

ANNEX 2. TIED AID DISCIPLINES AND UNTYING RECOMMENDATION

2.1 DAC Guiding Principles for Associated Financing and Tied and Partially Untied Official Development Assistance (1987)

(See the 1987 DAC Chair Report on Development Co-operation)

I. Preamble

1. Recognising the need to avoid the risk of distortion of aid and trade, DAC Members undertake to ensure that Associated Financing and Tied and Partially Untied Official Development Assistance will promote priority developmental objectives and are consistent with fair trade competition and to this end adopt the Guiding Principles set out below. Most of these principles constitute good practice for Official Development Assistance generally but they are particularly important where there may be a risk of aid and trade distortion.

II. Definitions

2. *Official Development Assistance* (ODA) is defined as those resources to developing countries (and multilateral institutions) provided by official agencies, including state and local governments, or by their executive agencies, each transaction of which meets the following tests:

- It is administered with the promotion of the economic development and welfare of developing countries as its main objective, and
- It is concessional in character and contains a grant element of at least 25 per cent. To calculate the grant element of an ODA transaction, a 10 per cent discount rate is used.

3. *Associated Financing* with developing countries associates in law or in fact two or more of the following:

- Official Development Assistance;
- Other Official Flows with a grant element of at least 25 per cent;
- Officially supported export credits, other official flows or other funds with a grant element of less than 25 per cent.

4. Associated Financing transactions may take various forms -- such as “mixed credit”, “mixed financing”, “joint financing”, “parallel financing” or single integrated transactions. Their main characteristic is that the concessional component is linked in law or in fact to the non-concessional component, that either the non-concessional or the concessional component or the whole financing package is in effect tied or partially untied and that the availability of concessional funds is conditional upon accepting the linked non-concessional component. In determining association or linkage “in fact” due consideration should be given to the existence of informal understandings between the recipient and the donor authority and the intention by the donor through the use of ODA to facilitate the acceptability of a financing package.

5. *Untied Official Development Assistance* is defined as loans or grants which are freely and fully available to finance procurement from substantially all developing countries and from OECD countries. Funds provided to finance the recipient's local costs are also defined as untied. *Partially Untied Official Development Assistance* is defined as loans or grants which are in effect tied to procurement of goods and services from the donor country and from a restricted number of countries which must include substantially all developing countries. For the purposes of these Guiding Principles *Tied Official Development Assistance* is defined as loans or grants which are either in effect tied to procurement of goods and services from the donor country or which are subject to procurement modalities implying limited geographic procurement eligibility other than those described above under Partially Untied.

6. A transaction is defined to be *in effect* tied or partially untied if:

- It is the subject of a formal or informal understanding to that effect between the recipient and the donor country, or
- It involves practices which the Development Assistance Committee and the Participants in the Arrangement on Guidelines for Officially Supported Export Credits may determine to result in such tying or partial untying. In cases of substantial doubt as to whether a certain financing practice falls within the scope of the above definition, the donor country shall furnish evidence in support of any claim that such a practice is untied or partially untied.

7. For a transaction to qualify as untied or partially untied, respectively, the donor has to inform the recipient, at the time of the aid offer, clearly and explicitly of the countries which are eligible for procurement. In accordance with the Memorandum of Understanding on Untying of Bilateral Development Loans in Favour of Procurement in Developing Countries, Members wishing to extend Partially Untied Official Development Assistance will notify the Chairman of the DAC, and through him other DAC Members, of those developing countries which are eligible for procurement.

III. Guiding Principles¹

8. Members confirm that Associated Financing and Tied and Partially Untied Official Development Assistance should be the subject of greatest possible transparency.

9. Members will continue the mutual ex post examination of individual Associated Financing and Tied and Partially Untied Official Development Assistance transactions.

¹ As regards Associated Financing, paragraphs 9 to 17 apply to transactions containing an element of Official Development Assistance.

10. Members will refrain from extending commitments of Associated Financing and Tied and Partially Untied ODA transactions which do not comply with the rules of the Arrangement on Guidelines for Officially-Supported Export Credits set out in the Appendix.^{2 3}

11. Members undertake to confine Associated Financing and Tied and Partially Untied Official Development Assistance to priority projects and programmes which are carefully appraised against developmental standards.

12. In implementation of these principles, Members undertake:

- To establish and make available, during 1987 and subsequently as required, to other DAC Members and the OECD Secretariat the criteria for the selection and design of projects and programmes financed by a) Associated Financing, b) Tied or Partially Untied ODA with a grant element of less than 50 per cent, and c) where different from b) above, Tied or Partially Untied ODA with a grant element of 50 per cent or more, including the exceptional conditions under which ODA is being used for “matching”;
- To conduct thorough ex post evaluations of representative selections of projects and programmes financed by Associated Financing and Tied and Partially Untied ODA, including the effects of tying on development effectiveness, and to make the results of the evaluations available for the regular DAC Associated Financing Reviews;
- In response to a request by Members of the Working Party on Financial Aspects of Development Assistance, to prepare thorough reports on individual projects and programmes financed by Associated Financing or Tied or Partially Untied ODA to determine possible aid or trade distortion. These reports shall be prepared in accordance with criteria established by the Working Party which shall include project selection and appraisal procedures. Such reports shall be prepared promptly after the request has been received and be made available for the regular DAC Associated Financing Reviews;
- A summary of the reports shall be submitted to the next DAC High-Level Meeting following the DAC Associated Financing Review at which they were considered.

13. The following considerations are important in examining the developmental priority of all projects and programmes financed with ODA. Members undertake to pay particular attention, when examining the developmental priority of a project or programme to be financed with Associated Financing or Tied and Partially Untied Official Development Assistance with a grant element of less than 50 per cent to these considerations:

- It is part of investment and public expenditure programmes already approved by the central financial and planning authorities of the recipient country;

² The Arrangement rules concerning the minimum permissible concessionality level and its calculation affect neither the ODA definition nor the reporting of ODA disbursements and commitments: the threshold for ODA eligibility remains a grant element of 25 per cent, calculated with a discount rate of 10 per cent, and the grant element of ODA commitments continues to be calculated using a 10 per cent discount rate.

³ Associated Financing transactions whose Official Development Assistance component consists solely of technical co-operation are exempted from this rule, provided that the technical co-operation component remains below 3 per cent of the total value of the Associated Financing transaction or below \$1 million, whatever is lower.

- It has been the subject of review and general endorsement in such international aid co-ordination arrangements as may exist;
- It is being co-financed with an international development finance institution;
- Particular care will be applied in the examination of projects where evidence exists that they had been considered and rejected by an international development finance institution or another DAC Member on grounds of low developmental priority.

14. In conformity with the DAC Recommendation on Terms and Conditions of Aid, which stipulates that Members should relate the terms of aid on a case-by-case basis to the circumstances of each developing country or group of countries, Members undertake to tailor also the terms of Associated Financing to the economic situation, stage of development and debt servicing capacity of the recipient country.

15. In line with this general principle, to the extent that Associated Financing or Tied or Partially Untied ODA is provided to Least Developed Countries (as defined by the United Nations), Members will ensure that the transaction takes place on favourable terms. Members undertake to restrain the use of Tied and Partially Untied ODA and of ODA for Associated Financing in case of stronger developing countries, both as a proportion of the total ODA programme and, subject to paragraph 10, for individual transactions, apart from technical co-operation.

16. Members reconfirm the importance of the “Good Procurement Practices for Official Development Assistance” approved by the DAC and the undertakings contained therein.

17. In order to ensure full transparency in the proposed use of Associated Financing and Tied and Partially Untied Official Development Assistance, especially prior to contract decisions, Members will use the system of contact points in their administrations actively and respond fully and promptly to requests for information by other Members on aid offers for particular projects.

IV. Statistical Reporting Requirements

18. Members reaffirm their commitments to comply fully and promptly with the standard requirements of the Creditor Reporting System which includes Associated Financing and Tied and Partially Untied Official Development Assistance. In particular, Members will notify within two months of the signature date of the grant or loan agreement (specifying amounts, financial terms, tying status and purpose):

- Individual ODA grants and loans, specifying those used for Associated Financing;
- Individual OOF (“Other Official Flows”) grants and loans, specifying those used in Associated Financing; and
- Individual officially supported export credits used in Associated Financing.

Under the Creditor Reporting System, reporting of technical co-operation grants is voluntary unless they are used in Associated Financing. Low value grants (less than \$10 000) may be grouped for individual recipients.

V. Review and Appraisal

19. Members agree to review periodically, through the DAC Working Party on Financial Aspects of Development Assistance, their policies and practices concerning Associated Financing and Tied and Partially Untied ODA against the Guiding Principles set out above. Members will provide information on policies and procedures as required for the review and will inform the DAC of any significant new policies adopted in this area. The Guiding Principles themselves will be the subject of review in the light of experience.

VI. Co-operation with the OECD Group on Export Credits and Credit Guarantees and with the Participants in the Export Credit Arrangement

20. The DAC Working Party on Financial Aspects of Development Assistance will follow closely relevant work of the Group on Export Credits and Credit Guarantees of the Trade Committee and the Participants in the Arrangement on Guidelines for Officially Supported Export Credits and co-operate with these Groups as required.

Appendix

First Stage

- a) The minimum concessionality level for tied and partially untied aid credits to Least Developed Countries will be increased to 50 per cent.

The minimum concessionality level for tied and partially untied aid credits to all other developing countries will be increased to 30 per cent.

- b) The discount rate for calculating the concessionality level will be related to the commercial interest reference rates (CIRR) for each currency and will be calculated as follows:

$$\text{CIRR} + 1/2 (10 - \text{CIRR})$$

- c) These measures will enter into force on 15th July 1987.

Second stage

- a) The minimum concessionality level for tied and partially untied aid credits will be increased to 35 per cent for developing countries other than Least Developed Countries.

- b) The discount rate for calculating the concessionality level will be calculated as follows:

$$\text{CIRR} + 1/4 (10 - \text{CIRR})$$

- c) The interest rate subsidies for importing countries in Category I of the matrix will be abolished. The matrix interest rates for importing countries in Categories II and III will be increased by 30 basis points.

- d) These measures will enter into force on 15th July 1988.

2.2 New Measures in the Field of Tied Aid (1992)

(See the Development Assistance Manual: DAC Principles for Effective Aid)

OECD Members are agreed on the following general principles

1. Policies for export credit and aid credit should be complementary: those for export credits should be based on open competition and the free play of market forces and those for tied aid credits should provide needed external resources to countries, sectors or projects with little or no access to market financing, ensure best value for money and minimise trade distortion and contribute to developmentally effective use of these resources.

Member countries of the Development Assistance Committee

- reaffirming the DAC Revised Guiding Principles for Associated Financing and Tied and Partially Untied Official Development Assistance of 1987 as well as the DAC Principles for Project Appraisal of 1988;
- acknowledging the valuable role of untied aid for the development of recipient countries' economies and societies as well as for minimising trade distortions and thus encouraging each other to provide aid in this form wherever possible;
- recognising the importance of managing tied aid in a way that ensures obtaining best value for money and minimising trade distortion;
- emphasising the advantages of international competitive bidding for obtaining best value for money and minimising trade distortion;

Undertake to implement the following new measures:

I. Large projects

2. In respect of large projects with a value of more than SDR 50 million, financed by tied aid⁴ credits, with the exception of credits which according to the rules and definitions of the Arrangement on Guidelines for Officially Supported Export Credits have a concessionality level⁵ of 80 per cent or above, and consistent with the rules of the Arrangement on mandatory consultations in case of projects larger than SDR 50 million, the DAC agreed to the following:

⁴ Tied aid includes associated financing, tied ODA and partially untied ODA. For the purpose of this provision, technical co-operation, humanitarian and disaster relief action are excluded from tied aid. Untied ODA is defined as loans and grants which are freely and fully available to finance procurement from substantially all developing countries and from OECD countries. For transactions to qualify as untied or partially untied, respectively, the donor has to inform the recipient at the time of the aid offer, clearly and explicitly, of the countries which are eligible for procurement.

⁵ The Arrangement rules and definitions concerning the calculation of the concessionality level are used at the stage of notification of tied aid transactions. They do not affect the DAC ODA definition nor the reporting of ODA disbursements and commitments.

Mutual appraisal

3. The principles for mutual appraisal set out below constitute good practice for all large projects but they are particularly important for tied aid credits where there may be a risk of aid and trade distortion.
4. DAC Member countries recognise the value of the participation by the World Bank Group in the preparation and financing of large projects.
5. Where the World Bank Group does not participate, interested donors will seek to agree to co-ordinate with the World Bank, also using where appropriate contacts at local level, to ensure that the project is consistent with the objectives of the dialogue between it and the recipient government concerning policies and resource allocation in the sector concerned.
6. They also agree to co-ordinate with the recipient country and each other on project preparation and appraisal work, including a joint review of the project prior to finally committing aid funds, in keeping with the DAC Principles for Project Appraisal and the Checklist for Developmental Quality of Aid-Financed Projects which is based on these Principles (the Checklist is produced in the publication "Development Assistance Manual: DAC Principles for Effective Aid", paragraphs 444 to 452).
7. DAC Member countries will develop procedures which will facilitate such collaboration, including at the field level, among themselves and between them, the World Bank Group and the recipient country. These procedures should ensure also co-ordination with financing from untied sources.

Appropriate financing terms

8. Interested donors will consult, together with the recipient authorities, with a view to agreeing appropriate financing terms for a large project consistent with the economic situation of the recipient country concerned. However, donors would not be expected to harden the terms at which they normally extend assistance to the country concerned.

International competitive bidding

9. Offers of aid for large projects should be subject to the recipient authorities undertaking arrangements for international competitive bidding (ICB) in accordance with internationally accepted practice.⁶
10. Contracts financed by tied aid credits should be awarded to the lowest evaluated bidder, concerning both price and technical factors, before taking into account the financing terms. However, it is recognised that seriously resource-constrained poor countries, in awarding a contract, may need to take into account the availability of financial resources at concessional terms, provided the award goes to a supplier which ranked second or third in bid evaluation for price and quality or where the price margin is reasonable.

⁶ DAC Members agreed Good Procurement Practices for Official Development Assistance in 1986, which include "Minimum Conditions for Effective International Competitive Bidding", and possible exceptions from ICB.

II. Limitations on use of tied aid credits

11. DAC Member countries recognise the importance for development of the productive sectors and economic infrastructure and of appropriate market oriented pricing policies. However, for projects in these areas market financing is often appropriate and available, especially in stronger developing countries. Official development assistance is therefore preferably used for other areas.

12. For these reasons, and consistent with the rules of the Arrangement, DAC Member countries will limit the extension of tied aid credits as follows, with the exception of credits with a value of less than SDR 2 million or which according to Arrangement rules and definitions have a concessionality level of 80 per cent or above or unless otherwise agreed under the provisions of the Arrangement.

- a) Tied aid credits, except for credits to Least Developed Countries, shall not be extended to public and private projects that normally should be commercially viable if financed on market or Arrangement terms.

The key tests for such aid eligibility are:

- is the project financially non-viable, i.e. does it lack capacity with appropriate pricing determined on market principles, to generate cash flow sufficient to cover the project's operating costs and to service the capital employed; or
- is it reasonable to conclude, based on communications with other participants, that it is unlikely that the project can be financed on market or Arrangement terms?

The above tests are intended to describe how a project should be evaluated to test whether it should be financed with such aid or with export credits. Through the consultation process, a body of experience is expected to develop over time that will more precisely define, for both export credit and aid agencies, ex ante guidance as to the line between the two categories of projects.

- b) There shall be no tied aid credits to countries whose per capita GNP would make them ineligible for 17 or 20 year loans from the World Bank.⁷ If such credits which according to Arrangement rules and definitions have a concessionality level of 80 per cent or above are extended to these countries, they might be used mainly for exceptional balance-of-payments support and for financing of projects in such areas as the social field, environment, good governance and emergency aid.

13. The DAC recognises the importance of all the provisions in the Arrangement; in case of consultations, DAC Member countries will co-operate with Participants.

⁷ Currently GNP/capita over \$2 465 in 1990. A country will only be moved to, or from, this income category after its World Bank income category has remained unchanged for two consecutive years. The list of countries in this category is subject to automatic, annual revision. Notwithstanding classifications of countries ineligible or eligible to receive tied aid, tied aid policy for Bulgaria, CSFR, Hungary, Poland and Romania is covered by the Participants' agreement, as long as such agreement is in force, to try to avoid such credits other than outright grants, food aid and humanitarian aid. The OECD Ministers endorsed this policy in June 1991.

III. Further work

14. Member countries agree to pursue work in the following areas:

- a) monitor Member countries' compliance with the new measures above, as well as with the DAC Guiding Principles for Associated Financing and Tied and Partially Untied ODA;
- b) work on a more precise definition on tied ODA and monitor Member countries' practices in the use of tied ODA;
- c) work on a more precise definition of untied and partially untied ODA and monitor Member countries' practices, including procurement results, and work further towards greater use of untied ODA;
- d) harmonise and improve further definitions and procedures contained in the Good Procurement Practices for Official Development Assistance;
- e) monitor Member countries' ODA terms performance, with particular emphasis on terms for tied aid, including associated financing;
- f) the DAC will take stock of progress made in the above areas by the end of 1993.

2.3. DAC Recommendation on Untying Official Development Assistance to the Least Developed Countries (2001)

(See DCD/DAC(2001)12/FINAL)

I. Objectives and Principles

1. Members of the OECD's Development Assistance Committee (DAC) agree to the objective of untying their bilateral official development assistance (ODA) to the Least Developed Countries as a means to:

- foster co-ordinated, efficient and effective partnerships with developing countries;
- strengthen the ownership and responsibility of partner countries in the development process;
- demonstrate responsiveness to the requests from partner countries and others to increase the use of untied aid in order to promote aid effectiveness; and
- contribute to broader efforts with partner countries to promote their integration into the global economy

2. This Recommendation reflects the results of discussions in the DAC to respond to the Mandate provided at its 1998 High Level Meeting (see Appendix III) and the shared intentions of DAC Members to:

- untie their ODA to the Least Developed Countries to the greatest extent possible;

- promote and sustain adequate flows of ODA in terms of quality, volume and direction, in particular to the Least Developed Countries, and ensure that ODA to the Least Developed Countries will not decline over time as a result of the implementation of this Recommendation;
- achieve balanced efforts among DAC Members.

3. This initiative is targeted on the Least Developed Countries because of their relative dependence on aid and their relatively greater need for accelerated progress towards the International Development Goals, as set out in the report “Shaping the 21st Century: the Contribution of Development Co-operation”. This initiative aims to capture, for these countries, the benefits of open procurement markets.

4. In promoting the above objectives, DAC Members consider that reinforcing partner country responsibility for procurement, with appropriate guarantees for effectiveness, accountability, probity and transparency, is intrinsic to this initiative. Similarly, promoting local and regional procurement in partner countries is a shared goal. DAC Members will work with partner countries to identify needs and to support efforts in both areas.

5. This Recommendation does not restrict the prerogative of DAC Members to untie ODA to a greater extent than set out herein. DAC Members are invited to continue to provide untied ODA in areas not covered by the Recommendation when they already do so, and to study the possibilities of extending untied aid in such areas. Neither does this Recommendation pre-empt positions that DAC Members may take in discussions on related issues in other fora.

6. Promoting effort-sharing among Members is an integral part of this Recommendation. Variations in the structures and geographical orientations of Members’ aid programmes, together with the coverage provisions of this Recommendation, can result in sizeable differences in the extent to which their ODA to the Least Developed Countries is presently untied, and in respect of their aid performance in the Least Developed Countries more generally.

II. Implementation

a) Coverage

7. Untying is a complex process. Different approaches are required for different categories of ODA, and actions by Members to implement the Recommendation will vary in coverage and timing. Bearing this in mind, DAC Members will untie their ODA to the Least Developed Countries to the greatest extent possible and in accordance with the criteria and procedures set out in this Recommendation:

- i) DAC Members agree to untie, by 1 January 2002, ODA to the Least Developed Countries in the following areas: balance of payments and structural adjustment support; debt forgiveness; sector and multi-sector programme assistance; investment project aid; import and commodity support; commercial services contracts, and ODA to Non-Governmental Organisations for procurement related activities.
- ii) In respect of investment-related technical co-operation and free standing technical co-operation, it is recognised that DAC Members’ policies may be guided by the importance of maintaining a basic sense of national involvement in donor countries alongside the objective of calling upon partner countries’ expertise, bearing in mind the objectives and principles of this Recommendation. Free-standing technical co-operation is excluded from the coverage of the Recommendation.

iii) In respect of food aid, it is recognised that DAC Members' policies may be guided by the discussions and agreements in other international fora governing the provision of food aid, bearing in mind the objectives and principles of this Recommendation

8. This Recommendation does not apply to activities with a value of less than SDR 700,000 (SDR 130,000 in the case of investment-related technical co-operation).

b) Effort-Sharing

9. Promoting a more balanced effort-sharing among Members is a necessary process. Pursuant to paragraphs 2, 5, and 6 of this Recommendation, Members agree to undertake their best endeavours to identify and implement supplementary effort-sharing actions in accordance with the mechanism set out below.

Mechanism

10. To this end, Members should apply the following reference indicators matrix and procedures:

- Reference indicators matrix

11. The situations of Members and their evolution over time with respect to initial positions and reference points will be set out in a reference indicators matrix (see Appendix I). The elements of this matrix will be used in conjunction with Member performance profiles (see below) to monitor and assess the progress made by DAC Members towards more balanced effort-sharing.

- Member performance profiles

12. Members will prepare annual country profiles setting out their positions in respect of the reference indicators matrix and, on that basis, identify initial and medium term supplementary actions to promote effort-sharing. Peer review of these profiles by the DAC will be used to help Members identify and undertake supplementary actions in furtherance of a more balanced effort-sharing in respect of the reference indicators matrix.

13. The implementation of this part of the Recommendation will be assessed as part of the annual reports covering all aspects of this Recommendation. These reports will be considered by the DAC High Level Meeting, which may recommend further actions, as well as in the peer reviews of individual Member's development co-operation policies. An overall review of the effort-sharing mechanism and procedures will be conducted in 2009. On the basis of the DAC's assessment of the progress of Members towards a more balanced effort-sharing, this part of the Recommendation will be open to review with the objective of improving Members' performance towards a more balanced effort-sharing.

c) Procurement regime

14. The procurement of goods and services covered by this Recommendation should follow the DAC's Good Procurement Practices.

15. In conducting procurement of aid-supported goods and services, and in partnership with developing countries, DAC Members should apply relevant commitments and guidance such as:

- The 1996 DAC Recommendation on Anti-Corruption Proposals for Aid-Funded Procurement;
- The 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

d) Transparency

16. For untied aid offers covered by this Recommendation, DAC Members should, and in collaboration with developing country partners as appropriate, provide or ensure *ex ante* notification.

17. DAC Members should respond promptly and fully to requests by other Members for further information on, or clarification concerning untied aid offers covered by this Recommendation.

18. DAC Members should ensure that the DAC will be provided with information on contract awards pertaining to the untied aid offers covered by this Recommendation.

e) Derogation

19. For individual aid offers, DAC Members may, in exceptional circumstances, take measures inconsistent with the terms of this Recommendation, in situations where they believe it to be justified on the basis of overriding, non-trade related, development interests. Derogations are to be justified in a letter to the Secretary-General of the OECD and to the DAC Chair and will be followed up in review procedures.

f) Monitoring and evaluation

20. The DAC will monitor all aspects of this Recommendation through a combination of different mechanisms:

- Annual reports covering all aspects of the Recommendation, as well as the experience in delivering its objectives. These reports, which will be reviewed by the DAC in time for its annual High Level Meeting, will, inter alia:
 - assess the impact of the Recommendation on the volume, quality and directions of ODA flows;
 - set out Members' policies in respect of investment-related technical co-operation and food aid;
 - review the implementation of this Recommendation with respect to promoting effort-sharing among Members in accordance with the mechanism set out in section IIb above;
 - review DAC Members' procurement practices and patterns for untied aid offers;
 - assess progress towards strengthening partner countries' local procurement capacities and improving the access of partner countries' enterprises to aid funded procurement;
 - address, in addition to the provisions for bilateral consultations set out above, specific concerns that may be raised by individual DAC Members in respect of the Recommendation.

- The annual reports will also provide input for the peer reviews of individual DAC Member's development co-operation programmes.
- A comprehensive evaluation of its implementation and impact will be carried out by the High Level Meeting in 2009. This evaluation will also pay particular attention to the implementation of this Recommendation with respect to achieving a balance of efforts among DAC Members and promoting and sustaining ODA flows to the Least Developed Countries.

21. DAC Members will work with stakeholders, particularly developing country partners, to ensure the Recommendation delivers its objectives.

Appendix I

Operational procedures and understandings

22. This Annex forms an integral part of the Recommendation on untying ODA to the Least Developed Countries. It details, where necessary, provisions concerning operational procedures and understandings related to the coverage and implementation of this Recommendation.

I. Definitions and coverage

23. Untied ODA refers to loans or grants which are freely and fully available to finance procurement from substantially all aid recipient countries and from OECD countries. Members which have rules of origin, or minimum national content rules, should take any steps necessary to ensure that ODA untied in accordance with this Recommendation is both *de jure* and *de facto* untied.

24. This Recommendation applies to DAC Members' bilateral ODA to the Least Developed Countries. The list of Least Developed Countries (as may be periodically modified by the United Nations) is set out in Appendix II.

25. Definitions of the ODA categories addressed in this Recommendation are as set out in the DAC's Statistical Reporting Directives [DCD/DAC(2000)10]. Further work will be undertaken as a matter of priority to operationalise the definitions of investment-related technical co-operation (including its component activities) and food aid to ensure an effective implementation of the Recommendation.

Commercial services contracts

26. For the purposes of this Recommendation, commercial services contracts are defined as contracts let on a commercial basis to a company for the running or management of a utility or distribution network.

ODA provided for NGOs

27. ODA provided for NGO activities is covered by this Recommendation only to the extent that NGOs are involved in procurement-related activities included in its coverage. Grants for the core support of development NGOs or their programmes are excluded.

Management services arrangements

28. Management services arrangements (i.e. "technical co-operation" provided by donors primarily for the purpose of carrying out the administration of their own aid projects and programmes) are excluded from the coverage of this Recommendation.

II. Transparency

29. DAC Members recognise that efforts to promote partner country responsibility for procurement are intrinsic to this untying initiative. In situations where partner countries have responsibility for conducting procurement, some of the information requirements set out below may be available in the first instance from partner countries or their procurement agents. Members should report in a timely manner the information required by the following provisions, or should work effectively with partner countries to do so.

i) Ex ante notification

30. Untied aid offers covered by this Recommendation are to be notified *ex ante*. These notifications should include the following information:

- Notifying Member, agency and contact point;
- Recipient country;
- Project description;
- Sector/activity and DAC purpose code;
- Project value (in donor currency and SDR);
- Bidding period (start and closing dates);
- Procurement regime (if not International Competitive Bidding, state regime and justification);
- Details of agency responsible for procurement and from which further information or details (e.g. bidding periods, procurement regime, bidding documentation) can be requested,

and all other information that the Member deems appropriate.

31. Notifications should be made to the Secretariat not less than 30 calendar days prior to the opening of the bidding period.

32. Bidding periods should ensure sufficient time to all suppliers to prepare and submit bids, while taking account of the circumstances of the procurement agent. Bearing this in mind, bidding periods should normally be not less than 45 calendar days, except for large projects (with a value of, or exceeding, SDR 50 million), where bidding periods should normally be not less than 90 calendar days.

33. Notifications should be made available to DAC Members and to potential suppliers through the DAC's Internet bulletin board. DAC Members may also, in addition, wish to use their own facilities to publicise the aid offers contained in notifications.

ii) Exchange of information procedures

34. DAC Members which have received an enquiry from another Member concerning individual untied aid offers covered by this Recommendation should respond promptly (i.e. within 14 calendar days) and fully, providing all information relevant to the request, including information concerning donor financing of services related to the design and implementation of the notified project. Such enquiries and responses should use electronic means of communication. The DAC Members concerned should, together, take all possible steps to clarify or resolve issues arising.

35. Where that latter is not possible, a DAC Member may, if it so wishes, broaden the initial bilateral exchange of information to other DAC Members, in order to solicit views on issues pertaining to the implementation of the Recommendation.

36. The periodic reviews of the implementation of the Recommendation will also address experience with these procedures.

iii) *Information on contract awards*

37. DAC Members should provide the Secretariat with information on contract awards pertaining to individual *ex ante* notifications. This information should include the name, address and country of incorporation of the firm awarded the contract (or the prime contractor, where a syndicate of firms is concerned). The above information should be provided on an annual basis and be reviewed in the context of the overall review procedures.

III. Reference Indicators Matrix

	Members' positions ⁸	Reference point	Index ⁹
I. Bilateral LDC ODA untying ratio		0.60	
II. Effort-sharing composite indicator ¹⁰		0.04	

8. 5 year average.

9. Members' positions as ratios of reference points.

10. Calculated according to standing DAC practices, pending future work on the definition of multilateral ODA and its tying status, as follows: (bilateral LDC ODA/GNP times bilateral LDC untying ratio) + multilateral LDC ODA/GNP. The presentation of the composite indicator, and the reference indicators matrix more generally, will set out in full their component elements.

Appendix II

Least Developed Countries (as at 1 May 2001)

Afghanistan	Liberia
Angola	Madagascar
Bangladesh	Malawi
Benin	Maldives
Bhutan	Mali
Burkina Faso	Mauritania
Burundi	Mozambique
Cambodia	Myanmar
Cape Verde	Nepal
Central African Republic	Niger
Chad	Rwanda
Comoros	Samoa
Congo, Dem.Rep.	Sao Tome and Principe
Djibouti	Senegal
Equatorial Guinea	Sierra Leone
Eritrea	Solomon Islands
Ethiopia	Somalia
Gambia	Sudan
Guinea	Tanzania
Guinea-Bissau	Togo
Haiti	Tuvalu
Kiribati	Uganda
Laos	Vanuatu
Lesotho	Yemen
	Zambia

Appendix III

Aid procurement liberalisation: 1998 DAC HLM mandate

38. HLM participants mandate the Working Party on Financial Aspects to work on a Recommendation on untying ODA to the Least Developed Countries (LDCs), including the relevant implementation issues, with a view to presenting a proposed text to the HLM in 1999. A status report should be presented to the Senior Level meeting (SLM) of the DAC in December 1998.

39. Participants recognised that in order to arrive at an agreed text, the following issues, in particular, will have to be satisfactorily addressed:

- The need for effective donor co-ordination and partnerships with developing countries that reflect responsiveness, efficiency and effectiveness of development co-operation.
- Assessment of potential effects on the quality, volume and direction of ODA flows.
- Helping develop the capacities of the private sector and procurement systems in partner countries.
- The importance of maintaining a basic sense of national involvement in donor countries (especially in certain forms of technical co-operation) alongside the objective of calling upon partner countries' expertise.
- The need to take into account differences in the structures and starting points of Members' programmes with respect to volume, ODA/GNP ratio, distribution and existing untying of aid.
- Initiatives to enlist the understanding and involvement of the business community in Member countries and promote wide public information and support.
- The impact of further procurement liberalisation on regional arrangements such as the Lomé Convention.
- Thorough examination of the modalities involved in the untying initiative, including:
 - ⇒ appropriate procurement modalities (including safeguards against corruption);
 - ⇒ manageable thresholds, coverage and exclusions (including with respect to technical co-operation and promotion of procurement from local and regional sources in developing partner countries);
 - ⇒ definitions and reporting arrangements on the tying status of ODA
 - ⇒ mechanisms for confidence building and transparency, including provision of relevant statistical information;
 - ⇒ monitoring and peer review.