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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Working Party No. 3 on Co-operation and Enforcement

ROUNDTABLE ON CARTELS INVOLVING INTERMEDIATE GOODS

-- Chinese Taipei --

27 October 2015

This document reproduces a written contribution from Chinese Taipei submitted for Item 3 of the 122nd meeting of the Working Party No. 3 on Co-operation and Enforcement on 27 October 2015.

*More documents related to this discussion can be found at:
www.oecd.org/daf/competition/cartels-involving-intermediate-goods.htm*

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1. Along with international trade liberalization, the economic activities of businesses usually extend beyond a country's territory. Corporations concerned with the optimization of their production factor portfolios often spread their production and sales activities across different countries to maximize their profits. Hence, their production and sales activities are not limited to any single country. Competing corporations sometimes collude with each other and form an international cartel, a trend more often observed in oligopolistic industries. The principles, which countries adopt to determine jurisdictions over international cartel cases, are generally applied by nationality and territory. In addition, the effect doctrine is now popularly adopted by most competition authorities. In other words, whether or not a country enjoys jurisdiction over an international cartel is based on the impact of the international cartel on the designated geographical market associated with the market structure and trading relationships. In practice, the location or territories where production and sales activities take place is rarely the only consideration when determining jurisdiction.

2. With regard to hypothetical issues of the roundtable conference, the Fair Trade Commission's (FTC) position based on stipulations of the Fair Trade Act (FTA) and practices are as follows:

1. In the case of Country A (the place where component X is manufactured)

1.1 Considerations to determine jurisdiction and taking action:

3. The FTC first considers whether the component can be sold independently or whether it must only be assembled (or a high proportion must be assembled) to be sold in Country A, i.e., whether or not the cartel has a direct and significant impact on the market of Country A. Next, the FTC considers whether or not the members of the cartel are national entities of Country A and whether the corporations located in Country A are negatively affected by the collusion of Alpha and Beta. In the case where there are no competitors of Alpha and Beta in the market of Country A, and component X is not sold or only a very low proportion of component X is sold in Country A and does not have a substantial direct effect on Country A, and the conspiracy between Alpha and Beta only expands in the international market and only has an impact on other countries, then the FTC will not take any enforcement action, even though Country A is where the act takes place and the FTC has jurisdiction. In practice, territorial jurisdiction is retained depending on whether or not the cartel has a considerable impact on the domestic market.

1.2 Considerations to determine the FTC's disposition and penalty:

4. When a considerable ratio of component X manufactured by Alpha and Beta is sold in Country A, or if the component cannot be sold independently, if Product X can only be sold after being assembled, jurisdiction will be determined based on the direct impact of the final product on manufacturing in Country A. In some cases, the FTC used a 5% market share of products as the threshold when deciding whether or not to take enforcement action, and when determining whether or not the concerted action of Alpha and Beta was a violation of the law such that it should be penalized. Penalties include ceasing or correcting the illegal actions and imposing a fine. The amount of the fine is based on the scale of business operations, sales revenue in Country A, duration of a violation, market position, motive, attitude of cooperation in the investigation, and whether or not cartel members apply for leniency. The maximum fine is 1/10 of cartel members' sales revenues in Country A in the previous accounting year.

1.3 *Whether or not the disposition of other countries regarding the case is considered:*

5. In principle, the FTC deliberates on cases independently, but will sometimes consider the disposition of other countries when deciding on the penalty. This is to prevent conflicts with the judgments of a case by different countries, thereby keeping law enforcement in harmony. The FTC also focuses on international cooperation and notification procedures to learn about the differences in the opinions of other competent competition authorities that reviewed the case. However, neither of these will have a binding impact on the FTC's decision.

2. *In the case of Country B (the place where component X is assembled)*

2.1 *Considerations to determine jurisdiction and taking action:*

6. The FTC usually first examines trade patterns between the domestic assembly companies and Alpha and Beta with respect to component X. If assembly companies only collect an assembly fee for assembling products that contain component X when the final product is ordered by a company, and do not purchase components on their own, then the FTC will not take enforcement action against the possible conspiracy. However, if an assembly company purchases component X and can set the price of the final product, in which the price of components represents a portion of the assembly company's cost, then the trading pattern will impact the assembly market of Country B, and the FTC will determine whether it has jurisdiction over the case and, if so, will take enforcement action.

2.2 *Whether or not the place where the act takes place is considered:*

7. Even though the act takes place in Country B, if the act in contention does not have a substantial direct effect on Country B, then the FTC will usually not take any enforcement action. However, territorial jurisdiction is retained depending on whether or not the cartel has a considerable impact on the market.

2.3 *Considerations to determine the FTC's disposition and penalty:*

8. The FTC will order the corporations to cease or correct their action pursuant to Article 40 of the Fair Trade Act, and will impose an administrative fine. The amount of the fine according to Article 36 of the Enforcement Rules of the Fair Trade Act is based on the scale of business operations, sales revenue in Country B, duration of a violation, market position, motive, attitude of cooperation in the investigation, and whether or not cartel members apply for leniency. The maximum fine is 1/10 of cartel members' sales revenues in Country B in the previous accounting year.

2.4 *Whether or not the disposition of other countries regarding the case is considered:*

9. In principle, the FTC deliberates on cases independently, but will sometimes consider the disposition of other countries when deciding on the penalty. This is to prevent conflicts with the judgments of a case by different countries, thereby keeping law enforcement in harmony. The FTC also focuses on international cooperation and notification procedures to learn about the differences in opinions of other competent authorities of competition that reviewed the case. However, neither of these will have a binding impact on the FTC's decision.

3. In the case of Country C (the place where the final product containing component X is sold)

3.1 Considerations to determine jurisdiction and taking action:

10. Since Country C is where the final product is sold after being assembled, the FTC will first examine the sales of component X, whether or not the component can be sold independently or must only be assembled (or a high proportion must be assembled) to be sold in the market. Next, the FTC will consider the sales of the final product that contain component X in Country C. If Country C is the country where the final product of Alpha and Beta is sold, component X is a key component in the final product, and sales revenue of component X in Country C is the main source of revenue or contributes considerably to the revenue of Alpha and Beta, then the FTC will determine whether it has jurisdiction over the case and may take enforcement action. In addition, whether or not there are domestic competitors that were negatively impacted by the collusion of Alpha and Beta will be considered when determining the FTC's jurisdiction.

3.2 Whether or not the place where the act takes place is considered:

11. Even though the act takes place in Country C, if the act in contention does not have a substantial direct effect on Country C, then the FTC will usually not take any enforcement action. However, territorial jurisdiction is retained depending on whether or not the cartel has a considerable impact on the market.

3.3 Where corporations in Country C are involved in price negotiations with cartel members:

12. Since parties involved in a price negotiation represent demand and supply in a market, and thus the price of the final product in Country C is highly related to negotiations on the price of component X, the FTC will examine trade patterns, the trade structure and trade relations to determine if it has jurisdiction over the case. If Alpha and Beta are not concerned about the market of Country C and do not know whether the final product will be sold in Country C, then the FTC will usually proceed with further investigations to decide whether to take enforcement action.

3.4 If the assembly company is a wholly-owned subsidiary of the final product's buyer in Country C:

13. As described in the second item, the assembly company is usually not involved in setting the price of component X, and price negotiations for component X are mainly carried out by the buyer of the final product. The party involved in the price negotiations is the final recipient of the price, and the price of the component affects the price of the final product, which is sold in Country C. As described above, the FTC will examine trade patterns, the trade structure and trade relations to determine if it has jurisdiction over the case. If Alpha and Beta are not concerned about the market of Country C and do not know if the final product will be sold in Country C, then the FTC will usually proceed with further investigations to decide whether to take enforcement action.

3.5 Considerations when determining the FTC's disposition and penalty:

14. The FTC will order the corporations to cease or correct their action and will impose an administrative fine pursuant to Article 40 of the FTA. The amount of the fine according to Article 36 of the Enforcement Rules of the FTA is based on the scale of business operations, sales revenue in Country C, duration of a violation, market position, motive, attitude of cooperation in the investigation, and whether or not the cartel members apply for leniency. The maximum fine is 1/10 of the cartel members' sales revenue in Country C in the previous accounting year.

3.6 *Whether or not the disposition of other countries regarding the case is considered:*

10. In principle, the FTC deliberates on cases independently, but will sometimes consider the disposition of other countries when deciding on the penalty. This is to prevent conflicts with the judgments of a case by different countries, thereby keeping law enforcement in harmony. The FTC also focuses on international cooperation and notification procedures to learn about the differences in opinions of other competent authorities of competition that reviewed the case. However, neither of these will have a binding impact on the FTC's decision.