yourself.

Mr Hayman: Sure. I am Gavin Hayman. I am the Campaigns Director for Global Witness.

Chairman: Thank you. You obviously were an important source of information for us when we were doing our conflict report and we are glad to have your organisation back giving further evidence. I am going to ask Robert Smith to open the questioning.

Q20 Sir Robert Smith: Obviously tomorrow we have got the minister and it has taken a long time before we have managed to get a minister to come to us on this whole issue and we will be starting with a whole new set-up by the Government. I wonder what your assessment is of the benefits and/or risks of the way ministerial responsibilities have been changed in the latest set-up on trade policy?

Mr Hayman: As it pertains to our specialist area in terms of natural resources in conflict I would say it is positive that DFID is having an enhanced set of responsibilities but the challenge is to deal with the raging disconnect we still see in government policy as relating to natural resources, conflict and corruption. I am not completely convinced that all the mechanisms are in place there. If you look, for example, at natural resources in conflict, partly as a result of prompting of the committee and everything else, there have been some improvements in the OECD Guidelines procedures but in terms of delivering on, say, the White Paper commitment to address natural resources in conflict, I have seen a cross-Whitehall committee that has been set up, then disbanded and set up again, and there was someone in DFID who had a job description that implied they should be doing that but they have just changed jobs to do something else without really delivering on a coherent plan. I would say in general there is still a challenge there about co-ordination across Government.

Q21 Sir Robert Smith: You are saying someone had a job description?

Mr Hayman: Yes. Someone within DFID was leading the thinking. I think DFID are very good at developing ideas but it is having the time and perhaps the space to go away and speak to the different parties and looking at how the Government might have longer range policies and provisions. The problem is it looks like the person who was doing it has just moved on to a new job and somebody new has come in again, so we are back to square one.

Q22 Sir Robert Smith: Someone new has come in but the job is still in being?

Mr Hayman: Yes, and hopefully they will carry on filling the same job but it seems a shame, having only just convened a cross-Whitehall committee to start looking at the issues, that the person who is the focal point immediately changes jobs. That seems to me to be a sign of a lack of coherence and a lack of political will to address this problem coherently.

Q23 Sir Robert Smith: Do you have any concerns about the splitting of policy and promotion and the fact that policy will now have a more potentially development led approach but promotion will be quite detached?

Mr Hayman: I do. Again, it is an issue of coherence. I will quote an example we came across only the other day which was in Cambodia. As you know, we have done quite detailed work there looking at the whole system of corruption and concerns about the governance of the country and the management of the forests, and also illegal land concessions there being one of the key development challenges. DFID and others have been quite good on being concerned about these issues but then you have perhaps the country’s largest illegal land concession and a UK-based company called D1 Oils, which is a biofuels company, possibly negotiating with the tycoon who was awarded that concession. According to newspaper reports, you had the British Ambassador joining the CEO of that company to go and see the concession and perhaps speak to the tycoon involved. Business promotion there has clearly, perhaps completely, cut across governance concerns of a country like Cambodia.

Q24 Sir Robert Smith: Would that have predated the new structure of Government anyway?

Mr Hayman: It is happening while the new structure is being rearranged.

Q25 Sir Robert Smith: Currently in play?

Mr Hayman: Yes. It is a good example of the challenges between promotion and policy and you have quite an obvious disconnect there where you have an ambassador in a country that is plagued by corruption, and corruption at the very highest levels, apparently disregarding, I would say, advice in
terms of trying to address that challenge coherently and perhaps working on the promotion side of British business but which actually undercuts long-term policy towards a very fragile state.

Q26 James Duddridge: On the ground, maybe in that specific example of Cambodia, what is the interaction between the Ambassador, the local DFID office and the visiting Minister? Does DFID carry enough punch in-country to make sure that the Minister’s agenda both physically and its point of focus is a correct one representing the United Kingdom?

Mr Hayman: My experience is DFID does not quite carry enough punch yet. A good example of that might be the Extractive Industries Transparency Initiative where DFID led on the negotiations of this international multi-stakeholder initiative to promote transparency in the mining of oil and gas from those countries, and it has been problematic but broadly they have done a good job there, but the challenge there was getting local ambassadors involved in the process. A good example would be in a country like Kazakhstan where DFID may have had the agenda to do that but were they briefing the ambassador properly such that he could go and front for it? Again, when the ambassador changed the transparency agenda seemed to have very much dropped down. It is a question of consistency again.

Q27 Chairman: Thank you for that. When we did our Conflict and Development report, Global Witness was a very useful source of information and gave formal evidence, as you know. We tried to follow it on at the time but we had some difficulties with the minister, so it has taken us rather a long time to get to this point. I will perhaps remind you and then ask for your comment. As I recall, the United Nations produced a list of companies which they said allegedly may be engaged in conflict resources. Two of the companies which were British which were identified in that were Alfred Knight and Afrimex. We did take evidence from Afrimex who were refreshingly frank in their evidence, although they wrote to try and redress some of it. To be fair to them, they came and gave evidence. Alfred Knight refused to do so effectively and did not do so. The Government, even under this new arrangement, have said that no organisation has provided evidence to justify a complaint or an investigation into alleged activities which may be in breach of the OECD Guidelines. Do you accept that response that the UN at least has made allegations which it seems the Government did not follow up or, in your capacity, are you satisfied that the Government did respond to those in a proactive way?

Mr Hayman: We have now submitted an OECD Guidelines complaint to the new procedures and that has been accepted and the Government is now following on with that complaint. If I remember right, at the time Mr Kotecha admitted payments to the RCD10 Government directly in the committee meeting, to one of the most brutal rebel groups involved in the civil war. Effectively we took that forward as a complaint and the UK Government, after some um-ing and ah-ing, has agreed to take that forward. As a result of the revised procedures and the new National Contact Points, I would say there has been a measure of improvement in the Government’s progress in that. I would go back to why the Government did not pursue that to start off with. I think it was a shambles because, if I am not mistaken, the answer as to why the case was not pursued was simply that Afrimex had been there for 30 or 40 years before the war broke out so, therefore, they were not just a profiteer during the war, which is interesting logic but clearly not coherent: it was the role they were playing in the actual civil war that should have been the subject of focus. It is still very much the fact that we have to present all the evidence and do all the running and all the work. I would say the Government lacks any kind of individual investigative capacity itself and I am quite struck that in terms of the new procedures it is still quite junior staff and not a full-time person doing it for their entire job description, which I think is a problem. If you read the new procedures, I think it is 0.2 of a person in DFID, 0.2 of a person in FCO11 and 0.8 of a person in Business, Enterprise and Regulatory Reform.

Q28 Ann McKechin: Are they taking any direct evidence from the Serious Fraud Squad or from any other police organisation about how they should conduct an investigation?

Mr Hayman: Not that we know of. There may be informally but there is nothing in the Memorandum of Understanding that I have seen that deals with the new procedures and seems to cover that, which would be an obvious omission and something they should address. It is very much that they are starting to find their feet. This is the first complaint and, to be frank, we are using it as a test case.

Q29 Chairman: We did ask Afrimex what their view of the OECD Guidelines was, to which they said they had never heard of them. We also asked what conversations the DTH had had with them, to which they said there had been none. In the light of that, and your complaint, do you think there is a case for the new National Contact Point to look again particularly at those cases given what you say, that they were not properly handled in the first place?

Mr Hayman: Absolutely, and to investigate them actively rather than simply saying, “Here we sit, come and bring us evidence if you can”, I think that is way too lazy given the seriousness of the allegations that were made there and the brutality of the war that took place.

Q30 Chairman: Taking Ms McKechin’s point, do you think it should go to the National Contact Point first or should it be referred to the police?

Mr Hayman: It will be very interesting to see what actually comes out from our complaint against Afrimex. The procedure was meant to run for three

10 Rally for Congoese Democracy (RCD)
11 Foreign and Commonwealth Office (FCO)
months and it is going to hand down a judgment in February, which is at least twice the length it should have been. The explanation for that is Afrimex is only a very small company so it takes time. I will be very interested to see what the actual guidance that comes from the British Government is because it could be it makes a general statement about companies in conflict zones or, alternatively, it could simply say, “Afrimex is being behaving inappropriately here, we condemn them in writing” and that is it and there will be no sanctions or follow-ups. I do not want to prejudge the process, as it were. What it does show is there is a crucial need for clear and coherent guidance globally with perhaps the UK taking a lead, building on the experience of Afrimex and elsewhere, about what companies should and should not do in conflict zones. There is no instrument that governs this at the moment. We have just published a new briefing that is called Oil and Mining in Violent Places. There is no global instrument that provides clear guidance to companies on how to manage the risks and behaviour in conflict zones, and in particular their interaction with rebel and security forces from the government, and that is a problem. It has to have two levels: not only clear guidance of what companies should and should not do but also a requirement on companies to provide certain transparency provisions so you can be assured they are doing it properly externally. Those are two key challenges that I think the Government have failed to live up to yet and that is something I would put at the heart of their conflict and resources policy.

Q31 Chairman: You made a specific complaint under the OECD Guidelines about Afrimex. Do you have a view at all about Alfred Knight?

Mr Hayman: We are not experts in that particular case. We know Tricia Feeney of Rights and Accountability in Development tried that one out. I would say generally she has been disappointed with the Government’s response to that. Again, it would be characterised by the Government being very passive rather than actively investigating the information. One of the challenges there, if I am not mistaken, was that she provided particular detailed evidence to the Fraud Squad and the Serious Fraud Office and that did not get through to the National Contact Point and elsewhere. Again, that slightly passive sense of just waiting for information to be passed over seems to be the issue there as well.

Q32 John Bercow: In its evidence to the Committee as part of our inquiry into Conflict and Development, Global Witness argued strongly that the British Government should take a lead at the UN to define conflict resources. In your judgment, what progress is being made in reaching an internationally agreed UN endorsed, if you like, definition of resources? Is the UK Government doing enough to push for an agreed definition? If so, what is the evidence and, if not, what ought it to be doing that it is not doing?

Mr Hayman: I would say the UK absolutely has not been taking a lead, it has been absurdly passive to my mind and has been overtaken by the German and the Belgian Governments. They had a debate in the Security Council where the UK made vaguely supportive noises but, in fact, the UK Government has been almost missing in action. It has been friendly and making supportive noises across the UN but it is very much letting others do the diplomatic running, taking the lead and everything else, and I find that very disappointing. It is very clear that the UN is not joined-up about addressing natural resources in conflicts, be it defining the problem to start off with or just sequencing its interventions in countries that are affected by conflicts and natural resources in terms of actually rebuilding the government’s natural resources before reopening the sector for business. The key thing would be to commission a Secretary-General’s report on the issue which would force different parts of the UN to talk to each other: peacekeeping operations talking to the Department of Political Affairs, and so on. That has not happened. It should not be that difficult to do, the UK is on all the relevant committees, be it the Security Council, be it the General Assembly, be it, I think it is called, the Group of 40, the peacekeeping operation part of the UN, and it has not done anything on this as far as I can work out. I think that is just lazy, quite frankly.

Q33 John Bercow: “Absurdly passive, missing in action, very disappointing and lazy”. Mr Hayman, these are very, very, very strong terms and I am extremely grateful to you both for being so explicit in your criticism and, indeed, for saying what ought to be done. You seem to have encapsulated most of what one could possibly want. There is just one thing on which I am going cheekily to press you. On the view of your candour so far. What is going on? Why has the Department been “absurdly passive, missing in action, very disappointing”, given that the Government would, I think, in general terms sign up to the importance of making progress in this field? In the end ministers have to take responsibility, we know that, but is it poor staff work, is it ministerial lethargy? Have ministers allowed other matters to take their eyes off this particular ball? This seems extraordinary, not least in the light of the forceful advocacy of Global Witness, amongst others. I am trying, in a sense, to get at why the passivity.

Mr Hayman: I just want to dwell for a moment on two examples of the starkest elements of disconnect as to why I used quite strong language there. There are two examples that are quite fundamental. One is Sierra Leone, and there you have the Peace Building Commission, the new part of the UN that is meant to deal with post-conflict reconstruction. Sierra Leone is the absolute epitome of a conflict resource during the war with conflict diamonds, of course. The UK is the single largest bilateral donor to Sierra Leone, the EU is the biggest donor, but the Peace Building Commission are not looking at natural resources and that is a startling omission; hence my strong language. Another very good example is DRC12 where you have at the moment a mining concession review going on, again the UK is the
largest bilateral donor, very aware in terms of being sensitised, not least through endless meetings we have had with DFID, the FCO and others, about the issue of natural resources in conflict there; incredibly though the concession review is being pushed through very fast without adequate provisions and in quite an unclear and not very transparent way. If you get that wrong the DRC’s mining sector will be a mess forever more. These are crucial tests on the ground and in both cases the ball has been dropped. The UK should have an awful lot of leverage to help pick that ball up but so far it has not happened. That is why I am using quite clear language. In terms of what is happening, I am at somewhat of a loss to say exactly why. The high level political messaging on policy seems to be that we should be concerned about natural resources and that it is clearly a key factor in the risk of instability and yet in reality, for the people on the ground, maybe there are other priorities that are snowing them under or it is part of their job they feel unable to deal with, there is clearly not adequate, advice, resources and support given to people, or maybe it is seen as politically too intractable in those countries. I would ascribe generally from our dialogue with the UK Government that there is a sense in which it thinks, “Let’s have an election; let’s deal with that first and not worry about the governance, we will sort that out once an election has taken place that is legitimate”. The sequencing tends to be “Let’s tackle the elections. Let’s have free and fair elections first and then we can deal with the resource governance of the sector”, but I would say you have got to deal with both of them at the same time. This is a very messy, complicated business but you have got to have parallel tracks of work going on otherwise you end up with the new government saying, “Great, we will attract new business” and the sector has not been reformed and the same brutalities emerge again. That was exactly what we found on our recent field visit in Sierra Leone. We found large scale mining operations going on and people were being marginalised, dispossessed and really quite angry about not seeing the economic benefits. There is clearly a disconnect there. I am at a bit of a loss to say why, although part of it may be that the natural resources portfolio often goes to quite junior staff members, and I think that this has been a problem with the conflict and resource policy. They are very nice people but it is new, fast-stream graduates who are dealing with this and they do not have perhaps the diplomatic and bureaucratic ability to be able to push other people, manoeuvre obstacles out of the way and to join-up British Government policies.

John Bercow: One of the benefits of your giving evidence to us is that your very clear and forcefully expressed views can be conveyed to the new ministerial team, and we have to hope that with that new ministerial team in place some of the words you have uttered will be heard and heeded. Thank you very much indeed.

Q34 James Duddridge: Could one of the reasons be the disconnect between the Foreign Office and DFID, the Foreign Office wanting fast free and fair elections and to move on, and DFID taking a much longer term development view? It has always surprised me that the good governance work happens in DFID rather than the Foreign Office where perhaps there are particularly some of the governmental relations.

Mr Hayman: Yes, I think that is a very key point. Thank you, I would totally agree with that. It has been my experience certainly that DFID are always, “What could the long-term policies be on conflict and resources?”. When you get to the FCO they are like, “Well, we are not doing too much at the UN at the moment. We are already trying to push all the terrorism stuff through and we cannot deal with this issue of conflict and resources as well”. There seems to be an issue there for sure. I am quite struck by another example of the disconnect. If you deal with a country like China and natural resource governance in China and Chinese companies operating abroad, there was a relatively junior staff person in DFID who had the job of going to the Chinese Government to get them into the Extractive Industries Transparency Initiative and there is no way a twenty-something junior staff member of DFID is going to get traction with the Chinese Government. The US sent the Deputy Assistant Secretary over. It is quite clear that DFID does not always have the muscle to be able to do this. That is not to criticise DFID for at least trying but the FCO has to be alongside pushing in the same way and we do not tend to see that happening in practice.

Q35 Chairman: Perhaps we can come back to you and talk about China before we go next year. You mentioned the mining review in DRC and you mentioned Sierra Leone. When we were looking at conflict in the DRC, and it is fair to put this on the record, major British mining companies were not involved in the DRC and the general attitude was, “It is corrupt. It is not possible to operate there with any kind of standards, therefore we do not go there”, so we did not have an issue that was identified. If they are reviewing the mining concessions at this time are there British companies or international companies with British connections now looking to move into the DRC under these new arrangements? Is your concern that we might be moving into a situation where reputable companies could be moving into an area where the arrangements are not directly—

Mr Hayman: Completely, yes. That is precisely my concern. We are certainly aware of very large mining companies listed in London which are interested in moving into DRC who have actively invited us in to ask what the risks are, so they are assessing the situation.

Q36 Chairman: They are taking advice from you?

Mr Hayman: They are sensible enough to call in various different people to try and get the lie of the land and see what works or does not work. My concern would be that this is one of the key challenges for DRC and, again, an issue for the British Government to help the government steer a sensible course would be that you have the mining
concession review going on, all the mining contracts are being looked at within about three to four months by a series of government officials who have full-time day jobs as well, so where is their support? If you look at the process of reviewing one contract with Mittal in Liberia, which was signed by the transitional government, that took a group of people three months to look at by itself, so that gives you some idea of the sheer weight that is on this committee’s shoulders. Meanwhile, you have large mining companies lining to get up in DRC while this process is going on and perhaps negotiating with the government. The coherence of the contract reviews and the advice the government will receive from that and the way it restructures the sector is going to be crucial and it is a mess at the moment.

Q37 Chairman: So taking Mr Bercow’s point, that is another reason why it is really important that under this new arrangement the British Government takes a much more proactive view about what it expects from British companies or international companies operating out of the UK?

Mr Hayman: Absolutely.

Q38 James Duddridge: Taking you back to the Extractive Industries Transparency Initiative, my understanding is that is only being implemented by about 25 or 26 countries at the moment. What chance is there that it will become the benchmark for all countries, and specifically is there a possibility of a UN Resolution on the initiative?

Mr Hayman: The UN General Assembly Resolution endorsing EITI as a principle of business is absolutely crucial. That is one example where the UK has been cheerleading for it and it is an example where they have perhaps been a bit more active. Certainly DFID has been pushing this, although again, interestingly, the FCO were like, “Well, we would actually go to the General Assembly and help push for a Resolution on.”

Q39 James Duddridge: A what group?

Mr Hayman: A friends group. I think Azerbaijan is launching the idea of a General Assembly Resolution. The British Government has been talking about it for quite a while now, perhaps one and a half to two years, and it is only just starting to emerge, so I would like to see some rapid progress on that, and that is something I hope the Minister would actually go to the General Assembly and help push for a Resolution on.

Q40 Chairman: Thank you very much. As always, your evidence is extremely helpful to the Committee as well as being to the point. We will be very grateful for any further input you have on these kinds of issues. I do not think there is any desire on behalf of this Committee to conduct a witch hunt. Indeed, in some ways one can say that Afrimex at least had the courtesy to come and explain themselves to the Committee, and one can understand where they are coming from. But the truth at the end of the day is that we are under criticism in the UK for not having a very active anti-corruption policy, and obviously we are going to talk to the OECD next. I think the kind of practical evidence you can put to the Committee from all the experience you have is really helpful to enable us to question ministers and other organisations effectively, so I want to thank you again very much for your evidence today and that which you have provided in the past.

Mr Hayman: Thank you very much.

Witnesses: Professor Mark Pieth, Chairman, OECD Working Group on Bribery, and Mr Robert Ley, Counsellor to the Director for Financial and Enterprise Affairs, OECD, gave evidence.

Q41 Chairman: Good morning, gentlemen, thank you very much for coming in to give evidence, it is much appreciated. You have heard the previous exchanges and I think you will see where the Committee is heading. I wonder for the record if you could briefly introduce yourselves and your particular relevance to this inquiry

Professor Pieth: Thank you, Chairman. My name is Mark Pieth and I am a Professor of Criminal Law in Switzerland at Basle University and Chairman of the OECD Working Group on Bribery.

Mr Ley: I am Robert Ley and I have been with the OECD for more than 20 years in the Directorate for Financial and Enterprise Affairs. For 10 years, from 1990 to 2000. I was head of the division responsible for the ME Guidelines13 that you are interested in today. That is the part of the Directorate that looks after what is now called the Investment Committee. During those 10 years we also launched the first non-binding (at the time) OECD instrument to combat corruption. That was the beginning of the Working Group on Bribery and Mark Pieth has been chairing that ever since. I must tell you that since 2001 I have not had direct responsibility for these issues. I am attached to the Director’s office and I follow these issues as best I can. My Director is responsible for all of these issues and many others as well. It is an honour for me to be here and I will do my best to respond to your questions.

Q42 Chairman: Thank you very much. We have taken a close interest in the OECD’s Peer Review of the UK and the comments made and the fact that a

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13 Guidelines for Multinational Enterprises (ME Guidelines)
Professor Pieth: Let me start from this side, there is Professor Pieth:
countries concerned for which they are accountable. there are many provisions that require action by the country concerned under the Convention and mentioned as a way of assessing the performance of interest in individual cases such as the one you judging them or resolving them. It does take an interest in individual cases with a view to working Group does not act as a tribunal. It does make, though, from the outset is that of course the recommendations, and so on. One comment I would wonder if you could perhaps just give us your views. The press and NGOs have suggested that this action has seriously undermined the UK’s credibility on bribery and corruption issues. I think it would be fair to say that some of us have taken the view that the way it was done was also somewhat damaging. It did appear to be a straight admission that political and commercial interests outweighed what you might call objectivity about corruption. That is a subjective comment from me, but I would be interested to hear your views as to what impact that decision has had on the UK’s standing in terms of its attitude towards bribery and corruption. Mr Ley: Maybe Mark could answer this first because his Group is directly responsible for overseeing the implementation of the Convention. It is the Group that conducts the peer reviews, makes recommendations, and so on. One comment I would make, though, from the outset is that of course the Working Group does not act as a tribunal. It does not take an interest in individual cases with a view to judging them or resolving them. It does take an interest in individual cases such as the one you mentioned as a way of assessing the performance of the country concerned under the Convention and there are many provisions that require action by the countries concerned for which they are accountable. Professor Pieth: Let me start from this side, there is no hiding the fact that certainly this case has caused serious concern. That is what we have expressed several times in our communiqués. However, I think rightly it has to be seen in a wider context. The UK is one of the key members of the OECD and has a very good reputation on anti-corruption, especially through DFID, and that is very well acknowledged. The problem with the OECD Convention is that the goal of this Convention is about fair competition amongst competitors fighting each other in a tough economic combat for jobs and for contracts, and here obviously everybody is very closely observing what others are doing. We have not only these two instruments, as Robert has just mentioned, we have a monitoring body, we are able to look at each other, but it is not a tribunal, it is still peer monitoring, so it is friends looking at each other and trying to befriend each other and stay on that friendly level. This case has caused a lot of concern worldwide. We are not able to and we have not yet got to the bottom of the case. We have reserved our right to have a new look at it in the light of something much broader. We have had over the years a very uneasy relationship with the UK, and if I say “we” I am not talking about the OECD as such but the OECD Working Group on Bribery. Since 1999 when we first evaluated UK law, we found those laws of 1906 and 1912 are not really addressing the issue we are talking about in modern times. It is not the servant/master relationship and we are really talking about trans-national bribery, which was at the time not at the forefront. When we had a new look at the law after 2001, when the 2001 Anti-Terrorism law came in, in 2002 we had, under what we call Phase 1 bis a new look at the law. We said it is better now because it is clearer that trans-national bribery is meant but we have still inherited this old servant/master construction, and in fact that is one of the problems that we are now seeing as one of the major difficulties in the case mentioned in Phase 2, when we had the first fully fledged analysis of not only laws but also practice, we came up with three difficulties. The laws still had not changed and the laws were in other ways also, in our view, not up to standard. Take corporate liability, which is absolutely fundamental for what we are trying to achieve, the corporate liability standards are based on jurisdiction. I think Tesco v Nattrass is still the leading case, and it is simply attaching responsibility to the brain rather than to the limbs of the company. That seemed to us not good enough for modern needs. However, it went further than that: our major problem was that cases, even though there are about 30 investigations we are told, never really make it from the investigation phase into the prosecution phase, so the question was—and this is really still an issue—is there an inherent or a systemic impediment or a threshold between investigation and prosecution that does not allow it to go ahead? The third point was that we felt there were various institutions concerned with this topic of trans-national bribery and they were not necessarily co-ordinating really well. At the time in 2005, we also had difficulties with the resourcing. I believe a lot has changed here in the meantime. The effect of the stopping of the BAE-Saudi case is that in the course of our regular evaluation (we call it the follow up to Phase 2, which happens two years after the phase two evaluation), we came to the conclusion that this might be the tip of the iceberg and we would want to have a totally new look at the entire outfit and come back to the UK next March. The emphasis from us is not the case; the emphasis is the law. I must be very frank with you, this is really worrying everybody because we believe that one can in half a year write a bill and give it to Parliament, and we are worried that this has not happened since 1999, to put it in very straightforward words.

Q43 Chairman: Your reasoning behind that is that it does not suit the Government to do it?

Professor Pieth: Sorry?

Q44 Chairman: Of course we agree with you, many of us have been calling for such a bill, but why do you think over that length of time the Government have not thought it a priority to bring such a bill?

Professor Pieth: It is not really for us to think about the reasons. We are just finding that the laws have not been made and have not been drafted in the meantime and that parliamentary time at some point has not been found. This is worrying but it is not
really up to us to criticise the Government or to question their commitment. We are just finding that this has not been done. The effect of this situation is obviously that it is not just a problem for UK, it is a problem for the OECD as an institution because our credibility is called into question. That is probably why we reacted quite strongly last March when we came out with a scathing press release saying that we are putting the UK in a situation as we are putting Japan in a situation. That was made very clear. I might also add, however, that we are not really trying to bash the UK, again to be very specific, this is not the intention of this Group. The Group is not a political instrument, not a political tool. We are trying to apply equal standards and there are several other countries in the situation of having to undergo these Phase 2 bis, for instance, Ireland, Japan and Luxembourg. Maybe the attitude is different. The Deputy Prime Minister of Ireland, whose title I cannot pronounce, has actually made it public before the evaluation that they would welcome such a Phase 2 bis, so the attitude is different from country to country.

**Q45 John Bercow:** There is a conflict of evidence here. The Government says that it is very co-operative and wants to take forward the whole process of the review, including presumably the Phase 2 bis review. On the other hand, Transparency International UK says the Government response to the reviews to date has been characterised by delays and that “nothing is being done to resolve the practical difficulty”\(^{14}\), so this is a golden opportunity for us to extract from you the following: what would be the focus of the review and the on-site visit to the UK by the OECD Working Group? Related to that, and very importantly in light of the suggestion that there is some dilly-dallying, when will the visit take place? My understanding is that there is a commitment that it should take place by March 2008. Professor Pieth, you are amongst friends, within the confines of this small room you can share with us your last point, that there will be a new bill in a form that is a government commitment going to Parliament. The difficulty is that we cannot really evaluate a Law Commission paper because that does not have the firmness yet that we need because the Government can do what it wants with that type of document afterwards, so the hope is to give the UK until March to see where you are going.

**Q47 John Bercow:** Obviously if the visit is to be, for the sake of argument, in March it needs to be organised and confirmed and put in diaries rather before then. Is there some activity taking place in the undergrowth?  
**Professor Pieth:** I can confirm that we are preparing for it on both sides.  
**John Bercow:** Good, thank you.

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**Q48 Ann McKechin:** I was interested to hear, Professor Pieth, about the reasons that you have concern and one is a lack of prosecutions. I was also interested to hear that you mentioned Eire because one thing that Eire and the United Kingdom share is a very similar legal system in relation to prosecutions. Any prosecutor will obviously bear in mind the history of previous prosecutions on issues of fraud. Fraud prosecution in the United Kingdom is a disaster area for prosecutors because they have a very high rate of failure in terms of convictions. I just wondered whether the particular system, which is generic to the United Kingdom and to Eire, is one of the causal links about some of the problems about why both prosecutors and legislators have perhaps an inherent reluctance to broach this issue because it has been an area of failure? In the United States of America the prosecution method is to take the company directors, to put them in jail, and then to plea bargain them down, which is why they have a prosecution rate of something in the region of 90%
plus. In the Continent of Europe, where many of the OECD members are based, there is a codified system of law and a very different system of prosecution. I am wondering whether the OECD has made any analysis as to whether the different systems of prosecution are having a bearing on this issue of fraud cases and corporate liability in particular?

Professor Pieth: It is an obvious question with the two countries undergoing a Phase 2 bis. The reason why Ireland is being subjected to that procedure is quite different though. At the time we visited Ireland—we always have a so-called on-site visit as part of this Phase 2 evaluation. It simply—it did not take it seriously enough. There were one or two public officials and one private sector person present and we were not in a position to adequately evaluate Ireland. Thus it is for formal reasons that we are saying we have to re-do it; it was not a valid evaluation; there is no statement of contents actually involved there. In fact, Ireland was making a point that even though they obviously inherited the 1960s laws and everything, they understood the master/servant approach totally differently. Obviously we are open to hearing what that means and what it looks like in practical terms in cases. I do not think we can say automatically it is because of your legal system that you find it more difficult because we would then have a similar situation in countries like Australia or New Zealand.

Q49 Ann McKechin: And Canada.

Professor Pieth: Or Canada, and the situation presents itself totally differently there.

Q50 Ann McKechin: In light of that, how would you characterise the UK Government’s approach to resolving the outstanding issues? What conversations have you had about the issue? Are they taking studies about how to frame this law? Are they making active initiatives to put this as a priority in terms of the legislative programme? Have you had any indications from them about where they currently stand?

Professor Pieth: The approach of this Treaty was originally a very careful one because we work under something that we call the “concept of functional equivalence”. That means that every country has to choose its own way. We are not going to tell anybody in the detail how to do anything, so we would not go and tell our members to do this or that in concrete terms, but the approach is that the overall goal has to be achieved and we would simply measure what a country has been doing against the overall goal. To give an example, if no cases are brought even though you have 30 cases in the investigation or pre-investigation phase, the question is is there a bottleneck there and why there would be such a bottleneck, or for instance, to take your example, whether plea bargaining is an element of your system or not. That is not at all an issue for us. We would not have a problem with plea bargaining as long as the system is efficient overall.

Q51 James Duddridge: Professor Pieth, in April this year there were reports in the papers about the UK Government not wishing to support your re-election. What is in your mind as behind that reluctance to support your re-election? I have got some questions for Mr Ley in a second, but I am particularly interested in your view of what lies behind that.

Professor Pieth: I do not really know much about it at all and it is up to the countries. I have been elected as Chairman every year for 18 years, by unanimity, and I need full unanimity to be elected. It has happened in the past that from time to time a country has had difficulties and then we have overcome these difficulties. It is in the logic of this process, which sometimes gets quite rough, that some countries ask questions, but I could not confirm what has been said there in the media because I have no way of knowing. That was a media story.

Q52 James Duddridge: But is it possible that their indication that they might not re-elect you is more to do with you doing your job than you not doing your job?

Professor Pieth: You cannot exclude that, but on the other hand you also have to say that 18 years is a long time and maybe too long for a Chairman. You have to find the right moment to leave, and I do not know if this is the right moment.

Mr Ley: I should say that the normal practice of the OECD is that chairs are supposed to give way to somebody new every three to five years or so. Mark is not the only committee chair to have a longer period than that. The French chair of the Competition Committee, for example, has been there for about 10 years or so. We tend to keep our best chairs. When I say “we” I speak perhaps presumptuously on behalf of the OECD members who like to retain somebody as chair with a high degree of technical competence and commitment. It is very important to have a high-quality person in such a leadership role, and in this particular case there is an obvious need for a high technical expertise as well as political savvy.

Q53 James Duddridge: Perhaps more broadly Mr Ley, how would you characterise the UK/OECD’s relationship generally?

Mr Ley: I think the relationship is excellent. I have been in the OECD for a long time. It has always been a pleasure to work with the UK. They send very good people, sometimes more junior than other delegations but they can take care of themselves. They know how to defend the national interest and at the same time be constructive. The committees that I have been most closely associated with have had a strong negotiating agenda, and in that area it is particularly useful to have creative minds and people with a sense of how to help build consensus. Of course, consensus around something you can live with, but it helps to have that kind of approach rather than what we are sometimes confronted with.
Q54 Chairman: Does defending the national interest include resisting introducing laws which will secure more effective prosecutions for bribery? We had a Member of Parliament who gave evidence to the last Peer Review group specifically on defence contracts (he was Chairman of the Select Committee on Defence at the time) saying that everybody knows that you do not win defence contracts without bribery and corruption and therefore he did not find it at all surprising that that is what goes on. I do not think he fully understood the terms of the review! In blunt terms, that is the dilemma, is it not? Professor Pieth, you said this is a highly competitive situation and people are in there trying to win contracts; that is the whole nub of the issue.

Mr Ley: One comment I would make about this is that it is useful to take a step back and look at the evolution of this over time, because when Mark Pieth and I sat for the first time together in an OECD committee room we were unable to get a conversation started at all because the only country with legislation on its books that treated as illegal the corruption of foreign public officials was the United States, and no other country in the room wanted to take the floor. It took several meetings and a lot of talking from the chair to get the conversation started. I must say over the years I have been astonished that in an area which is perhaps one of the most sensitive that one could find in regard to national sovereignty and international economic affairs, we have reached the stage at the OECD of having a legally binding treaty, and not only a treaty but this rather intrusive monitoring and follow-up procedure. It is standard OECD process to have non-binding rules and a monitoring process to go with it, but here we have binding rules and a monitoring process that is particularly intrusive, I think more so than in any other area of the OECD. Personally I am not surprised to see that from time to time we run into boulders, but I am confident that this one will be overcome.

Q55 James Duddridge: Following The Economist article, which made certain accusations against Professor Pieth, the Director-General of the OECD said that the UK media is trying to smear him through “innuendo, gossip and partial truths”. Do you think that is the position of the UK media and is the UK Government behind that smear campaign? Mr Ley: I am not sure if it is a smear campaign. About the Director-General?

Q56 James Duddridge: That was a quote from the Director-General of the OECD.

Mr Ley: Secretary-General is his title.

Q57 James Duddridge: In which case I am misquoting, my apologies.

Mr Ley: I do not see any smear campaign. The Secretary-General has broad shoulders and can look after himself.

Q58 Chairman: The briefing that the Committee had for this said that Angel Gurria, the Director-General of the OECD has said that he believes the UK media is trying to smear him—and I think that means you Professor Pieth, does it?

Professor Pieth: Himself I believe.

Q59 Chairman: —“through innuendo, gossip and partial truths”.

Professor Pieth: It is not really for me to speak for the organisation as a whole, but since the two articles came out one day after the other one, it was in The Economist one day and then the next day I believe the Guardian, the Secretary-General made the point that since those points raised in The Economist, in his view, seemed a strange mix of elements drawn together to make him look bad that he was now being made a victim. I think that was what led him to make that media statement in defence of his own integrity. In my situation, I would add one point, as I said, I do not know anything about it in concrete terms, maybe you have better means of finding out, but there is a certain logic in such a move, since we are in our monitoring mechanism doing something very rough: in an institution that works on the basis of unanimity, we are saying there is a noble duty to abstain for the country that is being subjected to monitoring. We call it unanimity minus one when we are evaluating, and that can be very rough in a situation like this. The only way a country can get its own back is to say, “We have had enough of this Chairman,” because then you have full unanimity. I am not saying the UK is actually doing that or trying that but in the past it is true—Mr Berlusconi has tried it and he failed.

Q60 John Bercow: So some not very brave person is playing the man and not the ball, a pretty age-old tactic by those under pressure who know they have lost the argument, they have got something to hide, some of the ill-deeds are being exposed so they think, “Let’s take a pot shot at this guy and see if we can undermine his credibility and perhaps force him to quit, make it a bit unpleasant, and he might go away.” It is pretty low grade, is it not?

Professor Pieth: Picking up on your point a moment ago, I think in the light of the upcoming Phase 2 bis we have really turned a corner and we are trying on a very straightforward technical basis to plan for that event now, and whatever there might have been, that is no longer an issue. That is my sense.

Chairman: It is helpful to know that and to have this on the record. To my mind, and I suspect the Committee would agree with me, if this pressure led to that kind of result in a situation where the British Government, which is currently under review, is not playing by the rules, it is the British Government who emerges in a pretty shady way, not the OECD, so I think we would hope that our Government would not behave like that, whatever their tetchiness might be at the process.

James Duddridge: Just for the record, from what you are saying it did appear in two United Kingdom journals, The Economist and the Guardian, not in...
other foreign papers. It would seem very odd for people external to the United Kingdom to place articles in the United Kingdom press.

Chairman: I think we know how journalists work.

Q61 Ann McKechin: We heard earlier this morning, and you may have caught Gavin Hayman’s evidence on behalf of Global Witness making some criticisms about the effectiveness of the National Contact Point in the United Kingdom, and in particular his comments regarding the junior staff and their relative inexperience. We have also had evidence from The Corner House, which is a UK NGO, which complained that the investigations by the NCP16 favoured business interests and continued to be “dogged by bias and delays”. I just wondered from your own assessments what your opinion is of the UK National Contact Point in comparison with other members. Is there a best practice model or are there other areas where there is a much more robust approach—being taken about these types of complaints?

Mr Ley: I take it that we have changed subject matter?

Q62 Ann McKechin: Yes we have.

Mr Ley: And we are talking about the OECD’s Guidelines for Multinational Enterprises. My impression is that in fact the UK is one of the better National Contact Points. The Guidelines themselves are not legally binding of course because they are recommendations from governments to enterprises, but they do have a formal binding element. It is a Council decision that regulates the procedural follow-up and calls upon countries to set up a National Contact Point and then provides the procedural guidance as to how they should go about it. The UK in this area has a pretty good record. This is an interesting time in the annual cycle. Since the review was completed in 2000, we have had an annual cycle of reporting in June to an Annual Meeting of National Contact Points and there there is a sort of collective peer review. It is nothing like what goes on in the anti-corruption field, which has on-site visits lasting a week with experts from different countries and the presence of several Secretariat people enquiring intensely and interviewing all kinds of people inside and outside government. This is a very different kind of animal and it has to do with the priorities of the organisation and the priorities of the members and the resources devoted to it. The way we do this is via a collective peer review where each of the countries’ National Contact Points reports in writing and then attends a meeting where they take it in turns to say what they have been doing. It has a certain “show and tell” side to it but it also has an enquiry side where they can learn from each others’ experiences and question what is going on, because for the system to work well a National Contact Point cannot do the whole thing on its own. There is usually another country involved, sometimes several other countries, because multinational enterprises are complicated things. The general impression I would say is that the UK is not doing too badly.

Q63 Ann McKechin: What surprised me from Gavin Hayman’s evidence this morning is that an involvement either by the police investigators of this country or by the prosecution authorities in terms of how the investigation was conducted did not appear to be integral to this process. At the moment it appears to be conducted solely through civil servants. Are there any guidelines by the OECD or discussion about at what seniority level this investigation should be taken within the Civil Service and to what extent police experts and investigators should be called in to assist?

Mr Ley: I think if we were to get into police and formal investigators and so on we would be in a very different kind of environment. One thing we have to remember is that very often the facts that are associated with what we call, unfortunately, a “specific instance”—which for normal people would be a “case” but we do not call it a case precisely because it is not a legal proceeding, and to keep faith with the business community it was important to them that we called it a specific instance and not a case—the events that give rise to complaints under the Guidelines are typically in developing countries and most of the developing countries concerned are not part of the Multinational Guidelines, so we have the 30 OECD members plus 10 other non-member countries now, but they are mostly the more advanced ones—Chile, Brazil, Argentina, and most recently Egypt, which is a novelty. What I am getting at is that the investigation, if there is to be one, is in the sovereign territory of another country and our National Contacts Points’ job is to try and gather information as best they can, typically through their local embassies, and if possible with the cooperation of the local authorities, but it cannot be guaranteed because the local authorities do not necessarily welcome the presence of investigating embassies, or NGOs for that matter, but the NGOs do a pretty good job in gathering information too, and it is typically through them that the cases emerge.

Q64 Chairman: Just a final point, the Risk Awareness Tool that you introduced last year, which obviously is of particular relevance to developing countries, how do you promote this if it is giving guidance to OECD-based countries operating in areas of weak governance? This Committee has visited a number of these places and clearly it is difficult, so how do you see this Tool working, how do you promote it, how do you actually make it effective?

Mr Ley: It is an excellent question and the answer is being discussed still, if you will. The Tool itself was approved only in 2006 and since then we have been exploring with countries and companies and NGOs to see what would be the most effective way to go about this. One thing that is new about it is that the potential clients for this are businesses themselves. The idea of this thing is to provide a guide or a set of

16 National Contact Point (NCP)
17 Ev 12
questions that businesses can use to determine what they are getting into, what they should be careful of, and what questions to ask and of whom. The most interesting idea that has come up to make it more operational would be to have a portal, a sort of elaborate website that we could operate that would receive information, not just passively, not just a collection of information, but where businesses themselves would put the information up there to explain what is involved in dealing with a particular country, because they are not interested very often in being on their own. There are areas of mutual interest and possible collaboration within an overall highly competitive environment. The main drawback here is that we do not have any money for this. It is like anything new. We could create a sort of website but it would not have any bite. We need some money from somewhere, probably not a lot of money, but we need to have a full-time person who would both gather the information and interact directly with the companies who might be interested. The institutions that represent them—employers' federations, chambers of commerce and the like—have shown interest in this.

**Q65 Chairman:** This presumably would work a bit like defence exports where companies who are making components which are not directly for defence products but could be adapted should be aware when they get an order from a strange place? Is it the same sort of idea, to raise awareness?

**Mr Ley:** Yes.

**Q66 Chairman:** It still requires companies to take that upon themselves, and one of the problems we have found in this inquiry—and if you were in the previous evidence session when we were taking evidence from Afrimex you will know they had been identified by the United Nations as maybe trading in conflict products, which had been referred to the British Government for investigation, and the company basically said they had received no contacts from the British Government and were totally unaware of the existence of OECD Guidelines. I think in all fairness to the witness from Afrimex that was a genuine comment. To some extent he was saying, “I am a small business; is it not up to somebody to tell me these things?” How do we make that work?

**Mr Ley:** One of the things that came out of the last Annual Meeting of the National Contact Points is that two or three of our countries have done special promotional efforts to small and medium-sized enterprises. Italy was one, which will not surprise you. I think that is the sort of thing where typically if you think of multi-national enterprises you think of the top end of the market, but the middle-sized end in many ways needs more hand-holding, they do not have the resources necessary. Government does not have unlimited resources either for hand-holding, but there might be a case for working through some of the bodies that look after the interests of SMEs18 and then perhaps also to target particular sectors. The extractive industries is obviously one that has been particularly interested and anybody working in Africa. The Canadians seem to be a bit out in front in exploring what might be done here, and the US have put the Risk Awareness Tool on their site for OPIC, the Overseas Private Investment Corporation, which provides services to prospective investors.

**Q67 Chairman:** So it would not be unhelpful for us to recommend the British Government look at Canada and the United States?

**Mr Ley:** Maybe look at that, yes.

**Q68 Sir Robert Smith:** You said you needed more resources to actually make a web portal effective. What sort of resources? Is there a figure?

**Mr Ley:** One person. They discussed this at one of the recent committee meetings and the figure was €160,000. It would be on an on-going basis, it would not be a one-off. There was an offer by the Dutch to contribute to such a fund but they did not want to be the only one. It is like lots of these things—you can get something started and it would not take all 30 or 40 countries that are interested in the Guidelines, another two or three would do the trick, I am sure.

**Q69 Chairman:** Can I thank you both very much for coming in. We very much appreciate the work that you do, which we engage with quite a bit. Clearly what you are going to be doing over the next six months is important. As you put it Professor Pieth, it may be a bit rough but one hopes the British Government can handle that and respond in a positive manner. This Committee certainly shares the view that the Government should be doing more, not just be seen to be doing more but that there should be some outcomes like effective prosecutions in due course to make clear that this is a serious undertaking. Speaking personally, and I think on behalf of the Committee, I wish you well. I think it is a proper undertaking and if it helps the British Government get to where it ought to be, then that is a good outcome.

**Professor Pieth:** Thank you very much for the opportunity.

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18 Small and medium enterprise (SME)
Thursday 18 October 2007

Members present

Malcolm Bruce, in the chair

John Bercow  Ann McKechin  Sir Robert Smith

Witnesses: Mr Gareth Thomas MP, Parliamentary Under-Secretary of State, Departments for International Development (DFID) and for Business, Enterprise and Regulatory Reform (BERR), Mr Edmund Hosker, Director, Trade Policy Unit, DFID/BERR and Mr Piers Harrison, Team Leader, Anti-Corruption, Financial Accountability and Anti-Corruption Team, DFID, gave evidence.

Q70 Chairman: Good afternoon to you Minister and your colleagues. Thank you for coming in. It is certainly no reflection on you personally but for the record I should say that this is our fourth attempt to get the Trade Minister in front of the Committee to answer questions, but on none of the other occasions were you the Minister in question. I have to say that it has been a point of frustration for the Committee. I am grateful that we have now finally managed to arrive at that, although since we requested the meeting obviously the circumstances have changed so we are covering both the new arrangements plus the issues of bribery and corruption which were our initial concern for securing this meeting. Could you perhaps introduce your team for the record and then we can take it from there?

Mr Thomas: The officials with me are Edmund Hosker, who is the head of the joint Trade Policy Unit across the Department for International Development and the Department for Business, Enterprise and Regulatory Reform, and on my left Piers Harrison, who is the head of the Anti-Corruption Team in the Department for International Development.

Q71 Chairman: Thank you for that. Starting first of all with the new arrangements which, to be honest, we are still trying to get to grips with. As a committee we welcome the fact that the lead Minister on trade is the Secretary of State for International Development; that clearly is something we believe should be of benefit to development policy. One presumes that is the reason for it, but it is not entirely clear exactly who leads on what. Could you first of all indicate why you think the Prime Minister made these changes in the way that they have been done? Was it because there were problems with the previous arrangement in terms of coherence and the development priority? Was that the prime reason or was it for some other reason?

Mr Thomas: You are right to focus on the issue of coherence. Bringing together the trade and the development briefs will lead to much better coherence across Government. Perhaps the other thing to draw to the Committee’s attention is that the Trade Minister brief has been split into two. There has always been a trade promotion side of trade and work in Government as well as a trade policy dimension. Lord Jones of Birmingham is the Trade Promotion Minister selling British business. My job is to focus in on the trade policy work, reporting to the Secretary of State for International Development, who chairs the Cabinet committee and indeed the Secretary of State for Business, Enterprise and Regulatory Reform. You asked specifically about the division of labour; I assume you mean between the two Secretaries of State. The Secretary of State for International Development will chair the Cabinet committee and obviously has the overall lead as a result and will lead on issues such as the Doha Round, Economic Partnership Agreements, where there is a very clear and very strong development dimension. The Secretary of State for Business, Enterprise and Regulatory Reform will lead on issues such as trade defence measures and indeed issues such as regional trade agreements where the development dimension, whilst perhaps there, is not there in quite the same way as it is with, say, EPAs1 or indeed the Doha Round.

Q72 Chairman: So, for example, the Doha Round in day-to-day terms will be your responsibility.

Mr Thomas: Indeed; yes. However, one of the reasons for establishing a Cabinet committee is to bring around the table all the different interests across the UK, across the Government. There are many, many different departments which have a stake in wanting a good outcome from the Doha Round of talks and many other ministers across Government, apart from those I have just named, will have opportunities to have the conversations, to do the lobbying work necessary to make progress on the Doha Round, and indeed on EPAs, that we want to see. Having a Cabinet committee brings together all those different interests to agree not only coordinated policy but also then to think through the lobbying and influencing strategy to try to achieve our objectives.

Chairman: As the questioning develops there are aspects of that we shall want to explore a little more.

Q73 John Bercow: What exactly is your title?

Mr Thomas: My title is the Minister for Trade and Development.

Q74 John Bercow: I am heartened by the straightforwardness and clarity of that reply, which I confess is in stark contrast to some of the published sources which we have consulted to try to establish

1 Economic Partnership Agreement (EPA)
the same points. Specifically, I have seen you referred to not only as Parliamentary Under Secretary of State for Trade and Consumer Affairs, indeed I have seen you referred to as Minister for Trade and Development. I have seen you also referred to as Minister for Trade Policy. Would you not agree with me—this is no cavil and it is certainly not in any sense nitpicking—that it is terribly important, particularly when there is a change, to be clear and that we need to know your identity and therefore to be reminded constantly of that title and that it should be one title and not a whole series of different titles apparently all emanating from official sources and reproduced in different ways. For example, you yourself wrote a letter to the Guardian on the ninth of this month in which you did indeed use the title Minister for Trade and Development, but on other occasions the title has been given differently. Is there not a need for some sort of central edict to go out so that departmentally, as between DFID and BERR, for example, there is clarity, the better to promote the chance of clarity amongst the media and others?

Mr Thomas: I hope the opportunity to appear before the Committee now will help to clarify that. As well as the brief for trade policy, I hold other responsibilities, still at the Department for International Development and indeed hold other responsibilities at the Department for Business, Enterprise and Regulatory Reform which is perhaps where the initial confusion may have come from. I am clear that my prime responsibilities are in the trade and development area; that is not to down grade the other areas of work I have which are also important and which I am seeking to take forward too.

Q76 John Bercow: Let me put a couple of quite specific points to you. The DFID submission states that there is to be a new single but dually located Trade Policy Unit of DFID and BERR officials. CBI evidence says that this is to be headed by the former DTI trade policy lead official. As at 11 October, 106 days after the Prime Minister took up his post, there was only one mention of the Trade Policy Unit on the BERR website—there was a contact address—and no mention on the DFID website. What is going on?

Mr Thomas: I will go back and seek to make sure that the omissions, if indeed there are any, are remedied. The joint Trade Policy Unit is established and it is doing an awful lot of work helping the Prime Minister in his conversations around the Doha Round and indeed mine and both Secretaries of State similarly on the Doha Round and on Economic Partnership Agreements. I hope you will forgive the website omissions in the light of the considerable amount of work which is being done, but I will take that back.

Q77 John Bercow: It may well be that they can be forgiven, but they cannot lightly be forgotten and they will of course be recorded in the evidence. It does seem to me that it would be the height of cheekiness to expect you to be sorting out the website physically yourself. I am sure others can do that, but it does seem to be peculiarly unfortunate that the mention is on the BERR website, not on trade promotion but on trade policy, when we are being told that on trade policy DFID is in the lead. I am not saying that you should be doing it, but the matter needs to be sorted. It would be very unsatisfactory if we were still meeting as a select committee next week and the matter had not been addressed. You will not be surprised to know that it is my personal intention to check the website very soon after this session. One might allow 24 hours, but it would be trespassing on the generosity of members of this Committee to expect us to wait any longer than that. What has changed as a result of the

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2 Confederation of British Industry (CBI)
3 Department of Trade and Industry (DTI)
4 The information is available on the Trade Policy Unit website: http://www.dti.gov.uk/europeandtrade/Trade%20Policy%20Unit/page41941.html
dual location of the Trade Policy Unit? Specifically, have any former DTI staff moved to DFID as a result?

**Mr Thomas:** Yes, staff have moved across to DFID. A specific issue in terms of the benefits of the Trade Policy Unit is linked to having a separate minister for trade policy. What it has done is to free up ministerial time to concentrate on what needs to be done to try to help unlock progress in the Doha Round and indeed to address the concerns and needs in terms of Economic Partnership Agreements too.

**Q78 Chairman:** A specific and unrelated concern. Does the transfer of staff into DFID have any implication for DFID’s overall headcount?

**Mr Thomas:** They remain as Department for Business, Enterprise and Regulatory Reform staff, albeit working within the Trade Policy Unit. May I bring in Edmund Hosker, who is the head of that Trade Policy Unit? Do you want to comment in any way on the staff location arrangements?

**Mr Hosker:** There are some people from BERR who will be spending most of their time in DFID and a few people from DFID who will be spending most of their time in BERR. The net effect is more people working in DFID than was previously the case and the precise working arrangements will be for the teams themselves to sort out in terms of what makes operational sense for them.

**Q79 John Bercow:** Yes, but you are not just an official. You are the Director of the Trade Policy Unit and that leads me to the fairly obvious question: where is your office?

**Mr Hosker:** I am intending to spend one day a week working in DFID and indeed I have already started spending some time there; we hold meetings sometimes in DFID, sometimes in BERR.

**Q80 John Bercow:** Do you have an office in BERR as well?

**Mr Hosker:** Yes.

**Q81 John Bercow:** So your office in DFID will be occupied one day a week and your office in BERR will be occupied four days a week. Is that right?

**Mr Hosker:** That is probably roughly right, but it will be flexible in the light of the way the unit develops.

**Q82 John Bercow:** Just so long as both of the offices are there on the particular days that you want to be in one or other of them.

**Mr Hosker:** We already have hot-desking in BERR and that is pretty much the way I will work.

**Mr Thomas:** Notwithstanding where individual staff are based, I too have offices in both departments and I spend probably more of my time in the Department for International Development, albeit still a considerable amount of time in the Department for Business, Enterprise and Regulatory Reform. Frankly, meetings about trade policy take place in the most appropriate area, depending on the particular needs at the time. At the moment, given that we are running three-line whips, quite a few meetings are taking place within the House of Commons and in neither department.

**Q83 John Bercow:** You will appreciate that this is a relatively unusual set of questions. It is and we are seeking to extract lots of little bits of information. I do not intend to prolong it, but I do want to ask you just a few more things very quickly. Does the Europe and World Trade Directorate still exist as part of BERR and the International Trade Department still exist as part of DFID?

**Mr Hosker:** The Europe and World Trade Directorate does still exist as a part of BERR and in effect there are overlapping circles. Most of the people within the Europe and World Trade Directorate are now part of the Trade Policy Unit but not all of them, which is why it continues to exist. The Europe and World Trade Directorate also deals with European economic performances, implementation of the services directive, export controls.

**Q84 John Bercow:** I am just slightly concerned that if something continues to exist as part of BERR but several of its officials are functioning within the Trade Policy Unit, which is part of DFID, there is quite a lot of potential scope for confusion and uncertainty—to put it no more strongly—as to lines of accountability. I choose my word carefully; it is not necessarily lines of responsibility, when you might well say you are the Minister and you know exactly who is responsible for each area. To whom are such people accountable if they are still part of a unit which reports to the Secretary of State for Business, Enterprise and Regulatory Reform, but they are also functioning within a unit which reports in the intermediate sense to Mr Thomas and ultimately to Douglas Alexander? It has to be hoped that there are extraordinarily good relations between all parties and a less than usual human capacity for confusion, inter-departmental rivalry and crossed wires.

**Mr Thomas:** I think you are seeing plots and conspiracies where you do not need to. There are other examples of cross-government units; you will be familiar with the Sudan unit no doubt, where staff do come together to work on specific issues, but still stay within their main departments. My own experience of the functioning of the Trade Policy Unit, in terms of the support I am getting to do my job, is that the arrangements are bedding down very well. I take your point that there is always the potential for some confusion, but there is scope for confusion in a whole variety of other settings. The arrangements are bedded down well and I have felt extremely well supported by civil servants from both departments who are now working in the unit.

**Q85 John Bercow:** I very much hope that the record will justify your optimism. For the record, if it is parliamentary to do so, I confirm that I am not a subscriber to conspiracy theories, but I am a keen subscriber to the cock-up theory of history. Sometimes problems can arise not because there is a
deliberate intention to mix it or to foster disillusionment or rancour, but simply because there is an uncertainty. Very finally I ask you, with the indulgence of the Chairman because we need to get these facts on record, what the implication will be in policy development terms in practice of the changes? For example, the TUC\(^5\) feels in its submission that it is not yet clear how, under the new arrangements, consultation will feed into decision making. I welcome your thoughts about that and by implication presumably so will the TUC. Can you just tell me whether the Trade Policy Consultative Forum will be maintained and if so whether it will operate broadly as now?

Mr Thomas: My understanding is the TUC Consultative Forum will continue with pretty much the same process involved. On the opportunities for consultation, I would expect people wanting to contribute ideas on trade policy issues to come in the first instance through me, albeit some will no doubt want to write direct to the Secretary of State for International Development and some I suppose may write to other ministers; some will obviously write to the Prime Minister direct. That is the way I would expect the arrangements to function.

Q86 Ann McKechin: In the evidence we received from both the TUC and the CBI there seemed to be doubts from both parties as to what the role actually is as between your own office and the Secretary of State for International Development and that of John Hutton, the Secretary of State for Business, Enterprise and Regulatory Reform. Could you clarify which of the two secretaries of state is the senior partner on the area of trade issues? The TUC said that it remained unclear about the decision-making structures between ministers and departments. The CBI on the other hand expressed concern that the changes could be a sign that the UK now views development as the engine of trade policy rather than the trade engine of development policy. Could you also indicate what discussions you have had since your appointment with the major parties such as the TUC and the CBI to try to reassure them about where policy stands?

Mr Thomas: I have met with both the CBI and TUC on a number of occasions, as indeed have officials. In terms of how the burden of responsibility falls between the two secretaries of state, they are obviously equals. The Secretary of State for International Development has been asked to chair the newly established Cabinet committee which seeks to bring all the interests in terms of trade around the table. As I indicated in my answer to the Chairman, we would expect the Secretary of State for International Development to be on all those trade negotiations which had a very strong development focus, such as the Doha Round, such as Economic Partnership Agreements, and indeed for the Secretary of State for Business, Enterprise and Regulatory Reform then to lead on those negotiations where the development component is not quite so strong, such as some of the original trade agreements and indeed the trade defence issues.

Q87 Ann McKechin: You will understand that there can be concerns that policy can fall between two departments and obviously your aim is to try to obtain better policy coherence in Government on the issue of trade. How are the two departments proposing to measure whether these changes are going to deliver greater policy coherence?

Mr Thomas: It is effectively my responsibility to make sure that a ball is not dropped between the two departments in trade policy terms and that is one of the reasons why, in the 106 days since my appointment to this job, I have been consulting with a whole variety of stakeholders on a number of different occasions. The Committee will be more than well aware of the fact that we are very much in the business end of the EPA negotiations and indeed that the Doha Round is at a critical point. So it is trade policy matters which have dominated—apart from select committee appearances this week—my work as a minister since my re-appointment by the Prime Minister.

Q88 Ann McKechin: May I just clarify the issue of departmental reports? The Committee is very familiar with the DFID annual report and the traffic light system but I am just wondering to what extent the BERR department will report on trade issues in their annual submission. Will it be in the same way or will it be differently?

Mr Thomas: I expect the Department for Business, Enterprise and Regulatory Reform to report on trade issues. You will be aware that as a result of the Tom Clarke International Development Act, the Department for International Development has a particular set of responsibilities in terms of reporting on the coherence of cross-government policy and I expect that to continue.

Q89 Sir Robert Smith: Part of that coherence is meant to be established through Cabinet sub-committees and the International Development Secretary chairs the sub-committee on trade policy. According to the DFID evidence it is trade policy and promotion, but when the Minister for promotion, Lord Jones of Birmingham was giving evidence to another committee, he talked about the fact that he was not involved in that sub-committee because the International Development Secretary would chair the trade policy Cabinet sub-committee but that it was only on the trade policy side and not what he was doing. Can you clarify? Is this sub-committee on trade policy or is it for trade policy and promotion?

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\(^5\) Trades Union Congress (TUC)
Mr Thomas: It is predominantly for trade policy issues. So the items which have been on the agenda thus far have been on the Doha Round, for example, and on Economic Partnership Agreements and Lord Jones of Birmingham has attended one of those sub-committee meetings. He will travel widely to promote British business, as he has been appointed to do. In the course of those visits there will be opportunities for him, as indeed he has already, to make the case for progress on the Doha Round. He is an important and valued colleague as a result.

Q90 Sir Robert Smith: So if he is there, he can attend the sub-committee.

Mr Thomas: Yes.

Q91 Sir Robert Smith: It has met and at the moment Doha and EPAs are on the agenda. Does it meet frequently?

Mr Thomas: It has met twice within the 106 days and Doha and EPAs have been the predominant issues discussed because they are two of the very big issues which are before us in trade policy terms at the moment.

Q92 Sir Robert Smith: Is he in the loop then too that if there is a policy agenda on the development round he does not promote business cutting across that government agenda?

Mr Thomas: I am not quite sure what scenario you are thinking of specifically, but he is a colleague of mine within the Department for Business, Enterprise and Regulatory Reform and we have regular ministerial meetings, so there is a joining up in that process. He has attended the Cabinet committee as such and has taken part actively in the discussion which took place there. We work closely together, albeit in different areas.

Q93 Sir Robert Smith: Presumably on the promotion side he can pick up concerns about where trade policy is not working in the UK interests and feed that back in.

Mr Thomas: I have no doubt that he will do so; yes. I would welcome that if that were indeed what he were to pick up.

Q94 Chairman: As you can appreciate, what we are striving for is to see how in practice the balance between the promotion of British interests and the interests of developing countries can be reconciled. Maybe it is perception and not reality, but sometimes people see that when what was the DTI, now BERR, is the lead then it tends to be jobs, investment, exports and whatever it may be for the UK economy. When it is the Department for International Development then it is more about what is the real benefit to developing countries and the extent to which they can use trade to lift their economy. The two things are not mutually exclusive but the emphasis can make a difference. That is essentially what we are trying to get out.

Mr Thomas: Your clarification is very important because they are not mutually exclusive at all and that has become very clear in the discussions I have had with all sorts of stakeholders, that they recognise that. I appreciate that it is a very new arrangement and I entirely understand the Committee's interest. I suppose what I would ask the Committee to dwell on is the fact that in particular not only has there been a joint unit established across the two departments, but also in a sense the job of minister for trade has been expanded. There are two ministers focusing on trade issues: one purely on trade promotion, the role Lord Jones of Birmingham has, and then one specifically on trade policy, the role I have, albeit we both report in to secretaries of state with interests in these areas.

Q95 Chairman: We will monitor the situation with genuine interest to see how it works out. One particular question on the anti-corruption strategy—we have some more questions later—I was in attendance when Hilary Benn, after he had been appointed as the champion for combating overseas corruption, had a fairly high profile launch at the Foreign Office. It is not entirely clear how that has changed. Transparency International, in evidence to us said that it is understood that the role of ministerial champion now falls to the Secretary of State BERR, but nowhere is this set down. The TUC says that so far there has been no announcement that John Hutton is the new ministerial champion, although the evidence that the Government has given to this inquiry states that the role has moved to BERR but does not specify the Secretary of State. Who is the ministerial champion for overseas corruption? Given that the establishment of that post was given such high profile, why has the transfer to the current champion not been given a similarly high profile?

Mr Thomas: The ministerial champion is the Secretary of State for Business, Enterprise and Regulatory Reform. It is a little unfair, if I may say so, to expect my Secretary of State for Business, Enterprise and Regulatory Reform in a sense to have advertised his responsibility in this area immediately. I know that he is working very hard on the preparation of the second anti-corruption plan for Government and I would suggest that the launch of that would be an appropriate time for all sorts of focus on his particular responsibility. I know he appreciates having the responsibility but he has been concentrating on the detail of work in that area rather than on seeking to advertise the post.

Chairman: I shall not extend it now, because we have some more questions later, other than to say that the reason we have been trying to have this meeting ever since we did our conflict report, which is nearly 18 months, is because we had a concern that the output from the DTI on tackling corruption seemed to be rather less robust than was the case in the Department for International Development. Therefore you can understand if the transfer of the champion goes from one department to the other, frankly we are entitled to ask questions about whether there is significance to that. However, we have other more detailed questions which we will pass onto later.
Q96 Sir Robert Smith: You have already mentioned in your evidence and certainly in the written evidence that between the two secretaries of state, in trade negotiations such as Doha and EPA, where there is a predominant development focus it will be the International Development Secretary and where it is more on a trade/business focus it will be the Secretary of State at BERR who would take the lead in those negotiations. I just wonder whether you could clarify what would happen if they are tending towards the trade side rather than development but are with developing countries. For instance, who will lead the bilateral free trade agreements which might be negotiated with India, South Korea and ASEAN? Would that be International Development?

Mr Thomas: I would expect to be leading on those in myself but reporting to in both secretaries of state. That is one of the purposes of the Cabinet sub-committee, to be able to have the discussions about what our approach should be on regional trade agreements, indeed other areas around the table, so that all the different interests are being aired in that room as we formulate our policy and strategy.

Q97 Sir Robert Smith: Would that be the same with the EU-Mercosur negotiations involving Brazil and so on?

Mr Thomas: Indeed; yes.

Q98 John Bercow: Do you believe that development-focused Economic Partnership Agreements can still be signed by the end of this year? With about 10 weeks to go might it now be time seriously to consider a Plan B?

Mr Thomas: We are still seeing a lot of work from the Commission and indeed from the negotiators in the six regions to try to complete Economic Partnership Agreements and we would want to encourage that as much as is possible.

Q99 John Bercow: That is a gloriously unspecific, dare I say very ministerial reply. On 2 October Commissioner Mandelson stated that he would reach an interim goods-only deal with the Pacific ACP region, leaving services, investment and reach an interim goods-only deal with the Pacific. Dare I say very ministerial reply. On 2 October John Bercow: That is a gloriously unspecific, encourage that as much as is possible. Partnership Agreements and we would want to the six regions to try to complete Economic Commission and indeed from the negotiators in the Commission and indeed from the negotiators in the six regions to try to complete Economic Partnership Agreements and we would want to encourage that as much as is possible.

Q100 John Bercow: The first part of your answer, in which you referred to the scope for discussing other issues at a later date, was of interest but I was about to reach the conclusion that you were providing an extremely good answer to a question I had not asked. In the second part of your answer, to be fair, you did then touch on the very specific point that ECOWAS has raised and it is interesting and important for us to learn that you are proposing what I think would be fairly imminent conversations about ECOWAS concerns. The difficulty from our point of view is that we want to get the evidence and have it on the record and produce our report. I am all agog to know what the outcome of your conversation will be. I fear that, as of today, you are perhaps not going to give me the explicit answer that I want to my question. Do you back the ECOWAS case or at any rate do you accept it—no goods-only agreement by the end of the year—or not?

Mr Thomas: If you will forgive me, I do want to have the conversation with the negotiator from ECOWAS rather than give you a specific answer at this stage. What I would say is that a series of other suggestions have been touted as possible alternatives to completing Economic Partnership Agreements by the end of the year: GSP PLUS; trying to get an extension to the deadline. Neither of those options is particularly attractive. For example, there are two reasons why I would have a problem supporting the idea of GSP PLUS. First, it offers worse market access than the Commissioner’s offer of duty and quota free access (a series of products not included).
Second, GSP PLUS has thus far only been given to countries which achieve high human rights standards and I am not sure we would want to support driving a coach and horses through the incentives for good governance. That is my problem with GSP PLUS. On the idea of simply extending the deadline, that is relatively unrealistic too; in fact I think it is very unrealistic. It is developing countries who are not part of the Cotonou Agreement who first raised objections through the World Trade Organisation and if there were any attempt by EU and the ACP to extend the deadline we would see further challenge by those countries in the WTO.

Q101 John Bercow: If you have your conversations at which you hinted a few moments ago and you felt able to send a note to the Committee of any further or better particulars or any outcome, whether an agreed and consensual outcome or not, as the case may be, for the record, that would be helpful. May I ask you in this context how EU development ministers at your September meeting reacted to your view that some issues should be left off the negotiating table until later? I should be very interested to know what their reaction to that was. Relately, would you be good enough to provide us with a copy of the letter you sent to EU trade ministers which is mentioned in your statement?

Mr Thomas: On the question of a letter following the conversation, if I can provide information without compromising the negotiations, then of course I will provide further information to the Committee. I shall certainly look at providing a copy of the letter I sent to trade ministers. We published pretty much the version of what was in the letter on our website.

Q102 John Bercow: I am a bit suspicious of the use of the words “pretty much”. I want an unexpurgated version; I do not want some sanitised download.

Mr Thomas: It certainly was not sanitised, to my recollection. I shall certainly look to provide the letter to you and the Committee. I am trying to remember the other point you made.

Q103 John Bercow: At the September meeting how did they react?

Mr Thomas: You will remember that back in March 2005 the Government published their view of what Economic Partnership Agreements should look like. We have been seeking to achieve the different objectives in that agreement since that point. It would be fair to say that at the time it was first published we were in a relatively small minority of people who felt the same way about Economic Partnership Agreements, indeed the Commission since has moved substantially towards the position that we took and adopted, making an offer in March for duty and quota free market access, albeit with transition periods for a couple of products. In terms of the level of market opening required from ACP regions, again we said we wanted the maximum time for market opening to take place and certainly for some products there have been periods of up to 25 years for markets to be opened and for some products they will not have to be opened at all. The specific concerns I raised at Madeira did see support from a number of member states and we welcomed their support. There is a lot of continuing dialogue between development ministries about Economic Partnership Agreements and the progress, given how close to the deadline that we are.

Q104 Sir Robert Smith: Your approach to the request for a delay or a postponement is to engage constructively and find out what the other side is wanting out of that negotiation and what the problems are. Does that contrast with the EU approach which I understand is just to write back and say no?

Mr Thomas: We have made clear to the European Commission that their suggestion that GSP12 will be the only thing on offer, if an Economic Partnership Agreement is not concluded by the end of the year, is not acceptable to us. We do not want any of the ACP countries to be in a worse position in terms of market access than they are at the moment post December. That is also one of the reasons why we do not support GSP PLUS.

Q105 Ann McKechnie: I am going to ask the Minister about the World Trade Organisation which is, as you will know, a frequent area of conversation between us. We have seen many attempts over the last few years to resurrect these talks and all have ended up in failure. The US presidential mandate has now just about expired. The latest rumour is that Brazil, India and South Africa, along with some other South African countries have come out with an alternative draft which has met with a very sceptical response from both the EU and the US. In light of this, is it time to accept that the Doha as a truly development-focused round is probably as dead as a Dodo?

Mr Thomas: Absolutely not. I can understand the scepticism but what we have seen, fortunately not in the media, is a considerable amount of activity between capitals discussing the negotiating texts on agriculture and NAMA that Ambassadors Crawford and Stephenson published in July. A lot of work is being done in Geneva pouring over the details of those texts; those texts about what are, in the jargon of the negotiation, called landing zones, setting out a broad range in which agreement will be required. What we are hoping to see shortly is further texts narrowing the area of disagreement in the agriculture and NAMA negotiations, but also texts of possible agreements in other areas of the negotiation as well. I do not think it is right to say they are as dead as a Dodo; quite the opposite actually. A lot of activity is taking place. All the major players have recognised that we are in a critical moment and that we do not have that much time left if we want to secure an agreement by the American presidential elections. One of the specific things that I have been doing as well is to seek to ensure that we stay very closely in contact with the
least developed countries group and indeed the African group to make sure that the concerns and needs of those groups are very much reflected in our position and our lobbying work in and around Geneva, in and around Brussels and our discussions with other Member States too. What has been interesting is the continuing enthusiasm of the LDCs for progress in the Doha Round. They recognise that however important the Economic Partnership Agreement discussions are, they stand ultimately in the long run to benefit most from a positive development-friendly Doha Round.

Q106 Ann McKechnie: Can I take it from that that the aid package for the least developed countries which was discussed in Hong Kong is still on the table in terms of the text? Have you had any discussions with the G20 group in India about this text which apparently is now causing some degree of heartache, with the American spokesman saying it could signal the end of the Doha Round, while the EU Trade Commissioner said that the alternative papers are not needed? It does not seem to me as though they are necessarily having a terribly good time at negotiating texts, if you are saying people are being asked to bring them forward.

Mr Thomas: On the package of measures which were discussed in Hong Kong for developing countries, that is still very much on the table. Obviously it is dependent on getting an agreement more generally. We still want to see improvements in that package which reflects an interest of many members of the Committee. You may be aware that what was committed to in terms of duty and quota free access was 97% access for LDCs. We want a timescale to get to 100% for example and we are still pursuing that.

Q107 Ann McKechnie: When you say “we” do you mean the EU or do you mean the United Kingdom?

Mr Thomas: The UK in particular. In terms of the very specific discussions around the conversations which have taken place in South Africa, we need to wait and see how things actually develop in the negotiations in Geneva. Comments have obviously been made in media terms. We will wait to see how things develop. There have been many comments in the past about the Doha Round. It is still going and there is new energy in the round at the moment.

Q108 Ann McKechnie: Would that be energy within the EU to be more flexible in its own negotiating stance, particularly on agriculture, which has been one of the barriers over the last few years.

Mr Thomas: We are very clear that at the appropriate time further flexibility will have to be shown by the EU. We believe that Commissioner Mandelson, because of the reforms that have been in the past to the Common Agricultural Policy, has that flexibility, but there will also have to be flexibility shown by all of the other key players in the negotiations too. Through the contacts that the Prime Minister has, that the Secretary of State for International Development and indeed the Secretary of State for Business, Enterprise and Regulatory Reform has with all those key players that point is made.

Q109 Ann McKechnie: On the question of the UK National Contact Point we seem to have received contradictory evidence. The Government’s interim progress report on the UK Action Plan 2006-07 says “Since the new NCP has been in place, six new cases have been brought to its attention, which represents a significant increase over the short term.” However, your own department’s evidence to this inquiry says there have been four new cases, which is in line with the average. Could you clarify how the discrepancy has arisen and which you believe is the correct figure?

Mr Thomas: Let me say first of all on the National Contact Point that following some of the concerns which have been expressed about the National Contact Point we have taken steps to strengthen the contact point. Additional staff have been brought in from the Department for International Development and from the FCO and an independent steering board is to oversee the workings of the National Contact Point. That independent steering board has met twice already. OECD Watch, which is one of the groups which takes particular interest in the National Contact Point, has praised the UK for the improvement in arrangements and is suggesting that the reformed NCP should be a good model for other countries to adopt. Let me bring in Mr Harrison to try to resolve the particular point about the four and the six cases.

Mr Harrison: The interim report was written in March and I do not know whether the six cases were six new cases.

Q110 Ann McKechnie: I am quoting from the report, “six new cases”. “Since the new NCP has been in place, six new cases have been brought to its attention, which represent a significant increase over the short term.”

Mr Thomas: Let me take that back and give the Committee an assurance that I will go back and check the reason for the discrepancy and drop a note of explanation to you.

Q111 Ann McKechnie: That would be helpful. You pointed to changes in the NCP practice to try to improve it. From the evidence we took earlier this week certainly the OECD officials said that the UK represented one of the better practices. However, evidence we took from Global Witness seemed to indicate that perhaps staff who were dealing with cases were at a relatively junior level; some concern

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14 Least Developed Countries (LDCs)
15 National Contact Point (NCP)
16 DFID, Combating International Corruption: UK Action Plan For 2006/07—Interim Progress Report, March 2007, p 1
17 Foreign and Commonwealth Office (FCO)
18 Organisation for Economic Co-operation and Development (OECD)
19 Ev 36
about whether or not they had sufficient seniority to progress cases and also that there did not seem to be any direct contact with either police or the Serious Fraud Office in terms of the way in which investigations were conducted or with the Crown Prosecution Office, if there should be potentially criminal prosecutions, on whether or not these could be taken forward. I just wondered what analysis has been made of what resources this Contact Point requires.

Mr Thomas: Whilst I am encouraged by what the OECD officials have said and indeed what OECD Watch have said, we are certainly not complacent about the progress of the NCP. We have agreed to lead, jointly with Canada, a survey of best practice across all the national contact points and there are opportunities for us to learn from what others are doing as much as to help other countries with their implementation arrangements too. On the question of the range of officials who are involved, I am not quite sure what Global Witness were referring to because a whole range of officials at a whole variety of levels have been involved, not only in the National Contact Point arrangements but a whole series of other processes too. Indeed we have said, for example on conflict resources and on anti-corruption, that we will increase the engagement of all staff in this area. These were commitments which were made in the White Paper which was published by Hilary Benn and we have been working to do just that. Ministers continue to have oversight and to engage in this area of work. In terms of the relationships between the police and the Serious Fraud Office, I know there has been some concern about lack of clarity between institutions and that there were some concerns that there were overlapping mandates between some of the institutions involved. I hope that the Committee will appreciate that the establishment of the dedicated anti-corruption unit run by the City of London police should largely have resolved that. A memorandum of understanding has been signed between the various players to help address some of the concerns you have just raised.

Q112 Chairman: May I add a comment to that? Having been involved on a number of occasions in expressing concern about the Government’s lack of response, the last two or three years have seen some significant improvement, as you have described. We initially had no prosecution capacity and that was almost an excuse; a number of other areas have also moved forward. Nevertheless people are looking for a successful prosecution as the final proof that we really are doing something about it and we might come back to that.

Mr Thomas: Perhaps I could just raise that one of the concerns has been about the ability to compel companies and individuals to produce documents and answers at an early stage. Members of the Committee may have seen that the Attorney General announced on Friday 12 October our intention to bring forward amendments to the Criminal Justice Bill before Parliament at the moment proposing an extension of powers to strengthen the SFO’s ability to investigate and prosecute.

Q113 Chairman: It would obviously be a welcome development if that were proactively followed up. When we were doing our Conflict and Development report and sought on the back of that to pursue the matter further, we were frankly concerned about some of the things we heard. There were two companies in particular which had been identified by the United Nations Panel, Alfred Knight and Afrimex who were alleged to have been engaged in activities in the DRC which could have been actively supporting conflict and in breach of the guidelines. If I recall, and it is on the record, in the case of the witness from Afrimex who came to see us—and he did have the courtesy to give evidence which I have to say Alfred Knight did not—he said that they had made payments effectively to a rebel group. This was on the record. He did subsequently write to the Committee and his written evidence was published where he sought to clarify some of his evidence but no action was taken. In evidence to us he said that, in spite of their being identified by the United Nations, at no time did anybody from the DTI have any contact with the company and he had never heard of the OECD guidelines. I think you will understand that when we heard that it suggested to us a less than diligent response from the government department. That raises is, as things stand, given no investigation has taken place, whether the Government are satisfied that these two companies do give no cause for concern. Do they really regard those as closed cases, given that in neither case does there seem to have been any active investigation of the allegations which were made about them?

Mr Thomas: On Afrimex, it did take longer than the initial three months to conduct the initial assessment and my advice is that was because the National Contact Point wanted to seek some legal and specialist accounting advice to help them with that assessment. That initial assessment has now been done. Work is still going forward in the case. I am told that we are optimistic that the National Contact Point can conclude on the Afrimex case within the one-year target that the NCP has to report. In terms of Alfred Knight, the NCP has not received a specific complaint to this date. If a specific complaint is received, then of course the NCP will be able to investigate and move forward. At this time my understanding is that no specific complaint has been received by the NCP.

Q114 Chairman: In the case of Afrimex, are you aware that Global Witness told us yesterday that they are formally complaining to the National Contact Point and are looking for a judgment, basically saying that they do not think it has been adequately investigated? Is the answer you have just given us effectively your response that you will connect with that complaint?

20 Serious Fraud Office (SFO)
21 Democratic Republic of Congo (DRC)
**Mr Thomas:** I need to see the detail of what Global Witness are saying. As I said in answer to your first question on this area, we recognise that the initial assessment took longer than anybody would have wanted. I believe there is a reason for that. The investigation is now proceeding and we hope that we will conclude on the Afrimex case within the one-year target.

**Chairman:** Will that be published and reported on in the public domain?

**Mr Thomas:** Indeed.

**Chairman:** On the case of Alfred Knight, I am slightly concerned at your reply and that actually the Government’s response to our report in fact was “If such a complaint, backed by evidence, was forthcoming the NCP would consider the case on its merits”.22 If I may say so, I do not think that is good enough. When the United Nations has identified a company, when really quite startling evidence is put on the record in front of our Committee, I would have thought that it was the responsibility of the Contact Point to make some proactive investigation not wait for somebody else to come along with a complaint. With the greatest respect, the Committee does not have that capacity. We felt we had done a service putting it in the public domain. We tried to get the company to give evidence. The fact that they went to considerable trouble to avoid giving evidence was indicative that there might have been something to investigate. I say that in spite of the fact that my understanding is that on an international basis Alfred Knight is a highly respected and highly reputable company, one of the leading assay companies in the world, but in the context of its activities in Rwanda, there were some very definite questions that have not been answered. Am I not right in saying that that is part of the concern, that we do not appear proactively to go out trying to see whether or not there is a case to answer, that we expect somebody else to do it for us?

**Mr Thomas:** I shall obviously reflect on what you said and I respect the Committee’s work in providing a forum for concerns to be raised. Equally I hope you will recognise that there has to be a process outwith Parliament. That process is encapsulated within the National Contact Point and does require us to receive complaints and to date we have not received such a complaint.

**Chairman:** On the Afrimex case, I am slightly concerned that we are not appearing proactively to go out trying to see whether or not there is a case to answer. That is now proceeding. I shall write back to the Committee on this point.

**Mr Thomas:** What I shall do as a result of appearing before you this afternoon is go back and reflect on the concerns you have raised now in echoing the Chairman’s point. I shall write back to the Committee on this point.

**Chairman:** On the wider issue of anti-bribery and corruption the OECD’s working group is undertaking a review of the UK’s position and is due to visit in March 2008 as part of that second review. In March this year the then Trade Minister said “we welcome the opportunity to demonstrate the degree of our commitment to all aspects of the fight against international corruption.”23 Yet the Government have not implemented the OECD Working Group's previous recommendation, including a new offence of foreign bribery and addressing issues linked to corporate liability. So if they have not addressed the previous review what is the real value of a further review and visit?

**Mr Thomas:** With respect, the Working Group of the OECD found that of 20 recommendations which had been made by the review team, 17 had been either fully or at least partially implemented. It is not fair to say that no progress has happened. Of three areas in particular where we do not have the progress that we would have wanted, one is the issue around the corruption law and getting the simplified legislation on the statute book. The second, as you say, is the corporate liability and the third is an issue in terms of amending the code of conduct for Crown prosecutors. We are obviously seeking to take forward those areas to make progress. I should want to put very much on the record that 17 out of 20 recommendations by the OECD review have either been met in full or at least partially.

**Mr Thomas:** Indeed.

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23 HL Deb, 20 March 2007, col 81WS
Mr Thomas: The Committee will be aware from its previous work of the difficulties that there have been around the Corruption Bill. We have gone back to the Law Commission to ask for their assistance in producing a draft Bill. We are expecting the Law Commission to report in early November on their initial ideas with a period of public consultation on their ideas starting in December. We have said that we would ask the Law Commission to bring forward a draft Bill by October 2008 and we are still optimistic that we can get to that point.

Q122 Chairman: Yesterday we had OECD officials and Professor Pieth in front of us and there had been some suggestion that the British Government were not pleased with Professor Pieth and that he might not be re-appointed to his role as Chairman of the anti-bribery working group. Is there any truth in that? Or to put it the other way, does the Directorate-General and the Chairman of the anti-bribery working group have the UK’s confidence?

Mr Thomas: Mr McCartney, who was my predecessor, wrote to the particular newspaper which published those allegations at the time making clear that the allegations were not true. Both the Secretary General and indeed the Chairman of the OECD working group on bribery do have our confidence. We have not been involved in any attempt to remove the Chairman of the OECD working group on bribery at all. He was re-elected in January this year by consensus. We made no effort at all to remove him and I do not see that happening in January next year either when he will be up for election again.

Q123 Chairman: What were you saying about the Secretary General?

Mr Thomas: On the Secretary General, we have made clear to him directly that we have confidence in him. He has also made clear that he does not believe the UK Government were responsible for the article which appeared to be attacking him and which appeared in the media at the time.

Q124 John Bercow: When is his post the subject of re-appointment or re-election?

Mr Thomas: We do not know. We would have to come back to you.

Q125 John Bercow: I think you have given a pretty explicit answer, but for the avoidance of any doubt and just to close this particular piece of business, was his position to be the subject of a vote at any time in the foreseeable future, can we take it from what you have said that Britain would be voting for his continued occupancy of that post?

Mr Thomas: We have seen nothing to date to warrant us not supporting him. Let me be that clear. If some sort of disaster were to happen tomorrow or further down the line, then we would reconsider our position, but nothing to date has led us to have anything other than full confidence in him.

Q126 John Bercow: Britain had no hand in this rather low-grade down-market scurrilous tittle-tattle about him in the media and you would utterly depurate such.

Mr Thomas: Mr McCartney made that clear at the time and, given the evidence that the Committee took yesterday, I have asked my officials to check and nothing which has been said to me gives me any reason to doubt the veracity of the letter which was drafted at the time; quite the opposite.

Chairman: To be fair, Professor Pieth said that he was unaware of any such.

Q127 Ann McKechin: May I ask you quickly about the OECD Risk Awareness Tool? What assessment have your department made of the impact of the Tool? To what extent are you actually contacting UK companies working in zones of weak governance to tell them about this facility? There was mention at the evidence hearing yesterday that the US and Canada seemed to have been an example of good practice on how they are promoting it. They also said that there was an idea of running a web portal provided members of OECD were prepared to meet the relatively modest running costs which might be behind that. To what extent have the UK analysed the use of this methodology?

Mr Harrison: I believe it is part of our OECD guidelines promotion but I cannot comment on the detail I am afraid.

Mr Thomas: I will take that point back and drop you a note on the detail of what we are doing.

Chairman: Before we move on to the next section which relates to national resources, Sir Robert Smith would wish to make a declaration of interests.

Sir Robert Smith: I did declare on the Register of Members’ Interests that I have a shareholding in Shell and RTZ and also a relevant interest as Vice-Chairman of the All-Party Group for the UK Offshore Oil and Gas Industry.

Q128 John Bercow: What progress are the Government making in reaching an internationally agreed definition of “conflict resources”?

Mr Thomas: I suspect you will know that we have put substantial effort into trying to get agreement at the UN to ensure that the issue is progressed and kept alive. There has been considerable disagreement among members of the UN as to what such a definition might look like. We argued very strongly in favour of a UN Secretary General report on conflict and natural resources to keep alive the scope for progress on what a definition might look like. That debate took place in June at the UN Security Council and I regret to say was blocked by other countries. In order to try to keep the issue alive we are currently pursuing the idea of a group of friends within the UN. We have a group of officials working across the piece on this issue. I do not have any immediate good news to offer the Committee on this issue other than the fact that it continues to be a priority for the Government. We continue to work towards trying to get a definition, but the complexity...
of the issues in terms of searching for a definition has meant that there has been no international agreement so far.

Q129 John Bercow: You can see that there has been no agreement but you give the impression that the department is a veritable hive of activity on this important matter. I have to put to you a contrary view which was very eloquently articulated to us by Gavin Hayman on behalf of Global Witness. He said that the UK had been lazy, absurdly passive and missing in action. He told me in the Committee that Belgium and Germany had taken the lead. What do you say to him?

Mr Thomas: What I would say to him is that one does not have to be publicly out in the lead in order to be doing a lot of work to try to make progress. We have led a whole series of issues where other countries have been in support of initiatives in the UN. Similarly, when other countries are taking the lead, sometimes it is appropriate for the UK to recognise that leadership and to support the work of those other countries. That is what has been happening in this case. We will continue to work with those countries. We are actively looking at whether or not a group of friends is appropriate within the UN to try to move the issue forward. We are talking to other stakeholders and we share the frustration of a whole range of other organisations that we have not yet been able to reach agreement on a definition. It is not fair to say we have been inactive or absent from the action, it is simply the case that other countries have been taking the initiative and lead on this issue and we have been working in support of them.

Q130 John Bercow: At the very least there is a communication issue here because Mr Hayman, on behalf of Global Witness, is obviously an interested player in this field and even if your officials have been very active, this is a fact which has not communicated itself to Global Witness. I wonder whether there might at least be a case for some communication there. Hearing this litany of critical adjectives flowing spontaneously from Mr Hayman’s lips, I did ask him what might be the cause. If I remember correctly, he said he thought some of the officials involved, though very agreeable people, were relatively junior and by implication perhaps lacked either experience or pushing power. I just wonder whether you think there might be some force in that criticism and whether, at least as a result of the well-meaning criticism from somebody who wants to see the Government make progress on this point and who has no other agenda, the issue might bear scrutiny. Would you consider doing anything which might be necessary to reinvigorate existing efforts?

Mr Thomas: I take your point about communication. I do not accept the point about seniority. There is surely, I would suggest, no more important a forum for the UK to make the case for a definition than the Security Council. We were active in the debate which took place in the Security Council in June and pushed very strongly there for the UN Secretary General to be tasked to bring forward a report in this area. Other countries blocked such a report being brought forward. I do not think it is a fair criticism to say that the UK has not been active. Obviously the preparation for such a debate in the Security Council involves a whole range of officials in preparation for that work. Clearly we need to have further conversations with a whole variety of people, not only about what the UK is doing, but also how best to try to remake the case for an agreed definition. I emphasise again that we share the frustration that we have not been able to make more progress on this and it continues to be something we are working hard on.

Q131 John Bercow: What are the prospects for a UN General Assembly resolution or another form of international recognition of the Extractive Industries Transparency Initiative as a global standard in the extractive sector?

Mr Thomas: That is potentially another route to try to make progress in terms of conflict and natural resources. We are working to secure such an international standard. At the moment we are working to expand the number of countries who are taking part in the Extractive Industries Transparency Initiative and also to broaden the depth of the work under EITI. There are some 28 countries involved in EITI already and I have taken part in a number of international meetings, building the case then for the Extractive Industries Transparency Initiative. We are not yet there in terms of having the level of international commitment to EITI to get it through the UN, but we continue to be optimistic that we will be able to do so. We continue to make the case for that to happen.

Q132 John Bercow: When might that happen in your view?

Mr Thomas: If you will forgive me, I am not going to speculate on such a time. Nevertheless we are putting a lot of effort into the EITI and we are also seeking to broaden the concept of transparency from just the existing EITI arrangement into a series of other sectors where corruption is a particular problem: the construction industry, for example, and medicines, where initiatives have been discussed informally and are likely to be launched shortly. The key thing is to establish the principle of how to make progress in this area and then we can go from there.

Q133 John Bercow: That was a wonderfully Sir Humphrey reply that you were not going to speculate. I can almost hear him in the background saying “Minister, that would be very brave” and you judging on the whole that it would be politic not to take that course, but we will not hold that against you. You are an experienced hand and you do not want to be tied down or indeed up for that matter.

Mr Thomas: That is slightly unfair. We are making progress on this issue. On the timescale point, I would not want to misinform the Committee either. It is the best of motives, with respect.
Q134 John Bercow: I accept that and I accept from what you are telling me that there certainly is progress. I do not seek to sniff at that. By March 2007 there was an intention that a further five countries should have implemented the initiative. Was that target met?

Mr Harrison: Yes, it was.

Q135 John Bercow: Who are they?

Mr Harrison: The countries which have reported on EITI are Azerbaijan, Nigeria, Kazakhstan, Gabon, Mauritania, Kyrgyzstan... forgive me if I search for the other one.

Q136 John Bercow: You have six so far. I would not Mr Harrison to be guilty of understatement. We do not want the record to be understated. Is it the case that the target has been exceeded?

Mr Harrison: Yes. In the EITI now a system of validation has been set up. Each of the 28 countries which has committed to implement is now going to be assessed on whether it reaches compliance status or candidate status and that is going to be an independent assessment of their reporting.

Q137 John Bercow: Did you mention a number of the “stans” there?

Mr Harrison: I mentioned Kazakhstan. I mentioned Kyrgyzstan.

Q138 John Bercow: Not surprisingly, no mention of Uzbekistan.

Mr Harrison: No, they have not agreed to implement the EITI.

John Bercow: Probably too busy boiling people I suspect.

Q139 Chairman: We come to the last but not least important question which hinges on the credibility of the British Government’s anti-corruption strategy. I have to say, on Professor Pieth’s evidence yesterday, not only the British Government’s anti-corruption strategy but potentially the credibility of the OECD’s anti-corruption campaign, namely the suspension of the BAE-Saudi case. I read every time almost with incredulity that the Attorney General’s explanation was “It has been necessary to balance the need to maintain the rule of law against the wider public interest.” That is a fairly devastating statement from a law officer. The consequence of that is that the British Government, in spite of the progress which I acknowledge in terms of what you are trying to do in anti-corruption and prosecution, have not prosecuted, have abandoned a very high profile prosecution and stand accused really of breaching the obligations of the OECD Anti-bribery Convention according to Transparency International. Corner House say that the UK’s anti-bribery policy is “nothing short of a shambles—legally, institutionally and politically.” How do you respond to that? I accept by the way that this case is not central to this Committee, it is something which has happened since we became concerned and it is a very high profile case. It raises the question of whether or not the British Government and for that matter the OECD is serious about prosecuting significant cases of bribery and corruption. May I just tell you what Professor Pieth said to us yesterday? He said that the case raised serious concerns, that it might be the tip of the iceberg and it called into question the credibility of the organisation, by which he meant the OECD. These are pretty strong statements about where the British Government stands on dealing with anti-corruption issues.

Mr Thomas: You will not be surprised, but I do believe that the Serious Fraud Office director took his decision based solely on the ground of national security. I do not think the case should detract from the substantial other work that has taken place to build our capacity to take action on corruption and bribery. A series of other investigations is taking place. We would not have established the anti-corruption unit with the City of London police in the way that we have done, if we were not serious about these issues. I would encourage the Committee to recognise the wide range of other work which has taken place in this area.

Q140 Chairman: The OECD said—and I think it was Professor Pieth himself—that they believed that although it was not the OECD’s job to tell any Member State how to implement it, there was a problem with the law in the UK. Their understanding was that the British Government were pleading some difficulty in getting legislation prepared and through. He added the comment that he did not really see why it would take more than six months to introduce a necessary piece of legislation. Is there any specific anti-corruption legislation to clarify the offences in preparation?

Mr Thomas: As I made clear in answer to Sir Robert, one of the remaining issues of work is to bring forward revisions to our laws on corruption. We do believe we comply with the Convention at the moment, but we do want to simplify the law as it stands. Members will be aware that a draft Corruption Bill was brought before the House for pre-legislative scrutiny and as a result of the concerns which were raised that Bill was withdrawn. We have gone back to the Law Commission to ask them to prepare a draft Bill to try to reflect on the lessons from those investigations which have taken place already and indeed the experience of other countries that have also been implementing the Convention. As I indicated, we are expecting them to publish their thoughts in November with a view to public consultation in December. We are still optimistic the timescale of the draft Bill by October 2008 is realistic and achievable.

Q141 Chairman: That is rather longer than OECD were hoping for. I think he made the comment that it was not really in their ability to comment on a Law Commission proposal, they could only comment on a Government Bill and you are saying it will be autumn 2008 before such a Bill.

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25 HL Deb, 14 December, col 1712
26 Ev 47
Mr Thomas: That is the timescale we are working to. I respect his view of course, but I simply point out to the Committee the very real complexities which were brought out in this area by the pre-legislative scrutiny of the draft Corruption Bill back in 2003.

Q142 Chairman: Thank you for that. The frustration we have is that the Government have put forward a number of measures and if you look back where we were four or five years ago, when we were under heavy criticism and we had not ratified the Anti-corruption Convention and we had not set up an effective policing operation, we had made no progress, all of those things are positive and move in the right direction. I do think that the abandonment of the Saudi case has real repercussions which even the Financial Times described as unhealthy and potentially self-destructive. In other words it may set a precedent which may make other countries feel can be prayed in aid. I can only say to you that that piece of legislation, if it helps secure prosecutions in future cases, will help somewhat to address the balance. A very final practical point. Which department will actually be introducing that Bill? Will it be BERR?

Mr Thomas: No; Ministry of Justice.

Chairman: May I thank you very much for your evidence across a fairly wide range of issues and thank you for some of the undertakings which you have given in terms of further evidence and indeed advice on the specifics of Alfred Knight which we shall write to the Contact Point about. Thank you very much.
Written evidence

Memorandum submitted by the Departmental of International Development

SUMMARY

This memorandum provides an overview of the cross-departmental working on development and trade following the recent restructuring of the machinery of Government. It sets out the trade policy roles between the Department for International Development (DFID) and the new Department for Business, Enterprise and Regulatory Reform (BERR).

It provides information on the new Cabinet sub-Committee on Trade and both the Ministerial and official level decision-making structures involved in trade policy. It explains how trade policy will be developed by the new Trade Policy Unit, staffed by officials from DFID and BERR as well as the added coherence in bringing together trade and development policy.

It also brings together information on issues relating to the OECD and corruption, including the nature of the restructured UK National Contact Point and the government’s increased efforts in the promotion of guidelines for Multinational Enterprises. It sets out the work in progress following the OECD review of the UK implementation of the anti-bribery convention and the supplementary review being conducted by the OECD Working Group. It also provides information on the relatively new role of “Ministerial champion” on international corruption, the UK action plan and the positive achievements to date.

It presents the role of DFID and other government departments in working on natural resources and improving economic and trade governance, and the whole of government approach to tackling conflict. It also examines the examples of the Extractive Industries Transparency Initiative, the Kimberley Process Certification Scheme (KPCS) and the EU Forest Law Enforcement and Environmental Governance initiatives. It showcases DFID support to establishing an Expert Panel in the UN and UK support to the recent debates in the UN Security Council.

It deals with the development aspects of defence exports, including Ministerial responsibility for export controls and other arms controls issues, such as small arms controls and the Government review of the 2002 Export Control Act.

A. TRADE POLICY DECISION-MAKING

The division of responsibility between the Minister for Trade and the Minister for Trade Promotion and between the Secretaries of State for Business, Enterprise and Regulatory Reform and for International Development

1. The Government announced on Thursday 28 June 2007 that Trade Policy would now be a joint responsibility of the Department for International Development (DFID) and the new Department for Business, Enterprise and Regulatory Reform (BERR) and that Trade Promotion would continue to be a joint responsibility of the Foreign & Commonwealth Office and BERR.

2. A new Cabinet sub-Committee on Trade has been established to oversee all the work of the Government on Trade Policy and Promotion. This Committee is chaired by the Secretary of State for International Development. The Secretaries of State for Business, Enterprise and Regulatory Reform and the Environment, Food and Rural Affairs, the Chief Secretary to the Treasury and the Foreign Secretary, and the Minister for Trade Policy are members of the Committee.

3. The Cabinet sub-Committee will decide as necessary who should be the lead interlocutor on specific issues. The Secretary of State for International Development will act as lead interlocutor on trade policy dossiers where there is a strong development focus, such as the current DDA and EPA negotiations. However, both Secretaries of State will take appropriate actions to promote actively the full range of trade policy objectives with relevant Ministers in other governments.

4. The Minister for Trade Policy, Gareth Thomas, reports jointly to the Secretaries of State for International Development and for Business, Enterprise and Regulatory Reform. His responsibilities include:

- the UK’s positions on EU and international trade policy and operational issues (eg market access, import restrictions, WTO rules and trade defence);
- current trade negotiations, for example the Doha Development Round, regional trade agreements and Economic Partnership Agreements (EPAs) between the EU and African, Caribbean and Pacific (ACP) countries;
- building the capacity of developing countries to utilise the benefits of trade to reduce poverty through aid for trade, capacity building, policy development and research.

He has other responsibilities in his portfolio for both Departments.
5. The Minister for Trade Promotion, Lord Jones, reports jointly to the Foreign Secretary and the Secretary of State for Business, Enterprise and Regulatory Reform. His responsibilities cover promoting UK exports and inward investment.

Formal decision-making structures between the ministers and departments involved in trade policy

6. Submissions to Ministers on Trade Policy will usually be handled by the Minister for Trade Policy. Submissions requiring Secretary of State level agreement will be submitted through the Trade Minister to the appropriate Secretary of State, copied to the other, in line with the lead responsibilities set out above or as decided by the Cabinet sub-Committee.

7. At official level there will be a new Trade Policy Unit staffed by officials from DFID and BERR. It will be headed by a single Director, reporting to a Director-General in each Department and to the Minister for Trade Policy. It will be dual-located, with some teams based in DFID and others in BERR. There will be teams comprising of officials from both Departments on key trade policy issues with a strong development focus, such as the DDA and EPAs.

8. Officials from other departments will continue to be closely involved and consulted in the normal way by the Trade Policy Unit. For example, DEFRA will continue to lead on the trade-related aspects of UK agriculture policy.

B. DIRECTION OF TRADE POLICY

How trade policy may evolve under the new arrangements and DFID’s role in policy development

9. Trade policy will be developed by the Trade Policy Unit following direction from the Minister for Trade Policy and other Ministers through the Cabinet sub-Committee. It will continue to draw on experience and expertise from throughout DFID, BERR and other Whitehall Departments as well as from outside Government. The Unit will work closely with all interested stakeholders—business, unions, consumers and civil society.

10. Development is at the heart of UK trade policy. This is set out in the 2004 White Paper, Making Globalisation a Force for Good and reconfirmed in the 2006 DFID White Paper. These new arrangements reflect and reinforce this. More joined up working and shared leadership will help promote even more policy coherence.

11. UK business and development objectives on trade policy are essentially complementary. Where there are conflicts of interest or objective, they will be discussed in the normal way between all relevant departments and resolved at an appropriate level and ultimately at the Cabinet sub-Committee if necessary.

The impact of the new structure on international development

12. The PM’s objective in giving DFID joint responsibility for trade policy is to align trade, aid and debt policy. This will reinforce the role of trade in our development policy and programmes. Trade is of vital importance to development and, ultimately, to DFID’s mission of reducing global poverty. The new structure will help us further focus on how trade can set countries onto the path of sustainable development. And it will bring more trade expertise into our development discussions.

13. Trade features high on DFID’s agenda and the UK has led the international debate on the importance of aid for trade since 2005. We have pledged to increase aid for trade by 50% by 2010 to US $750 million a year and expect to see increasing focus on the trade dimension of development programmes over the coming years.

Likely effects on negotiations at the WTO and with the African, Caribbean and Pacific countries in the Economic Partnership Agreement negotiations which are scheduled to be completed by the end of 2007

14. The UK’s position already reflects close working between DFID and BERR in these areas, which will now be consolidated in the new structural arrangements. UK Government work on the Doha Round and the EPA negotiations will now be led by teams jointly staffed with officials from DFID and BERR. This will ensure coherence and equality between our objectives in trade negotiations, and our work on reducing international poverty.
C. OECD AND CORRUPTION

Progress on implementing the Guidelines for Multinational Enterprises and promotion of the risk awareness tool; role of the UK National Contact Point; and the OECD review of UK implementation of the anti-bribery convention

Promotion of the Guidelines and the role of the National Contact Point

15. The Government has significantly increased its efforts to promote the Guidelines. On 21 May 2007 Hilary Benn and Ian McCartney jointly wrote to over 50 key UK stakeholders including business associations, trade unions, civil society organisations and the media to highlight the Guidelines and the changes that have been made to improve the effectiveness of the UK’s implementation of them. Furthermore a communication and awareness raising strategy has been put to the Steering Board for comment. The strategy continues to develop and the Steering Board will receive regular updates on actions taken and proposed actions.

16. UK diplomatic missions and DFID offices in priority countries have instructions to use British business and local trade union and NGO contacts to promote the Guidelines. To this end we have produced a standard presentation and accompanying speaking notes (which includes a reference to the OECD risk awareness tool) as well as a new promotional leaflet with a covering letter to send out to their contacts and detailed written guidance on the NCP complaints process. All this material is available on departments’ intranet systems.

17. The Guidelines are covered in the FCO’s pre-overseas posting training for economic officers. NCP officials have provided presentations on the Guidelines and the new NCP structure to the International Chamber of Commerce and UK Trade & Investment’s team of High Growth Market Specialists. Information about the Guidelines and the NCP is available on the Government’s generic Corporate Social Responsibility website (www.csr.gov.uk).

Changes to the structure of the National Contact Point and how complaints are managed

18. The restructured UK National Contact Point (NCP) was launched in August 2006. Hitherto, the National Contact Point had been managed by DTI. Responsibility is now shared between BERR, FCO and DFID (with BERR taking the lead). One of these three Departments now takes the lead in managing each new complaint that the NCP receives. BERR at present has someone managing the NCP on a full time basis and additionally provides secretariat support and chairs the NCP Steering Board.

19. The NCP is overseen by a cross-departmental Steering Board comprising representatives of all Government departments with an interest in the Guidelines and four external members representing the CBI, TUC, and two law firms (Doughty Street Chambers and Clifford Chance) nominated by the NGO community and the All Party Parliamentary Group on the Great Lakes Region. The Steering Board’s principal role is to oversee the function and effectiveness of the NCP and, where appropriate, to consider recommendations or offer advice on a range of issues relevant to the effectiveness of the Guidelines and their application.

20. Since the new NCP system was launched it has received four new complaints, in line with the average of four complaints per year that it was handling prior to the changes being introduced. But there are indications, for example through enquiries, that an increase may be in the pipeline. The Government has set a target for concluding each complaint within one year of having received it. The new system has not yet been in place for long enough to assess our performance against this target.

OECD review of UK implementation of the anti-bribery convention


22. In its follow-up report http://www.oecd.org/dataoecd/43/13/38962457.pdf, published in June 2007, the Working Group acknowledged that the UK had made important steps since the March 2005 “phase 2 report” in implementing the Convention and commended our awareness raising work, in particular. Of the 20 recommendations made by the Review Team, the Group found that the UK had fully or partially implemented seventeen. Three recommendations were assessed as “not implemented”. The Working Group decided to undertake a supplementary review, known as “phase 2bis”. This will include a second on-site visit to the UK within 12 months, ie by the end of March 2008. The UK is one of four countries undergoing such a review.

23. The phase 2bis review will focus on the issues raised in the June 2007 follow-up report, namely progress with law reform, the UK’s framework for criminal corporate liability, UK law enforcement effort, and the Convention’s article 5 and prosecutorial discretion. The review will provide a useful opportunity to demonstrate continuing progress and a high level of commitment.
The role of the “Ministerial champion” on international corruption and the effectiveness of the UK Action Plan for Combating International Corruption

Background to the Ministerial Champion role

24. The present Ministerial Anti-Corruption Champion is John Hutton the Secretary of State for the Department for Business and Regulatory Reform, appointed in July 2007, replacing Hilary Benn who, as the first Champion, had held this position from July 2006.

25. This role is a relatively new innovation, following a recommendation in the Africa All-Party Parliamentary Group’s report on corruption and money laundering, “The Other Side of the Coin”.

The UK Action Plan

26. Closely associated with the Champion role is the elaboration of an HMG Action Plan which was overseen by the Champion. The 2006–07 Plan was published shortly after Hilary Benn’s appointment, and the Action Plan for 2007–08 is currently under finalisation. These plans focus on improving UK systems to:

— investigate and prosecute bribery overseas;
— combat money laundering by political elites and recover stolen assets;
— promote responsible business conduct in developing countries; and
— support international efforts to fight corruption.

27. As Champion, Hilary Benn chaired quarterly meetings of an existing Cabinet Office committee, the purpose of which was primarily for officials to provide updates on progress against the Action Plan, identify key actions which might need the Secretary of State’s personal engagement and, most recently, to develop the Action Plan for 2007–08. The main departments involved are: MoJ/HO/DFID/FCO/AG’s Office/HMT/BERR with MoD, ECGD, Office of Government Commerce, SOCA, Crown Prosecution Service, SFO and the City of London Police and Metropolitan Police also playing important roles. DFID also played a secretariat role to the Champion. The new operational arrangements for the new Champion are under finalisation as is the possibility of having a wider public debate.

Achievements so Far

28. The 2006–07 Action Plan contained 12 actions. The overwhelming majority of these have either been achieved or have seen positive progress.

29. UK efforts have focused on boosting UK law enforcement capacity to tackle money laundering by political elites and foreign bribery by UK companies and nationals, working in different international fora, e.g G8, UN, OECD, and working in partnership with the private sector. Last year the UK made excellent progress, establishing a dedicated unit within the City of London Police to support SFO investigations of foreign bribery and reinforcing the Met’s Proceeds of Corruption Unit. As a result, £34.6 million of assets stolen by the political elites of developing countries has already been seized. There are other areas of progress: SOCA has established new structures to ensure intelligence is effectively prioritised and linked to targeted activity.

30. As noted in paragraphs 18–20, BERR with DFID and FCO launched a revamped National Contact Point (NCP) to strengthen the effectiveness of the OECD Guidelines for Multi National Enterprises. The Action Plan also contained reference to the Extractive Industries Transparency Initiative, with 28 countries now implementing the Initiative. There is wide support for the idea of new initiatives on transparency in health sector procurement and the construction sectors.

The future

31. The champion role has been transferred from DFID to BERR. DFID will continue to work to ensure that international development is a central driver of the UK’s efforts in tackling bribery and corruption.

32. Modification of the Annual Action Plan approach is under consideration with the possibility of moving towards a longer term Action Plan. This would allow stronger strategic prioritisation against longer term trends.

D. Natural Resources

DFID’s role in the promotion of improved economic and trade governance in resource-rich countries, such as through the Extractive Industries Transparency Initiative

33. DFID is concerned to ensure a “whole of government” approach to tackling conflict. Formal arrangements are now in place for BERR to engage with the Global and Africa Conflict Prevention Pools and the Post-Conflict Reconstruction Unit on a case by case basis. National Contact Point arrangements have been revamped to strengthen this area.
International Development Committee: Evidence

34. DFID is committed to supporting the establishment of an Expert Panel in the UN which could be useful to monitor the links between natural resources and conflict. DFID, together with the FCO, are currently considering how an Expert Panel might add value, what its role would be within the UN system, and how we can best support its establishment.

*Extractive Industries Transparency Initiative (EITI)*

35. EITI enables governments, companies and civil society organisations to work together under an agreed workplan that delivers transparency and accountability to revenues generated from extractive activities.

36. DFID works closely with the FCO to promote the importance of EITI as a mechanism to improve transparency and accountability within a country's governance structure. During the period when the International Secretariat was located within DFID, the FCO was relied on to ensure communications from the EITI Chairman were delivered to Heads of State and Heads of Government.

37. DFID represents HMG on the EITI Multi stakeholder Board. FCO Embassies and High Commissions continue to play a vital role in promoting EITI to countries that have yet to sign up to the initiative, engaging with senior government officials, communicating information and messages, as well as acting as contact point for the UK relating to EITI. FCO offices in country, as well as country desk officers in London, provide information and updates on specific countries when required.

38. DFID and FCO will continue to play an important role as EITI focuses its attention on engagement with emerging economies such as China, India, Philippines, Indonesia and Brazil to sign up to the initiative.

*Kimberley Process Certification Scheme (KP)*

39. The Kimberley Process Certification Scheme (KP) for exports of rough diamonds has had significant success since its introduction in January 2003. All major producers and traders in rough diamonds are now participants to the KP. There is scope for further developing the minimum requirements of the KP, in particular in tightening internal controls in both producing and trading participants. The KP is also researching the feasibility of producing diamond “footprints” for particular regions.

*Illegal, Unreported and Unregulated (IUU) Fishing*

40. DFID’s Renewable Natural Resources and Agriculture (RNRA) Team has been collaborating for 18 months with DEFRA Fisheries Directorate (and now their Marine Directorate) on international fisheries policy, particularly on Illegal, Unreported and Unregulated (IUU) fishing. This was a follow up to the Ministerial High Seas Task Force (chaired by DEFRA Ministers Elliot Morley MP and more recently Ben Bradshaw MP), established with several partner states and international NGOs to push ahead with concrete actions to tackle IUU fishing.

41. The joint work with DEFRA addresses several recommendations of the Task Force as well as others that the UK has recently prioritised (such as working with our industry in influencing new EC policy on supply chain security). Although actions originally focused on international policy, more recently work has moved towards developing countries and we now have two new programmes in Africa: (1) SADC (Namibia-led) on IUU policy leading to an international ministerial conference in Feb 2008 (2) fisheries sector support in Sierra Leone which addresses IUU, coastguard and maritime security as well as core fisheries management issues.

*Forest Law Enforcement, Governance and Trade (FLEGT)*

42. DFID’s Forest Governance and Trade Programme works to promote governance reforms where illegal logging is a problem and to improve the functioning of markets for wood products. It does so by supporting reforms in countries that enter into partnership with the European Union under the Forest Law Enforcement, Governance and Trade (EU FLEGT) programme. It complements FLEGT with work with the private sector to promote trade in forest products from legal and well-managed sources and collaborative work with other countries, in particular G8 countries and China, to influence the demand for products from responsibly managed forests.

43. FLEGT focuses on negotiating and implementing bilateral Voluntary Partnership Agreements (VPAs) between timber-producing countries and the EU. DFID, together with DEFRA and FCO work within the EU to negotiate FLEGT VPAs, which will establish a timber export licensing scheme, including credible control systems and, where needed, other governance reforms in partner countries, such as improved transparency and forest tenure reform. When the scheme is operational in a partner country, unlicensed timber will be denied entry to the EU single market. DEFRA has responsibility for the domestic implementation of the FLEGT Regulation and the public procurement policy on timber.
44. DFID, FCO and DEFRA work closely to promote the importance of FLEGT as a mechanism to improve global sustainable forest management. Posts in Africa, Asia and Latin America as well as G8 countries and China routinely assist in preparatory work and negotiations. Both DEFRA and FCO fund work in other countries that is complementary to the work funded by DFID.

E. DEVELOPMENT ASPECTS OF DEFENCE EXPORTS

Impact of the changes in ministerial responsibilities on defence export licences and application of the “consolidated criteria” on such exports, particularly criterion 8 on sustainable development

45. The changes in ministerial responsibilities will not have any impact on the strategic export licensing process. Where licences to export arms and other goods controlled for strategic reasons used to be issued by the Secretary of State for Trade and Industry, they are now issued by the Secretary of State for Business, Enterprise and Regulatory Reform (BERR). The Minister of State for Energy, Mr Malcolm Wicks MP, will continue to have responsibility for strategic export controls and to oversee the work of the Export Control Organisation (ECO). Within DFID, Mr Shahid Malik MP, Parliamentary Under-Secretary of State, is the minister responsible for export controls and other arms control issues.

46. As the export licensing authority, BERR liaises closely with all Departments involved in the licensing process, including DFID. DFID continues to lead on the application of Criterion 8, against which licences to developing countries are assessed for their potential impact on sustainable development. Other departments may also provide advice on Criterion 8, just as DFID may contribute to assessments against any of the other seven criteria, particularly those on human rights and conflict.

47. In its report of 7 August on Strategic Export Controls, the Quadripartite Committee on Export Controls (which includes representatives of the IDC) stated “we conclude that the system for assessing applications against Criterion 8 appears sound and that it is underpinned by a robust methodology.”

48. The Government is also conducting a review of the 2002 Export Control Act. This review is ongoing, and the Quadripartite Committee have already been involved, and will continue to be consulted.

49. The UK, led by the FCO, is encouraging all countries to submit views to the UN Secretary General’s consultation on the Arms Trade Treaty (covering all conventional weapons), with 97 papers submitted so far (deadline 20 June). The UK is looking forward to playing an active role in the Group of Governmental Experts on a treaty when it convenes next year.

Supplementary memorandum submitted by the Department for International Development

CLARIFICATION FOR THE IDC FOLLOWING 18 OCTOBER EVIDENCE SESSION

Q109 and 110

The IDC was provided with evidence that the NCP received four new complaints since the re-launch of the National Contact Point for the OECD Guidelines in August 2006. The Interim Progress Report on the UK Anti-Corruption Action Plan cited six cases. These included the four new cases, one case lodged with the NCP days before its re-launch and another case which had been static for a period and become active again at the time of the re-launch.

Q 127

The NCP recognises the important role of the Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones in raising useful questions for companies operating, or considering operating, in these environments. The NCP considers the tool to be of particular interest to small and medium enterprises that may not have the dedicated internal corporate responsibility expertise that the larger companies can access.

The NCP promotes the Risk Awareness Tool alongside the OECD Guidelines when appropriate. For example, the Awareness tool has been outlined in bilateral contacts with a number of companies and will be included in final statements concluding a Specific Instance as appropriate.

The NCP is currently updating its website to include a link to the Risk Awareness Tool and is also working with the DFID team responsible for conflict and resources work to establish the best way to use and promote the tool.

The NCP will approach key Embassies and DFID country offices and request that they provide a link to the Risk Awareness Tool on their websites. The NCP will explore with OECD the possibility of supporting the web portal.

2 November 2007
Letter from Gareth Thomas MP, Parliamentary Under-Secretary of State, DFID/DBERR to Minister Karel De Gucht, Minister for Foreign Affairs, Government of Belgium

21 September 2007

Dear Minister De Gucht

ECONOMIC PARTNERSHIP AGREEMENTS

The UK has long held the view that EPAs have the potential to contribute to regional development, economic growth and poverty reduction. By providing real commercial opportunities and support to achieve sustainable economic growth, EPAs should bring new benefits to the African, Caribbean and Pacific (ACP) countries and deliver for development.

At the Development Ministers’ Informal meeting in Madeira this weekend, I will be making clear that the UK supports the Commission’s efforts in taking these negotiations forward to a development friendly outcome. Considerable and valuable progress has been made to date. In particular we welcome the EU’s good market access offers, significantly improving the trading opportunities for the ACP countries. We will also want to see further improvements in rules of origin.

We are now approaching the end game of the negotiations. I urge all parties to make every effort to reach agreement this year in order to deliver the significant potential benefits. We encourage the ACP to take account of the flexibilities in the WTO rules to allow for longer transitional periods for their own market opening. We believe that this is critical to ensuring properly sequenced trade reform.

I also want to make clear that the UK does not agree with those who have called for an extension to the deadline. Nor do we believe that ACP countries should find themselves in a worse position once the Cotonou Agreement lapses at the end of 2007. This would be the case if either GSP or GSP plus is put in place.

Although time is short, it is possible by the end of the year to agree outline EPA frameworks, focussing on trade in goods which deliver duty and quota free access for the ACP on 1st January 2008. We recognise that this means leaving other issues, such as investment, aside until later: however, the UK has always been clear that these issues should only be included in the negotiations if the ACP wished them to be. We welcome that some regions will wish to cover investment as they believe this will bring development benefits and urge them to continue to engage on these negotiations once a goods agreement has been reached.

Yours sincerely,

GARETH THOMAS

Memorandum submitted by the Campaign Against Arms Trade

1. The Campaign Against Arms Trade (CAAT) is working for the reduction and ultimate abolition of the international arms trade, together with progressive demilitarisation within arms-producing countries.

2. Your Committee’s inquiry into Cross-departmental Working on Development and Trade is welcome and CAAT would like to comment on two of the points raised: military exports and corruption.

MILITARY EXPORTS

3. The Department for International Development (DFID) has responsibility for assessing applications for licences for the export of military equipment against Criterion 8 of the Consolidated EU and National Arms Export Licensing Criteria, assessing the compatibility of the proposed export against the technical and economic capacity of the recipient country. Beyond this specific task, however, there are more general issues about military procurement and development which CAAT believes would benefit from the input from DFID. These would include looking UK government promotion of sales to countries such as India, Pakistan and South Africa.

4. It is with this in mind that CAAT would like to draw your Committee’s attention to the announcement by the Prime Minister on 25 July 2007 that the Defence Export Services Organisation (DESO) is to close (Hansard, col 23WS). DESO’s responsibility for the promotion of military exports will move to UK Trade and Investment (UKTI). The statement said that the Cabinet Office would be leading work across Government to develop an implementation plan by the end of 2007.

5. At the time of writing, CAAT has still to ascertain exactly what consultation will be taking place on the changes, but understands that the Department for Business, Enterprise and Regulatory Reform (DBERR), rather than the Cabinet Office, is now co-ordinating this. CAAT thinks it is important that your Committee maintains a watching interest with regard to these changes.

6. Military equipment accounts for less than 2% of the UK’s visible exports and UK Defence Statistics show that 65,000 jobs (just 0.2% of the national labour force) are sustained by military exports. Relative to this, the DESO received thirteen times the budget of UKTI.
7. UKTI currently covers 39 industrial sectors. On 1st February 2007, DESO employed 466 staff (Hansard, l.3.07, Col1542W); its net budget 2006-07 was approximately £15 million (Hansard, 17.7.07, Col196W). About 200 of the staff are employed on the Saudi Armed Forces Project. This is paid for by the Saudi Arabian government and the Project and its staff will stay in the Ministry of Defence.

8. This leaves over 250 DESO staff. It is vital that they do not move en bloc to the UKTI, or in any other way come to dominate its trade promotion work, and that the military equipment sector’s exports are given no greater share of UKTI resources than is proportional to the size of the sector’s contribution to the economy.

9. The move of military export promotion to UKTI may present an opportunity for further consideration as to how development concerns are raised. For example, could UKTI be charged with formally liaising with DfID before promoting military equipment to a country in receipt of DfID support?

10. The move of military export promotion from the MoD to the DBERR’s UKTI means that the latter is now both the overseeing department for both sales promotion and export licensing. Although Lord Digby Jones is the Minister responsible for UKTI and Energy Minister Malcolm Wicks’ remit (rather oddly) includes exports controls, this, again, is a change which will need monitoring to make sure that Criterion 8 concerns are not marginalised even more than perhaps they already are.

11. Your Committee, in its Notice of this Inquiry, points out that DfID and DBERR share a Minister. However, DBERR also has joint Trade Ministers with the Foreign and Commonwealth Office and the MoD, Lord Digby Jones and Lord Drayson respectively. These Ministers, and, in particular the latter, might have very different interests with regards to military exports. It is also worth noting that, within DBERR, Gareth Thomas is an Under-Secretary whilst Lord Digby Jones and Lord Drayson are Ministers of State. It remains to be seen if this will be reflected in influence over trade policy.

OECD AND CORRUPTION

12. The weakness of the UK government’s commitment to stamp out corruption became fully apparent in December 2006 when it ended the Serious Fraud Office inquiry into the Al Yamamah deals. CAAT, together with The Corner House, has applied for a Judicial Review of that decision. The oral application for permission for a Judicial Review will be heard on 9 November.

13. The outcry which followed the decision has highlighted the lack of dedicated anti-corruption legislation. Importantly, too, it has conveyed a message that investigations into allegations of contraventions of the existing law are pursued or otherwise on the basis of considerations other than the evidence available. The South African President, Thabo Mbeki, was right to question in January 2007 why the investigation into the arms deal with Saudi Arabia was dropped, while that into deals with his country continued.

14. With this in mind, CAAT was disappointed that the report of the Quadripartite Committee, “Strategic Export Controls: 2007 Review” (HC117), limited its recommendations on corruption to those licence applications being considered by DfID under Criterion 8. It recommends that DfID consider including an assessment to test whether the contract behind an application for an export licence is free from bribery and corruption. The section in the same report on Saudi Arabia makes no recommendations. This, surely, only serves to reinforce the idea that the UK’s anti-corruption efforts are selective and not being applied consistently. It does not help the cause of good governance.

September 2007

Memorandum submitted by the British Geological Survey

1. The British Geological Survey (BGS), which is a public sector research establishment and a component body of the Natural Environment Research Council (NERC), wishes to bring to the attention of the Committee its experiences in development aid work that have a bearing on the Inquiry. Members of the Committee may know that the BGS International and its forerunner organisation, the Overseas Geological Survey, have a long history of providing technical assistance and institutional strengthening to the geological survey organisations (GSO) of Commonwealth, and other, developing countries. Prior to 1997, this work was mainly commissioned by the Overseas Development Administration (ODA) within the Foreign and Commonwealth Office (FCO). Following the creation of the Department for International Development (DfID) in 1997 and its adoption of policies that give priority to humanitarian rather than “engineering” type work, the BGS’s activities in developing the natural resources infrastructures overseas have mainly been sponsored by World Bank and European Union funding sources.

2. Notwithstanding the importance of humanitarian aid, sustainable economic development in most resource rich, but financially poor, countries is more likely to flow from trade, based on mineral, hydrocarbon, or agricultural assets. Whilst early stage developments of mineral resources will generally involve bulk exports of relatively low grade ore, through time and investment it is possible to build more beneficication to the local economy, as exports move higher up the value chain.
3. We recognise that the mining industry, especially in Africa, has a somewhat negative image, and we applaud the Extractive Industries Transparency Initiative of the World Bank, DfID and others. Despite persistent examples of bad practice in mining, including corruption, the exploitation of child and female labour, environmental damage, funding of conflicts and fostering social practices that increase the incidence of HIV/AIDS, it is entirely possible to support good mining practices that avoid these problems. This is the norm, today.

4. An essential first step to developing best practice mining is the establishment of effective information and regulatory bases, and skills, in the country. In most developing countries, the GSO is responsible for updating and publishing the geological and cadastral data that both attracts inward investment and helps to regulate the exploitation of natural resources. Many developing countries need external assistance to generate modern, accurate, digital geological maps that meet the standards required by international mining companies as a pre-requisite to investment. Furthermore, such maps need to be credentialised through having on them the badge (logo) of a leading, internationally respected and independent geological survey, such as the BGS. This is because it is less likely that a mining company would invest several millions of dollars in a country, solely on the basis that the GSO of that country claimed, through its geological maps and reports, that the area was highly prospective. Nor would the maps necessarily be more credible if they were produced by a commercial survey company, even one of good repute, which potentially had a financial interest in their subsequent use.

5. The principle, described here, of supporting the production of modern geological maps and the concomitant transfer of skills and technologies to local counterparts, as an important first step to economic development built on trade in natural resources, is well recognised by the World Bank, the African Development Bank, the Nordic Development Fund, the European Union and several bilateral aid agencies, including Coopération Francaise (France), GTZ (Germany), DANIDA (Denmark), CIDA (Canada), etc. Unfortunately, this aspect of development aid does not appear to be regarded highly by DfID, which has largely withdrawn from this sector, other than through its indirect support via its financial contributions to the World Bank and the EU. BGS regrets that position, because it limits direct UK involvement in supporting this important aspect of development through trade. It also, perhaps, sends a negative signal of disinterest to those very large international mining companies based in the UK.

6. Given its position as the oldest national geological survey in the world (founded in 1835) and its unique position as a respected and independent centre of excellence in the geosciences for international development, the BGS would wish to see a stronger relationship building between itself, DfID and the DBERR, with the aim of assisting developing countries, especially those in Africa, to maximise their economic growth through trade based on natural resources, in environmentally and socially acceptable ways. We believe that, acting together, the BGS, DfID and DBERR could be a very effective force for good in this endeavour.

August 2007

Memorandum submitted by Christian Aid

TRADE POLICY DECISION-MAKING

Division of responsibility between the Minister for Trade and the Minister for Trade Promotion and between the Secretaries of State for Business, Enterprise and Regulatory Reform and for International Development; Formal decision-making structures between the ministers and departments involved in trade policy

1. Christian Aid welcomes the shift in responsibility for trade policy making to the Secretary of State for International Development. This clearly signals that external trade policy of the UK as part of the European Union must be driven primarily by development concerns. The role of the UK as a key donor and trading partner of some of the world’s poorest countries means that its decisions affect their opportunities to export, as well as to develop their own markets and supply-side potential using trade-policy tools, such as tariff protection.

2. This should mean an international development lead in all external trade negotiations and trade policies affecting developing countries. This includes policy reviews—such as those on market access and trade defence mechanisms—and trade negotiations conducted under the remit of the EU’s external competitiveness strategy outlined in its “Global Europe” paper. So far this development priority has been lacking, despite the fact that regions affected include least developed countries, are home to large numbers of poor people and suffer structural economic development problems such as high levels of inequality and dependence on agriculture.
**Direction of Trade Policy**

How trade policy may evolve under the new arrangements and DFID's role in policy development;

*The impact of the new structure on international development;
*Likely effects on negotiations at the WTO and with the African, Caribbean and Pacific countries in the Economic Partnership Agreement negotiations which are scheduled to be completed by the end of 2007

3. A development policy lead is particularly welcome, as up until now, the relationship between trade and development policy has been governed by the concept of “coherence” at the EU and UK levels. This has been largely inadequate to ensure development outcomes—as demonstrated by the current situations in negotiations at the World Trade Organisation and EU-ACP Economic Partnership Agreements. (For recent assessments of the poor development prospects of these talks see “What could the Doha Round mean for Africa?” Carnegie Endowment (2007), “For Better or for Worse: Rethinking EU-ACP Trade relations”, Christian Aid (2005)).

4. Coherence too frequently has meant identification of mitigation measures to accompany predetermined policies, rather than properly tailoring policy choices to development needs. This is exemplified by the Sustainability Impact Assessment (SIA) process used to ensure “coherence” between EU development policy and trade negotiation outcomes. Impacts of trade reforms are difficult to predict and depend on local conditions. Impact assessments are therefore important to guide developing country policy choices and EC conduct in trade negotiations. However, SIAs are only carried out after the finalizing of the EC’s negotiating mandate and frequently finish post-deal. They do not influence the EC’s negotiating practice, as demonstrated by the WTO SIA which concluded that Kenya should not at this stage liberalise distribution services, because of impacts on local retailers and suppliers, yet the EC still made requests in these sectors to African countries, such as Kenya, during GATS negotiations.

5. A critical role for DFID in taking a lead in external trade policy, would be to promote more evidence-based policy making with respect to developing countries. These impact assessments and research should take account of recent criticisms of World Bank trade research that criticized the sidelining of research that did not support preferred policies and over-relied on conclusions from research that supported preferred policies, without sufficiently acknowledging its flaws. (“An Evaluation of World Bank Research 1985–2000”, Angus Deaton, World Bank (2006)). This policy bias has been evident in SIAs, for example, that fail to question assumptions on the short-term nature of impacts of trade liberalization, and do not even examine the viability of alternative policy approaches.

6. The second shift in trade policy making should be to support options that provide the greatest scope for developing country ownership of trade and economic policies. This is in line with good development practice as well as with the governments own statements on economic conditionality and trade and development.

7. In concrete terms for EU-ACP EPA negotiations this would involve first and foremost the removal of the threat of the end of the WTO waiver for Cotonou preferences by providing assurances to ACP governments that market access for their exporters will not be disrupted and/or to provide a viable alternative in line with Cotonou commitments. Second, it would involve an arrangement on market access concessions that would allow ACP countries to decide the scope, pace and sequencing of their trade liberalization, including by introducing special and differential treatment provisions to WTO GATT Article XXIV governing regional trade agreements. Finally, it would involve removing trade-related issues from the agenda, unless specifically requested by an ACP region. These areas are not required by WTO rules and encroach on sensitive areas of domestic regulation. (For more information, see Christian Aid (2006), EPAs and Investment).

8. In WTO negotiations, above all developing countries should not be forced to sign up to a deal because of the latest sense of urgency—a slowing down or hiatus in the negotiating process would be preferable to this outcome, particularly if it provided the opportunity of a reform to negotiating processes to properly involve developing country WTO members and a stock-take of the development impact of current proposals. A better result in a WTO deal for developing countries involve a halt to the current thrust of negotiations, that pushes developing countries to liberalise for little return, and a refocus on the neglected “development agenda” of improving market access for developing countries, including tackling non-tariff barriers, and making special and differential treatment operational and effective. Aid for trade can be useful in helping developing countries address supply-side constraints and adjustment costs of trade reforms, but should not be linked to or made conditional on signing up to any deal.
Memorandum submitted by the City Corporation

I was interested to see the Committee’s plans for an inquiry into cross-departmental working on development and trade which was announced shortly before the House rose for the Summer Recess.

The City Corporation is not in a position to respond fully to the questions posed by the Committee in the call for evidence but in the context of the City of London as a global financial centre, it is perhaps worth highlighting the importance of the business City in financing international trade and development.

London is widely regarded as a World City. The prominence of the City of London as a leading international centre for financial and business related services is well documented as an integral part of the capital’s success, not least because of the cluster effect of financial capital and expertise found in close proximity.

For developing markets, access to services is as important as access to goods. The international nature of City institutions, and open borders for financial and related business services, allow for technical skills and expertise to be shared internationally to the mutual benefit of both the provider and recipient economies. The market access work undertaken by Department for Business, Enterprise and Regulatory Reform (BERR) through UK Trade and Investment (UKTI), and supported where necessary by the Treasury and Foreign and Commonwealth Office (FCO) is an important part of the wider international development framework.

Infrastructure projects aimed at facilitating development, such as improving access to utilities and increasing road and port capacity etc., are increasingly undertaken using financial and legal structures similar to Public Private Partnerships. The business cluster found in the Square Mile has enabled the City to present a complete package to advise on these structures. The promotion of PPPs has become a prominent feature of the Lord Mayor’s overseas visits programme. The planning of these visits involves extensive consultation with Government departments.

The City’s engagement with India is a good illustration of the contribution the City can make to international development in coordination with Whitehall departments. The City Office in Mumbai was established with the overall aim to strengthen trade and investment links in both directions between India and the UK, and promote awareness of the services the City institutions can offer. Although funded and managed by the City Corporation, the Office is very much intended to be a resource for the whole financial and business related services sector. It works to promote the services of the City to Indian public and private sector customers including the raising of capital, insurance, asset management, infrastructure finance and consultancy, London’s exchanges, business education & training and legal & advisory services. The Office also works to identify formal or informal barriers to market access for financial and business related services, and to promote the UK as a physical location for Indian financial and business related services.

The work of the City Office is steered by an Advisory Council for India, comprising senior Indian businessmen. It is the City of London’s aspiration that this activity be beneficial to India, in particular by assisting Indian providers of goods and services to expand internationally. The Advisory Council provides guidance to achieve this aim, and ensures that the City Corporation’s work matches Indian aspirations. Through the City Office, and regular Lord Mayoral visits, the City of London is well placed to assist the development of Mumbai as a financial centre, identified as a priority by the Indian Ministry of Finance earlier this year. The City’s approach is based on the demonstrable reality that improved access to the global financial system is a benefit, indeed a necessity, for countries at India’s stage of growth. A greater degree of market penetration by international financial services firms and the development of an international financial centre (IFC) in Mumbai will support Indian businesses as they themselves become companies of regional or even global significance.

In this work, the City of London works closely with the Treasury, UKTI and the FCO both in the UK and in India. The City Office has been established to provide extra resource without duplication, and work streams are therefore coordinated with other interested departments. For example, the City Corporation has commissioned independent work on the development of India’s corporate debt market in coordination with the Treasury, who have also identified this as a priority for Mumbai’s development as an IFC. The UK Deputy High Commissioner in Mumbai attends the Advisory Council and the work of the City Office is undertaken in close liaison with UKTI staff in India.

More broadly, the City Corporation is part of the Financial Services Sector Advisory Board, which coordinates UK promotion of financial services. Through this forum, high level visits by the Lord Mayor and the Chairman of Policy and Resources are coordinated with those of government Ministers from BERR, UKTI, the Treasury and the FCO. Through funding of International Financial Services London, the City Corporation also contributes to the trade policy work of the Liberalisation of Trade in Services Committee and the Joint Economic and Trade Committee, in coordination with UKTI and BERR.

Bruce Hunt
Senior Parliamentary Affairs Officer
Office of the City Remembrancer
Parliamentary Agency to the City of London
Memorandum submitted by the Confederation of British Industry (CBI)

1. As the UK’s leading business organisation, CBI speaks for some 240,000 businesses that together employ a third of the private sector workforce, covering the full spectrum of business interests both by sector and by size.

2. CBI welcomes the International Development Committees’ inquiry on Cross-Departmental Working on Development and Trade. Our submission addresses the key areas set out in the Committee’s Press Release of 19 July 2007.

**Trade Policy Decision-making**

**Division of responsibility**

3. CBI believes that the UK can be justly proud of its reputation for being one of the most open and liberal economies, not only in Europe, but throughout the world. The UK Government’s championing of free and fair global trade and its rejection of protectionism within the EU has been a major contribution to this achievement. CBI would vigorously oppose any weakening of this position.

4. We therefore raised a number of major concerns following the ministerial changes related to trade policy, announced immediately after Gordon Brown became Prime Minister. The rationale for the ministerial changes was not entirely clear. CBI is unsure what value is anticipated to be added to UK policymaking from the sharing of responsibility for trade policy between BERR and DFID. The UK Government has consistently been a major supporter of development-friendly trade policy in the EU, for example by supporting the abolition of all tariffs and quotas for least-developed country imports in the framework of the WTO Doha round and by urging other WTO members to sign up to a similar level of ambition—positions which the CBI fully supports. It is therefore difficult to conceive how much more development-friendly the UK’s trade policy could be, or what further level of departmental co-ordination and cooperation could in reality be achieved.

5. With regard to the position of Minister for Trade Promotion, we can foresee potential benefits for business from the creation of a new role focused solely on trade promotion. We supported UKTI’s new five-year strategy and particularly a renewed focus on export promotion to the major emerging markets. The appointment of a minister with responsibility for UKTI could boost the organisation’s effectiveness and help to deliver real benefits for UK business in overseas markets. But while trade promotion centres on practical assistance for companies, there is a link with trade policy that must be maintained, particularly regarding a coordinated UK government approach to specific trade and investment barriers in individual markets.

6. The two Secretaries of State must ensure that these new arrangements do not lead to confusion, inconsistencies and a loss of focus in the formulation and presentation of trade policy. We would argue that trade policy is a vital part of the enterprise and competitiveness agenda and that, as such, effective trade policy can play a part in securing the benefits from a pro-growth approach to development. The new role of Parliamentary Under Secretary of State for Trade and Consumer Affairs, located in two departments (DFID and BERR), has a significant responsibility to achieve this goal.

7. As trade policy is a key priority for businesses operating internationally, it is critical that the lead for this area remains anchored in a Department that is focused on competitiveness. Many aspects of trade policy are entirely unrelated to or are much wider than developmental concerns. These include trade defence, trade relations with OECD countries, regulatory convergence, investment chapters in free trade agreements and customs procedures, among many others. Trade policy in these areas can have serious ramifications for businesses operating globally. It is therefore vital that the UK can demonstrate a clear, coherent and effective pro-competitive trade policy both within the EU Council and globally.

**Decision-making structures**

8. Our concerns regarding the ministerial structures given above also relate to the day-to-day operational functioning of trade policy officials within government. We believe that the BERR trade officials have done excellent work over the years in ensuring that UK interests are well represented in the EU at both technical and ministerial levels. The trade team has also been diligent in consulting with all stakeholders, including business, unions and development NGOs, and reflecting these interests in their policy work. Therefore, while we would question the value of merging the DFID and BERR trade teams in the first place, we are pleased to note that the new team will be headed by the senior BERR official who has had the policy lead in the former Department of Trade and Industry.

9. As we understand the situation currently, changes to the current setup will be limited in practice. It is vitally important that the team is able to continue functioning efficiently and effectively. We would emphasise the fact that officials from many government departments, including FCO, DEFRA and HMT, have interests in trade policy and their input should continue to form part of trade policy-making.
Direction of Trade Policy

Evolution of trade policy and DFID’s role

10. We see no reason at all why these changes should shift the direction of UK trade policy and expect it not to do so. CBI believes that in recent years the UK Government has been able to promote a balanced trade policy, one that is both pro-competitive and pro-development. The fundamental reason for this is the Government’s firm belief that trade liberalisation can provide vital economic growth for both developed and developing countries. Clearly, different levels of liberalisation will be appropriate for countries at different levels of development. Certainly in poorer countries, a focus on aid-for-trade—an area in which DFID has previously been very active—is to be encouraged and CBI supports this. The UK’s positions reflect a belief that, over the longer term, trade liberalisation boosts trade and, in turn, trade boosts economic growth and economic growth is the basis for development. Moreover, unlike aid, trade provides a self-sustaining and continuously growing source of prosperity.

11. CBI would also highlight the key fact that, when formulating an effective and sustainable development policy, trade liberalisation cannot be considered as a policy tool divorced from other aspects of economic governance. In particular, trade liberalisation may be ineffective where there is an absence of a solid and well-functioning regulatory framework. Other important considerations include the investment climate, infrastructure, effective rule of law and, most importantly, good governance. We expanded in detail on these points in our submission to the DFID White Paper consultation on Development in 2006, which is annexed to this submission.

12. Given this, we expect DFID’s role in trade policy development to be the same as it was before July’s machinery of government changes. However, we hope that DFID’s highlighted involvement will result in a better understanding of pro-growth, pro-competitive and pro-business issues in a way that has a cross-cutting impact on the overall work of the Department.

Impact of new structure on international development

13. Likewise, we would not expect the recent changes to alter the way international development in itself is conducted. However, we would caution that, depending on how the UK Government presents its new structure, there could be a number of risks in the approach that others adopt toward us or the assumptions others make of us. One risk lies in the possibility that key players in the trade or aid sectors conclude that the UK now views development as the engine of trade policy, rather than trade the engine of development. Another lies in the possibility that a minister whose principal remit is development might be perceived to have less negotiating clout among international discussions with ministers whose principal remit is trade.

14. In either case, the blurring between trade and development responsibilities may not be helpful. Whilst we can only surmise that the recent machinery of government changes are a statement about the importance of trade to development issues—with which principle we would strongly concur—we believe care must be taken not to seriously undermine the UK’s general pro-competitiveness approach to trade policy.

Effects on negotiations at the WTO and with the ACP countries in the EPA negotiations

15. The consequence of this may be to weaken the UK’s strong voice in major trade negotiations such as the WTO. At a time when there are already many advocates of a less than robust approach to opening global markets, the UK has been a consistent champion of free and fair trade. If we are seen as less pro-competitive, we may end up strengthening the hand of those who have more protectionist tendencies. This would have a disastrous effect on the direction of trade negotiations in general and undermine our ability to compete on a level playing field in trade—and investment—matters. Furthermore, it could seriously undermine the authority of the global rules-based system and thus of the WTO itself.

16. Regional trade agreements—such as in the EPA—are negotiated directly by the European Commission. However, there is a potential risk of the UK being less able to influence EU partners and therefore the direction of trade negotiations along pro-competitive lines.

OECD and Corruption Issues

OECD Guidelines and promotion of the risk awareness tool

17. CBI supports the OECD Guidelines as one of the leading voluntary corporate responsibility instruments. We were closely involved in the work that led to the creation and update of the Guidelines through our participation as the UK member of the Business and Industry Advisory Committee (BIAC) to the OECD. Gary Campkin, Head of CBI’s International Group, is currently the co-chairman of BIAC’s Investment Committee and CBI is therefore in a leadership role on these issues. This has recently included the OECD Risk Awareness Tool. We believe that BIAC’s championing of a web-based portal, which the Trade Union Advisory Committee also endorses, offers the greatest potential to promote the Tool further.
UK National Contact Point (NCP)

18. The recent changes to the UK NCP are generally welcomed by business. In particular, we believe that indicative timescales, greater clarity of process and consideration of an awareness raising strategy are positive. CBI is one of four external members of the newly established NCP Steering Board, which exists to provide oversight of the operation of the NCP and review procedural issues.

OECD review of UK anti-bribery legislation

19. CBI is against bribery, corruption and extortion. It is morally wrong and it distorts the market. We believe UK law complies with the requirements of the OECD Convention; however we have consistently called for its modernisation. The Government’s request to the Law Commission to re-examine UK laws and to propose a new draft bill in 2008 is something CBI strongly supports. This means that the suggested timescale for the OECD bis II review makes little sense. It should be postponed until after the Law Commission has completed its work and subsequent Parliamentary action.

Minister for corruption and UK action plan for combating international corruption

20. We believe that there is value in having a Ministerial champion to ensure an effective and co-ordinated approach across government. CBI has felt that more attention should be given to tackling extortion and bribe solicitation, which we have pointed out is often where business finds itself when it comes into contact with these issues.

Natural Resources

DFID’s role in promoting economic and trade governance in resource-rich countries

21. CBI believes that DFID has a key role in promoting good public governance and the rule of law in all developing countries. We fully support that role and commend the work that has been done to date to promote good governance in development. CBI would refer the Committee to our submission to DFID last year in response to its White Paper consultation, in which we elaborate our views on the central role of good governance. We were pleased that DFID in turn has made good governance the defining element of its policy approach as describes in the White Paper.

22. This approach—and DFID’s role—is especially crucial in resource-rich developing countries where increasingly there are competing international interests for the resources they can offer. A fully functioning and transparent public sector underpins development; currently, the development of many countries is considerably hampered by the endemic corruption that permeates the public service within many developing nations. When natural resources are prevalent, the tendency to poor governance would appear only to increase. It is thus all the more important for DFID to be involved in the strengthening of institutions which can help to deliver good governance structures and practice in such countries.

23. DFID has done some good work on public governance, such as its pivotal role in establishing and promoting the Extractives Industry Transparency Initiative (EITI). This work could be extended into other areas which would benefit from increased transparency and good practice. We would urge that DFID consult UK business as many of the main issues are the same ones which companies investing in developing countries face. There may be useful lessons which business can share with DFID on such issues.

24. CBI believes that DFID’s role and influence are all the more critical at a time when corporations and state-owned enterprises from third countries are affecting traditional relationships with developing countries and altering the way that business is done there. There is a real danger that crowding out by less scrupulous third-country governments and business may start to exacerbate the problem of poor governance.

Development Aspects of Defence Exports

Impact of changes in ministerial responsibilities on criterion 8

25. We do not anticipate that the changes in Ministerial responsibility will impact on export licensing and in particular on the application of the “consolidated criteria”. As the Committee will be aware, the Quadripartite Committee considered the role of DFID and Criterion 8 issues in Chapter 5 of the Quadripartite Committee’s report published on 7 August 2007.

September 2007
Memorandum submitted by the Corner House

1. The Corner House is a non-governmental organization that focuses on environment, development and human rights. It has a track record on policy research and analysis on overseas corruption and on corporate accountability.

2. The Corner House welcomes the International Development Committee’s inquiry into “Cross-departmental Working on Development and Trade”. This submission addresses two main areas on which the Committee has sought views from organisations with relevant expertise and experience, namely:
   - Progress in implementing the OECD Guidelines for Multinational Enterprises.
   - The OECD review of UK implementation of the anti-bribery convention.

THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

3. The Government has repeatedly signalled the high priority its gives to the OECD Guidelines for Multinational Enterprises, describing them as “integral” to its policy on corporate social responsibility. Although the Guidelines are voluntary, the Government nonetheless states that it expects companies operating in the UK, and UK companies investing overseas, to act in accordance with the principles set out in the Guidelines and to perform to at least the standards they suggest.

4. The Guidelines were first agreed in 1976. In 2000 (the most recent revision) it was agreed that all OECD member states would set up a National Contact Point (NCP) “to promote the Guidelines and to contribute to the resolution of issues arising from their implementation”. Under the 2000 revisions, Non-Governmental Organisations (NGOs) and others were granted the right to submit complaints against OECD-based companies. The complaints are handled by the NCP of the companies’ home government.

5. The implementation of the Guidelines in the UK has been subject to repeated criticism by parliamentary bodies and by NGOs. In its 2006 Report on Conflict and Development, the International Development Committee itself stated: “There is a serious deficiency in the manner in which the Government approaches the actions of UK companies abroad . . . The Government does not send out a strong message to UK companies about the significance it attaches to OECD Guidelines. The Government needs to demonstrate that it takes the OECD guidelines seriously, in practice as well as in theory, by drawing up practical measures to ensure their implementation.”

6. In response, the Government assured the Committee that steps had been taken—following a public consultation in 2005—to “revamp” the office of the UK NCP in order to ensure better handling of complaints. These changes included “the expansion of the NCP to include officials from DFID and FCO as well as DTI, and the establishment of a Cross-Government Steering Board to oversee the work of the NCP”. This Board includes independent members drawn from outside Government.

7. Announcing the changes, the then Minister of State for Trade, Investment and Foreign Affairs, The Rt Hon Ian McCartney, stated: “The Government wants the new NCP to work with businesses, employees and other parties to deal with issues raised under the Guidelines. I believe that this approach, allied with the changes set out in the Government’s response, will deliver a more open and transparent system in which all organisations can put their faith in encouraging responsible business activities overseas” (emphasis added).\(^5\)

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1 International Development Committee, Press Notice 52, Session 2006–07, http://www.parliament.uk/parliamentary_committees/international_development/ind0607/tn52.cfm

2 The Guidelines are a set of “recommendations addressed by governments to multinational enterprises operating in or from adhering countries”. They provide “voluntary principles and standards for responsible business conduct in a variety of areas including: anti-corruption, consumer rights, environment, employment and industrial relations, human rights, information disclosure, inward and outward investment and taxation”. The Guidelines were first agreed in 1976. In 2000 (the most recent revision) it was agreed that all OECD member states would set up a National Contact Point “to promote the guidelines and to contribute to the resolution of issues arising from their implementation”. Under the 2000 revisions, NGOs and others were granted the right to submit complaints against OECD-based companies. The complaints are handled by the NCP of the companies’ home government.

3 UK National Contact Point Information Booklet, http://www.societyandbusiness.gov.uk/oecddoc/UKNCBPbookletdocD.pdf, p.7. When Chancellor of the Exchequer, the current Prime Minister Gordon Brown, stated: “Where multinationals are unaccountable across boundaries and sometimes appear more powerful than the developing countries in which they operate—businesses and government must do more to restore the right balance, increase stakeholder awareness and achieve cross border accountability . . . I urge more companies to follow the principles of good corporate practice laid out in the OECD’s guidelines for multinational enterprises” (Gordon Brown, speech at the September 2002 Commonwealth Finance Ministers Meeting).


8. On paper, the changes made to the NCP are to be welcomed—and broadly align with recommendations made by the non-governmental sector. In practice, however, the NCP’s handling of Complaints continues to be dogged by bias, delays and a failure to adhere to stated procedures.

9. The recent history of a four-and-half-year-old Complaint jointly submitted by The Corner House, Friends of the Earth (England, Wales and Northern Ireland), Kurdish Human Rights Project, PLATFORM and Milieudefensie against BP over its Baku-Tbilisi-Ceyhan (BTC) oil pipeline is illustrative.

10. Annex 1 sets out a detailed chronology of the Complaint from the dialogue phase to the present. In brief:

— The Complaint was submitted in April 2003.
— In September 2005, the NCP undertook an “information gathering mission” to the region, confirming a range of problems at the community level.
— This was followed in November 2005 by a dialogue session with BP. Although all parties agreed to pursue further dialogue, the company unilaterally disengaged from the process, instead supplying the NCP with a report, alleged based on visits to the villagers in November 2005, which purported to document how the issues complained had been resolved. The report was withheld, at BP’s request, from the Complainants.
— In December 2005, the Complainants provided the NCP with written evidence that BP had not visited the villages concerned and that the issues complained of remained unaddressed. Further evidence to the same effect, including videoed statements by villagers, was made available to the NCP in January 2007.
— In September 2006, the new institutional procedures for handling complainants were introduced by the Government.
— In December 2006, the NCP sent Corner House a draft of the NCP’s proposed statement on the case, requesting “comments of a factual nature”. In response The Corner House identified 28 factual errors. In addition, The Corner House also raised procedural concerns relating, in particular, to the unfairness of the NCP’s reliance on the undisclosed and contested BP report to exonerate the company.
— In January 2007, the NCP assured The Corner House in writing that the Complainants would be shown the next draft of the Statement and “advised of the reason why any comments have not been incorporated therein”.
— In August 2007, the NCP issued its Final Statement.

11. The NCP’s Final Statement on the BTC Complaint strongly suggests that the lessons identified in the Government’s 2005 Consultation on the Guidelines have yet to be learned. In particular, the NCP has conspicuously failed to adhere to basic standards of fairness and has simply disregarded commitments made to the Complainants with respect to procedure.

12. The Complainants were not shown a draft of the Final Statement, contrary to the NCP’s written undertaking, nor was any explanation been given by the NCP as to why the bulk of the Complainants’ comments on the first public draft had not been incorporated.

13. The Statement relies almost exclusively on BP’s withheld report to exonerate the company. The Corner House hold that, as a matter of basic fairness, the complainants should have been given the opportunity to see and comment on this important report before the final statement was published. It was wholly unfair to give BP the opportunity to comment on the complainants’ representations, but not to extend the same duty of fairness to the complainants.

14. Although a redacted version of the BP report, which had not previously been shown to the Complaints, is annexed to the Final Statement, the documentary evidence supplied by the Complainants, which disputes BP’s claims, is not included.

15. Although the Government has undertaken that the NCP will “justify its decisions and any recommendations that it makes”, the Final Statement in the BTC case offers neither an attempt at a proper analysis of the facts nor any serious justification for the conclusions reached.

16. The Complainants have now appealed to the Steering Board on procedural grounds.

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7 The Complaint is available at http://www.baku.org.uk/publications/oecd_complaint_final_ui.doc. The Complaint held that the BTC Consortium, of which BP is a part, had: exerted undue influence on the regulatory framework; sought or accepted exemptions related to social, labour, tax and environmental laws; failed to operate in a manner contributing to the wider goals of sustainable development; failed to adequately consult with project-affected communities on pertinent matters; and undermined the host governments’ ability to mitigate serious threats to the environment, human health and safety.

8 “Government Response to the Consultation of the National Contact Point’s Promotion and Implementation of the OECD Guidelines for Multinational Enterprises”, http://www.societyandbusiness.gov.uk/oecddoc/Hitle32038.pdf, paragraph 57.
17. The Corner House considers that the NCP has conducted itself throughout the Specific Instance process with conspicuous unfairness, favouring the commercial organisations involved at every stage. The consultation with the complainants has been one-sided, limited and partial, and wholly fails to meet basic standards of fairness or natural justice. Moreover, this bias and procedural laxity has continued despite the introduction of the new handling procedures in 2006.

18. It remains to be seen whether the Steering Board is in a position to offer Complainants redress in circumstances where the NCP has acted unfairly. It is not known, for example, whether the Steering Committee has the powers to direct the NCP to re-assess the Complaint, should the Complainants’ appeal be upheld.

19. In The Corner House’s view, the handling of the BTC Complaint casts grave doubts over whether the institutional reforms made to the NCP are sufficient to ensure the fair handling of Complaints. Indeed, whilst the NCP remains housed within the Department for Business, Enterprise and Regulatory Reform (previously the Department for Trade and Industry), there will always be institutional pressures that militate against Complainants receiving a fair hearing.

20. Given the importance of the Guidelines as an (albeit weak) mechanism for holding corporations to account, The Corner House would recommend that the NCP is reconstituted as an independent body.

THE OECD REVIEW OF UK IMPLEMENTATION OF THE ANTI-BRIBERY CONVENTION

21. In its 2006 White Paper on International Development, the Government states: “The UK is committed to tackling corruption, bribery and money laundering. This includes making sure that we rigorously enforce relevant UK laws so that people who pay bribes are prosecuted . . .”

22. Recent events, notably the decision in December 2006 to terminate the Serious Fraud Office’s investigation into alleged corruption by BAE in its dealings with Saudi Arabia, have thrown into question the UK’s commitment to tackling corruption by UK companies. Indeed, the response of the Government to the international furore that followed the SFO decision strongly suggests that the UK’s anti-bribery policy is nothing short of a shambles—legally, institutionally and politically. Significantly, that the government’s appointed “Corruption Tsar” was not even consulted on the BAE decision.

23. Current international standards relating to combating bribery in international trade are set out in two OECD instruments: the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the “OECD Anti-bribery Convention” and the 1997 Revised Recommendation11. Parties are monitored against their implementation of both the Convention and the 1997 Revised Recommendation, using the OECD peer review process.

24. The UK signed the OECD Anti-Bribery Convention in 1997 and ratified it a year later. Since then, the OECD has conducted three peer reviews—in 1999, 2003, 2005. Following concerns expressed by the OECD Working Group on Bribery over the BAE decision, as well as the UK’s failure to implement key recommendations arising from the 2005 review, a further review is planned before March 2008.

25. Each of the evaluations undertaken to date by the OECD has expressed grave reservations over whether the UK is fully compliant with the OECD Convention. In response, the UK Government has repeatedly stated that the concerns raised by the OECD have been addressed or are in the process of being addressed.

26. These assurances have been cast into severe doubt by Government statements and actions since the termination of the BAE-Saudi investigation. Indeed, it is now clear that the Government has misled the OECD—and Parliament—as to the extent of its compliance with the Convention. For example:

27. Agent-Principal Defence

The OECD Working Group on Bribery expressed concern in 2005 that, under UK law, corruption is conceived “as the suborning of the agent to the detriment of the principal”. So if a bribe to an official (the “agent”) is sanctioned by the official’s superiors (his or her “principal”), no offence is held to have been committed.

In response, the Government assured the OECD Working Group on Bribery that a defence based on the consent of the principal to the agent receiving the bribe “has no basis in current UK law” and would not apply in foreign bribery cases.12

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10 OECD, “Anti-bribery Convention”, available at http://www.oecd.org/document/21/0,2340,en_2649_34859_2017813_1_1_1_1,00.html
Yet, in justifying the decision to terminate the BAE-Saudi investigation, both Lord Goldsmith\(^\text{13}\), the then Attorney-General, and Mr Robert Wardle\(^\text{14}\), the Director of the Serious Fraud Office, stated that the “agent-principal” issue—supposedly no longer a defence under UK law—posed a major obstacle to bring any successful prosecution.

28. Article 5 and the SFO Decision to Terminate the BAE-Saudi Investigation

Article 5 of the OECD Anti-Bribery expressly forbids the termination of corruption investigations on grounds other than the merits of the case. Signatory governments specifically undertake not to be influenced “by the potential effect [of an investigation] upon relations with another State . . .”

In response to concern raised by the OECD Working Group on Bribery, the UK Government gave a categorical assurance that “none of the considerations prohibited by Article 5 would be taken into account as public interest factors not to prosecute”.\(^\text{15}\)

Despite this assurance, the SFO’s decision to terminate the BAE-Saudi investigation was based on the grounds that clearly breach Article 5—namely that continuing the corruption investigation would damage relations with Saudi Arabia. Such a breakdown in relations, argued the SFO, could result in the Saudis withdrawing security cooperation and hence constituted a threat to the UK’s national security.

The Corner House and Campaign Against Arms Trade are currently seeking a judicial review of the SFO decision.

29. Claims as to Non-Justiciability of Article 5 in the UK

The Government has repeatedly stated that it will comply with the OECD Convention when considering prosecution of corruption cases involving bribery of foreign officials. In the BAE-Saudi case, the SFO was explicit that considerations arising from Article 5 had been taken into account.

Such statements have a considerable legal significance, since it is a well-established principle of English public law that where a public body announces that it will comply with an international law obligation when making a decision, or that it has taken into account such obligations when taking its decision, the international law obligations—specifically, in the BAE-Saudi case, Article 5 of the OECD Anti-Bribery Convention—are justiciable in the UK.\(^\text{16}\)

Yet in its response to The Corner House/CAAT judicial review claim on the BAE-Saudi decision, the Government denies categorically that Article 5 of the Convention is justiciable in the UK.\(^\text{17}\)

30. Willingness to Ignore the Convention

The SFO and the Attorney General have stated that, in deciding to terminate the BAE-Saudi investigation, they had regard “at all times . . . to the requirements of the OECD Anti-Bribery Convention”.\(^\text{18}\)

Yet in response to The Corner House/CAAT judicial review challenge, the UK Government states that, far from considering itself bound by the requirements of the Convention, it was prepared to break the Convention entirely in order to terminate the inquiry:

“It is true that the Director [of the SFO] considered, and remains of the view, that his decision to discontinue the investigation did not put the UK in breach of its international obligation [under the OECD Convention] . . . But this was not for him a critical or decisive matter: the

\(^{13}\) “Goldsmith’s dilemma on Saudi royals in BAE case”, Financial Times, 1 February 2007. According to the Financial Times: “The Attorney-General defended the decision to scrap the inquiry. He said the main obstacle was the difficulty of proving corruption under current laws. These require prosecutors to show the person receiving bribes—the ‘agent’—acting without the consent of their boss—the ‘principal’. The reason I was concerned was because of the particular constitutional position of Saudi Arabia . . . And, indeed, how, in this context, do you ever succeed in showing that? BAE were asserting that the payments had been authorised at the highest level [in Saudi Arabia]”, he said.

\(^{14}\) “Britain’s anti-corruption laws are outdated”, Financial Times, 23 February 2007. Wardle told the Financial Times that “the SFO could have faced a problem in any prosecution of BAE because of the need under existing anti-corruption rules to prove that Saudi officials who had allegedly received bribes—known in law as the ‘agents’—had acted without the consent of the country’s king, the ‘principal’.”


threat to national and international security was such that, even if consideration of those matters had been contrary to that provision, he considered them to be of such compelling weight that he would still have taken the same decision.”19

31. **Mutual Legal Assistance**

Article 9 of the OECD Convention requires parties to act “promptly” and “without delay” when a request for Mutual Legal Assistance (MLA) is received.

The UK’s compliance with this Article is in doubt. According to a recent report in the Guardian,20 it would appear that the Home Office is failing to co-operate with the US Department of Justice requests for information relating to the BAE-Saudi Arabia corruption allegations.

32. The Corner House has written to the OECD Working Group on Bribery, drawing its attention to a number of the above discrepancies. It remains to be seen whether they will form part of the OECD Working Group’s 2008 review.

33. The Corner House views the Government’s actions over the BAE-Saudi investigation as clear evidence not just of a lack of political will to tackle alleged corruption by UK companies operating abroad but, perhaps more worryingly, of immense political will to turn a blind eye to such corruption, placing the interests of the company above the UK’s international law obligations. Indeed, there is a high risk that the UK’s actions could fatally undermine the OECD Convention itself.

34. Within this context, the restructuring of responsibility for trade policy between DFID and the Department of Business, Enterprise and Regulatory Reform (DBERR) carries a high risk that anti-corruption concerns will be still further marginalised. Whilst, in theory, the “merger” may give DFID, which has a strong record of concern over corruption, a stronger voice within trade policy, the likelihood is that the DBERR, with its mandate to promote UK companies, will prove the senior partner, to the detriment (on past experience) of the international fight against corruption.

22 September 2007

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**Annex 1**

**CHRONOLOGY OF CLOSING STAGES OF BTC SPECIFIC INSTANCE**

In November 2005, following an “information gathering mission” by the NCP to the region, a dialogue meeting was held with BP. Although it was agreed that a follow up meeting would be arranged, BP withdrew unilaterally. BP also undertook to look into complaints made to the NCP by villagers he had visited and to report back to the parties. BP subsequently refused to disclose its report to the Complainants.

Although BP claimed that it had investigated the complaints made to the NCP, Complainants provided the NCP with written evidence in December 2005 that BP had not visited the villages concerned and that the issues complained of remained unaddressed. Further evidence to the same effect was provided to the NCP in January 2007.

On 22 December 2006, the NCP sent Corner House, as lead NGO for the Complainants, a draft of the NCP’s proposed statement on the case, requesting “comments of a factual nature” by 12 January 2007, later extended by mutual agreement to 30 January 2007.

Subsequently, on:

- **4 January 2007** Corner House requested clarification as to the procedures that would be followed prior to publication of the Final Statement. Specifically, it asked the NCP: “Will the Complainants be shown the next draft of the Statement to ensure that their comments have been taken into account before it is issued? And will the NCP respond with reasons where comments have not been taken into account?”

- **11 January 2007** The NCP replied to Corner House’s email of 4 January, stating, “I can also confirm that the answer is yes to your two earlier questions—You will be shown the next draft of the statement and also be advised of the reason why any comments have not been incorporated therein.”

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29 January 2007  Corner House submitted, on behalf of the Complainants, a response to the draft Statement, identifying 28 factual errors. Corner House also raised procedural concerns relating, in particular, to the NCP’s reliance on the undisclosed and contested BP report to exonerate the company. The Corner House argued that relying on an undisclosed and contested report violated the principle of fairness to which the NCP process was officially committed. Further evidence was supplied denying that BP had visited the villagers during the period when the report was written—and confirming that numerous problems remained unresolved. Video statements by the villagers were also recorded. The Complainants also made available video testimonies by the villagers but failed to avail himself of these.

31 January 2007  After receiving an earlier (October 2006) draft of the Statement, released under FOIA, Corner House submitted further comments on the current December 2006 Draft, highlighting further factual errors.

14 March 2007  The NCP sends a partial response to the comments submitted by Corner House on 29 January 2007. The NCP states: “I can confirm that your submission is being carefully examined. However, I thought it would be helpful to provide you with the response of the NCP to some of the alleged factual misrepresentations that are the subject of the third section of your submission.” No comments were offered on other concerns raised by Corner House. The NCP:

— Acknowledged that a number of questions and issues remain “unresolved” and proposed a further dialogue meeting with BP.
— Confirmed that the issue of project standards (do they or do they not conform to EU standards, as claimed by BP?) was “currently under investigation”.
— Confirmed that BP had been asked for “an update on a number of outstanding issues in respect of villager complaints in Turkey”.

Despite acknowledging that there were unresolved issues and that further reports and investigations were being undertaken, the NCP never informed The Corner House of their outcome.

31 March 2007  Corner House responded to the NCP’s letter of 14 March 2007, again pointing to factual errors in his comments, some (but by no means all) of which were subsequently corrected in the Final Statement. Corner House noted that no reply had yet been received to the procedural and other factual issues raised in its letters of 29 and 31 January 2007.

4 April 2007  The NCP acknowledged Corner House’s letter of 31 March 2007 and stated “I will reply substantively as soon as possible”.

There was no further contact from the NCP until the UK National Contact Point for the Guidelines (the NCP) wrote to The Corner House on 15 August 2007 (received 20 August 2007), enclosing the final statement on the Complaint, including (as an Annex) a redacted version of the previously undisclosed and contested report by BP.

The Statement and the Annex have both been posted by the NCP on the Government’s Society and Business website—http://www.societyandbusiness.gov.uk/oecddoc/N0000M4A.doc.

Memorandum submitted by the Export Group for Aerospace & Defence (EGAD)

1. Below is a paper compiled for the Committee in response its inquiry on “Cross-departmental working on development and trade”, as promulgated in Press Notice No 52, submitted on behalf of the Export Group for Aerospace & Defence (EGAD), which is the UK Industry focal group on all export control issues.

2. We would wish to restrict our comments to the aspects, which are most pertinent to our area of interest and expertise, namely:

   Development aspects of defence exports
— Impact of the changes in ministerial responsibilities on defence export licences and application of the “consolidated criteria” on such exports, particularly criterion 8 on sustainable development.

3. We feel that we must point out, right at the start, that it is incorrect to believe that export controls and the need for export licences only relate to “defence exports”—this ignores the vast swathe of export controls which relate to “Dual-Use” equipment and technologies, and seemingly seeks to perpetuate the ill-informed myth that export controls only relate to “arms”.
4. There is nothing intrinsically unique to the export of defence materiel, either in terms of excessive expenditure or allegations of bribery and corruption, which can affect sustainable development, which cannot similarly relate to most other sectors.

5. We warmly welcome efforts by the British Government to strengthen our own national regulations against bribery and corruption, and enhance their effectiveness further. When an official from DfID reportedly stood up in front of an audience in 2005–06 and stated that it was their aspiration to achieve in the next three to five years the successful prosecution of a “British defence company” for bribery and corruption, we were somewhat concerned, and our suspicions remain about their intentions.

It would have been better if the official had stated that they wished to achieve the successful prosecution of a “British company” for bribery and corruption, without stating the target sector. We would hope that officials would share our view that discrimination is distasteful and that laws should be enforced dispassionately, rather than on such a basis.

6. We welcome the closer involvement of DfID in making and implementing trade policy, in liaison with the Minister of Trade and the Minister of Trade Promotion and their respective Secretaries of State. We hope that they will play a constructive role in successfully achieving this. At a time when, with the intended demise of the Defence Export Services Organisation (DESO), there is uncertainty about how UKTI is going to fulfill the role of supporting the export activities of the British Defence Industry, we believe that there is merit in involving DfID more closely.

7. The role of DfID in setting out clearly and authoritatively the British Government’s interpretation of Criterion 8 is invaluable, as this whole area is highly subjective:

“The compatibility of the arms exports with the technical and economic capacity of the recipient country, taking into account the desirability that states should achieve their legitimate needs of security and defence with the least diversion for armaments of human and economic resources.

The Government will take into account, in the light of information from relevant sources such as United Nations Development Programme, World Bank, IMF and Organisation for Economic Cooperation and Development reports, whether the proposed export would seriously undermine the economy or seriously hamper the sustainable development of the recipient country.

The Government will consider in this context the recipient country’s relative levels of military and social expenditure, taking into account also any EU or bilateral aid, and its public finances, balance of payments, external debt, economic and social development and any IMF- or World Bank-sponsored economic reform programme.”

DfID’s involvement in the MoD(UK)’s 680 procedure in assessing potential exports against Criterion 8, right up front at the start of a company’s intended potential marketing campaign, and providing clear and authoritative guidance to the exporter on this highly subjective subject is invaluable and assists in avoiding launching nugatory, highly expensive efforts in pursuing potential business opportunities for which the necessary export licences will be turned down. We believe that this may be one reason why there have been so very few export licences turned down by HMG on the grounds outlined in Criterion 8 of sustainable development, as the 680 procedure may have helped in weeding these out before an export licence application has been submitted.

8. It has to be pointed out that almost no exports of a level that they could be deemed to impact on the customer’s national economy and sustainable development would ever be achieved without considerable political lobbying support from the British Government (if only to offset the similarly vocal lobbying support that other national Governments almost invariably give to their own national champions in the defence arena). Therefore, the apparent failure by HMG to refuse export licences on the grounds that they would infringe Criterion 8 should not cause undue concern, as this would be the result of effective communication between Government departments; and this can only be further enhanced by involving DfID more closely in trade activities.

Memorandum submitted by One World Action

SEPTEMBER 2007

1. One World Action welcomes the House of Commons’ International Development Committee’s initiative and is keen to submit evidence on two particular points raised by the Committee: trade policy decision-making and the direction of trade policy.

2. One World Action considers trade a key route out of poverty for developing countries—certain conditions being met—and therefore welcomes the government’s recent decision to restructure its machinery and to make trade a joint responsibility of the Department of Business, Enterprise and Regulatory Reform (DBERR) and the Department for International Development, with a single minister shared by the two departments.
3. This is of considerable importance in the context of the current negotiations of the Economic Partnership Agreements; of the drafting of the Joint European Union-Africa Strategy and of the current Doha Round WTO negotiations.

4. EPAs are due to replace existing trade arrangements between the European Union (EU) and African Caribbean Pacific countries (ACP) that are covered by a World Trade Organisation (WTO)’s waiver due to expire at the end of 2007. The UK government is working closely with the European Commission, which is negotiating these agreements on behalf of the European Union (EU), other EU member states and ACP countries to ensure that these agreements are development-focused and designed, so that EPAs, once adopted, can deliver long-term development, sustainable economic growth and poverty reduction.

A) Gender Equality and Equity

5. One example of the importance of DFID’s policy, research and practice for trade is its work on gender equality. This is a good example of why better cross-departmental working on trade is necessary.

6. Gender equality is a MDG in its own right and has a vital role to play in the achievement of the rest of the Millennium Development Goals which include the development of a just and open trading and financial system with a commitment to good governance, development and poverty elimination nationally and internationally. There is increasing evidence of the link between progress on gender equality and progress on all other development objectives. But our research has shown insufficient application of gender policy commitments throughout all trade and development policies.

7. In the area of employment and wages, our research has shown that removing tariffs can affect women’s employment and income in two key ways. If women are consumers, then they can benefit from cheaper goods, but if they are producers, then they are likely to face competition and possibly loss of employment and income. From a poverty reduction point of view, it is important to ensure that women on low incomes are not negatively affected by EU imported goods. More research is therefore needed to identify which items should be liberalised in which country because women are more consumers than producers of these products, and which items should be protected because women are more producers than consumers. These issues need to be carefully balanced in EPA negotiations.

8. For example, where women are mainly employed in export production, such as cut flowers in Zambia, our research has shown that core labour standards and decent work are often neglected; women are concentrating in low paid, low status and precarious jobs. The growth and expansion of the sector seems to depend on the exploitation of cheap women’s labour implicitly considered as a “comparative advantage” in international trade. An EPA should provide an opportunity to deliver better working conditions for women.

9. Therefore, promoting and protecting core labour standards should be central to an EPA and the DBERR and DFID joint Parliamentary Under Secretary has a central role to play in the negotiations of the EPAs—based upon DFID’s own work in this area, and international commitments such as the Beijing Declaration and Platform for Action and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)—to influence other EU members states and the European Commission to take these issues into account. The same is true in the UK bilateral relationships with developing countries in Asia or South America.

10. In the area of trade related assistance, the gendered division of labour and the inequalities accompanying this mean that women are unable to fully participate in trade. The case studies we developed have shown that an EPA could increase the workload of poor women without enabling them to share the benefits resulting from growth in industries. It is therefore important that measures are taken to ensure trade related assistance reaches women in order to increase their productive capacities.

11. As far as tariffs and revenue are concerned, our research has shown that some potential revenue loss arising from trade tariffs, such as those engendered by EPAs, might occur and affect the delivery of public services in countries. ACP countries may indeed have to impose domestic taxes on goods and services—in the form of direct tax on income or through indirect tax such as value added tax—or to cut public spending to remedy to this revenue loss, which would negatively affect the quality and quantity of crucial services in health and education at a time when ACP countries are struggling to combat HIV/AIDS, illiteracy and food insecurity. It is now DBERR and DFID’s joint responsibility to convey the message internationally that tax is not neutral and to promote measures that ensure that women are not disproportionately affected by taxation policy.

12. In the area of adjustment costs and supply side capacity, and in order to achieve real development-focused trade agreements (especially EPAs), additional resources must be allocated to support infrastructure development, technical assistance, investment and market access in ACP countries. From the point of view of eliminating gender disparities, the new DBERR must support programmes of assistance targeted to women in order to enable them to increase their productive capacity.

13. DFID and DBERR’s joint Parliamentary Under-Secretary of State for Trade and Consumer Affairs (within DBERR) and for International Development with responsibility for Asia, Europe, Latin America, the Caribbean and Overseas Dependent Territories (within DFID) whose portfolio includes trade policy, must, in EU/ACP regular negotiations, convince his European partners to provide additional support to enhance the supply-side capacity of ACP countries that must be made available through an EPA, as it
represents a key barrier to free trade. In particular, women’s lack of access to productive resources including land, labour, inputs and technology, as well as support services, such as credit, extension and research, must be addressed in order to enable them to become more productive and competitive. Supply-side capacity-building is one important way in which this could be done.

14. Collecting disaggregated data is crucial in this context, as this would allow policy-makers to get pertinent statistics on women’s economic activities, which are of fundamental importance to understanding the impact of trade liberalisation on livelihoods and employment in developing countries. Government and statistical offices should be supported and encouraged to compile basic data such as employment figures for sectors which are particularly vulnerable to trade. Statistical tables providing information jointly on export intensity, import penetration and female intensity for each sector should become part of the standard set of basis statistics regularly issued. DFID has a key role to play in assisting developing countries to gather these disaggregated data, which could then be combined with data secured by DBERR on export intensity or import penetration for each country within each sector.

15. DFID has already got strengths in gender equality work and an independent evaluation of its work on gender equality in August 2006 by the peer review of UK development assistance by the OECD Development Assistance Committee has shown that the DFID’s work on education and health had had good results; that DFID had played an important role in international discussions on gender equality; that its funded-research had had a worldwide influence and that it had developed significant partnerships on gender equality at national and international levels. But if the commitment at policy and strategy level has been strong, there has been a failure to fully and consistently translate that commitment into actions that make a difference on the ground.

16. One World Action is hoping that the recent government restructuring, making trade an area of joint responsibility between DFID and DBERR, will translate itself into better understanding of the problems and opportunities for women and girls in developing countries and into better coordination to ensure that the impact on gender equality and equity is taken into account in all trade and development interventions.

17. Given DFID’s expertise and recently restated commitment to promoting gender equality, One World Action is hoping that DBERR will make the UK position more clear on this matter. We hope that DFID and DBERR will use their combined influence to encourage international donor partners and the EU Commissioner for Trade to give far greater priority—in their words and in their actions—to ensuring trade agreements support and not undermine progress towards gender equality. Where organisations like the African Union and SADC have made strong commitments on gender equality, the UK should assist by supporting comprehensive and consistent implementation.

B) POLICY COHERENCE

18. Policy coherence, defined by the DAC Poverty Guidelines as “the systematic promotion of mutually reinforcing policies across government departments and agencies creating synergies towards achieving the defined objective”, is therefore crucial to achieving sustainable development. Better coherence between DFID and DBERR’s objectives and work will therefore be crucial in achieving better cross-departmental working on development and trade.

19. The EU and the UK are committed to ensuring coherence in their external actions with third countries, which include better coherence and consistency between policy and practice on development co-operation and trade. One World Action would like to see these policies fully implemented and monitored, as policy coherence is of fundamental importance to achieving sustainable and equitable development and to transparent and accountable governance. The lack of policy coherence in external actions, between development co-operation objectives and objectives in the areas of trade, common foreign and security, agriculture, fisheries, migration, environment, undermines progress towards sustainable and equitable development including transparent and accountable governance. Furthermore, low policy coherence jeopardises progress towards achieving the Millennium Development Goals.

20. As recognised by DBERR on its website, trade liberalisation does not automatically imply higher growth. It will have little benefit if the domestic policy environment is inadequate. Weak economies need to build simultaneously the institutional and human infrastructure to take advantage of trade opportunities. Hence there is a need for a coherent approach amongst the international organisations, but also amongst DBERR and DFID to best enable them to do just that. The UK government’s position is that trade openness can have beneficial impacts on productivity, and use of new technologies and investment.

21. The joint responsibility for trade between DFID and DBERR is therefore a step in the right direction, but effective cross-departmental work necessitates the elaboration of a common DFID/DBERR cross-departmental position on sustainable and equitable development and trade justice, especially in the design of the EPAs and in the DOHA round negotiations. Regular meetings between the EU divisions of both departments are therefore crucial. Similarly, DFID’s priorities and concerns should be promoted by the DBERR’s European and World Trade Directorate officials and the Parliamentary Under Secretary of State responsible for trade policy in their discussions with partners in government and at the EU level—possibly during the Article 133 Committee meetings on trade—colleagues in the United Nations and other donor governments.
22. DFID officials should ensure that DBERR’s trade policy section officials (European and World Trade Directorate EWT) take into consideration the MDGs when preparing the weekly “Article 133 Committee” meetings—during which the UK and its European partners meet to coordinate their positions on trade related issues, before that position is defended by the European Commissioner for Trade at international trade negotiations, including those of the DOHA round.

23. As far as the DOHA round negotiations are concerned, deeper cuts in EU and US spending on agriculture; tariff reduction offers, reduced pressure on developing countries to liberalise some sectors or services and fewer sensitive products for Europe are all needed to ensure that poverty reduction is achieved. Trade alone cannot be the answer, and DFID/DBERR’s better coordination is therefore a step in the right direction to ensure that trade and development are successfully combined and benefit the poorest countries of the world. As the UN’s 2005 Human Development Report in its chapter on trade and development stated, “good trade rules will not resolve many of the most pressing problems facing developing countries, but good rules can help. And bad rules can inflict serious damage”.

24. An effective “aid-for-trade” package as part of the DOHA round final agreement is also crucial to enable developing countries to gain maximum benefits from the deal. In 2005 the UK government announced that the UK would treble its contributions to “aid-for-trade” to £100 million a year by 2010. As part of this, an aid package of £37.8 million was announced in April 2007 for technical assistance over the next five years to help the 40 poorest countries to develop trade capacity. Joint scrutiny of the use of this money is highly needed.

25. Better cross-departmental work on trade between DFID and DBERR officials, in the form of policy coherence, joined-up initiatives, information sharing and exchange of best practice, is therefore welcome in order to avoid duplication or overlap, and in order to fulfil the promises made in 2000 to halve world poverty by 2015.

C) Governance

26. Another example of the importance of DFID’s policy and practice for trade and for DBERR is its work on governance. This is also a good example of why better cross-departmental working is necessary to achieve trade justice.

27. Since the early 1990s, DFID has supported programmes in various areas of governance. It published a White Paper, “Making governance work for the poor” in July 2006, which set out DFID’s priorities and explained how it will work with the rest of UK Government, partner governments, international organisations, non-governmental organisations (NGOs), academics and the private sector to fulfil the promises made in 2005 to reduce significantly world poverty. This paper clearly set out DFID’s ambition to put governance at the centre of its work—focusing on building states that are capable, responsive and accountable to their citizens and on tackling corruption internationally.

28. The UK Government and the European Union have developed strong policies on governance and development. Their thinking has evolved to looking at good governance in a more comprehensive manner, including stressing the importance of citizen-state accountability and engaging with the most socially excluded women and men. They acknowledge clear linkages between good governance, respect for human rights and non-discrimination.

29. One World Action believes that governance—respect for human rights, rule of law, transparency, accountability, responsiveness—should be mainstreamed in all external interventions and policies, not least in development and trade. It is therefore important that DBERR officials ensure that trade agreements support, and not undermine, progress on governance issues such as support for democratisation, reinforcement of the rule of law and access to justice, public sector capacity-building, or enhancement of the role of civil society. DBERR officials should for example ensure that trade agreements support, rather than undermine, progress towards legitimate governance, the promotion and protection of human rights, the enhancement of the role of civil society, decentralisation and local government reform.

30. One World Action also believes that support for democratisation, as put forward by DFID, should imply a strong UK support in the trade negotiations, not least on the EPAs, for national parliaments’ scrutiny and involvement, both in European countries and African countries.

Conclusion

31. DFID provides support to strengthen trade policymaking processes in the ACP countries. Its track record of policy, research and interventions in the area of trade and its openness to discussions with civil society partners bring an important perspective to DBERR thinking. Shared knowledge and expertise between DFID and DBERR civil servants will therefore be crucial in better cross-departmental working on development and trade.

32. DBERR’s trade policy section (European and World Trade Directorate EWT) works with a variety of partners and institutions both in the UK and worldwide to “promote a vision of open and competitive markets and a world trading system that is fair as well as free”, while DFID states that “many different things can contribute to development which reduces poverty, such as settling conflicts, increasing trade,
securing more and better aid, and improving health and education”. Both visions are complementary and require a better coordinated approach between both departments in the context of the current major international trade negotiations.

33. Gender equality is one of the key cross cutting issues and should be mainstreamed throughout development and trade policy discussions. If trade and aid are twin pillars of the UK and the EU development policies, then the need for coherence between gender equality objectives and aid and trade policy objectives—and coherence between trade policies that exacerbate inequality and development policies that aim to reduce inequality—need to be better highlighted and promoted.

34. Better coordination and shared knowledge are needed between the two departments to promote legitimate governance and gender equality and equity, and to assess with the private sector and with civil society the relationship between gender equality and economic growth.

35. A joint strategy/action plan should be designed to set out how both department can better use their partnerships, money and staff to make a lasting difference to the trade and development agenda and in particular gender equity and equality, legitimate governance and trade justice.

36. DFID rightly emphasised that having women in senior positions mattered in fulfilling this agenda; and that leadership was needed. Gender Equality Champions were appointed in its most senior positions and right across DFID, to challenge DFID and help DFID make the biggest difference possible. They meet every six months and report on successes and obstacles. Similar Gender Equality Champions must be appointed within DBERR so that all gender policies and practice are consistently applied throughout all trade and development policies to ensure policy coherence. Specific steps must be taken to ensure that women have equal access to markets, subsidies, resources, credit and training aimed at mitigating the negative impacts of trade liberalisation.

37. Through the review of the International Development Committee of cross-departmental working on development and trade, the British government has a timely opportunity to critically assess its own practices and role in the current international trade negotiations (Doha Round and EPAs) and to develop a more coherent development-focused gender-mainstreaming strategy in trade policy.

Memorandum submitted by Stop the Traffik

1.0 DEVELOPMENT, TRADE, AND HUMAN TRAFFICKING

1.1 STOP THE TRAFFIK welcomes the International Development Committee’s Inquiry into the Cross-Departmental Working on Development and Trade. This is key to assessing and implementing the Millennium Development Goals, and the recognition of the links between development and trade is crucial. Effective cooperation between DFID and DBERR is essential to tackling corruption, trade inequalities, and conflict over resources. This will streamline different departments’ relations with such organisations as the EU and the WTO.

1.2 STOP THE TRAFFIK urges the International Development Committee to consider another key issue that will affect the Cross-Departmental Working of DFID and DBERR on Development and Trade—human trafficking. This modern-day trade in human beings that deceives and coerces victims into commercial and sexual exploitation has huge implications for development.

1.3 For example, STOP THE TRAFFIK welcomes the opportunity to follow-up issues on conflict and development. The trafficking of children as child soldiers and sex slaves in countries such as Uganda has a significant detrimental effect on development and trade, and requires consideration by both DFID and DBERR as they look to work together on this issue. STOP THE TRAFFIK partner organisation Noah’s Ark is working in northern Uganda to rescue, rehabilitate, and reintegrate child victims of trafficking.

2.0 TRADE POLICY DECISION-MAKING

2.1 Where the majority of activity is centred in developed countries, DBERR should have primary responsibility. Where developing countries are involved, DFID should have primary responsibility. However, whatever the trade policy, STOP THE TRAFFIK urges that priority be given to achieving the MDGs, which would address the root causes of human trafficking. The MDGs cannot be achieved without tackling human trafficking, and human trafficking cannot be tackled without achieving the MDGs.

3.0 DIRECTION OF TRADE POLICY

3.1 DFID has a key role to play in directing the development of trade policy. This should be along the lines of MDG 8(a):

- Develop further an open trading and financial system that is rule-based, predictable and non-discriminatory, includes a commitment to good governance, development and poverty reduction—nationally and internationally.
3.2 STOP THE TRAFFIK recommends that individuals vulnerable to human trafficking be involved in the decision-making processes of the trading, financial, governance, and development systems of their communities. This should be pursued by DFID and DBERR in all their overseas development and trade activities.

3.3 This should also have a positive impact on international development generally, and on the EPA negotiations specifically, so as to provide clients of DFID and DBERR from developing countries beneficial access to markets and trade mechanisms, so as to reduce both poverty and vulnerability to human trafficking.

4.0 OECD and Corruption

4.1 Cross-Departmental Working on Development and Trade as determined by the MDGs and tackling human trafficking should also modify the Guidelines for Multinational Enterprises. Labour practices and recruitment that reduce the exploitation of workers and hence their vulnerability to human trafficking should be integral to both DFID and DBERR practices across all activities.

4.2 Combating bribery and corruption can only be successful when human trafficking is tackled. The Anti-Corruption Resource Centre cites such sources as the Council of Europe and the Hong Kong Commission when describing how corrupt officials both create new situations and exacerbate existing ones where people are trafficked.

5.0 Natural Resources

5.1 DFID can promote improved economic and trade governance in resource-rich countries through pursuing MDG 7—ensuring environmental sustainability. By reversing the loss of environmental resources, Cross-Departmental Work can create gains for both developing and developed countries.

5.2 Encompassing development and trade governance on natural resources within the MDGs also helps tackle human trafficking. The IOM has identified environmental degradation as a key factor in increasing people's vulnerability, and STOP THE TRAFFIK urges both DFID and DBERR to develop policies to reduce the reoccurrence of situations such as that of the December 2006 Asian Tsunami, after which children orphaned by the disaster were taken by human traffickers.

6.0 Development Aspects of Defence Exports

6.1 STOP THE TRAFFIK urges Cross-Departmental cooperation on ensuring ethical responsibility throughout the defence export cycle. Recipients are often complicit in human trafficking, as evidenced by the Country Narratives in the US Department of State's Trafficking in Persons Report 2007. Tackling poverty and ensuring human rights within the framework of the MDGs and sustainable development must always take precedence over any search for profit or influence.

6.2 STOP THE TRAFFIK urges the International Development Committee to address these issues, integrate anti-trafficking into its Inquiry into Cross-Departmental Working on Development and Trade, and mainstream tackling human trafficking in all its work.

Memorandum submitted by the Trades Union Congress (TUC)

INTRODUCTION

1.1 This document forms the TUC's submission for the inquiry into cross-departmental working on development and trade being conducted by International Development Committee.

1.2 The TUC is grateful for this opportunity to submit comments to the Committee. The TUC is the voice of Britain at work, representing six and a half million workers in 63 unions. We represent workers in every industry and occupation, in every town and district and from every community in Britain. The TUC takes an active role in discussions on trade policy within the international trade union movement via the European Trade Union Confederation, the International Trade Union Confederation and the Trade Union Advisory Committee to the OECD.
TRADE POLICY DECISION-MAKING

2.1 The TUC broadly welcomes the increased role which DFID has now assumed in relation to trade policy. We have long argued that trade is an essential element of strategies to achieve sustainable development, strategies which must help to rebalance the processes of globalisation so that the benefits accrue to the many not just the few. However we are concerned that unless well managed the process of cross departmental responsibility could lead to a loss of focus and/or to departments failing to act in a coordinated fashion.

2.2 Whilst it is our understanding that the Secretary of State for International Development now takes lead responsibility for all trade issues it appears less clear what responsibilities will lie with other ministers. Whilst most of the officials involved on a day to day basis with multilateral and regional trade negotiations will remain within DBERR we are uncertain what role the DBERR Secretary of State will take in directing their activities. The role of the minister for trade with their specific cross departmental brief will be central, but only time will tell if this is a workable system in regard to day to day coordination. The role of the new minister for trade promotion also remains unclear, we are unclear how much this will be a roving ambassadorial role promoting British exports and inward investment compared to how much the post will be involved in trade policy formulation. We trust that the post will be fully integrated into the development objectives of the trade agenda.

2.3 To date we remain unclear on the exact formal decision-making structures between ministers and departments involved in trade policy although we understand that there will be a ministerial level trade committee. There have been some promising early initiatives regarding stakeholder consultation including a joint DFID-DBERR seminar bringing together government officials with NGO and trade union representatives. However the details of how such a process of extended engagement will feed into formal structures has yet to be made clear. Involving civil society, unions, business and NGO’s, in discussion on the trade policy formulation is important for a range of reasons and we are keen to learn more about how this will be done. For instance will the Trade Policy Consultative forum be retained?

2.4 Given that trade negotiation remains a competence that is exercised at the EU level the TUC also remains concerned about how much the British Government is actually able to influence DG trade on specific aspects of trade policy. We understand that the government must pick the specific issues it chooses to take up carefully, but would like more clarity on how these decisions are arrived at and more openness in regard to the positions taken by British ministers and officials in Brussels. This is central to ensuring broad based support for a development focused trade agenda amongst civil society.

DIRECTION OF TRADE POLICY

3.1 As noted the TUC has consistently argued that a trade policy, with the aim of increasing global trade flows, in particular those from developing countries to developed and between developing countries themselves, is an essential element of any coherent approach to sustainable development. However we have also always argued that simply increasing trade flows without accompanying policies and action to ensure that the benefits of such growth are more evenly distributed renders the development impact meaningless.

3.2 We hope that the move of lead responsibility for trade to DFID will lead to greater emphasis on the interfaces between trade policy and employment, in particular the impact of trade agreements on the Decent Work agenda and the implementation (or lack of it) of the International Labour Organisations core labour standards. DFID in its 2004 policy paper “Labour Standards and Poverty Reduction” noted that “an essential part of poverty elimination is those human rights known as core labour standards.”

3.3 It is to be hoped that the increased role played by DFID will lead to a strengthening of the existing official British positions on the need for less than full reciprocity in market opening, no forced liberalisation and a move away from a zero sum mercantilist approach to trade negotiations. The strong stand taken in the open letters from ministers McCartney and Thomas last year on the direction of EPA negotiations is something we welcomed and would wish to see developed within the new set up.

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21 The ILO have designated eight of their conventions as core labour standards which are also deemed to be basic human rights. These are summarised as freedom from child labour, freedom from forced labour, freedom from discrimination in the work place and the right to join a union and bargain collectively.

22 DFID, May 2004
OECD and Corruption

4.1 The TUC maintains a close watch on the workings of the UK National Contact Point, the post to which cases raised under the OECD Guidelines on Multinational Enterprises are submitted. We have welcomed recent changes to the structure of the NCP which have included making it a cross-departmental function across DBERR, FCO and DfID and establishing a steering board with representation from civil society alongside government officials. We accept it will take some time for these new structures to bed down and for plans to raise awareness of the Guidelines to be implemented.

4.2 There are a number of issues relating to the implementation of the guidelines and the acceptance of cases which continue to cause us concern, including: the speed at which cases are assessed, the training provided to officials forming part of the NCP on industrial relations, the issue of parallel proceedings and overall how the NCP views its role as a proactive mediator once cases have been raised. We are addressing these issues with the relevant civil servants and remain optimistic that progress will be made.

4.3 In June 2006, the Government announced that Hilary Benn, then the Secretary of State for International Development, would lead the Government’s work on combating overseas corruption. Under the new Government, this role has been assigned to John Hutton, the Secretary of State for Secretary of State for Business, Enterprise and Regulatory Reform.


4.5 The TUC welcomes the creation of the post of Ministerial champion for combating overseas corruption and the implementation of an annual action plan. It notes however there is an urgent need to clarify the roles played by the various departments and especially DFID, the Foreign and Commonwealth Office and the Department of Business, Enterprise and Regulatory Reform. It also considers it essential to raise the profile of the actions being taken, at home and at international level. The UK has suffered considerable damage to its anti-corruption reputation in recent months and must now act to demonstrate its commitment. So far there has been no announcement that John Hutton is the new Ministerial champion and only limited publicity regarding the action plan. The TUC considers that the following would improve clarity and effectiveness:

— Include in the 2007–08 annual action statement a description of the role of the Ministerial champion, and outline the respective departmental responsibilities alongside the description of tasks.
— Convene a meeting of internal and external stakeholders to discuss the final report of the 2006–07 action plan, as well as the priorities of the 2007–08 action plan.
— Ensure that the Anti-corruption Minister attends the forthcoming High Level Conference of “The Tenth Anniversary of the OECD Anti-bribery Bribery—Its Impacts and Achievements” being held in Rome on 21 November 2007, together with other high-ranking officials, so as to send a strong message of UK support for the OECD Anti-bribery Convention.
— Extend the post of the Anti-corruption champion beyond the two-year period recommended in the Report Of The Africa All Party Parliamentary Group, “The Other Side of the Coin”.

4.6 It is important that on both the issue of the Guidelines and anti-corruption work unions continue to be seen as key stakeholders. Earlier this year DfID and the TUC held a successful one day seminar bringing together ministers, officials, unions, business and NGO’s to look at how we can increase work on anti-corruption issues, but since this event we have had difficulty convincing some officials that anti-corruption is a trade union issue.

Natural Resources

5.1 The Extractive Industries Transparency Initiative has been a positive step in regard to economic and trade governance and we would welcome consultation about plans to expand the initiative and in particular more detailed work on how trade unions in the countries and industries covered and their relevant global union federations will be involved.

Conclusion

6.1 Overall we feel that the current restructuring of trade responsibilities in government has the potential to be very positive in ensuring that development priorities remain at the heart the UK trade agenda. As noted from a trade union perspective and in line with the calls from our sister organisations in the global south we want to see far greater emphasis on trade and employment as fundamental part of the trade and development agenda. We also wish to see an increased emphasis on consultation and involvement of civil society. This is needed both to help create good policy and to increase awareness amongst the public of the importance of trade policy as a tool to achieve sustainable development. We would ask that the International Development Committee continues its close scrutiny of the new set up to monitor progress and to help ensure that this restructuring achieves its stated goal of greater coherence across Whitehall.
6.2 Finally we would ask the Committee to consider how officials in the departments involved have been consulted about the various changes and informed about where they will fit into new structures, without the continuing hard work and commitment of the civil servants in DBERR, DFID and other relevant ministries progress will be much harder.

September 2007

Memorandum submitted by Traidcraft

A. INTRODUCTORY REMARKS

1. Traidcraft welcomes this timely inquiry by the International Development Select Committee. The realignment of the government’s trade policy work—to be overseen now by DFID—presents an unparalleled opportunity for the promotion and implementation of a more sustainable and equitable approach to overseas development. However, there are huge inconsistencies in the government’s track record on trade and development, and there is much that should be done immediately if this new structure is to have any impact.

2. Traidcraft is one of the UK’s leading Fair Trade organisations, with a mission to fight poverty through trade. Traidcraft trades with and supports small producers around the world where their circumstances effectively exclude or marginalise them from mainstream trade. Traidcraft also seeks to influence the wider trading environment through research, analysis and advocacy. Our work is conducted through an innovative partnership of a trading company (Traidcraft plc) and a registered charity (Traidcraft Exchange). This joint perspective enables Traidcraft to square the often competing demands of commercial opportunity and sustainable development.

3. Traidcraft PLC is one of the UK’s pioneering Fair Trade companies, with a turnover of over £19 million. It provides a route to market for marginalised producers, offering them terms of trade that promote security and facilitate longer term planning. Traidcraft PLC distributes more than 450 fairly traded products to a highly aware customer base in the UK, with mainstream supermarkets occupying a growing niche in its distribution system.

4. Traidcraft Exchange is the UK’s only development charity specialising in making trade work for the poor. Its work spans capacity building amongst producers in developing countries, promoting market access for small producers (including into the UK market), policy development and advocacy. Through its Policy Unit, Traidcraft Exchange seeks to influence government policy and business practice in the North and the South to the benefit of the poor in the developing world.

5. Traidcraft believes that trade—if organised and regulated properly—can contribute to poverty reduction. Since its creation in 1979, Traidcraft has sought innovative solutions to market access. For example, Traidcraft was one of the four founders of Cafédirect; it established Shared Interest in order to enable producers to access pre-order financing; it was also a founder member of the Fairtrade Foundation and of the Ethical Trading Initiative, both designed in different ways to encourage mainstream companies to take steps to improve the impact of their supply chains in developing countries.

6. Traidcraft is also a pioneer in social accounting, by which companies seek to take account of their social and environmental impacts as well as their economic performance. Traidcraft PLC was the first public company to publish audited social accounts. In 2006 Traidcraft won the ACCA award for the Best Social Reporting. The commitment to the principles of transparency, accountability and responsibility in trade underpin all aspects of our business.

7. This submission concentrates on areas of Traidcraft’s particular competence: the inter-relationship between trade and development; the government’s weak track record to date on coherence between trade and development policy, and the potential for future improvements in this area. It therefore focuses on responding to the first two questions in this inquiry by the IDC (on “Trade policy decision-making” and “Direction of trade policy”).

B. TRADE POLICY DECISION-MAKING

8. Traidcraft welcomes the new government structure that, for the first time, gives joint responsibility on trade to two government departments, the newly created Department for Business, Enterprise and Regulatory Reform (BERR) and the Department for International Development (DFID). The move to give DFID a formal—as opposed to advisory—role on trade policy is to be applauded, although it is overdue. It has long been recognised by the UK government that trade can help people out of poverty. However,
DFID and DTI (as was) have hitherto had an unequal relationship. The absence of a clear, formal and accountable involvement from DFID on recent trade policy has severely limited its ability to influence the UK government position in favour of poverty reduction.

9. To date, DFID has had no formal role in UK trade policy, except in an advisory capacity. We have been repeatedly told that DFID and DTI have been as one on trade policy matters, and the habit of joint lobby meetings and joint Ministerial letters and declarations suggests that there has been a great deal of coherence between the Departments. However, it is Traidcraft’s experience that DFID has very often “played second fiddle” to DTI, and that its development concerns have repeatedly been overruled or ignored in favour of DTI’s trade promotion agenda.

10. Much of DFID’s involvement in trade policy has been as a funder and knowledge broker. For example, it has funded trade related capacity building in developing countries, supported information exchange and analysis and commissioned wide-ranging research into issues such as the impacts of trade liberalisation on particular groups or sectors, and the safeguard mechanisms required to protect the most vulnerable. Provided that DFID guards against the danger of co-option that is an inevitable threat in this area, this work is necessary support to the long-term capacity of developing country governments in trade negotiations and should continue.

11. What DFID has not yet been able to do, however, is exercise authority over trade negotiations. There has been no mechanism through which it could insist, for example, that its research findings should be acted on or that the increasingly vocal complaints of developing country governments should be responded to. With no authority over the range and scope of trade negotiations, DFID’s programme of work could have been seen as “tokenism”.

12. This lack of authority has been exacerbated in the way trade negotiations have been structured. For example, although EPAs are meant to be “instruments of development” there is no mechanism within the ongoing technical EPA negotiations to take account of development findings. This has been a huge missed opportunity to create a new dynamic in trade policy. EPAs have been particularly controversial, attracting profound criticism from ACP and EU civil society, as well as increasingly from ACP governments themselves. This criticism has turned to frustration because the EPA negotiations, and those driving them—DG Trade in the European Commission—appear blithely to ignore the mounting evidence of the consequences of EPAs for development and poverty. As one example from many: even though the EC’s own Sustainability Impact Assessment of EPAs has been poor both in process and content, it identified potentially huge development concerns—including, in its earliest findings, the threat that liberalisation through EPAs “could lead to the collapse of the manufacturing sector in West Africa”.27 It was a failing in the structure of the EPA talks that such warning signals did not constitute “lines in the sand” which negotiators were not permitted to cross. A truly pro-development trade negotiation would enable development benchmarks to inform—and if necessary veto—the ongoing content of negotiations.

13. DFID’s primary focus to date has been on trade policy rather than seeking to engage in any strategic way with companies. Pro-poor trade rules, of course, would only set the framework, but it is companies that impact on poverty directly, through their supply chains and terms of trade. DFID has not yet developed a coherent strategy for harnessing the potential of the private sector for development, and this a major gap. Similarly, DFID has not scrutinised areas of policy which relate to corporate practice. For example, it was not evident that DFID was engaged at all in the recent UK Companies Bill, which was the largest review of company law in recent times. This, again, suggests a lack of vision or commitment to improve the impact of trade on poverty. Many civil society groups, including Traidcraft, were engaged in the company law review process since it began in 1997, and were advocating for the inclusion of requirements for UK companies to report on their social and environmental impacts. Throughout the process attempts were made to engage DFID in the debate, seeking a champion for poverty reduction at a government level, without success.

14. A further problem in bringing about coherence between UK government trade and development policy, of course, is the delegation of trade issues from EU Member States to the European Commission. Despite the economies of scale and impact that are the logic behind this arrangement, the fact of the UK being only one of now 27 voices is a serious hindrance in the area of making trade work for development. This has materially limited the ability of the UK government to influence the outcome of both WTO and EPA negotiations.

15. It has also meant that certain trade reforms have been approved in the name of “harmonisation”, without sufficient focus on the development needs of developing country farmers. The process through which the EU last month denounced the ACP-EU Sugar Protocol is a case in point. This arrangement had been in place for 32 years and was a cornerstone of ACP-EU relations. However, reform was driven more by the need to respond to WTO challenges and to change the unsustainable internal EU sugar system. Impact in ACP countries was clearly not a priority, compensation has been inadequate and the EC is relying on the fact that countries will sign EPAs to ensure even current levels of market access are maintained for non-LDCs.

16. Whilst this decision was technically a Brussels competency, it has such far-reaching impact on ACP sugar producers that wider consultation should have been undertaken on how to manage the consequences. Traidcraft is also concerned about how this process is being used in relation to the ongoing EPA negotiations. Non-LDC sugar producing countries such as Swaziland or Guyana will at present only retain their sugar market access into the EU if they conclude an EPA. A more pro-development approach would have been to ensure that these two processes are not conflated and that a proper plan is put in place for a managed transition to a successor to the Sugar Protocol that would promote development and that is not dependent on countries signing up to an EPA.

17. However, EU Member States are able to play a much stronger individual role on development issues. This is thus an opportunity to increase domestic scrutiny of EU trade issues where they directly relate to development. This is something the UK government has not chosen to do and represents something of a “democratic deficit”. Development issues and concerns are a higher priority for the UK voting public than in some other EU Member States—witness for example the scale of mass mobilisation in the Make Poverty History campaign and the run-up to the G8 in 2005, or the fact that the UK is now the world’s leading market for Fair Trade. There is a clear public mandate for a robust UK government position on matters of international development. Even though trade issues will continue to be negotiated centrally through the EC, the UK government could step up its domestic engagement on matters of development, even where they relate to trade. For example, given the controversy around EPAs and their impact on poverty, the UK government could implement its own development review before agreeing to ratification, to ensure that its development objectives for the ACP will be met. There is no reason why this could not include a debate in parliament, given the importance of the UK’s ties with the ACP—historical, cultural and developmental, as well as economic.

C. DIRECTION OF TRADE POLICY

18. The new structure in the UK government presents an opportunity to review UK trade policy in its entirety, to ensure that it has poverty reduction and sustainable development at its centre. Traidcraft believes the following principles should underpin the work of the new cross-departmental committee:

19. **Ensure UK and EU trade policy is non-mercantilist in reality as well as rhetoric.** The government’s past approach to trade policy has favoured liberalisation and free trade as a response to poverty. It is Traidcraft’s experience that this theory frequently does not work in practice and it is often the poorest people who suffer most as a result. It is not the unlimited liberalisation of trade, but the appropriate sequencing, pace and scope of trade reforms that will make a difference to poor producers. The evidence from developing countries forced to liberalise, particularly in Africa and Asia, has shown that—rather than creating wealth—opening up too soon to imports from more efficient and/or highly subsidised foreign producers has had a devastating effect on jobs, poverty, livelihoods and the potential for domestic economic growth. Developing countries should have the right to nurture and protect vulnerable or infant sectors of their economies from free and unfettered trade until they are able to be competitive regionally and internationally. No country, the UK included, has developed without protection. This pragmatic—rather than theoretical—approach should be the bedrock of UK trade policy. The UK must insist that it will veto any EU trade policy which will make it harder for vulnerable producers to survive and compete, and champion policy that is grounded in the reality of the economic circumstances of producers, farmers and workers in poor countries. If the UK is serious about its commitment to develop sustainable trade that benefits everyone, development should be made a fundamental concern of its trade policy.

20. **Clarify new ministerial responsibilities.** While the new role of joint Minister is a welcome move, there is a danger that this brief will be everything and nothing in that it will have to manage potentially conflicting interests of a number of different Whitehall departments. In order to ensure that the development focus is not lost, this role should include specific performance indicators related to the UK government’s objectives on poverty reduction and the achievement of the Millennium Development Goals. Where UK trade policy seems not to be taking account of poverty impact—as is the case in EPAs, or the EC’s recent denouncement of the ACP-EU Sugar Protocol—the joint Minister should be accountable. Similarly, clarification is needed over responsibility for Commodities. DEFRA has a major role in this area, but given its responsibility for other issues such as consumer safety and UK farming, there are potential tensions with UK government international development objectives (such as the risk of increasing EU consumer standards becoming a non-tariff barrier for developing country producers). DFID will need authority to identify and manage these tensions. In each area the responsibilities of the Minister should include a clear mandate to establish development benchmarks that must be achieved and not compromised through any trade negotiations, and to ensure that they are respected.

21. **Champion the potential for trade to alleviate poverty.** For development to be truly enshrined in HMG’s policy, the new trade minister should become a “champion of poverty reduction” across government. This should be achieved in the following ways:

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28 See, for instance, Traidcraft’s publication *Why free trade won’t help Africa* at http://www.traidcraft.co.uk/NR/d驾车yres/53BD19CC-07A8-40B4-B84C-2CE57BBB0F9D/0/campaigns_epas_free_trade_wont_help_africa.pdf
(i) By implementing an immediate and public review of all current and ongoing trade policy negotiations (both bilateral and multilateral). Where negotiations are not yet concluded, and where controversy over development impact exists, the Minister should make it clear that the UK government will veto ratification of any negotiations that have not fully taken account of poverty impact.

(ii) Given the imminent deadline for conclusion of EPA negotiations, the UK government should as a matter of urgency ensure: that ACP countries are not forced into signing EPAs, either by threats of tariff imposition or loss of funding; that they have sufficient time to research and conclude pro-development agreements; that the EU honours its Cotonou Agreement commitments that market access will be maintained; that alternatives (such as GSP+) should be properly investigated and proposed.

(iii) By ensuring that no future trade agreements will be initiated by the UK before robust and participatory impact assessments have been carried out on their potential impact on poverty, in order to establish development benchmarks. Consultation should be wide-ranging, public and accountable. This would entail not just the usual liaison with private sector on the UK’s economic interests, but the inclusion of other stakeholder assessments, development research and data that would ensure a better economic and developmental balance in our positions.

(iv) By proactively seeking those policy discussions or regulatory processes that will have development implications. In addition to the more established ground of development and trade policy, this would also include UK government strategy on corporate accountability, company law, standards setting and UK market concentration.

(v) By ensuring that government interventions (both technical and financial) are coherent across different Whitehall departments. This is not always the case at present. The UK’s current emphasis on trade liberalisation, for example, risks undermining certain (UK government funded) enterprise development projects. For instance, EPAs are likely to increase the vulnerability of small producers in a number of sectors, including dairy farmers in Kenya and cotton growers in Malawi—farmers in both sectors have been supported by DFID. Tomato growers in Ghana are similarly exposed, yet DFID has been supporting Unilever in addressing marketing problems faced by tomato farmers through its Ghana Business linkages Challenge Fund.

22. Improve the impact of the private sector on poverty. Despite the commitments in previous White Papers (see for instance, Chapter 5 of the 2005 White Paper Making Governance Work for the Poor), DFID has yet to develop an action plan for harnessing the private sector for development. A strategy in this area is essential and should include the following elements:

(i) an analysis of trends in mainstream international trade, with the purpose of assessing the quality of international trade and its impact on producers in developing countries. This would ideally be high-profile and seeking substantial stakeholder participation (private sector, producer groups and civil society). Without this baseline understanding, a strategic engagement will not be possible.

(ii) A commitment to policy coherence, identifying and advocating for development needs across the range of government policy (both domestically and internationally).

(iii) A detailed strategy for donor intervention, with clear targets (in terms of products, sectors or producer groups) for intervention. This will help build a broad understanding within HMG, with business and throughout the development sector of what the problems are and what is possible. It would make sense of what is currently project-based funding. There is no stated link between, for instance, government support to Fair Trade, to the Ethical Trading Initiative (ETI) or to the Extractives Industry Transparency Initiative (EITI). Critically, this would also facilitate shared learning between stakeholders and between initiatives. At present, government plays little part in supporting such learning.

23. However, engagement with the private sector should not extend to subsidising multinational companies in their efforts to improve their supply chain impacts. Challenge funds and other financial incentives are potentially valuable, but only when they have the potential for scalability. UK government funding to large multinationals will be seek as tokenistic if it is not linked to very substantial commitments by the company to implement project learning broadly across its supply base.

24. Increase domestic engagement on EU trade policy. If the new UK government structure on trade and development is going to work in practice, more scrutiny of EU policy-making will be required in the UK. There is still a lack of transparency and accountability within the UK on how EU trade policy is made. 133 Committee membership and agendas, for example, are not publicly discussed, and civil society in the UK continues to struggle to obtain specific, timely and accurate information from the UK government on what is being negotiated in the UK’s name. The new Minister should commit to much greater public

29 Business Linkages Challenge Fund, project started in September 2003 and ended in August 2006. Linkage partners were Great Lakes Cotton Company (GLCC), Clark Cotton Malawi (CCM), Chemical and Marketing Co (C&M), Syngenta AG, NASFAM, the Balaka Smallholder Farmers Organization (BASFA). Grant amount: £295,000.

30 http://www.challengefunds.org/ghana/newsblcf.htm
accountability on how UK trade policy is decided upon. This should include an increased reference to the UK Parliament, not only through submission to Select Committee scrutiny but also through reference to the wider membership of both Houses on the impact of trade proposals on poverty.

Memorandum submitted by Transparency International (UK) (TI(UK))

Transparency International (UK) (TI(UK)) welcomes this Inquiry by the House of Commons International Development Committee (IDC). As the UK National Chapter of the global nongovernmental coalition against corruption, we are primarily concerned with combating corruption both within the UK and in the UK’s international economic relations with the rest of the world, particularly developing countries. We pursue these objectives by working through partnerships with government, the private sector and civil society. This submission therefore covers three areas the IDC is focusing on, where the Government’s anti-corruption policies have an impact on trade and development.

By way of introductory comment, we endorse the observation of a recent relevant and international analysis by the International Peace Academy, assessing “whole of government” approaches to fragile states\(^{31}\). While noting that the UK is at the forefront of conceiving and adopting integrated policy responses to weak and failing states, the study observes that its “performance in designing and implementing coherent and integrated strategies towards fragile states continues to fall short of its aspirations.” Combating corruption is a key component of any strategy to strengthen weak governance, and the criticism of the Government’s incoherence and poor implementation is all too apt in relation to tackling corruption.

OECD and Corruption

OECD Guidelines for Multinational Enterprises

The OECD Guidelines for Multinational Enterprises (Guidelines) were adopted in revised form in 2000. The UK, together with other adhering countries, undertook to set up a “National Contact Point” (NCP) with responsibility for actively promoting and developing the Guidelines and for handling complaints about companies failing to meet them. The activities of companies in the Congo (DRC) caused widespread concern. The All Party Parliamentary Group on the Great Lakes Region published a report in February 2005 critical of the UK NCP in failing to address complaints either promptly or adequately. A Joint Working Group chaired by Lord Mance, and composed of representatives from prominent companies and NGOs, proposed substantial reform, and the Government accepted these proposals almost entirely.

There was criticism that the NCP had been set up as a low level appointment within DTI. The new arrangement shared responsibility between three Departments: DTI (0.6 FTE); FCO (0.2 FTE) and DFID (0.2 FTE), leaving the secretariat within DTI. The NCP’s performance was to be guided by a Steering Board composed of “senior staff from relevant ministries” and members from outside government. It was expected that the Steering Board would be appointed by December 2006.

The Steering Board was eventually appointed in April 2007, and has met twice, most recently on 19 September 2007. There are four “externals”: nominated respectively by the CBI, TUC, Civil Society and the AAPG (Jeremy Carver, a Trustee/Director of TI(UK)). No less than twelve Government departments and agencies are represented: DTI/DBERR, ECGD, DEFRA, Scottish Executive, Ministry of Justice, UKTI, DFID, FCO, DTI-CSR, Work & Pensions, DTI-Legal and Attorney General’s Office. It is said that current rules require that, on such bodies, external members must be out-numbered in a ratio of not less than 4:1. Whatever the rule, this over-large membership is bound to be unwieldy and inefficient.

It is too early to comment on the performance of either the reformed NCP or its Steering Board; but the involvement of so many officials drawn from a wide range of departments, many of which are unlikely to have direct dealings with the Guidelines or their observance globally provides a disappointing indicator that they will make a difference in strengthening the Guidelines wherever they operate, but particularly in parts of the world suffering from entrenched corruption. The Guidelines go beyond addressing corrupt business, dealing with transparency, labour relations, the environment, consumer interests, science and technology, competition and taxation. This is a broad agenda, of great potential benefit to countries in urgent need of economic development. The emphasis of the NCP’s work has been international, and this is likely to continue. It must be doubted whether any of the Departments other than DTI/DBERR, DFID and FCO have any real contribution to make to the NCP or Steering Board. The still-undefined merger of responsibilities between DBERR and DFID suggests the possibility of an even smaller concerned core. The smaller the core, the easier to manage and implement it, and the easier to finance it from public funds.

The primary focus of the NCP will almost certainly continue to be international. Trade and investment today are truly international; and abuses such as those dealt with in the Guidelines occur most often in situations of ignorance, exploitation and lack of understanding between commercial and social aims and expectations. It is not foreseeable that some binding treaty will be concluded to prohibit abuses. But if a voluntary code is to do the job, it will have to function coherently, with effective mechanisms operating in

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all the major exporting and investing countries. Having initially failed to make proper arrangements for the UK NCP, the Government has the opportunity to make a real contribution to strengthening the Guidelines. The dispersal of responsibility for review of the NCP between twelve departments of government gives grounds for pessimism in this respect.


Serious concerns have been expressed about the UK by the OECD Working Group on Bribery in International Business Transactions (Working Group). A coordinated approach across departments is essential if a meaningful and convincing response is to be made. This goes to the heart of the UK’s national and international interests, including trade and financial markets.

There is a perception that the UK is not serious about fully implementing and enforcing the OECD Convention foreign bribery offence. The Phase 1 and Phase 2 evaluations of the UK have both led to second follow-up evaluations. The Phase 2 bis evaluation visit is due in March 2008. Notice has been given that it will look particularly at the following issues:

- Progress in enacting a new foreign bribery offence.
- Broadening the liability of legal persons for foreign bribery.
- Systemic problems that may explain the lack of foreign bribery cases brought to prosecution.

These issues all have strong “legal” content. Primary departmental responsibility for them would involve MOJ, DBERR and the Law Officers. However, national strategic and international development interests mean that the outcome of the Phase 2 bis Review of the UK is of vital concern to the FCO and DIFD. In anticipation of the OECD Review, that concern should prevail. Law-making is not an end in itself and should serve the broader interests of the UK represented in this area by the FCO and DFID. The FCO leads on the UK’s implementation of and compliance with international anti-corruption conventions. DFID has primary responsibilities for ensuring good governance to facilitate sustainable development. The UK’s reputation and the combat of international corruption are too important for their progress to be frustrated by the law-making process.

With only three or four months in which to prepare for the crucial OECD Phase 2 bis evaluation visit, this is a bad time to be seen as diminishing the importance of coordination across departments in the work against international corruption. There has been significant progress in implementing the first Action Plan (2006–07) for Combating International Corruption. That progress was achieved because it was driven at the highest policy level by the Coordinating Committee’s being chaired by Hilary Benn, then Secretary of State for International Development who had special responsibility for coordinating action across departments ("Ministerial Champion"). It is understood that this role now falls to the Secretary of State (DBERR), but nowhere is this set down (see the announcement of ministerial responsibilities within DBERR of 10 July 2007). It is assumed that the Cabinet Coordinating Committee will continue, but that Committee only became effective within DBERR in March 2007.

The written ministerial statement (Minister for Trade, Investment and Foreign Affairs) of 20 March 2007 announcing publication of HMG’s report to the OECD Working Group underlined the importance of the UK Action Plan and the changes made to UK coordination in combating international corruption under the Secretary of State (DFID). To accord any lesser status to the Plan and the Coordinating Committee so soon could lead to the perception that these measures were essentially short-term to get through Phase 2. Phase 2 bis has unexpectedly made the need for demonstrable coordination with ministerial lead even more important.

The UK Action Plan needs to move forward. A 2007–08 version needs to be published urgently and it should give high prominence to all three issues that are on the agenda for the Phase 2 bis review.

Phase 2 bis illustrates well how “lead” departments need to take account of interests wider than their separate departmental responsibilities. The only way in which the UK will begin to redress the damaging perception that it is not serious about tackling foreign bribery is to make demonstrable and convincing progress in dealing with the issues.

Enacting a new foreign bribery offence

The Working Group has been promised comprehensive new legislation since Phase 1. The further reference to the Law Commission (LC) after 10 years from the first reference will have done nothing to increase credibility in the context of OECD concerns. The difficulty of defining bribery has been greatly exaggerated in order to excuse long periods of inaction within the Home Office (HO). Other countries have found it possible to define bribery within their laws. No “consensus” could have been expected from the last HO consultation—the reason given for the further reference to the LC. There was nothing in the procedure followed in the consultation that was calculated to achieve a consensus. What has been lacking is the will to be seized of the issues and to make a decision.
At the time of the reference to the LC (5 March 2007), a Phase 2 bis review of the UK had not been expected. The earliest that a report and draft Bill can be expected is November 2008 and even then there is no assurance that parliamentary time will be found to enact the new law. A measure that clearly complies with the OECD Convention is urgent. To tell the lead examiners on their visit that nothing more can be expected until 2009 is unthinkable. It would diminish the UK’s reputation further and undermine the UK’s standing in “making governance work for the poor”—the title of DFID’s most recent White Paper.

There are legislative options to meet the concerns of the Working Group that could be started immediately. So long as the principal components of the offence of foreign bribery can be clearly understood from the text by those who need to refer to the legislation, the government could improve the UK’s standing by acting promptly to enact new legislation and by changing the terms of reference of the LC as necessary.

Broadening the liability of legal persons for foreign bribery

The record of the UK in dealing with this issue is a good example of the lack of crossdepartmental coordination. Article 2 of the Convention requires the UK “to take such measures as may be necessary, in accordance with its legal principles, to establish the liability of legal persons for the bribery of a foreign public official (FPO)”. The UK response, presumably in reliance on the HO or the Law Officers, has been to take a theoretical stance, ie to claim (correctly) that corporations can be made liable for criminal offences. Unfortunately, “legal principles” in the UK (the need to show “directing mind”) make it impossible in practice to prosecute large, especially global, companies for bribery. These are the very companies that need to be targeted in investigating bribery of FPOs. Quite apart from the injustice that may result from prosecuting only natural persons for offences that confer direct economic benefit on companies that win business, this exploitation of a technical loophole does nothing to persuade the Working Group that the UK is serious about enforcing the Convention.

HMG’s position, that it would not be justifiable to alter the basic principles of corporate liability solely in relation to bribery, is understood. However the reality is that almost nothing is being done to resolve the practical difficulty. The question is a small part of the LC’s work on codification of the criminal law. A perfect opportunity to address this issue was lost with the recent Companies Bill. Had there been sufficient cross-departmental coordination, the then DTI could have been encouraged to look urgently at some provision that could have met the Working Group’s legitimate concerns.

With the issue being raised higher in the agenda (eg by its inclusion in the UK Action Plan) the LC team dealing with corruption could be asked to look urgently at whether some intermediate solution could be proposed to make prosecution of companies for foreign bribery effective, pending more general codification? HMG could declare its acceptance of the justice and reason behind the proposal and then promote this strongly. Progressive companies could be expected to support the legislation if sensible defences are built in. The timing is difficult, but energetic cross-departmental action driven at ministerial level would demonstrate a will to be fully compliant with the OECD Convention.

Systemic problems in prosecuting

Logically, this needs to look more widely than at foreign bribery alone—perhaps economic and financial crime including foreign bribery? With appropriate cross-departmental coordination to take account of the powerful policy need to satisfy the OECD Review, HMG could commit (through the Law Officers) to a thorough examination of all those problems that delay or deter investigation and prosecution of these crimes—including judicial process (disclosure, evidence rules, jury trials etc), mutual legal assistance and judicial cooperation. It can be damaging to the interests of the City and financial markets for criminal activities to be conducted and proceeds to be transferred freely across borders with little expectation of investigation and prosecution. Nothing that impedes enforcement should go unchallenged.

This is potentially a major piece of research. If the lead examiners can be convinced that the issue is being thoroughly examined, the scope of the work could be defined within a few weeks and an interim report could be available by end-January 2008. This would only be achievable with strengthened cross-departmental coordination.

NATURAL RESOURCES

The Extractive Industries Transparency Initiative (EITI), which now includes about 20 countries and 25 companies who have committed to the EITI’s criteria and principles for revenue transparency, is a good example of effective cross-departmental working. During the period 2002–06, when the UK Government took the lead to strengthen international support for EITI, DFID led this work within the Government, drawing on inputs from other departments, especially the FCO. EITI is a multi-stakeholder enterprise— involving governments, companies and civil society. Since different parts of the UK Government have various interactions with these constituencies, it was important to have effective co-ordination within Government to support EITI.
The UK’s and DFID’s responsibilities for EITI have been reduced following the establishment of an international Board to govern EITI as well as a secretariat in Oslo to facilitate the Initiative’s implementation. However, EITI needs the UK Government’s continued support to build on its initial successes. This will require further cross departmental collaboration between DFID, the FCO and DBERR.

DEVELOPMENT ASPECTS OF DEFENCE EXPORTS

When trade is infected by corruption, development is negatively impacted. This is particularly true when the product being traded is a defence export item, as the corruption of the export process can fuel human suffering, terrorism, and insecurity, all of which undermine development.

TI (UK) hopes that the ministerial changes will allow for the adoption of a more rigorous and detailed anti-corruption methodology in Criterion 8 of the EU Code of Conduct for arms exports. It is noteworthy that not a single UK arms export licence has been refused on grounds of Criterion 8. Indeed the Quadripartite Committee’s strategic export controls review (2007) stated: “We recommend that DFID considers including an assessment in the Criterion 8 methodology applied by Government to test whether the contract behind an application for an export licence is free from bribery and corruption”.

TI (UK) believes this recommendation should be implemented and would be happy to help DFID to develop such a methodology.

Memorandum submitted by UNICORN

INTRODUCTION

1. UNICORN is a trade union anti-corruption network set up to mobilise and support trade unions around the world to combat corruption. UNICORN was founded by the international trade union bodies the Trade Union Advisory Committee to the OECD, Public Services International and the (former) International Confederation of Free Trade Unions. UNICORN has been working to support the implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the OECD Anti-bribery Convention) since 2001, both in the UK and at international level.

2. This submission provides evidence on the issue of the OECD and Corruption and specifically the:
   a. OECD Review of UK implementation of the Anti-bribery Convention;

OECD REVIEW OF UK IMPLEMENTATION OF THE ANTI-BRIEY Convention

3. On 17 March 2005, the OECD Working Group on Bribery in International Business Transactions (the OECD Working Group on Bribery), the group responsible for monitoring parties’ implementation of the OECD Anti-bribery Convention, published its report32 of the UK’s implementation of the OECD Anti-bribery Convention, which highlighted the following weaknesses:
   — complexity and uncertainty of existing anti-corruption laws;
   — inadequacy of the basis for engaging corporate liability;
   — excessive fragmentation and lack of specialised expertise among law enforcement agencies dealing with overseas corruption;
   — lack of resources for investigating foreign bribery cases, processing money laundering reports and handling requests for Mutual Legal Assistance (MLA);
   — high level of proof required by law enforcement agencies to open an investigation;
   — potential for “national interest” considerations, such as damage to the UK economy, to influence the decision to open an investigation or not.

The report made a number of recommendations aimed at enhancing the UK’s capacity to deter, detect and sanction foreign bribery offences (see TABLES 1–8).

4. On 14 December 2006, the Attorney General announced that the Serious Fraud Office (SFO) had halted its investigation into the BAE/Saudi Arabia Al Yamamah deal for reasons of national security.

5. On 18 January 2007, at the close of 16–18 January meeting of the OECD Working Group on Bribery, the Group issued a press release stating that:

“The Working Group has serious concerns as to whether the decision was consistent with the OECD Anti-Bribery Convention and will discuss further the issue in March 2007, in the context of the United Kingdom written report on its implementation of recommendations, set out in the 2005 Phase 2 examination report on its enforcement and application in practice of the OECD Convention.”

The statement indicated that the March meeting discussions would focus on two specific Phase 2 recommendations:

“the performance of the SFO and other relevant agencies with regard to foreign bribery allegations . . . including in particular with regard to decisions not to open or to discontinue an investigation” (paragraph 254 a.)

“ensure that the investigation and prosecution of bribery of foreign public officials shall not be influenced by considerations of national economic interest, the potential effect upon relations with another state or the identity of the natural or legal persons involved” (paragraph 255 a.).

6. At the OECD Working Group meeting of 12–14 March 2007, the UK Government presented its “Written Follow-up to Phase 2 Report” (see TABLES 1–8).

7. On 14 March 2007, the OECD Working Group on Bribery issued a statement that:

— reaffirmed its “serious concerns” about the halting of the United Kingdom’s investigation into the BAE Al Yamamah deal;
— highlighted its concerns about deficiencies in foreign bribery and corporate liability laws;
— announced its decision to conduct a supplementary review of UK implementation (Phase two bis).

8. On 21 June 2007, the OECD Working Group on Bribery adopted and approved a report setting out the Working Group’s review of the UK Follow-up Report. Whilst acknowledging that the UK had “satisfactorily implemented a number of the Working Group’s recommendations in the Phase 2 Report” and “engaged in extensive efforts to raise awareness about the need to combat foreign bribery”, the report concludes:

“... the Working Group has decided to conduct a supplementary review of the United Kingdom (‘Phase 2 bis’) focused on progress in enacting a new foreign bribery law and in broadening the liability of legal persons for foreign bribery. The Phase 2 bis review will also examine whether systemic problems ... explain the lack of foreign bribery cases brought to prosecution. The review will also address matters raised in the context of the discontinuance of the BAE Al Yamamah investigation. The Phase 2 bis review will include an on-site visit to be conducted within one year, ie, by March 2008.”

9. UNICORN believes that recent events have not only damaged the UK Government’s reputation as a credible anti-corruption player, but, critically, have also undermined the collective political will of governments to tackle international bribery.

10. UNICORN considers that the UK Government should take immediate remedial action:

a. demonstrate its individual commitment to the OECD Anti-bribery Convention:

i. implement the Phase recommendations of the OECD Working Group on Bribery and in particular enact new corruption legislation, address the deficiencies in the laws governing corporate liability for foreign bribery offences, and review the systemic reasons for the lack of prosecutions. These priorities should be reflected in the contents of the 2007–08 Action Plan;

ii. engage with external stakeholders in implementing the OECD Working Group on Bribery’s Recommendations. The Foreign and Commonwealth Office (FCO) usefully convened an external stakeholders group for consultations on the United Nations Convention against Corruption (UNCAC), which was successful in increasing civil society engagement in UNCAC;

iii. improve visibility of the OECD Anti-bribery Convention at national level. Whilst the UK Government has taken a number of positive steps to increase awareness of the Convention amongst key target groups (see TABLE 2: Raising Awareness), there is a lack of basic information on the Convention and the UK’s implementation at national level:

33 http://www.oecd.org/document/43/0,3343,en_2649_37447_37948971_1_1_1_37447,00.html
35 To date the 2007–08 Action Plan has not been published.
36 Civil society representation at the first Conference of the States Parties in Jordan in December 2006 was higher for the UK than for any other country.
1. The document “The Steps taken by the United Kingdom to implement and enforce the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions”, published on the OECD web site, identifies two departments as the “Relevant Authorities” for the OECD Anti-bribery Convention: the FCO and the Ministry of Justice. Yet there is no clear route from the home pages of either of these Departments to information on the OECD Anti-bribery Convention, nor is there any indication that corruption is a policy area for which they are responsible, nor are there any contact points. The FCO leaflet (see TABLE 2: Awareness Raising) on “UK Bribery and Corruption Law” and its DVD “Crimes of the Establishment” are not easily found on the FCO web site, though the leaflet is published on the site, as well as on the UK Trade Invest site. (Links to the OECD Anti-bribery Convention are provided from the ECGD’s web site).

2. None of the documents published by the OECD on the UK’s implementation of the OECD Anti-bribery Convention appears (on the basis of several searches) to be published on UK Government web sites.

iv. compile and publish information on how to report bribery: a key obstacle to the effective implementation of the OECD Anti-bribery Convention is the low level of reports of foreign bribery offences. Yet 10 years after the signing of the Convention in 1997, there is little accessible guidance on how and where to report foreign bribery offences. Whilst the FCO leaflet, “UK Bribery and Corruption”, sets out some information on reporting, it is not easily found on the internet and the information provided is incomplete (see TABLE 2: Awareness Raising). The UK Government should take the lead and compile, translate and make public information on how citizens around the world can report foreign bribery offences involving UK companies or nationals. This information should be available on the web sites of all the relevant national authorities and embassies and links should be available from other key sites, such as the OECD, World Bank, UNODC and Transparency International.

b. help re-build collective political will by sending a high level delegation, including the Ministerial Champion on International Corruption and other high level officials, to the forthcoming Tenth Anniversary Celebration of the OECD Anti-bribery Convention, being held on 21 November 2007 in Rome. The overall aim of the event is to foster public understanding and support of the OECD Anti-bribery Convention and the purpose of the High Level meeting to provide a forum for ministers and other high level officials to reaffirm their commitment to the Convention.

**ROLE OF THE MINISTERIAL CHAMPION ON INTERNATIONAL CORRUPTION AND EFFECTIVENESS OF THE UK ACTION PLAN FOR COMBATING CORRUPTION**

11. UNICORN welcomes the appointment of a “Ministerial champion” for Anti-corruption and the implementation (and public reporting on) of an annual Action Plan for combating corruption. UNICORN considers that these initiatives have the potential to strengthen the UK’s anti-corruption efforts by securing strong leadership and coordination.

12. To fulfil their promise, however, UNICORN believes that there is an urgent need to improve clarity, publicity and consultation:

a. there is no public information available on the respective roles of DFID, the FCO, the Ministry of Justice and the Department of Business Enterprise and Regulatory Reform (if any):

i. the revised Memorandum of Understanding (2005) does outline arrangements for implementing Part 12 of the Anti-terrorism, Crime and Security Act 2001, but it focuses primarily on the enforcement agencies and how to report, investigate and prosecute foreign bribery cases;

b. whilst the appointment of the first “Ministerial champion”, Hilary Benn, was well publicised, so far there has been no public announcement that John Hutton, Secretary of State for Business Enterprise and Regulatory Reform, is his replacement. To date, there has only been limited publicity surrounding the Action Plan. Whilst DFID has published both the Action Plan and its Interim Progress report on its web site, there appears to be no link (on the basis of several searches) to the Action Plan from the web sites of other relevant agencies. There has been no consultation with external stakeholders on the content or progress of the plan.

c. As regards the OECD and Corruption, UNICORN acknowledges that a number of activities set out in the 2006–07 Action Plan support the UK’s implementation of the OECD Anti-bribery Convention. UNICORN particularly welcomes the creation of a dedicated unit for investigating overseas corruption. However, UNICORN notes that whilst the 2006–07 Action Plan includes a...
commitment to submit the (required) progress report on implementation of the phase 2 recommendations (point 9), it does not make a commitment to implement key recommendations of the phase 2 bribery review (March 2005), such as enacting new corruption legislation.

13. UNICORN considers that overall effectiveness could be improved by:
   a. including in the 2007–08 annual action plan a description of the role of the Ministerial champion, as well as an outline of the respective departmental responsibilities, alongside the description of tasks;
   b. convening a meeting of external stakeholders to discuss the final report of the 2006–07 action plan, as well as the priorities of the 2007–08 action plan;
   c. ensuring that the Action Plan reflects the priorities identified by the OECD Working Group on Bribery for the Phase two bis follow-up report;
   d. extending the post of the Anti-corruption champion beyond the two-year period recommended in the Report Of The Africa All Party Parliamentary Group, “The Other Side of the Coin”.

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<td><strong>CORRUPTION LAW</strong></td>
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<td><strong>OECD WORKING GROUP PHASE 2 RECOMMENDATION</strong></td>
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<td><strong>UK WRITTEN FOLLOW-UP TO PHASE 2 REPORT</strong></td>
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<td>Enact at the earliest possible date comprehensive legislation whose scope clearly includes the bribery of a foreign public official (para. 248 in the Phase 2 report; no number in the UK Follow-up Report)</td>
<td>The Working Group on Bribery (WGB)'s main concern over the adequacy of our law was dealt with in the Anti-Terrorism, Crime and Security Act 2001 (for England, Wales and Northern Ireland), and in Scotland by sections 68 and 69 of the Criminal Justice (Scotland) Act 2003. These Acts put beyond doubt that bribery of a foreign public official is a criminal offence. And they also gave our courts jurisdiction over crimes of corruption committed overseas by UK nationals and by bodies incorporated under UK law. The WGB’s phase 1 bis review concluded: “UK law now addresses the requirements set forth in the Convention.” So further legislation on corruption is a desirable measure of law reform rather than an issue of Convention compliance. Nevertheless, initiatives to reform the UK’s bribery laws have been underway for a number of years (predating the OECD’s phase 1, phase 1bis and phase 2 reports). In 1997 the Law Commission published proposals which were generally welcomed and formed the basis of the Government White Paper on Corruption published in 2000, which also elicited a positive public response. However, when the Government published a draft</td>
<td>The OECD Working Group considers that this Recommendation has not been implemented. (para.20) The Working Group is seriously concerned that this recommendation, which reflects deficiencies in the law on foreign bribery, remains unimplemented. The slow pace of reform appears to be attributable at least in part to the UK’s view, as expressed in the Follow-Up Report (at p. 1), that its current law complies with the Convention and that change is only a “desirable measure of law reform”. The Working Group finds these statements in the Follow-up Report to be surprising and of serious concern, especially in light of recent events and public statements by senior UK law enforcement officials about significant defects in the law that, in their view, could preclude prosecution in important cases. The Working Group urged the UK to accelerate the process of reform of the bribery laws.</td>
<td>Additional Information on Corruption Bill 25 May 2006 Transparency International prepared a Draft Corruption Bill which was introduced as a Private Members Bill by Hugh Bayley MP on 23 May 2006. This Bill ran out of Parliamentary time. 29 November 2006 Lord Chidgey introduced essentially the same Bill into the House of Lords. 5 March 2007 The Government published its response to 8 December 2005 consultation, concluding that whilst “there was broad support for reform . . . there is ‘no consensus view as to what that reform should look like.’” The Government has asked the Law Commission to look again at the issue and to come up with a model for going forward. 16 March 2007 The TI Bill had its second reading debate. October 2008 The Law Commission has been asked to report its findings by October 2008. Defence of the Principal’s Consent The issue of whether existing laws provide for a defence of the consent of the principal in foreign bribery cases has arisen in the context of debates surrounding the halting of</td>
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41 The information provided in this column for all Tables is based on information contained in a parallel report submitted by UNICORN to the March 2007 OECD Working Group meeting, which aimed to give a civil society perspective on the UK’s performance in order to augment the information provided by the UK Government. It was compiled on the basis of consultations with other civil society groups in the UK including: ACCA; Christian Aid; Corner House; Public Concern at Work; the Tax Justice Network; and the Trades Union Congress, as well as reference to secondary sources. This report was not published.

42 The headings used in this column for all the Tables have been added for clarity. They were not used by the OECD Working Group in its presentations of the recommendations. The UK Government used different numbers for the recommendations in its Follow-up Report than those used in the OECD Working Group Phase 2 Report. For clarity both are referenced here.

43 Information provided in the UK Follow-up report is dated 20 February 2007.

44 This is a summary report that reviews the UK’s implementation of the Phase 2 Recommendations, which was approved and adopted by the OECD Working Group on Bribery on 21 June 2007.

45 The Law Commission is the statutory independent body created by the Law Commission Act 1965 to keep the law under review and to recommend reform where it is needed.
Corruption Bill in 2003 it was subject to severe criticism in pre-legislative scrutiny. The Bill was criticised by the Committee for its complexity. The Committee recommended an entirely different approach to the formulation of the offences.

The Government remains committed to a fundamental reform of our bribery laws and we are considering the full range of structural options. This is not as an easy task. No approach commands wide assent. However, in an attempt to identify a workable approach for a new scheme of offences the Government issued a Consultation Paper in December 2003. The Consultation Paper also sought views on a proposal to amend the operational powers of the Serious Fraud Office to assist investigations into foreign bribery.

The consultation closed in March last year and the Government will publish its response shortly.

the BAE/Saudi Arabia Al Yamamah investigation. In statements reported in the Financial Times, the Attorney General and the Director of the Serious Fraud Office, Robert Wardle, have pointed to the difficulties in bringing a prosecution due to the need to prove that the “agent” did not have approval from the “principal” for accepting the payment.

“In an account of his role, the attorney-general defended the decision to scrap the inquiry. He said the main obstacle was the difficulty of proving corruption under current laws. These require prosecutors to show the person receiving bribes—‘the agent’—was acting without the approval of their boss—‘the principal’.

“The reason I was concerned was because of the particular constitutional position of Saudi Arabia . . . And, indeed, how, in this context, do you ever succeed in showing that? BAE were asserting that the payments had been authorised at the highest level in Saudi Arabia,” he said. 46

“Wardle told the Financial Times the SFO could have faced a problem in any prosecution of BAE because of the need under existing anti-corruption rules to prove that Saudi officials who had allegedly received bribes—known in law as the ‘agents’—had acted without the consent of the country’s king, the ‘principal’.” 47

This issue was identified as a potential problem in the March 2005 OECD Working Group report, which also recorded the UK Government’s position: “that a defence based on the consent of the principal to the agent receiving the bribe ‘has no basis in current UK law’.”

Comments

a) the UK Government will face further embarrassment unless it implements this recommendation before the Phase 2 bis visit (scheduled to take place before March 2008). The UK Government should take action in the coming weeks, as a priority under the Action Plan, to bring the various experts involved in the development of the two Corruption Bills together, to discuss and build consensus on how to meet the OECD’s requirements in the timeframe.

b) In the meantime, the UK Government should clarify, and publicise, the fact that the current law does not permit the consent of a principal as a defence in cases involving the bribery of a foreign public official.

46 Goldsmith’s dilemma on Saudi royals in BAE case, Financial Times, 1 February 2007
47 Britain’s anti-corruption laws are outdated, Financial Times, 23 February 2007
## Table 2

### AWARENESS-RAISING

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<th>OECD WORKING GROUP RECOMMENDATION</th>
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<td>Enhance existing efforts to raise awareness of the Convention and the foreign bribery offence among law enforcement authorities including the Police, judicial authorities and UK public officials involved with UK companies operating abroad (para 251a in the Phase 2 Report 1a) in the UK Report.</td>
<td>Our awareness-raising activities for UK officials have two main strands. Firstly, we include information about the risks of corruption and the obligation to report allegations against UK companies and UK nationals in standard training for Foreign and Commonwealth Office (FCO) staff preparing to go overseas as economic officers, as well as those from the Department of Trade and Industry (DTI) and Ministry of Defence (MOD) engaged in the promotion of UK exports and inward investment to the UK. We have also made this information available to staff involved in export licensing processes in the UK. Secondly, we engage in country- and region-specific efforts. The subject has featured in regional conferences for economic officers, eg for South-East Asian posts and for African posts. Since March 2005, we have also conducted specific awareness-raising sessions for staff in China, Russia, Argentina, Thailand, Singapore, Mexico, Spain and Dubai. To complement this, we issue guidance at least once a year to remind all overseas staff of their reporting obligation, drawing their attention the latest version of the guidance available on the UK legal framework (copy attached and at <a href="http://www.fco.gov.uk/File/leaflet.pdf">http://www.fco.gov.uk/File/leaflet.pdf</a>). We have also produced a DVD on corruption (copy enclosed) and distributed it, along with the revised guidance, to overseas Posts and UK Trade and Investment (UKTI) offices in the UK, as well as to interested civil society organisations. One example to demonstrate that this policy area is now very much in the mainstream of FCO work concerns the “assessment and development centre” (ADC), which officers must pass to achieve promotion from the grade of first secretary to the FCO’s senior management structure. The ADC is a demanding two-day mixture of group exercises, individual interviews and written work. One particular role-playing scenario from a recent ADC related to the creation of a unit to cover corruption and transparency, including the handling of foreign bribery allegations. As of 8 February 2007, 25 of the allegations referred to the Overseas Corruption Register have been from the FCO, of which six have been received since August 2006. The case in which searches were undertaken on 30 January 2007 was begun as a result of a referral from the relevant embassy. The Serious Fraud Office (SFO) is an independent specialist body</td>
<td>The OECD Working Group considers this Recommendation to be partially implemented. Para 3 “… The Working Group notes that FCO overseas missions have supplied 25 of the allegations in the Overseas Corruption Register (a list of known foreign bribery allegations maintained by the SFO), which indicates that the UK’s efforts in this area have been effective in practice.”</td>
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that investigates and prosecutes serious or complex fraud. The activity of the SFO in the area of overseas corruption includes the formation of a small unit to oversee preliminary investigations and vetting.

The UK has increased law enforcement capacity to investigate allegations of bribery and money laundering. DFID has allocated some £6 million over three years to the International Corruption Group which brings together the Proceeds of Crime Team within the Metropolitan Police and the Overseas Anti-Corruption Unit within the City of London Police Service. The Overseas Anti-Corruption Unit consists of a 10-person team and has a specific remit for foreign bribery investigations. Set up in November 2006, it has already taken on four investigations and made its first arrests in January 2007. The Proceeds of Crime Team now has 12 officers to combat money laundering. Recent progress in Nigerian money laundering investigations has seen up to £1,200,000 returned and £500,000 in the process of being returned.

The MOD Police Fraud Squad has developed training, which is now being rolled out across the UK Police Service, and the Squad is regularly called upon to advise other forces in relation to corruption matters. In addition to the investigative work, the Mod Police Fraud Squad seeks to educate and prevent corruption and fraud in the workplace. To this end, the Squad is in the process of restructuring to provide for an anti-corruption unit with a specific remit for education, prevention and investigation of these offences. (see also 4a) below)

Seven members of the new City of London Police unit have already attended the National Fraud Course and the remaining three will do so later this year. The entire team will also take the two-day MOD Police module and will benefit from ad hoc training inputs, including a presentation by the Hong Kong Police Anti-Corruption Unit.

The Crown Prosecution Service (CPS) has revised its Online Guidance to all prosecutors to reflect the requirements of the OECD Convention. It has also provided explicit training materials for its specialist staff within the newly created Fraud Prosecution Service. Discussions in relation to the foreign bribery offence are raised on a regular basis at a number of cross-Government groups attended by law enforcement officials. (See also 4a) below.)
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<td><strong>Trade Unions and SMEs</strong></td>
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<td>Undertake further public awareness activities for the purpose of increasing the level of awareness of the Convention in the foreign bribery offence among trade unions and small and medium-sized enterprises (SMEs) doing business internationally (Phase 2 Report 251.b), UK Follow-up Report 1b.</td>
<td>Minister for Trade, Ian McCartney, raised the issue of international bribery and corruption at the FCO-Trades Union Congress Advisory Council in November 2006. He drew trades union leaders' attention to revised FCO guidance and the corruption DVD (see 1a) above. Mr McCartney and Hilary Benn launched the DVD that month with guests at the event from a wide range of organisations, including trades unions, business groups, individual companies, NGOs, Parliament and the media, as well as officials and colleagues from law enforcement. A panel discussion gave participants the opportunity to ask questions about bribery and corruption.</td>
<td>Following a meeting in November 2006 between representatives of Amicus, the Trades Union Congress (TUC), UNICORN and the Secretary of State for International Development Hilary Benn, it was agreed to hold a joint DFID/TUC anti-corruption event in May 2007, funded by DFID, with the aim of identifying joint business and trade union strategies for combating corruption.</td>
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<td><strong>SMEs</strong></td>
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<td>We have continued our programme of specific awareness-raising sessions for UK companies with events in Russia, China, Argentina, Ghana, India and Thailand. As far as SMEs are concerned, we are contributing substantially towards the further development of the Danish anti-corruption information portal. Separately, the FCO funded the development of a website for the UK network of the Global Compact (<a href="http://www.ungc-uk.net/">http://www.ungc-uk.net/</a>). This features guidance on implementing all ten Global Compact principles, including the tenth principle on anti-corruption, and has a link to the Government’s anti-bribery leaflet. We published an article on bribery in a journal for the accountancy profession and have been discussing further activities with them and the Law Society to use their multiplier effect. An interview on the subject with government and business representatives will feature in a forthcoming edition of a leading construction and engineering journal. One of the reasons for increasing the range of awareness-raising activities in the UK, especially for UKTI staff and business audiences in the UK regions, is to lengthen our reach to SMEs. Through the network of UKTI’s international trade advisers, we know that SMEs will have more opportunities to obtain the necessary information. More broadly, the Government is working with companies and other stakeholders in a range of sectors to promote transparency in international business transactions. Building on the successful experience of the multi-stakeholder approach applied in the Extractive Industries Transparency Initiative (<a href="http://www.eitransparency.org">www.eitransparency.org</a>), we have been looking to help developing countries improve transparency and value for money in procurement through new international initiatives in the construction, health and defence sectors.</td>
<td>We consider this Recommendation to be satisfactorily implemented.</td>
<td>In October 2006, ACCA funded and undertook a survey of SMEs in view of the fact that there is “limited information on the scale of the problem outside the large, multinational company environment . . .” ACCA published its findings in a report “Bribery and Corruption: the Impact on UK SMEs” in March 2007. As follow-up, ACCA intends to convene a Policy Forum that will explore the issues identified in the survey and consider how accountants, Government and regulators might usefully work together to develop an effective business support service to SMEs.</td>
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SMEs

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The initial consultation phase on the construction transparency initiative (CoST) included a broad range of stakeholders from industry and industry bodies (eg UK Anti-Corruption Forum), civil society (Transparency International, Engineers Against Poverty), World Bank, academia and procurement specialists. A stakeholder focus group has been set up to act as a reference point during the future design of CoST.

There is wide support for the idea of a new initiative on transparency in health sector procurement—across Government, industry, development NGOs, donor country governments and international organisations (notably the WHO).

The development of a defence sector initiative is building on a number of existing industry and NGO attempts to build integrity in the international defence sector. There is now agreement across Government on taking forward dialogue on a defence transparency initiative though a multi-stakeholder group of government, industry and civil society.

Responsibility of Parent Companies

Responsibility of Parent Companies and Reporting Bribery
Take appropriate measures to publicise, including in all explanatory material distributed to UK companies, the conditions under which parent and affiliate companies can be liable in connection with foreign bribery, and encourage UK companies to report to UK authorities, as well as to other appropriate authorities, instances of foreign bribery they come across in the course of their operations. (Phase 2 Report 251c, UK Follow-up Report 1c).

Responsibility of Parent Companies and Reporting Bribery
We issued revised guidance in May 2006 (see 1a) above). In the context of awareness-raising sessions with business, as outlined above, we encourage companies to report allegations to the appropriate authorities.

Responsibility of Parent Companies
The OECD Working Group considers this Recommendation to be satisfactorily implemented. Para 3 . . . The UK has also significantly improved its anti-foreign-bribery guidance brochure since the Phase 2 Report. It now addresses more appropriately the potential liability of parent companies relating to foreign bribery by their subsidiaries; it also contains a clear statement of an obligation for Foreign and Commonwealth Office (FCO) and locally-engaged staff in overseas diplomatic posts to report acts of bribery by UK nationals or UK companies to the Serious Fraud Office (SFO) directly or to London that we raise the matter at the OECD Working Group on Bribery.

Reporting Bribery
The leaflet encourages UK companies and civil servants and local employees to report bribery. “If you have concrete evidence of a foreign rival company acting in a corrupt fashion then you should alert the local judicial authorities/ and or the authorities of the country where the company is registered. If you report it to the nearest British Diplomatic mission, they will consider how best to take it forward. This might include contacting the country’s local mission or suggesting to FCO that we raise the matter at the OECD Working Group on Bribery.”

“civil servants and locally engaged employees in British Diplomatic Posts oversea, who in the course of their duties, become aware of or receive information relating to acts of bribery committed by UK nationals or companies . . . must report the matter to London, either via the FCO Business Team or direct to the appropriate UK authorities. The FCO transmits such reports to the Serious Fraud Office so that the appropriate UK authorities can decide whether to pursue an investigation . . . ”

Comments
The advice provided in the leaflet on reporting bribery is incomplete. Comprehensive information on how to report bribery should be compiled and published on a website to which competitors/ employees/citizens may be directed.
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<td>UK Follow-up Report 2b</td>
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<td>Reporting to Law Enforcement</td>
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<td>Government policy on reporting</td>
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<td>also includes the encouragement of</td>
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<td>internal whistle-blowing in</td>
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<td>companies. The Public Interest</td>
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<td>Disclosure Act 1998 (PIDA) protects</td>
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<td>workers against victimisation by</td>
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<td>their employer if they “blow the</td>
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<td>whistle” on workplace wrongdoing in</td>
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<td>a responsible way. Its underlying</td>
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<td>aim of encouraging greater openness</td>
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<td>in the workplace is reflected in its</td>
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<td>design, the effect of which is that workers most readily</td>
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<td>attract protection if they make</td>
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<td>disclosures to their employer or</td>
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<td>through procedures authorised by</td>
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<td>their employer. Disclosures can</td>
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<td>also be protected if they are made</td>
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<td>more widely, however, including</td>
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<td>those to regulatory bodies</td>
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<td>State for Trade and Industry.</td>
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<td>These include bodies to which</td>
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<td>bribery can be reported, eg the</td>
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<td>National Audit Office and the</td>
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<td>Serious Fraud Office. Given PIDA’s</td>
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<td>underlying aim, the DTI believes</td>
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<td>that the current level of</td>
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<td>protection for those who make</td>
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<td>disclosures to law enforcement</td>
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<td>bodies is right, but, in view of the</td>
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<td>WGB’s recommendation, they will</td>
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<td>consider, when they next review the</td>
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<td>list of prescribed persons,</td>
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<td>whether the police should be added</td>
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<td>to them.</td>
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<td>OECD WORKING GROUP UK WRITTEN</td>
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<td>FOLLOW-UP TO PHASE 2 REPORT</td>
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<td>OECD WORKING GROUP UK PHASE 2</td>
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<td>FOLLOW UP REPORT</td>
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<td>Civil Servants</td>
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<td>The OECD Working Group considers</td>
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<td>this Recommendation to be</td>
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<td>partially implemented (para 25)</td>
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<td>Civil Servants</td>
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<td>The Civil Service Code was amended</td>
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<td>in 2006 to include a reference to</td>
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<td>whistleblowing legislation.</td>
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<td>Comment</td>
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<td>This is a welcome development.</td>
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<td>Compliance with this obligation in</td>
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<td>the Civil Service Code should</td>
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<td>be monitored.</td>
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<td>Publicise with Companies</td>
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<td>There has been no initiative aimed</td>
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<td>at promoting PIDA amongst</td>
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<td>companies.</td>
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<td>Promote to General Public</td>
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<td>There has been no initiative to</td>
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<td>promote PIDA to the general</td>
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<td>public.</td>
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<td>OECD WORKING GROUP RECOMMENDATION</td>
<td>IMPLEMENTATION OF RECOMMENDATIONS</td>
<td>ADDITIONAL INFORMATION/COMMENTS</td>
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<tr>
<td>Fraudulent Accounting Offence</td>
<td>Fraudulent Accounting Offence</td>
<td>Fraudulent Accounting Offence</td>
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<td>Proceed diligently with the</td>
<td>In response to the Phase 2 report, the DTI assessed UK compliance with Article 8 and is confident that the requirements are met under UK company law rather than accounting standards.</td>
<td>The OECD Working Group considers that this Recommendation has not been implemented.</td>
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<td>adoption of reforms clarifying</td>
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<td>19. The Follow-Up report also does not identify or analyse company law provisions which, according to the UK, now satisfy the recommendation to ensure that the fraudulent accounting offence in the UK is in full conformity with Article 8 of the Convention. Accordingly, the Working Group cannot meaningfully evaluate the situation and concluded that this recommendation has not been implemented.</td>
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<td>and unifying the UK accounting</td>
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<td>legislation with the International Accounting Standards, to ensure the fraudulent accounting offence is in full conformity with Article 8 of the Convention. (Phase 2 Report 253.a), UK Follow-up Report, 3a)</td>
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<td>Auditors</td>
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<td>Proceed with the adoption of</td>
<td>The Auditing Practice Board</td>
<td>Auditors</td>
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<td>guidance for auditors in order to explain and clarify their reporting obligation concerning possible acts of foreign bribery. (Phase 2 Report 253.b), UK Follow-up Report, 3b)</td>
<td>published interim Guidance in August 2004 on Money Laundering which covers overseas bribery. Following the WGB’s recommendation, the Board issued a revised Practice Note of the Auditing Practice Board Standards and Guidance 2006, taking account of comments received during the consultation process. HMT is working with auditors and other industry parties (in the guidance working party) to ensure that it receives approval.</td>
<td>Comment</td>
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<td>Tax Authorities</td>
<td>Tax Authorities</td>
<td>Tax Authorities</td>
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<tr>
<td>Ensure sufficient time and</td>
<td>Her Majesty’s Revenue and</td>
<td>The OECD Working Group considers this Recommendation to be partially implemented.</td>
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<td>resources are available to tax</td>
<td>Customs (HMRC) has produced a</td>
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<td>authorities to review tax</td>
<td>compliance strategy setting out the resources available to the UK’s tax authorities to review tax information and allow for the detection of possible criminal conduct, including foreign bribery offences. (Phase 2 Report 253.c), UK Follow-up Report 3c)</td>
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<td>information and allow for the</td>
<td>strategy includes dedicated staff training, including specifically on how to identify expenses entries that might be used to disguise bribes. Detailed guidance available via the HMRC intranet sets out how Tax Inspectors should handle their review of any deductions in the accounts that either are or might be bribes, whether paid within the UK or abroad. It recommends that the advice of Head Office be sought at an early stage. The standard procedure is for staff to challenge payments that give rise to suspicion and require evidence to back up the alleged purpose. If it turns out the expense was a bribe it is disallowed and a disclosure may be made to the appropriate law enforcement agency. The 2002 Finance Act provided that no deduction is to be given for the payment of bribes made outside the UK where “the making of a corresponding payment in any part of the United Kingdom would constitute a criminal offence there.” Guidance was issued to staff in October 2003 and will be revised again as necessary to take account of any developments in interpretation of the legislation.</td>
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<td>detection of possible criminal</td>
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<td>conduct, including foreign</td>
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<td>bribery, including foreign</td>
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<td>bribery.</td>
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<td>17. The UK has provided bribery-related training to tax inspectors. However, the Working Group continues to be concerned about whether they have sufficient time to detect bribery in practice given the limited time to re-open tax returns (one year) in the absence of fraudulent or negligent conduct.</td>
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In normal circumstances an enquiry must be opened within one year of a tax return being submitted. However, where there has been fraudulent or negligent conduct which is likely in cases involving the payment of a bribe, the time limits for conducting an enquiry are extended to 20 years. There is no restriction on the length of time that an enquiry can continue once it has been opened. Separately, HMRC is in the process of updating guidance on reporting suspicious transactions—including those suspected of being a bribe—to law enforcement authorities.

### Table 5

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<tr>
<th>OECD Working Group Recommendation</th>
<th>Implementation of Recommendations</th>
<th>Additional Information/Comments</th>
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<tr>
<td><strong>Serious Fraud Office—Role and Resources</strong></td>
<td><strong>In order to assist effective investigation, the SFO took over the maintenance of the register of corruption allegations in 2005. The SFO assesses all cases where an allegation of overseas corruption is made. The possible investigation of such cases where an element of fraud is present was already part of its remit. In practice there will remain some cases, particularly those investigated by the MOD Police, which would tend to be treated as a domestic corruption case with an overseas element, eg cases involving Crown staff deployed abroad. These may remain with the CPS for prosecution. The SFO already has scope within its existing budget to allocate resources to the investigation of corruption allegations. When the need arises, eg in a substantial search operation, the team investigating such allegations can be supplemented from the greater body of lawyers and investigators within the office. The effective use of this resource is subject to ongoing monitoring in a number of ways. The SFO presents to Parliament an annual report which includes strategic performance information on progress including with corruption cases. This reporting is supplemented by more ad hoc monitoring. The Attorney General frequently answers parliamentary questions about the SFO’s work on corruption. On 1 February 2007 in a debate in the House of Lords, the Attorney</strong></td>
<td><strong>The OECD Working Group considers this Recommendation to be partially implemented. 8. . . . The Phase 2 Report found that the very large number of investigative and prosecutorial authorities was hindering effective treatment of the foreign bribery offence. The UK has made substantial progress in giving a central role to the SFO in foreign bribery cases and it is now generally recognised as the key agency with regard to such matters . . . the rules for how the SFO attributes cases to other agencies remain unclear. 9. The UK has made significant efforts, especially in recent months, to substantially increase police capacity to investigate allegations of foreign bribery and money laundering . . . 10. The Working Group recognises these important efforts with regard to police resources. The SFO itself, however, has not received any additional funding for foreign bribery generally . . . The Working Group remains concerned about the adequacy of these resources, particularly in light of the continuing absence of any prosecution for foreign bribery. In January 2007, the UK Treasury approved supplementary funding of GBP 22.8 million (EUR 33.5 million) over five years to the SFO for a large-scale enquiry into part of the matters outlined in the report on the UN Oil-for-Food programme for Iraq . . . the size of the five-year Treasury allocation raises further doubts about the overall annual SFO budget which, Serious Fraud Office—Role and Resources</strong></td>
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General publicly emphasised the willingness of the UK government to consider providing funds for the investigation of allegations of international corruption. On 31 January 2007 the Treasury approved supplementary funding of £22.8 million to the SFO for a large-scale enquiry into part of the matters outlined in the Volcker Report of 23 October 2005 into suspected corrupt and fraudulent activity under the UN Oil-for-Food programme for Iraq. This will enable the SFO to establish an enquiry team to be supported, where necessary, by the City of London Police overseas corruption team.

As a small specialist unit, the SFO takes decisions on whether to begin an investigation, to lay charges against an individual or a company or not to do so at a high level usually the Director himself. The SFO is an investigatory body as well as a prosecution authority and, accordingly, the Director has to take into account a wider range factors at different stages in the life of a case. He is guided by the Code for Crown Prosecutors at appropriate times. In the one case in which an investigation was discontinued in December 2006, the Director was not influenced by any improper considerations. He had regard at all times to Article 5 of the OECD Convention and made his decision on the basis of national and international security. In doing so he complied with Article 5.

The MOD Police exists to provide a bespoke policing service, predominantly to the MOD. The Fraud Squad is a specialised department within the Force’s Criminal Investigation Department. It is one of the largest Fraud Squads in the UK. The Squad investigates cases of fraud and corruption in relation to MOD contracts. These offences are the highest priority for the Force—in contrast to most other sections of the UK Police Service, which does not prioritise economic crime so highly. The Force has naturally built up considerable expertise in the investigation of public sector corruption, particularly in relation to procurement. The CPS has restructured how it prosecutes organised crime, essentially in response to the creation of the Serious and Organised Crime Agency (SOCA). This restructuring has also led to the creation of the new Fraud Prosecution Service, staffed by specialist prosecutors who are likely to be in charge of future files involving overseas bribery and corruption. The CPS has already created a new fraud course for specialists and has available to it a

In the debate on Corruption in the House of Lords, the Attorney General announced that the “Treasury has recognised the importance of the SFO investigation into the humanitarian aid aspect of Oil for Food, and . . . we have been provided for that purpose with approximately £22 million additional funding.” He informed the House that he had told the Director of the SFO “to pursue these investigations vigorously and that, if more resources are needed, every effort will be made to find them.” Investigations into Foreign Bribery On 7 February 2007, the Solicitor General took the unusual step of confirming that investigations into BAE Systems were ongoing in South Africa, Romania, Tanzania and the Czech Republic as well as inquiries in Chile and Qatar. He also confirmed other active investigations related to Bosnia, Nigeria, Zambia, Costa Rica and Egypt. 51

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50 http://www.publications.parliament.uk/pa/ld200607/ldhansrd/text/70201-0002.htm
51 http://www.publications.parliament.uk/pa/cm200607/cmhansrd/cm070207/debtext/70207-0009.htm
The number of modules that centre on the UK's obligations under the OECD Convention and also UNCAC. The CPS is also due to create a specialist module on investigating overseas corruption which it is currently planning with the MOD Police and the SFO. (See also 5a) below.)

The Crown Office keeps a register of corruption allegations in Scotland. The Financial Crime Unit, part of the National Casework Division, would lead on such cases in Scotland, though cases may be investigated by the relevant Area Procurator Fiscal. Separately, the UK has taken an important role in the International Association of Anti-corruption Authorities (IAACA) which was established in 2006. Sir Alasdair Fraser, Director of Public Prosecutions for Northern Ireland, is a Vice-President and Robert Wardle, Director of the SFO, is a member of the executive committee.

**OECD WORKING GROUP RECOMMENDATION**

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<th>Recommendation</th>
<th>IMPLEMENTATION OF RECOMMENDATIONS</th>
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<td>UK WRITTEN FOLLOW-UP TO PHASE 2 REPORT</td>
<td>OECD WORKING GROUP UK PHASE 2 FOLLOW-UP REPORT</td>
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**Ministry of Defence Police**

Amend the Memorandum of Understanding to clarify that the Ministry of Defence Police's investigative jurisdiction is limited to cases where the Ministry of Defence is a party to the contract (254 b)

**Disclosure to Non-Investigatory Departments**

reconsider obligations in the Memorandum of Understanding specific to foreign bribery investigations requiring disclosure of information about the investigation to non investigatory government departments (notably the Foreign and Commonwealth Office and the Ministry of Defence) (Phase 2 Report 254, c, UK Follow-up Report 4c).

**Mutual Legal Assistance**

Increase resources for the prompt and effective handling of mutual legal assistance requests (Phase 2 Report 254,d, UK Follow-up Report 4d).

**Ministry of Defence Police**

The Memorandum of Understanding (MoU) setting out how Government Departments and agencies should handle cases of overseas bribery has been revised to take account of the UK's Phase 2 report. The new version was published on 1 December 2005 (copy attached). It clarifies that the MOD Police's investigative jurisdiction is limited to cases involving MOD employees or defence contracts where the MOD is a party to the contract.

**Disclosure to Non-Investigatory Departments**

The revised MoU puts beyond doubt that the disclosure of information on specific foreign bribery investigations to non-investigatory Government Departments (notably the FCO and MOD) is possible only where this is appropriate and with the consent of the senior investigating officer.

**Mutual Legal Assistance**

All mutual legal assistance requests are actioned as soon as possible within the resources available. Within the UK Central Authority (UKCA) a number of measures have been taken to enhance procedures and to ensure resources are targeted to provide for prompt and effective handling of requests. Recent cases include requests from Nigeria, Italy, Belgium, India and Pakistan. The Crime (International Cooperation) Act 2003 set up two additional central authorities for the UK—Crown Office (Scotland) and the Northern Ireland Office.

**Ministry of Defence Police**

The OECD Working Group considers this Recommendation to be satisfactorily implemented. Para. 4 MOU has been modified to limit the investigative jurisdiction of the Ministry of Defence Police to foreign bribery cases involving (i) defence contracts where the MOD is a party to the contract; or (ii) MOD employees. While the reference to "MOD employees" is not technically consistent with the Phase 2 recommendation with regard to the jurisdiction of the Ministry of Defence Police, the Working Group was satisfied that compliance with the recommendation had been achieved.

**Disclosure to Non-Investigatory Departments**

The OECD Working Group considers this Recommendation to be satisfactorily implemented.
which are competent to receive requests from EU Member States where the evidence is located within their jurisdiction. The central authority for Scotland works effectively and efficiently. However, the UK is party to bilateral treaties with 32 countries which require transmission of requests via UKCA. Nevertheless, the Act also allows for outgoing mutual legal assistance requests to be directly transmitted by prosecutors to the judicial authorities in EU Member States, therefore bypassing UKCA. And HMRC has been given the power to act as a central authority for mutual legal assistance requests related to indirect taxation but not in respect of direct taxation matters. These provisions offer the potential of establishing more effective and streamlined mutual legal assistance procedures that can promptly handle the increasing number of mutual legal assistance requests. Between April and September 2006 a review of working practices in UKCA was conducted. As a result of this review, a new system of working has been introduced to streamline and standardise working practices across the unit. This should improve the efficiency of UKCA. The new system is being carefully monitored. Following the organisational improvements within UKCA discussions will take place with stakeholders to see how further response times can be improved.

The Mutual Assistance Unit of the Serious Fraud Office undertakes the majority of incoming requests in cases of serious transnational corruption and fraud. That unit has recently gained an additional investigator. There is flexibility within the Serious Fraud Office such that, if the need arises, e.g. in a substantial search operation, the Mutual Legal Assistance Unit can be supplemented from the greater body of lawyers and investigators within the office. Between 2001 and 2006 the Serious Fraud Office received 15 requests for assistance in cases classified as bribery or corruption by the requesting state (6 including bribery, the balance alleging corruption). Since March 2005, these have included requests from Costa Rica, Zambia and the USA. Where the Director of the Serious Fraud Office is requested to use his coercive powers there is a requirement that he be satisfied that there is evidence that a serious or complex fraud has occurred. In no case has a request been turned down on the ground of not meeting the evidential threshold.

There has been a case in assistance was given but there was a refusal of a request to undertake a search of domestic premises.
Amend the Code for Crown Prosecutors
Amend where appropriate the Code for Crown Prosecutors, the Crown Prosecution Service Manual and other relevant documents to ensure that the investigation and prosecution of bribery of foreign public officials shall not be influenced by considerations of national economic interest, the potential effect upon relations with another state or the identity of the natural or legal persons involved.

Consent of the Attorney General
In light of the longstanding absence of any consent requirement for the common law bribery offence, consider the appropriateness of Law Officers consent for cases of foreign bribery.

Consent of the Attorney General
The Government made clear in its response to the Joint Committee on the draft Corruption Bill that it will replace the existing statutory requirement for the Attorney General’s consent with a requirement for the consent of the Director of Public Prosecutions or a nominated deputy. In the Consultation Paper issued on 8 December 2005, the Government announced that they intended that the Director of the SFO should also be empowered to give consents, given its lead role in foreign bribery cases. These changes will be taken forward in future legislation.

Consent of the Attorney General
The OECD Working Group considers this Recommendation to have been partially implemented. The UK has not amended the Code for Crown Prosecutors (CCP) to ensure that the investigation and prosecution of bribery of foreign public officials shall not be influenced by considerations prohibited under Article 5 of the Convention (the national economic interest, the potential effect upon relations with another state or the identity of the natural or legal persons involved). It intends instead to amend the publicly-available Online Manual for prosecutors which all CPS prosecutors, staff and the public can access via the CPS website. The Manual advises that, when making a decision in relation to the prosecution of a defendant for the offence of bribery of a foreign public official, the prosecutor will not be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved. See also 4a) above.

Consent of the Attorney General
The OECD Working Group considers this Recommendation not to have been implemented. The UK has not amended the Code for Crown Prosecutors (CCP) to ensure that the investigation and prosecution of bribery of foreign public officials shall not be influenced by considerations prohibited under Article 5 of the Convention (the national economic interest, the potential effect upon relations with another state or the identity of the natural or legal persons involved). It intends instead to amend the Online Manual for Prosecutors which all natural or legal persons involved. Follow-up Report 5a) (Phase 2 Report 255.a), UK Follow-up Report 5a).

Amend the Code for Crown Prosecutors
The Attorney General and the Director of Public Prosecutions have carefully considered whether it would be appropriate to amend the Code for Crown Prosecutors in response to the UK’s phase 2 review. They have decided against this course of action as the Code sets out general and public principles which apply to all prosecuting agencies in England and Wales, not just the CPS, and to all offences. The CPS has instead amended the Online Manual for Prosecutors which all CPS prosecutors, staff and the public can access via the CPS website. The Manual advises that, when making a decision in relation to the prosecution of a defendant for the offence of bribery of a foreign public official, the prosecutor will not be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved. See also 4a) above.

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Consent of the Attorney General
The OECD Working Group considers this Recommendation to have been partially implemented. Prior to the date of the Phase 2 Report, the UK government had publicly announced its intent to replace the existing statutory requirement for the Attorney General’s consent with a requirement for the consent of the Director of Public Prosecutions or a nominated deputy. Since the Phase 2 Report, the UK government has restated its intent in this regard and has announced in the context of its bribery law consultation process that it intends that the Director of the SFO should also be empowered to give consents. However, none of these statements have been acted upon to date. The Working Group considers that action has not been sufficiently taken to resolve the underlying concerns of the Working Group that led to this recommendation. In addition, new factual developments since the Phase 2 Report cause the Working Group to continue to focus on this issue.

Amend the Code for Crown Prosecutors
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Corruption prosecutions has been the subject of intense public debate in the UK, since December 2006, as a result of the termination of the investigation into the BAE/Saudi Al Yamamah deal and the Cash for Honours Inquiry. This recommendation should be fully implemented as soon as possible.

Corporate Liability
In its response to the Home Office December 2005 Consultation on the Corruption Bill, the Government confirmed its previous position “that it would not be justifiable to alter the basic principles of corporate liability in our law solely in relation to bribery … The general issue of corporate liability forms part of the Law Commission’s work on codification of the criminal law.”

Also in December 2005, discussions were held on the various options for implementing this recommendation at a joint Crown Prosecution Service/UNICORN seminar. Various options for complying with the OECD Working Group recommendation were discussed. A report is available on the UNICORN web site. To date there has been no follow up.

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Table 7
CROWN DEPENDENCIES AND OVERSEAS TERRITORIES

<table>
<thead>
<tr>
<th>OECD WORKING GROUP RECOMMENDATION</th>
<th>IMPLEMENTATION OF RECOMMENDATIONS</th>
<th>ADDITIONAL INFORMATION/COMMENTS</th>
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<tbody>
<tr>
<td>Crown Dependencies</td>
<td>Verify compliance of Guernsey’s new legislation with the OECD Convention, invite Jersey authorities to enact a comprehensive anti-corruption statute at the earliest possible date in order to extend the OECD Convention to the islands (Phase 2 Report 256. a), UK Follow-up Report, 6a)</td>
<td>Civil society remains concerned that the Crown Dependencies have not brought their legislation up to date, and have not provided sufficient resources for effective enforcement. It is also noted that compliance levels amongst small trust and company administration businesses are low—in Jersey, for example, it is reported that two-thirds of trust companies have not submitted any Suspicious Activity Reports in the past two years. Civil society that in 2006 the Government of Jersey enacted a new trust law which will have been approved by the UK Privy Council which allows for the creation of</td>
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<tr>
<td>Crown Dependencies</td>
<td>The Government extended its ratification of the OECD Convention to the Isle of Man in 2001. Guernsey now has legislation in place which will support the UK’s extension of the OECD Convention and we are awaiting a formal request to pursue this. Jersey is expecting its Corruption (Jersey) Law 2006 to come into force on 6 March 2007. It is expected that once in force, Jersey will have legislation sufficient to support convention extension. The UK is in the process of confirming this and will advise Jersey accordingly. The UK’s Department for Constitutional Affairs (DCA)</td>
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<tr>
<td>Crown Dependencies</td>
<td>The OECD Working Group considers this Recommendation to be satisfactorily implemented.</td>
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<tr>
<td>Crown Dependencies</td>
<td>Comments</td>
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OECD WORKING GROUP IMPLEMENTATION OF RECOMMENDATIONS

OVERSEAS TERRITORIES

Continues to discuss with the Crown Dependencies (CDs) the need to publicise their commitment to the anti-corruption agenda. All have expressed an interest in having UN anti-corruption conventions extended to them. The DCA continues to work with the administrations of the CDs to assist where necessary in meeting this deadline.

Overseas Territories

Continue to encourage the Overseas Territories to adopt the necessary legislation in line with the principles of the Convention and Revised Recommendation, and support them in their efforts. (Phase 2 report 256. b), UK Follow-up Report 6b).

OVERSEAS TERRITORIES

The Government raises the fight against bribery and corruption with the Overseas Territories (OTs) at appropriate opportunities, eg with OT Governors in May 2005 and in a session chaired by Hilary Benn at the Overseas Territories Consultative Council in November 2006. In addition, we invited the Attorney General of the Cayman Islands, British Virgin Islands and Turks and Caicos Islands (TCI) to participate in the UK’s delegation to the inaugural Conference of States Parties to the UN Convention against Corruption (UNCAC).

The UK extended ratification of UNCAC to the British Virgin Islands in 2006. The TCI Government has tabled an Integrity Bill, which should enable us to extend the OECD Bribery Convention and UNCAC to them later this year. We funded the drafting of a revised Proceeds of Crime Ordinance, together with a new set of Anti-Money Laundering Regulations, drawing on best practice internationally. The drafts were presented to TCI financial services industry representatives on 30 January for a one-month consultation period, following which any necessary amendments will be incorporated and the Bill taken to Cabinet and thence to the House of Assembly. The Cayman Islands Government will bring forward draft legislation shortly which, once enacted, will enable the UK to extend our ratification of both the UN and OECD Conventions to the Islands.

Thanks to various activities, awareness in Bermuda that corruption will lead to prosecution whenever there is sufficient evidence has greatly increased. The Government of Bermuda has in the past year successfully seized corrupt assets, in one case totalling $2.25 million from one individual. Bermuda has been actively involved in the post-Volcker investigation into companies based in the Bermuda jurisdiction in relation to the Oil-for-Food programme. The Overseas Territories are also likely to benefit from the outputs of a major Commonwealth Secretariat anti-corruption programme to produce tools to support UNCAC implementation, such as model legislative provisions. The FCO is providing some £0.5 million to this programme over three years.
Table 8

SANCTIONS

<table>
<thead>
<tr>
<th>OECD WORKING GROUP RECOMMENDATION</th>
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<th>ADDITIONAL INFORMATION/COMMENTS</th>
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<tr>
<td>Sanctions for Legal Persons</td>
<td>Sanctions for Legal Persons</td>
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<td>Consider adopting a regime of</td>
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<td>The OECD Working Group</td>
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<td>concerning the liability of legal</td>
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<td>engage in foreign bribery</td>
<td>considerations about the</td>
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<td>(Phase 2 Report 257, a), UK</td>
<td>underlying legal principles that</td>
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<td>Follow-up Report, 7a))</td>
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<td>Government Departments and</td>
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<td>impact on business transactions</td>
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<td>overseas. The Office of</td>
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<td>Government Commerce (OGC)</td>
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<td><a href="http://www.ecdg.gov.uk/index/pi_home/policy_on_bribery_and_corruption.htm">http://www.ecdg.gov.uk/index/pi_home/policy_on_bribery_and_corruption.htm</a>).</td>
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<td>not charged with corruption</td>
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</table>
Consider revisiting the policies of agencies such as Department for International Development and Export Credit and Guarantees Department on dealing with applicants convicted of foreign bribery, to determine whether these policies are a sufficient deterrent.

(E Phase 2 report 257 b, UK Follow-up Report, 7b).

In March 2006, the ECGD announced its new anti-bribery rules. The new procedures came into effect on 1 July 2006. A subsequent Inquiry by the Trade and Industry Select Committee concluded that the new procedures should be allowed to operate without further amendment, subject to monitoring and annual reporting to the Export Guarantees Advisory Council, and should be subject to formal review in three years' time (July 2009).

In May 2006, the OECD Export Credit Group agreed its updated Action Statement on Bribery and Officially Reported Export Credits (now a Recommendation).

As regards sanctions, the new agreement requires ECAs to take measures to verify that any exporter or applicant that has been debarred, charged or convicted for foreign bribery offences has taken adequate remedial action, prior to approving credit or other support. It suggests measures that “could” be undertaken by ECAs: replacing legal persons (companies) for individuals, adopting an appropriate anti-bribery management control system and submitting to an audit. These are discretionary.

The new measures do not require ECAs to debar companies that have convictions for foreign bribery offences, even in cases where the exporter or applicant appears on the publicly available list of the World Bank or other IFIs, has been debarred by a national court or by an equivalent administrative mechanism, or is the subject of multiple corruption convictions by final judgment.

Comment

The ECGD should publish the results of its annual monitoring on its new procedures as soon as possible including its treatment of cases of suspicion or evidence of corruption.

Policies of Agencies: DFID

At 6 July 2006 meeting of the OGIC consultation group (see above) DFID discussed its intention to adopt a no bribery warranty.

The UK Anti-corruption Forum subsequently submitted a written proposal on the purpose, scope and operation of such a warranty but recommending that DFID undertake and commission research and further consultation and adopting before going ahead.
<table>
<thead>
<tr>
<th>OECD Working Group Recommendation</th>
<th>OECD Working Group UK Phase 2 Follow-up Report</th>
<th>Additional Information/Comments</th>
</tr>
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<tr>
<td><strong>Confiscation</strong></td>
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<td>The OECD Working Group considers this Recommendation to be satisfactorily implemented.</td>
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</tbody>
</table>
| Encourage prosecutors to actively pursue the necessary procedures for confiscation in all appropriate foreign bribery cases  
(Phase 2 Report 257. c), UK Follow-up Report 7c | The UK is presently executing requests from more than 24 countries. Prosecutors are encouraged to pursue confiscation in all appropriate cases to seek to remove the profit from crime. SFO and CPS both have dedicated confiscation expertise. The Crown Office has a dedicated financial crime unit for Scotland. The Revenue and Customs Prosecutions Office (RCPO) also has dedicated confiscation expertise in its Asset Forfeiture Division. Further, Powers to take civil recovery action to seize assets are being devolved to the CPS and RCPO as well as the SFO. A combination of training and incentivisation should ensure that confiscation will be pursued wherever appropriate. Police forces and prosecutors have shown a commitment to obtaining confiscation orders by appointing “champions” to pursue actively opportunities to seize criminal assets and disrupt criminality. An asset recovery incentive scheme (not operational in Scotland) means that police, prosecutors, and the courts will have a share of the money collected as an encouragement to pursue confiscation. Prosecutors have been entering into local agreements with individual police forces to ensure that potential confiscation cases are recognised and taken forward in the courts. Measures have been put in place to ensure that, once confiscation orders have been made, they are paid. Since the beginning of 2006 the Serious Fraud Office Restraint and Confiscation Unit has also been empowered to take restraint and confiscation action on behalf of overseas authorities where the request for assistance includes serious or complex fraud. The powers of the Office will be further increased to include taking civil action to seize assets in appropriate cases in which it is not possible to obtain convictions. This will occur when the Assets Recovery Agency is amalgamated with the Serious Organised Crime Agency, and power to take civil action is devolved to prosecution agencies. Scotland’s Civil Recovery Unit will remain independent. | The OGC, the World Bank and others, with the aim of establishing/adopting a formal sanctions process to address related issues, such as: range/severity of penalties, treatment of “spent” convictions and potential processes for appeal and mitigation. The OGC is also in discussions with the European Commission to clarify these type of issues. |