

**Concerns about the AIIB Exclusion List**

**and**

**a Comparison with the ADB Prohibited Investment List, IFC Project Exclusion List, and Investments Prohibited under World Bank Safeguards.**

**Stephanie Fried, Ph.D.**

**Ulu Foundaion**

**Stephanie@ulufoundation.org**

**October 23, 2015**

“Exclusion lists” provide a measure of risk reduction for banks. Given the AIIB’s pledge to develop robust environmental and social safeguards of international caliber, presumably at least as strong – if not markedly stronger -- than those of other multilateral financial institutions, this analysis presents a brief comparison of the AIIB’s proposed exclusion list with current investment prohibitions at the Asian Development Bank, the World Bank, and the International Finance Corporation.

Unfortunately, the comparison shows that the AIIB’s draft Exclusion List appears significantly weaker than those of other multilateral development banks, including regarding the finance of nuclear power, forest protection, forced labor and child labor. Below are citations from the ADB, IFC and World Bank policies, and a comparison with the exclusion list proposed by the AIIB.

It would be important for the AIIB to take a leadership role and develop an exclusion list that provides substantially more robust protections than those of other multilateral development banks.

In addition to developing safeguards more highly protective than at other institutions, it is also of vital importance to ensure that the proposed AIIB safeguards are no weaker than those of other multilateral development banks and to ensure upward harmonization with the strongest multilateral development bank exclusion lists and provisions instead of promoting weaker standards as per the current draft.

We note that due to insufficient time allocated to the current “consultation” process, and the fact that the consultations have been held solely in English and solely by videoconference, making input from communities and civil society most likely to be impacted by AIIB Operations difficult, these comments are draft comments subject to further reflection and revision.

We join the widespread call of civil society to ensure a robust, transparent and meaningful consultation process – focused on face-to-face meetings with potentially affected communities and civil society in proposed client countries (as well as donor countries) with documents and meetings provided in local languages sufficiently in advance of any consultation.

**Analysis of AIIB Exclusion List**

In sharp contrast to the other MDBs, the AIIB Exclusion List makes no prohibition on support for:

\* “production of or trade in **radioactive materials, including nuclear reactors** and components thereof;”

\* “production or activities involving harmful or exploitative forms of **forced labor or child labor**” (NB: there is discussion of prohibition of certain types of labor in the body of the AIIB safeguards but this language is not found in the exclusion list.)

* In addition, IFC also prohibits support for Financial Intermediaries engaged in “Production or trade in wood or other forestry products other than from **sustainably managed forests**.” AIIB does not.
* IFC prohibits (apparently only for microfinance projects) “Production or activities that impinge on the **lands owned, or claimed under adjudication, by Indigenous Peoples, without full documented consent of such peoples.”**

The World Bank also prohibits:

OP 4.04 **conversion or degradation of “critical natural habitats**;”

OP 4.36 **significant conversion or degradation of critical forest area;**

**Clear and unambiguous prohibitions:**

ADB states clearly: “The following do not qualify for Asian Development Bank financing:”

IFC states clearly: “The IFC Exclusion List defines the types of projects that IFC does not finance.  IFC does not finance the following projects”.

WB has “excluded expenditures” and prohibitions.

On the other hand, AIIB states: “AIIB does not **knowingly** finance Operations involving the following.” This is a weaker formulation of exclusion than that of other multilateral banks.

ADB Exclusion List: “production of or trade in any product or activity deemed illegal under host country laws or regulations or international conventions and agreements or subject to international phaseouts or bans”, such as (a) pharmaceuticals,3 pesticides, and herbicides,4 (b) ozone-depleting substances,5 (c) polychlorinated biphenyls6 and other hazardous chemicals,7 (d) wildlife or wildlife products regulated under the Convention on International Trade in Endangered Species of Wild Fauna and Flora,8 and (e) transboundary trade in waste or waste products;9;

IFC: “IFC does not finance the following projects: Production or trade in any product or activity deemed illegal under host country laws or regulations or international conventions and agreements, or subject to international bans, such as pharmaceuticals, pesticides/herbicides, ozone depleting substances, PCBs, wildlife or products regulated under CITES.”

AIIB cites the above and then adds more specificity to flesh out the list of conventions and agreements which must be complied with.

“(ix) Activities prohibited by legislation of the country in which the Operation is located or by international conventions relating to the protection of biodiversity resources or cultural heritage (Bonn Convention, Ramsar, World Heritage Convention and Convention on Biological Diversity).x

 (xii) Shipment of oil or other hazardous substances in tankers that do not comply with IMO requirements (IMO, MARPOL, SOLAS and Paris MOU).xi”

While specificity is welcome, it is unclear that this acts to broaden the applicability of the AIIB Exclusion List compared to the IFC or ADB since those lists apply to all international conventions and agreements as well.

Below are texts of AIIB, ADB, IFC exclusion/prohibition lists and list of prohibitions found in current World Bank safeguards.

**Texts of AIIB, ADB, IFC, WB Exclusion / Prohibited Investment Lists / Prohibited Investments**

**Yellow highlighting of ADB, IFC, WB texts indicates prohibitions not found in AIIB Exclusion List.**

Appendix 1 to Environmental and Social Policy

**AIIB Environmental and Social Exclusion List**

1. AIIB does not knowingly finance Operations involving the following:

(i) The production of, or trade in, any product or activity deemed illegal under national laws or regulations of the country in which the Operation is located, or international conventions and agreements, or subject to international phase out or bans, such as:

• Production of or trade in products containing polychlorinated biphenyl (PCBs).i

• Production of or trade in pharmaceuticals, pesticides/herbicides and other hazardous substances subject to international phase-outs or bans (Rotterdam Convention, Stockholm Convention).ii

• Production of or trade in ozone depleting substances subject to international phase out (Montreal Protocol).iii

(ii) Trade in wildlife or production of or trade in wildlife products regulated under the Convention on International Trade in Endangered Species of Wild Fauna and Flora, CITES.iv

(iii) Transboundary movements of waste prohibited under international law (Basel Convention).v

(iv) Production of, or trade in, weapons and munitions, including paramilitary materials.

(v) Production of, or trade in, alcoholic beverages, excluding beer and wine.vi

(vi) Production of, or trade in, tobacco.vii

(vii) Gambling, casinos and equivalent enterprises.viii

(viii) Production of, trade in, or use of unbonded asbestos fibers.ix

(ix) Activities prohibited by legislation of the country in which the Operation is located or by international conventions relating to the protection of biodiversity resources or cultural heritage (Bonn Convention, Ramsar, World Heritage Convention and Convention on Biological Diversity).x

(x) Commercial logging operations or the purchase of logging equipment for use in primary tropical moist forests or old-growth forests.

(xi) Marine and coastal fishing practices, such as large-scale pelagic drift net fishing and fine mesh net fishing, harmful to vulnerable and protected species in large numbers and damaging to marine biodiversity and habitats.

(xii) Shipment of oil or other hazardous substances in tankers that do not comply with IMO requirements (IMO, MARPOL, SOLAS and Paris MOU).xi

*Consultation Draft Environmental and Social Framework*

20

i PCBs: Polychlorinated biphenyls are a group of highly toxic chemicals. PCBs are likely to be found in oil-filled electrical transformers, capacitors and switchgear dating from 1950 to 1985.

ii United Nations Consolidated List of Products whose Consumption and/or Sale have been Banned, Withdrawn, Severely Restricted or not Approved by Governments; Convention on the Prior Informed Consent Procedures for Certain Hazardous Chemicals and Pesticides in International Trade (Rotterdam Convention); Stockholm Convention on Persistent Organic Pollutants; World Health Organization Recommended Classification of Pesticides by Hazard. A list of pharmaceutical products subject to phase outs or bans is available at http://www.who.int. A list of pesticides, herbicides and other hazardous substances subject to phase outs or bans is available at http://www.pic.int.

iii Ozone Depleting Substances (ODSs): Chemical compounds which react with and deplete stratospheric ozone, resulting in the widely publicized “ozone holes.” The Montreal Protocol on Substances that Deplete the Ozone Layer lists ODSs and their target reduction and phase out dates. A list of the chemical compounds regulated by the Montreal Protocol, which includes aerosols, refrigerants, foam blowing agents, solvents and fire protection agents, together with details of signatory countries and phase out target dates, is available from the United Nations Environment Programme, http://www.unep.org/ozone/montreal.shtml.

iv The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). A list of CITES listed species is available from the CITES secretariat, http://www.cites.org.

v Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, see http://www.basel.int.

vi This does not apply to Clients (or other Operation implementing entities) who are not substantially involved in these activities. Not substantially involved means that the activity concerned is ancillary to the entity’s primary operations.

vii This does not apply to Clients (or other Operation implementing entities) who are not substantially involved in these activities. Not substantially involved means that the activity concerned is ancillary to the entity’s primary operations.

viii This does not apply to Clients (or other Operation implementing entities) who are not substantially involved in these activities. Not substantially involved means that the activity concerned is ancillary to the entity’s primary operations.

ix This does not apply to the purchase and use of bonded asbestos cement sheeting where the asbestos content is less than 20 percent.

x Convention on the Conservation of Migratory Species of Wild Animals (Bonn Convention) - http://www.cms.int/; Convention on Wetlands of International Importance, especially as Waterfowl Habitat (Ramsar Convention) - http://www.ramsar.org/; Convention Concerning the Protection of the World Cultural and Natural Heritage - http://whc.unesco.org/en/conventiontext/; Convention on Biological Diversity - https://www.cbd.int/.

xi Non-compliance with International Maritime Organisation (IMO) requirements: tankers that do not have all required International Convention for the Prevention of Pollution from Ships (MARPOL), International Convention for the Safety of Life at Sea (SOLAS) certificates (including, without limitation, International Safety Management Code compliance), tankers banned by the Paris Memorandum of Understanding on Port State Control (Paris MOU), and tankers due for phase out under MARPOL regulation 13G. No single hull tanker over 25 years old should be used. http://www.imo.org/About/Conventions/ListOfConventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-%28MARPOL%29.aspx.

**ADB PROHIBITED INVESTMENT ACTIVITIES LIST**

The following do not qualify for Asian Development Bank financing:

(i) production or activities involving harmful or exploitative forms of forced labor1 or

child labor;2

(ii) production of or trade in any product or activity deemed illegal under host country

laws or regulations or international conventions and agreements or subject to

international phaseouts or bans, such as (a) pharmaceuticals,3 pesticides, and

herbicides,4 (b) ozone-depleting substances,5 (c) polychlorinated biphenyls6 and

other hazardous chemicals,7 (d) wildlife or wildlife products regulated under the

Convention on International Trade in Endangered Species of Wild Fauna and

Flora,8 and (e) transboundary trade in waste or waste products;9

(iii) production of or trade in weapons and munitions, including paramilitary materials;

(iv) production of or trade in alcoholic beverages, excluding beer and wine;10

(v) production of or trade in tobacco;10

(vi) gambling, casinos, and equivalent enterprises;10

(vii) production of or trade in radioactive materials,11 including nuclear reactors and

components thereof;

(viii) production of, trade in, or use of unbonded asbestos fibers;12

(ix) commercial logging operations or the purchase of logging equipment for use in

primary tropical moist forests or old-growth forests; and

(x) marine and coastal fishing practices, such as large-scale pelagic drift net fishing

and fine mesh net fishing, harmful to vulnerable and protected species in large

numbers and damaging to marine biodiversity and habitats.

1 Forced labor means all work or services not voluntarily performed, that is, extracted from individuals under threat of

force or penalty.

2 Child labor means the employment of children whose age is below the host country’s statutory minimum age of

employment or employment of children in contravention of International Labor Organization Convention No. 138

“Minimum Age Convention” (www.ilo.org).

3 A list of pharmaceutical products subject to phaseouts or bans is available at http://www.who.int.

4 A list of pesticides and herbicides subject to phaseouts or bans is available at http://www.pic.int.

5 A list of the chemical compounds that react with and deplete stratospheric ozone resulting in the widely publicized

ozone holes is listed in the Montreal Protocol, together with target reduction and phaseout dates. Information is

available at http://www.unep.org/ozone/montreal.shtml.

6 A group of highly toxic chemicals, polychlorinated biphenyls are likely to be found in oil-filled electrical

transformers, capacitors, and switchgear dating from 1950 to 1985.

7 A list of hazardous chemicals is available at http://www.pic.int.

8 A list is available at http://www.cites.org.

9 As defined by the Basel Convention; see http://www.basel.int.

10 This does not apply to project sponsors who are not substantially involved in these activities. Not substantially

involved means that the activity concerned is ancillary to a project sponsor's primary operations.

11 This does not apply to the purchase of medical equipment, quality control (measurement) equipment, and any

equipment for which ADB considers the radioactive source to be trivial and adequately shielded.

12 This does not apply to the purchase and use of bonded asbestos cement sheeting where the asbestos content is

less than 20%.

**IFC Project Exclusion List**

The IFC Exclusion List defines the types of projects that IFC **does not** finance.  IFC does not finance the following projects:

* Production or trade in any product or activity deemed illegal under host country laws or regulations or international conventions and agreements, or subject to international bans, such as pharmaceuticals, pesticides/herbicides, ozone depleting substances, PCBs, wildlife or products regulated under CITES.
* Production or trade in weapons and munitions.1
* Production or trade in alcoholic beverages (excluding beer and wine).1
* Production or trade in tobacco.1
* Gambling, casinos and equivalent enterprises.1
* Production or trade in radioactive materials. This does not apply to the purchase of medical equipment, quality control (measurement) equipment and any equipment where IFC considers the radioactive source to be trivial and/or adequately shielded.
* Production or trade in unbonded asbestos fibers. This does not apply to purchase and use of bonded asbestos cement sheeting where the asbestos content is less than 20%.
* Drift net fishing in the marine environment using nets in excess of 2.5 km. in length.

A reasonableness test will be applied when the activities of the project company would have a significant development impact but circumstances of the country require adjustment to the Exclusion List.

**All financial intermediaries (FIs)**, except those engaged in activities specified below\*, must apply the following exclusions, in addition to IFC's Exclusion List:

* Production or activities involving harmful or exploitative forms of forced labor2/harmful child labor.3
* Commercial logging operations for use in primary tropical moist forest.
* Production or trade in wood or other forestry products other than from sustainably managed forests.

\* When investing in **microfinance** activities, FIs will apply the following items in addition to the IFC Exclusion List:

* Production or activities involving harmful or exploitative forms of forced labor2/harmful child labor.3
* Production, trade, storage, or transport of significant volumes of hazardous chemicals, or commercial scale usage of hazardous chemicals.Hazardous chemicals include gasoline, kerosene, and other petroleum products.
* Production or activities that impinge on the lands owned, or claimed under adjudication, by Indigenous Peoples, without full documented consent of such peoples.

\* **Trade finance projects**, given the nature of the transactions, FIs will apply the following items in addition to the IFC Exclusion List:

* Production or activities involving harmful or exploitative forms of forced labor2/harmful child labor.3

**Footnotes**

1 This does not apply to project sponsors who are not substantially involved in these activities. "Not substantially involved" means that the activity concerned is ancillary to a project sponsor's primary operations.

2 Forced labor means all work or service, not voluntarily performed, that is extracted from an individual under threat of force or penalty.

3 Harmful child labor means the employment of children that is economically exploitive, or is likely to be hazardous to, or to interfere with, the child's education, or to be harmful to the child's health, or physical, mental, spiritual, moral, or social development.

**World Bank Exclusions** (not a single list, but found throughout the OPs.) Citation from “*Comparative Review of MDB Safeguard Systems”, May 2015. World Bank,* [https://consultations.**worldbank**.org/](https://consultations.worldbank.org/)

**“World Bank.** No “Exclusion/Prohibition List” but OPs applicable to investment lending may prohibit the Bank from supporting and/or the borrower from undertaking projects that result in specified adverse environmental or social impacts when the OP is applied.[[1]](#footnote-1) World Bank has also relied on its Policy on Procurement as well as the “Multilateral Development Bank Harmonised Conditions of Contract for Construction for Building and Engineering Works Designed by the Employer” (June 2010)[[2]](#footnote-2) and its operational safeguard requirements to articulate and implement its categorical exclusions and prohibitions.

For example, Bank OP 8.60 Development Policy Lending (DPL) refers to “excluded expenditures,”[[3]](#footnote-3) but these exclusions apply only to borrower procurement under DPLs and not to Investment Lending. Bank OP 4.76 (1999) states that “[t]he Bank does not [with specified exceptions[[4]](#footnote-4)] lend directly for investment in, or guarantee investments or loans for tobacco production, processing or marketing….To the extent practicable, the Bank does not lend indirectly for tobacco production activities, although [such] support….may occur as an inseparable part of a project that has a broader set of objectives and outcomes (e.g., rural roads).”[[5]](#footnote-5)

 E.g., OP 4.01 prohibits projects that contravene the borrower country’s obligations under international agreements;

OP 4.04 contains a prohibition against conversion or degradation of “critical natural habitats;”

OP 4.36 prohibits significant conversion or degradation of critical forest area;

OP. 4.09 prohibits the use of specified categories of pesticides under certain circumstances;

OP 4.12 prohibits involuntary land acquisition absent specified pre-conditions;

and OP 4.11 prohibits certain activities adversely affecting physical cultural resources.

2<http://fidic.org/node/321>

3 Footnote 17 refers to “Excluded expenditures” consisting of “among others alcohol beverages, tobacco products, luxury items, military goods, radioactive and nuclear reactors, environmentally hazardous goods…”’

4 “Exceptions, which must be approved by the Vice President [Operations and Strategy, currently Operations Policy and Country Services], may be allowed for countries that are heavily dependent on tobacco as source of income (especially for poor farmers and farm workers) and foreign exchange earnings (i.e., …where tobacco accounts for more than ten percent of exports).”

5Per OP 4.76, the Bank’s prohibition of tobacco-related activity is justified on the basis of “Bank activities in the health sector [which] ….discourage the use of tobacco products.”

1. . [↑](#footnote-ref-1)
2. <http://fidic.org/node/321> [↑](#footnote-ref-2)
3. [↑](#footnote-ref-3)
4. [↑](#footnote-ref-4)
5. [↑](#footnote-ref-5)