



Business and Industry Advisory Committee to the **OECD**

Comité Consultatif Economique et Industriel Auprès de l' **OCDE**

Summary of Discussion Points

**Presented by James Rill and Calvin Goldman
of the Business and Industry Advisory Committee (BIAC) to the OECD
at the OECD Joint Global Forum on Trade and Competition
Voluntary Cooperation in Competition Law**

May 16, 2003

BIAC welcomes the opportunity to provide its views to the OECD Joint Global Forum on Trade and Competition with regard to modalities for voluntary cooperation as discussed in paragraph 25 of the WTO Doha Declaration.

As noted previously, BIAC supports the work of the WTO Working Group on the Interaction Between Trade and Competition to study the issues in the Doha Declaration, including modalities for voluntary cooperation. BIAC also recommended that the OECD continue its work on the relationship between trade and competition policy and commends the OECD on its successful Joint Global Forum here today. (*See* “BIAC Priorities for the WTO Doha Negotiations and Recommendations to the OECD,” Feb. 20, 2003.)

The business community supports the efforts of competition agencies to cooperate with one another as voluntary cooperation benefits not just the agencies themselves but also consumers and businesses. BIAC, jointly with ICC, has issued statements advocating the adoption of a legal framework for cooperation between competition agencies. The most notable of these statements are the “ICC/BIAC Comments on the Report of the US International Competition Policy Advisory Committee (ICPAC)” (June 5, 2000) and the “Recommended Framework for Best Practices in International Merger Control Procedures.” (Oct. 4, 2001) More recently, ICC provided recommendations to the WTO on the Doha Declaration, including the issue of voluntary cooperation. (*See*, “Competition Policy in the WTO: Doha Declaration Issues,” Doc. No. 225/580 Rev. 3, Apr. 9, 2003)

The views of the business community relating to voluntary cooperation, including the recommendations by ICC to the WTO directly, can be summarized as follows.

- Multi-jurisdictional antitrust enforcement should focus on cooperation and consultation between agencies through consistent contact and open dialogue. However, confidentiality protections should be in place to protect sensitive business information in the jurisdiction where the information is obtained as well as the jurisdiction to which information is provided. (*Confidentiality protections discussed in more detail by Cal Goldman during Session II of this Joint Global Forum*).
- The traditional principles of comity should play a role in guiding the decisions of competition agencies regarding proposed transactions with international implications.
- Additional bilateral agreements with positive comity addressing anticompetitive restraints affecting trade could be developed by the agencies, with the US/EU positive comity agreement serving as a possible model for future agreements. Additionally, communication and transparency in the positive comity process should be strengthened.
- Work sharing between competition agencies on multi-jurisdictional transactions is welcomed as it would help to reduce duplicate efforts.
- Cooperation between competition agencies should have the objectives of:
 - Formulating and adopting coherent, compatible competition policies;
 - Fostering the use of “best practices” in the implementation of the competition laws; and
 - Ensuring that related investigations and proceedings ongoing in multiple jurisdictions are handled in a way that is efficient for the agencies and for the businesses involved, to the extent possible avoiding duplicative requirements and costs, and that promotes economically and legally sound and consistent outcomes.
- Individual competition authorities should retain flexibility and discretion in the nature and extent of their cooperation with competition authorities of other jurisdictions, taking into account, among other things, the sufficiency of protections for confidential information, the impact on the cooperating authority's own investigation or proceeding, the degree of policy convergence or divergence, and demands on the authority's resources.
- Appropriate voluntary "peer review" mechanisms could be used which periodically subject jurisdictions' competition regimes to in-depth scrutiny and comment, but do not include dispute resolution mechanisms or other compulsory measures that would result in "second guessing" individual jurisdictions' enforcement decisions.