



Submission to the Senate Foreign Affairs Defence and Trade Committee Inquiry into the provisions of the Export Finance and Insurance Corporation Amendment (Support for Commonwealth Entities) Bill 2016, January 2017

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Introduction

The Australian Fair Trade and Investment Network (AFTINET) is a network of 60 community organisations and many more individuals which advocates for fair trade based on human rights, labour rights and environmental sustainability.

We support the development of fair trading relationships with all countries and recognise the need for regulation of trade through the negotiation of international rules.

Trade should enhance living standards and employment. In this context, most governments have policies which retain the right to regulate in the public interest, including policies which encourage local industry development and employment through small and medium- sized enterprises. These include provisions for the development of small and medium- sized enterprises to enable them to grow locally and develop export capacity.

We appreciate the opportunity to make a submission to this Inquiry into the Export Finance and Insurance Corporation Amendment (Support for Commonwealth Entities) Bill 2016.

The role of Efic

The Export Finance and Insurance Corporation (Efic) is an important public institution which provides support in the forms of loans and guarantees to Australian firms, especially small and medium-sized firms, seeking to develop exports. These firms are an important source of employment for Australians, especially in the context where many larger global manufacturing and services firms have used off-shoring to transfer employment out of Australia, resulting in an estimated loss of 80,000 jobs in the services sector alone between 2008 and 2012 (NIEIR, 2012).

We believe that the EFIC legislation should continue to require that firms seeking loans from EFIC should produce a reasonable percentage of goods and/or services in Australia and employ Australians. The bill proposes several changes which we do not oppose. The change which concerns us is the removal of this requirement.

EFIC's current loan eligibility requirements for Australian content

Currently, according to its public website, EFIC requires for small and medium sized enterprises that the value of Australian content needs to be at least one third of the total contract value for a transaction to be eligible for maximum Efic support. This one third Australian content can include a combination of the following

- Goods or services manufactured or produced in Australia
- Inputs sourced from other Australian suppliers
- Services performed by third parties in Australia or by Australians employed outside Australia
- Profit

- Australian Intellectual property

Profit alone cannot be considered as sufficient Australian content even if it is worth more than one third of total contract value (Efic, 2017).

This requirement for Australian content is based on the definition of “an eligible export transaction” defined in the original *Export Finance and Insurance Corporation Act 1991* which is described in more detail below.

It is a reasonable and in fact modest requirement that firms receiving support from Efic actually produce goods and/or services in Australia and employ Australians. It provides ample flexibility for firms to have offshore operations where required.

In the absence of such a requirement, there would be no incentive for firms receiving Efic loans to have any Australian content. This would lead to the perverse situation of an Australian government institution being able to provide support for firms providing no employment in Australia.

The proposed amendment to Australian content requirements in the legislation

We do not object to the provisions in the Bill which enable Efic to provide advice to other Commonwealth entities.

Our concern is focused on the change in definition of “eligible export transaction” for assistance from Efic which removes any local content requirement for firms receiving Efic loans.

The relevant section 3.1.3 of the *Export Finance and Insurance Corporation Act 1991* reads:

- “For the purposes of this Act, a transaction is an eligible export transaction if, in whole or in part, it involves, is associated with, or is incidental or related to:
- (a) the export from Australia of capital goods produced or manufactured wholly or substantially in Australia; or
 - (b) the production or manufacture in Australia, wholly or substantially, of capital goods that are to be exported from Australia; or
 - (c) the supply, installation, erection, operation, maintenance or repair of capital goods produced or manufactured wholly or substantially in Australia and exported from Australia; or
 - (d) the rendering in Australia or a foreign country:
 - (i) of any services in or in connection with the supply, installation, erection, operation, maintenance or repair of capital goods produced or manufactured wholly or substantially in Australia and exported from Australia; or
 - (ii) of any construction, technological, managerial or other services (whether in connection with such capital goods or otherwise) for a person carrying on business in a foreign country or for the government, or an agency of the government, of that country or of any political subdivision of that country.”

(Commonwealth of Australia, 1991)

The proposed amendment is to delete this definition and replace it with the definition of “Australian export trade” in section 3.5 of the Act which reads as follows:

“any transaction (including the rendering of a service) involving a benefit flowing directly or indirectly from overseas to a person carrying on business or other activities in Australia.”

(Commonwealth of Australia, 1991)

The Minister for Trade and Investment was explicit about this change in his second reading speech:

“This amendment before us will enhance Efic's capacity to provide loans to SMEs by replacing the current definition of 'eligible export transaction', which currently applies to Efic loans, with the broader definition of 'Australian export trade', which applies to Efic guarantees. This latter definition rightly focuses on the benefit flowing back to Australia from the export activity—like export earnings—rather than details of where the goods are assembled, where investments are made, or who the buyer is.”

(Hansard, 2016: 11).

Such a change would mean that export earnings flowing to Australia could be the sole criteria for Efic support, without the current requirements for production of goods or services in Australia and other Australian inputs.

We believe this change is unacceptable. The current Australian content requirement in the legislation as interpreted in the Efic guidelines is modest and should be retained. Its removal would provide an incentive for off shoring and place firms providing employment in Australia at a disadvantage.

DFAT submission unclear about the removal of Australian content requirement

The title of the Bill refers only to the amendment on support for Commonwealth entities.

The DFAT submission also focuses on this and lacks clarity about the justification for the removal of the Australian content requirement. It does not clearly say that the proposed change would remove requirements for Australian content. Instead it focuses on an assumed need for making the definition of the requirements for loans consistent with the requirements for guarantees, without any specific justification for this (DFAT 2017: 3).

It may be in fact reasonable to have stronger requirements for loans, which are a larger commitment than guarantees. However if there is a reason why the two definitions and requirements should be consistent, we believe the requirement for Australian content should be in both criteria, rather than be eliminated.

Conclusion

AFTINET believes that it is reasonable for firms which are receiving support from Efic to meet the requirements for Australian content to be eligible for maximum Efic support. The removal of local content requirements from the legislation would enable firms based in Australia but providing no local employment to have access to Efic support. It would provide no incentive for firms to continue to conduct operations in Australia and provide

local employment. For these reasons we oppose those sections of the bill which would remove Australian content requirements from the legislation.

References

Commonwealth of Australia (1991) *Export Finance and Insurance Corporation Act 1991*, found January 13, 2017 at <https://www.legislation.gov.au/Details/C2014C00532>

Department of Foreign Affairs and Trade (2017) *Submission to the Inquiry into the Export Finance and Insurance Corporation Amendment (Support for Commonwealth Entities) Bill 2016* found January 13, 2017 at

http://www.apf.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/EFICBill2016/Submissions

Export Finance and Insurance Corporation (2017) *Small to medium size enterprise business Australian content guidelines*, found January 13, 2017 at

<https://www.efic.gov.au/business-solutions/small-to-medium-sized-business/australian-content-guidelines/>

National Institute of Economic and Industry Research (2012) *Off-shore and off work: The future of Australia's service industries in a global economy (2012 update report)* found January 13, 2017 at <http://trove.nla.gov.au/work/174416618?q&versionId=190062827>