



## **PRIORITIES FOR OECD AND WTO WORK: BIAC SUBMISSION ON TRADE-RELATED ISSUES TO THE OECD.**

**June 1998**

### **Introduction**

The context for BIAC recommendations on trade issues to the OECD this year is the 50<sup>th</sup> anniversary of the General Agreement on Tariffs and Trade. The progress in trade liberalisation during 50 years of this evolving discipline has made a major contribution to economic growth and better living standards around the world. These benefits are continuing to accrue and the WTO disciplines are vital for efficient business operations in the global marketplace. BIAC attaches the highest priority to the implementation, acceleration and completion of the agenda established by the Uruguay Round. The WTO made good progress at Singapore in modifying its post-Uruguay agenda to address issues facing business today. BIAC applauds the agreements reached in 1997 on Basic Telecommunications and Financial Services, which were BIAC priorities. BIAC is encouraged also by the progress in 1997 to strengthen the WTO on other areas including:

- Progress toward full and effective implementation of existing WTO agreements;
- Further demonstration of effective Dispute Settlement procedures and government compliance with rulings;
- Further affirmation of the primacy of the multilateral trading system and that regional agreements are consistent with existing WTO rules;
- Continued effort to make WTO membership truly global as soon as possible on the basis of acceptance of WTO rules and meaningful market access offers.

### **New Initiatives**

We urge OECD members to take every opportunity to make progress on the WTO agenda. We would particularly support the launching of new negotiations to promote further liberalisation by means of accelerated implementation of Uruguay Round Tariff commitments, tariff elimination in agreed upon sectors, reduction of tariff peaks, and extension of tariff bindings; as well as further progress in tariff issues of the built-in agenda such as geographic expansion of zero-for-zero tariff cuts and tariff harmonisation agreements.

It is also important that the WTO leadership initiate strategic work to expand the scope of policy coverage to reflect the integrated nature of the private enterprise approach to commercial transactions in the global marketplace. In this spirit, we offer the following update of our priorities for this work as well as suggestions for OECD activity to support progress at WTO and encourage trade liberalisation. From the trade perspective, our highest priorities among the various OECD initiatives are the work on MAI and Regulatory Reform, which are discussed in more detail below.

## Uruguay Round Issues

Among the BIAC top priorities during the Uruguay Round were the area of services, protection of intellectual property rights and trade-related investment measures (TRIMS). In the area of services, a top priority should be to strengthen the GATS agreement. The OECD preparatory work on services was a major contribution to the Uruguay Round. We would ask OECD to work with the WTO to help prepare for the next negotiation of specific commitments on market access and national treatment under the GATS, which is to begin in the year 2000. BIAC is preparing a revised paper on this subject (BIAC Statement on OECD Work on Trade in Services). We support continuing OECD work to remove domestic regulatory obstacles to cross-border trade and foreign direct investment in professional services service industries. Also in the area of service industries, we urge OECD member governments to strengthen the draft disciplines for regulation of accounting services, which are now so weak as to be a damaging precedent for other WTO work on domestic regulation of service industries. Protection of intellectual property rights and trade-related investment measures remain important issues. We call on OECD members to push for accelerated implementation of the WTO Intellectual Property Agreement (TRIPS) and to work to strengthen the TRIMS agreement.

As mentioned above, another priority for BIAC is further tariff liberalisation. The ITA offers a useful demonstration that tariff reduction need not await the next comprehensive round of trade negotiations. BIAC member associations should support and the member governments should respond to recommendations from those sectors that are ready for further tariff reductions.

Regarding Government Procurement, BIAC restates the importance it attaches to improvements in the WTO Government Procurement Agreement. We believe the OECD can make a particular contribution in this area and we have prepared a revised recommendation with more detail on this topic (BIAC Statement on Government Procurement).

Regarding the WTO Basic Telecommunications Agreement, OECD members should urge all those countries that have scheduled commitments to ratify the Agreement at the earliest opportunity. OECD members should encourage other WTO members that have not yet scheduled commitments, and countries acceding to the WTO as a condition of their accession, to the schedule meaningful market opening commitments in basic telecommunications services. At a minimum, meaningful commitments would include: 1) specifying a date certain for full market liberalisation, 2) progressively removing any remaining foreign ownership restrictions, and 3) adopting the "Reference Paper," a set of pro-competitive principles, in its entirety.

Agricultural trade is another area in which OECD analysis can help lay the groundwork for further liberalisation through WTO negotiations scheduled to begin in the year 2000. We note the important role OECD had in developing constructive concepts for the Uruguay Round on agricultural trade. Similar approaches are now needed to address such matters as the withdrawal of marginal land from production. This kind of conceptual work and exchange of views at OECD could make timely contributions to the efforts to reform domestic farm legislation in some countries, notably the U.S. and E.U., in the next few years.

## *Newer Trade Issues*

### **Trade and Investment**

BIAC reiterates its strong urging to all OECD member governments to conclude an MAI embodying high standards of liberalisation and protection of investors in the shortest possible time. In our view this continues to be the most important OECD work, which has the greatest potential to bring multilateral disciplines to the realities encountered by companies investing abroad. We continue to support the OECD effort to send a signal of leadership and confidence and to intensify its outreach to non-members economies so that a number of these countries can be encouraged to accede to the MAI. Now that the OECD has released its study of the benefits of trade and investment and the WTO has initiated study of trade and investment, we believe that much work needs to be done in the WTO to convince non-OECD member countries about the positive relationship between trade and investment and the benefits of adherence to a multilateral discipline. A similar effort should be undertaken by OECD governments as well. We continue to urge the OECD to share this kind of analysis with the WTO and UNCTAD.

### **Trade and Regulatory Reform**

We applaud the decision by OECD Ministers to establish an on-going country review mechanism. A country review process is a vital contribution to regulatory reform among OECD members, which will foster the regulatory reform objectives mentioned above. We strongly urge all OECD member governments to participate in this review. We also support work on qualification of trade and economic effects; additional sector studies, and the deepening of existing studies. This work should help to provide the basis for private sector initiatives such as the TABD work on Mutual Recognition Agreements.

BIAC believes that the OECD work on regulatory reform can make a major contribution into further trade liberalisation because it addresses impediments beyond the border and beyond the reach of traditional trade disciplines. This is the next generation of trade barriers now that tariffs are greatly reduced. Regulatory reform is vital for the reduction of barriers encountered by services and investment, which are increasingly important elements of international commerce growth. OECD efforts to measure costs of regulation for international trade and investment will help to ensure that such costs do not exceed the benefits of regulation.

Regulatory reform is necessary to build in flexibility, without sacrificing regulatory objectives. This is needed to adjust to the high velocity of technological change, the speed and global reach of today's commercial transactions. Business needs this governmental modernisation to realise the opportunities presented in global markets.

This work is also important because it is an example of a new model for achieving liberalisation; a convergence of rules and practices driven by an increased national self-interest in reducing costs through more efficient regulation. The OECD effort could contribute to the mandate in Article 6 of GATS for development of regulatory disciplines to promote liberalisation in services.

Regulatory reform must overcome entrenched interests and this requires a horizontal approach and an international dialogue. The OECD analysis and data are indispensable to this effort. One of the most important contributions of OECD work is to identify patterns of regulatory reform for which strong logic has been established in one or more member countries. The main focus should

be to promote adoption of these patterns of regulatory reform practices of member governments; a second focus is to build support for them beyond the OECD.

Priorities among different areas of regulatory reform will vary from sector to sector but, as a general rule, the establishment of multilateral norms is more desirable. For example, international standards are always more desirable than local standards or bilateral MRAs. In this regard the OECD Trade Committee's incorporation of multilateral trade norms in its principles for regulatory reform is a vital element.

One way to enhance flexibility and the fairness in regulation is through a waiver process that is subject to clear conditions. Transparent conditions are necessary to avoid waivers that become non-transparent and discriminatory, and to ensure that such waivers do not undermine MFN treatment. The approach should be to apply more common sense in shortening permit process cycles, recognising demonstrated standards of conduct and eliminating application of tangential regulations. We also note the tendency for market access problems arising from regulation to fall disproportionately on foreigners. A way to address this issue is by incorporating pro-competitive regulation principles similar to those in the WTO Agreement on Basic Telecommunications in other sectors as appropriate.

OECD is the main body with a comprehensive multilateral approach to this issue other organisations are working on various parts of the issue and probably the only one capable of such work. It will be necessary for OECD to stay engaged, both in terms of further work on improvement and in terms of promotion and communication to governments.

### **Trade and Competition**

With the success of WTO disciplines on border barriers to trade, it is necessary to address public and private actions as well as other non-competitive practices that impede market entry. However, BIAC believes that a considerable effort is needed to achieve better understanding of the link between trade and competition policies and how conflict between the two policy areas can be dealt with before this issue can be effectively addressed in the WTO. We believe that the Singapore Declaration correctly defined the scope of WTO work on this relationships and avoids premature efforts to negotiate in that body. In our view the OECD is the best forum to continue an examination of these linkages and to make practical progress on certain aspects such as hard-core cartels or price-fixing. The on-going joint work of the OECD Trade and Competition Law and Policy committees should have high priority, as should the OECD work to develop the concept of market contestability and the appropriate role of competition policy in that regard. The OECD can also make an important contribution in suggesting areas and appropriate safe-guard for co-operation among competition authorities. In this regard the BIAC looks forward to examining the proposal for greater co-operation on cartel issues so that we may provide private sector views on its merits. The OECD has unique resources in this important area of future work and we encourage a process by which OECD analysis can be made available to the WTO study of this policy interaction.

### **Trade and Environment**

The WTO Ministers agreed in Singapore to continue to work on trade and environment issues in the Committee on Trade and Environment (CTE) but have not yet reached decision on any of these issues. This minimalist outcome is disappointing to our members who believe in the need for a clearer understanding of how trade rules apply to the use of trade measures in Multilateral Environmental Agreements (MEAs). Our members are also concerned about the proliferation of multicriteria ecolabelling schemes. BIAC strongly supported the 1995 Joint Working Group on

Trade and Environment's Report to OECD Ministers which identified several areas, including these two issues, for further work and decision in WTO. In view of very slow process in the WTO, we hope that the OECD's Joint Working Group, which made considerable progress before 1995 Ministerial, will intensify efforts to achieve better understanding of these issues, which can then pave the way for meaningful work in the WTO. We note with interest of CTE's discussion of environmental benefits of trade liberalisation, and believe the OECD Joint Working Group could contribute to this effort. In particular, BIAC again commends to the OECD its recommendation on criteria for MEAs in which trade measures may be necessary.

### **Trade Facilitation and Custom Modernisation**

BIAC believes that WTO can play an important role by focusing its work on the simplification of trade procedures on customs procedures and by supporting the WCO's effort to produce a revised and strengthened Kyoto Convention so that it becomes a binding, enforceable and truly multilateral agreement. The draft revision of this horizontal annex now incorporates most of the substance of the ICC's International Customs Guidelines, which we cited last year as the set of world business objectives for customs modernisation. To carry out this important work, we recommend that WTO establish a working group on customs modernisation to:

- Analyse the impact of customs-related barriers on WTO commitments;
- Examine the steps that can be taken under current WTO rules e.g., customs, transparency obligations under Article X of the GATT, to reduce customs-related barriers to trade;
- Assess the scope for enforcing the provisions of revised Kyoto Convention through the WTO dispute settlement mechanism;
- Promote and co-ordinate the development and implementation of initiatives to simplify trade procedures.

The OECD work to address bribery and corruption is important in this context as corruption is a major obstacle to improved customs procedures, and we support the OECD work on consumers and postal services, which also makes contributions to customs modernisation.

### **Regional Trade Arrangements**

We support the efforts of the Committee of Regional Trade Agreements in the WTO and look forward to the results. It is important that regional free trade agreements be compatible with WTO rules. OECD has already done considerable work in this area, and we think its analysis can be of particular assistance to the WTO Committee engaged on this topic.

### **Corrupt Practices**

BIAC salutes the achievement of the OECD Convention criminalising bribery of foreign public officials. We expect OECD member governments to meet their commitments to establish such practices as a criminal offence under national laws by the end of this year. Corrupt practices result in substantial economic and social costs both for companies and for countries in which illicit payments and extortion are frequently encountered. This is an issue with a close tangible link to trade and investment policy as well as other national practices and which affects the real value of trade concessions under WTO auspices. Further work by governments is needed to address the serious problems of extortion and bribery on a global basis with the aim of achieving comparable national rules and regulations for all countries, not just OECD members.

### **Trade and Taxation**

Companies are increasingly hampered by double taxation. National tax policies can decisively affect company operations now that intra-company transactions count for nearly half of all trade for some countries. For this reason BIAC continues its strong support for the OECD Transfer Pricing Guidelines and the recognition of the arms-length principle as the internationally accepted standard. We continue to support the OECD's plan to establish a mechanism to monitor member country compliance with the Guidelines. Moreover, we recommend that continuing attention be given to the elimination of international double taxation by, inter alia, strengthening the mutual agreement process and procedures to the extent possible and implementing and workable arbitration procedure.

In this context, we continue to be concerned and disappointed about the failure to treat taxation in the MAI in an appropriate manner.

### **Trade and Labour Standards**

The BIAC has long held the view that the ILO, not the WTO, is the competent body to deal with conditions of work. The OECD contributed a sound, objective analytical study, which was important to this result and which reflects well on its reputation for objective analysis of difficult issues. The ILO devoted a considerable amount of time to a discussion of the study, an indication of its high regard for the OECD's analysis. The ILO is making progress in its Declaration of Principles Initiative, which will strengthen that organisation's capacity to deal effectively with violations of fundamental workers' rights. We do not see any particular merit in new work on this issue in OECD for the present. We continue to believe it would be damaging to trade and investment, and counterproductive to the improvement of labour conditions, to introduce trade sanctions for violations of any agreed labour standards or to include binding social clauses in trade agreements or investment treaties.

### **Trade Impact of Codes of Conduct**

We note with interest the OECD Trade Committee's mandate to analyse the trade impact of Codes of Conduct, and we look forward to providing business views. From the trade perspective, such Codes raise costs for all parties and can place companies at the competitive disadvantage if they are not multilateral. The existing international voluntary codes promulgated by international organisations – the *OECD Guidelines for Multinational Enterprises* and the *ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy* – address a broad array of business practices, social, and environmental issues.

Governments should refrain from:

- Efforts to make these or any other codes binding or use them to condition access to government programs, including officially-sponsored labelling schemes, which would change their voluntary nature and thus create uncertainty for companies by increasing prospects for protectionism;
- The imposition of any form of review by an outside party of individual company compliance with a voluntary code (this does not apply to cases where a firm or organisation is voluntarily retained by a company or group of companies for the purpose of helping attain the goals or benchmarks of the code);
- Third-party labelling programs aimed at influencing consumer decisions based on company compliance with social or environmental issues codes or other norms;

In addition, governments should not make frequent or drastic changes to existing officially-sponsored multilateral codes, although amendments are possible in exceptional cases as

developments warrant, e.g., addition of a chapter on the environment in the OECD Guidelines. The procedure for the clarification and interpretation of the OECD and ILO instruments and their periodic review provides adequate flexibility to deal with new issues.

### **Supplementary Submission**

BIAC has issued revised papers on Trade in Services and Government Procurement, which elaborate on respective references in this submission.