

Paris, 11 April 2007

## BIAC Statement on “Freedom of Investment”<sup>1</sup>

About a year ago, BIAC asked the OECD and the Investment Committee to play a lead role in promoting the benefits of foreign investment and in fighting against protectionist actions by governments as well as overly restrictive foreign investment regulation. Last December, we brought the topic to the attention of the Ambassadors and the Secretary General.

Since we raised the issue with the Investment Committee, we have seen number of OECD activities. The Secretary General has taken up the issue and given the topic “Freedom for Investment” high visibility. The Secretariat has conducted a thorough stocktaking exercise to shed more light on countries’ approaches towards regulating cross-border investment.

We would like to commend the OECD for having taken up the issue and for the excellent work it has been doing so far.

The stocktaking has been necessary to increase transparency regarding countries’ practices and policies. In our view this approach should continue & include a discussion about “**informal barriers**” as well .

Almost all countries surveyed by the Secretariat denied making any recourse to informal barriers. This starkly contrasts with business experience and media reports tend to reinforce this view. As a matter of fact, governments, regulators, and other policy makers have intervened or tried to intervene in numerous cross-border deals on a purely discretionary and mostly informal basis.

Some of these interventions have taken the form of concrete actions to prevent a cross-border deal. In other cases government ministers, legislators or regulators made public statements to discourage foreign firms from taking over domestic ones by signalling that the potential deals were politically not welcome.

Moreover, in some countries few shares are listed thus inhibiting cross border deals. There are cross holdings and golden shares that have the same effect and of course in many countries an unsolicited takeover is just not possible.

BIAC urges the OECD to continue to shed more light on informal barriers, which are in some countries more important than the formal barriers. The OECD should use all possible sources including business contacts and information available in the public domain and confront countries with this information when there appears to be sufficient evidence that informal actions have been undertaken to prevent cross-order deals.

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<sup>1</sup> This document reproduces an oral presentation given by BIAC at the BIAC/TUAC/OECD Watch Consultation with the OECD Investment Committee on 29 March 2007

It is also critical that the OECD not only continues its work with the stocktaking analysis but also moves on to the next phase of discussion to examine the policy implications arising from its analysis and the provision of guidance to countries.

The **BIAC objectives for the next phase** of OECD work are the following:

- Development of recommendations/guidelines for best practices that balance legitimate national security concerns with countries' existing international obligations to allow the free movement of capital.
- OECD members should also share experience on how to safeguard national security without restricting investment in the first place.
- Moreover, the OECD should highlight the very positive contribution that foreign investment can make to national security by providing additional capital as well as technological and managerial know-how.
- In the future the OECD should conduct OECD country peer reviews to benchmark countries' policies against the agreed recommendations/guidelines.
- The OECD stocktaking exercise shows that investment in a number of countries may also be subject to authorisation requirements for reasons that are not necessarily related to national security. This is for example the case for foreign investments in radio and television as well as the financial sector. BIAC does not see any convincing argument that justifies foreign investment restrictions in areas not related to national security and we suggest that the OECD provides analysis on the economic costs and benefits of protection of strategic sectors and engages countries more systematically in a discussion on how to achieve strategic goals without resorting to foreign investment restrictions.
- Non-OECD countries are of increasing importance to foreign investors. Likewise, companies from emerging markets become ever more important investors in the OECD area. It is therefore very important that the OECD encourages major non-OECD countries, in particular the BRICS, to participate in any future work related to policies towards foreign investment for national security and other strategic reasons.
- State-owned enterprises (SOEs) were originally conceived to provide public utilities at a national level or to control certain parts of the domestic economy. Now, SOEs are becoming important players in cross border activity. More analytical work is needed to understand the impact that SOEs can have on investment inflows and outflows, as well as on private investment. Further analysis should be undertaken on the corporate behaviour of SOEs, including governance, transparency & accountability.
- However, reaching out to the BRICS should clearly not deflect from the need to promote freedom for investment within OECD countries. OECD countries need to be a better example for non-member economies. The OECD has to do its homework first before it can convince emerging economies of the benefits of open markets for investment.

In order to be able to conduct this work effectively, the OECD should seek the political support from the G8 leaders which will discuss "Freedom of Investment" at their summit in June.

The OECD should seek strong mandate from the G8 for future work aimed at meeting the objectives that we just mentioned.

BIAC members will do what they can to support the OECD. The German BIAC member will host a G8 business conference on April 25 in Berlin. On this occasion, the CEOs of all G7 BIAC members plus the President of the Russian Union of Industrialists and Entrepreneurs will present a joint business declaration to the German Chancellor in which BIAC members will call on the G8 to give full support for future OECD work on promoting freedom for investment.

As always, BIAC stands ready to provide input, assistance and advice to the OECD on an issue that we consider to be of vital importance to the global economy.