

Competition co-operation and enforcement

INVENTORY OF CO-OPERATION AGREEMENTS



PROVISIONS ON NEGATIVE COMITY

This document contains the text of the provisions on negative comity taken from the 2015 Inventory of Co-operation Agreements prepared by the OECD Competition Committee. This document includes:

- A short description of the provision which clarifies similarities and differences between agreements, as well as any innovative or unique features in a particular agreement.
- Relevant language from the 2014 OECD Recommendation concerning International Co-operation on Competition Investigations and Proceedings.
- A list of the relevant provisions in co-operation agreements. The agreements are listed in reverse chronological order, so that readers can see if wording has changed between agreements.

The full inventory, the OECD Recommendation and accompanying documents can be found online at www.oecd.org/competition/inventory-competition-agreements.htm.

Comity is a legal principle in international law whereby a country should take other countries' important interests into account while conducting its law enforcement activities, in return for their doing the same. Thus, comity is a means for tempering the effects of the unilateral assertion of extraterritorial jurisdiction.

Negative comity, also called traditional comity", involves a country's consideration of how to prevent its laws and law enforcement actions from harming another country's important interests. The principle is based on the recognition that a particular enforcement activity by one jurisdiction may adversely affect important interests of the other jurisdiction and may produce conflicts. For example, competition authorities may arrive at conflicting outcomes after independent proceedings that may undermine the remedial objective of at least one of the authorities involved.

Fourteen out of the fifteen co-operation agreements reviewed have negative comity provisions as a mechanism for avoidance of conflicts. They usually include:

- A general principle of negative comity requiring a party to consider the important interests of the other;
- Obligations of a party taking the enforcement activity which may affect important interests of the other – usually to provide timely notice of significant developments; and
- Factors which a party should consider in assessing appropriate measures to accommodate competing interests.
- A termination clause to allow pursuing enforcement independently.

Relevant provisions in the 2014 OECD Recommendation on international co-operation

Notifications of Competition Investigations or Proceedings

V. RECOMMENDS that an Adherent should ordinarily notify another Adherent when its investigation or proceeding can be expected to affect the other Adherent's important interests.

3. The notifying Adherent, while retaining full freedom of ultimate decision, should take account of the views that the other Adherent may wish to express and of any remedial action that the other Adherent may consider under its own laws, to address the anticompetitive practice or mergers with anticompetitive effects.

Consultation and Comity

III. RECOMMENDS that an Adherent that considers that an investigation or proceeding being conducted by another Adherent under its competition laws may affect its important interests should transmit its views on the matter to, or request consultation with, the other Adherent.

1. To this end, without prejudice to the continuation of its action under its competition law and to its full freedom of ultimate decision, the Adherent so addressed should give full and sympathetic consideration to the views expressed by the requesting Adherent, and in particular to any suggestions as to alternative means of fulfilling the needs or objectives of the competition investigation or proceeding.

Relevant provisions in co-operation agreements

EU-Switzerland (2013)

Article 5 Conflict avoidance (Negative Comity)

1. The competition authority of a Party shall give careful consideration to the important interests of the other Party throughout all phases of its enforcement activities, including decisions regarding the initiation of enforcement activities, the scope of enforcement activities and the nature of sanctions or other relief measures sought in each case.

2. If a specific enforcement activity envisaged by the competition authority of a Party may affect important interests of the other Party, the former, without prejudice to its full discretion, shall use its best endeavours:

- (a) to provide to the competition authority of the other Party timely notice of significant developments relating to the interests of that Party;
- (b) to give the competition authority of the other Party an opportunity to provide comments; and
- (c) to take into consideration the comments of the competition authority of the other Party, while fully respecting the independence of the competition authority of either Party to make its own decision.

The application of this paragraph is without prejudice to the obligations of the competition authorities of the Parties under paragraphs 3 and 4 of Article 3.

3. Where the competition authority of a Party considers that its enforcement activities may adversely affect important interests of the other Party, it shall use its best endeavours to seek an appropriate accommodation of the respective interests. In seeking such accommodation, the competition authority of the Party concerned should consider the following factors, in addition to any other factor that may be relevant in the circumstances:

- (a) the relative significance of the actual or potential effects of the anticompetitive activities on the enforcing Party's important interests as compared to the effects on the other Party's important interests;
- (b) the relative significance to the anticompetitive activities of conduct or transactions occurring within the territory of

- a Party as compared to conduct or transactions occurring within the territory of the other Party;
- (c) the extent to which enforcement activities by the other Party with respect to the same undertakings would be affected; and
- (d) the extent to which undertakings will be placed under conflicting requirements by both Parties.

EU-Korea (2009)

Article 5 Conflict avoidance (Negative Comity)

1. The competition authority of each Party shall give careful consideration to the important interests of the other Party throughout all phases of its enforcement activities, including decisions regarding the initiation of enforcement activities, the scope of enforcement activities and the nature of sanctions or other relief sought in each case.

2. If a specific enforcement activity envisaged by a competition authority of one Party may affect the important interests of the other Party, the former, without prejudice to its full discretion, shall use its best endeavours:

- (a) to provide to the other Party timely notice of significant developments relating to the interests of the latter;
- (b) to give the other Party an opportunity to provide comments; and
- (c) to take into consideration the comments of the other Party, while fully respecting the independence of each Party to make its own decision.

The application of paragraph 2 of this Article is without prejudice to the obligations of the Parties under paragraphs 3 and 4 of Article 2.

3. Where either Party considers that enforcement activities by its competition authority may adversely affect the important interests of the other Party, the Parties should consider the following factors, in addition to any other factor that may be relevant in the circumstances in seeking an appropriate accommodation of the competing interests:

- (a) the relative significance of the effects of the anticompetitive activities on the enforcing Party's important interests as compared to the effects on the other Party's important interests;
- (b) the relative significance to the anti-competitive activities of conduct or transactions occurring within the territory of one Party as compared to conduct or transactions occurring within the territory of the other Party;
- (c) the extent to which enforcement activities by the other Party with respect to the same persons, either natural or legal, would be affected;
- (d) the extent to which private persons, either natural or legal, will be placed under conflicting requirements by both Parties.

Canada-Japan (2005)

Article VI

1. Each Party shall give careful consideration to the important interests of the other Party throughout all phases of its enforcement activities, including decisions regarding the initiation of enforcement activities, the scope of enforcement activities and the nature of penalties or relief sought in each case.

2. When one Party informs the other Party that a specific enforcement activity by the latter Party may affect the important interests of the former Party, the latter Party shall endeavour to provide timely notice of significant developments of such enforcement activities.

3. Where either Party considers that enforcement activities by a Party may adversely affect the important interests of the other Party, the Parties should consider the following factors, in addition to any other factor that may be relevant in the circumstances, in seeking an appropriate accommodation of the competing interests:

- (a) the relative significance to the anticompetitive activities of conduct or transactions occurring within the territory of the country of the Party conducting the enforcement activities as compared to conduct or transactions occurring within the territory of the other country;
- (b) the relative impact of the anticompetitive activities on the important interests of the respective Parties;
- (c) the presence or absence of evidence of an intention on the part of those engaged in the anticompetitive activities to affect consumers, suppliers or competitors within the territory of the country of the Party conducting the enforcement activities;
- (d) the extent to which the anticompetitive activities substantially lessen competition in the market of each country;
- (e) the degree of conflict or consistency between the enforcement activities of a Party and the laws and regulations of the country of the other Party or the policies or important interests of the other Party;
- (f) whether private persons, either natural or legal, will be placed under conflicting requirements by the Parties;
- (g) the location of relevant assets and parties to the transaction;
- (h) the degree to which effective penalties or relief can be secured by the enforcement activities of the Party against the anticompetitive activities; and
- (i) the extent to which enforcement activities of the other Party with respect to the same persons, either natural or legal, would be affected.

EU-Japan (2003)

Article 6

1. The competition authority of each Party shall give careful consideration to the important interests of the other Party throughout all phases of its enforcement activities, including decisions regarding the initiation of enforcement activities, the scope of enforcement activities and the nature of sanctions or other relief sought in each case.

2. When either Party informs the other Party that specific enforcement activities by the latter Party may affect the former's important interests, the latter Party shall endeavour to provide timely notice of significant developments of such enforcement activities.

3. Where either Party considers that enforcement activities by a Party may adversely affect the important interests of the other Party, the Parties should consider the following factors, in addition to any other factor that may be relevant in the circumstances in seeking an appropriate accommodation of the competing interests:

- (a) the relative significance to the anti-competitive activities of conduct or transactions occurring within the territory of a Party as compared to conduct or transactions occurring within the territory of the other Party;
- (b) the relative impact of the anti-competitive activities on the important interests of the respective Parties;
- (c) the presence or absence of evidence of an intention on the part of those engaged in the anti-competitive activities to affect consumers, suppliers, or competitors within the territory of the Party conducting the enforcement activities;
- (d) the extent to which the anti-competitive activities substantially lessen competition in the market of the European Community and Japan respectively;
- (e) the degree of conflict or consistency between the enforcement activities by a Party and the laws and regulations of the other Party, or the policies or important interests of that other Party;
- (f) whether private persons, either natural or legal, will be placed under conflicting requirements by both Parties;
- (g) the location of relevant assets and parties to the transaction;
- (h) the degree to which effective sanctions or other relief can be secured by the enforcement activities of the Party against the anti-competitive activities; and
- (i) the extent to which enforcement activities by the other Party with respect to the same persons, either natural or legal, would be affected.

Canada-Mexico (2001)

Article VI Avoidance of conflicts

1. Within the framework of its own laws and to the extent compatible with its important interests, each Party shall, having regard to the purposes of this Agreement as set out in Article I, give careful consideration to the other Party's important interests throughout all phases of its enforcement activities, including decisions regarding the initiation of an investigation or proceeding, the scope of an investigation or proceeding and the nature of the remedies or penalties sought in each case.

2. When a Party informs the other that a specific enforcement activity may affect the first Party's important interests, the second Party shall provide timely notice of developments of significance to those interests.

3. While an important interest of a Party may exist in the absence of official involvement by the Party with the activity in question, it is recognized that such interest would normally be reflected in antecedent laws, decisions or statements of policy by its competent authority.

4. A Party's important interests may be affected at any stage of enforcement activity by the other Party. The Parties recognize the desirability of minimizing any adverse effects of their enforcement activities on each other's important interests, particularly in the choice of remedies. Typically, the potential for adverse impact on one Party's important interests arising from enforcement activity by the other Party is less at the investigative stage and greater at the stage at which conduct is prohibited or penalized, or at which other forms of remedial orders are imposed.

5. Where it appears that one Party's enforcement activities may adversely affect the important interests of the other Party, each Party shall, in assessing what measures it will take, consider all appropriate factors, which may include but are not limited to

- (a) the relative significance to the anticompetitive activities involved of conduct occurring within one Party's territory as compared to conduct occurring within that of the other;
- (b) the relative significance and foreseeability of the effects of the anticompetitive activities on one Party's important interests as compared to the effects on the other Party's important interests;
- (c) the presence or absence of a purpose on the part of those engaged in the anticompetitive activities to affect consumers, suppliers or competitors within the enforcing Party's territory;
- (d) the degree of conflict or consistency between the first Party's enforcement activities (including remedies) and the other Party's laws or other important interests;
- (e) whether private persons, either natural or legal, will be placed under conflicting requirements by both Parties;
- (f) the existence or absence of reasonable expectations that would be furthered or defeated by the enforcement activities;
- (g) the location of relevant assets;
- (h) the degree to which a remedy, in order to be effective, must be carried out within the other Party's territory; and
- (i) the extent to which enforcement activities of the other Party with respect to the same persons, including judgments, undertakings, conditioned approvals or consent orders resulting from such activities, would be affected.

Mexico-US (2000)

Article VI Avoidance of Conflicts

1. Within the framework of its own laws and to the extent compatible with its important interests, each Party shall, having regard to the purpose of this Agreement as set out in Article I, give careful consideration to the other Party's important interests throughout all phases of its enforcement activities, including decisions regarding the initiation of an investigation or proceeding, the scope of an investigation or proceeding and the nature of the remedies or penalties sought in each case.

2. When a Party informs the other that a specific enforcement activity may affect the first Party's important interests, the second Party shall provide timely notice of developments of significance to those interests.

3. While an important interest of a Party may exist in the absence of official involvement by the Party with the activity in question, it is recognized that such interest would normally be reflected in antecedent laws, decisions or statements of policy by its competent authorities.

4. A Party's important interests may be affected at any stage of enforcement activity by the other Party. The Parties recognize the desirability of minimizing any adverse effects of their enforcement activities on each other's important interests, particularly in the choice of remedies. Typically, the potential for adverse impact on one Party's important interests arising from enforcement activity by the other Party is less at the investigative stage and greater at the stage at which conduct is prohibited or penalized, or at which other forms of remedial orders are imposed.

5. Where it appears that one Party's enforcement activities may adversely affect the important interests of the other Party, each Party shall, in assessing what measures it will take, consider all appropriate factors, which may include but are not limited to:

- a. the relative significance to the anticompetitive activities involved of conduct occurring within one Party's territory as compared to conduct occurring within that of the other;
- b. the relative significance and foreseeability of the effects of the anticompetitive activities on one Party's important interests as compared to the effects on the other Party's important interests;
- c. the presence or absence of a purpose on the part of those engaged in the anticompetitive activities to affect consumers, suppliers or competitors within the enforcing Party's territory;
- d. the degree of conflict or consistency between the first Party's enforcement activities (including remedies) and the other Party's laws or other important interests;
- e. whether private persons, either natural or legal, will be placed under conflicting requirements by both Parties;
- f. the existence or absence of reasonable expectations that would be furthered or defeated by the enforcement activities;
- g. the location of relevant assets;
- h. the degree to which a remedy, in order to be effective, must be carried out within the other Party's territory; and
- i. the extent to which enforcement activities of the other Party with respect to the same persons, including judgments or conditioned approvals resulting from such activities, would be affected.

Japan-US (1999)

Article VI

1. Each Party shall give careful consideration to the important interests of the other Party throughout all phases of its enforcement activities, including decisions regarding the initiation of enforcement activities, the scope of enforcement activities and the nature of penalties or relief sought in each case.

2. When either Party informs the other Party that specific enforcement activities by the latter Party may affect the former's important interests, the latter Party shall endeavor to provide timely notice of significant developments of such enforcement activities.

3. Where either Party considers that enforcement activities by a Party may adversely affect the important interests of the other Party, the Parties should consider the following factors, in addition to any other factor that may be relevant in the circumstances in seeking an appropriate accommodation of the competing interests:

- (a) the relative significance to the anticompetitive activities of conduct or transactions occurring within the territory of the country of the enforcing Party as compared to conduct or transactions occurring within the territory of the other country;
- (b) the relative impact of the anticompetitive activities on the important interests of the respective Parties;
- (c) the presence or absence of evidence of an intention on the part of those engaged in the anticompetitive activities to affect consumers, suppliers, or competitors within the territory of the country of the Party conducting the enforcement activities;
- (d) the extent to which the anticompetitive activities substantially lessen competition in the market of each country;
- (e) the degree of conflict or consistency between the enforcement activities by a Party and the laws of the other country, or the policies or important interests of the other Party;
- (f) whether private persons, either natural or legal, will be placed under conflicting requirements by both Parties;
- (g) the location of relevant assets and parties to the transaction;
- (h) the degree to which effective penalties or relief can be secured by the enforcement activities of the Party against the anticompetitive activities; and
- (i) the extent to which enforcement activities by the other Party with respect to the same persons, either natural or legal, would be affected.

Brazil-US (1999)

Article VI Avoidance of Conflicts; Consultations

1. Each Party shall, within the framework of its own laws and to the extent compatible with its important interests, give careful consideration to the other Party's important interests throughout all phases of its enforcement activities, including decisions regarding the initiation of an investigation or proceeding, the scope of an investigation or proceeding, and the nature of the remedies or penalties sought in each case.

Canada-EU (1999)

VI. Avoidance of conflict

1. Within the framework of its own laws and to the extent compatible with its important interests, each Party shall, having regard to the purpose of this Agreement as set out in Article I, give careful consideration to the other Party's important interests throughout all phases of competition enforcement activities, including decisions regarding the initiation of an investigation or proceeding, the scope of an investigation or proceeding and the nature of the remedies or penalties sought in each case.

2. Where it appears that one Party's enforcement activities may adversely affect the important interests of the other Party, each Party shall, consistent with the general principles set out above, use its best efforts to arrive at an appropriate accommodation of the Parties competing interests and in doing so each Party shall consider all relevant factors, including:

- (i) the relative significance to the anticompetitive activities involved of conduct occurring within one Party's territory as compared to conduct occurring within that of the other;
- (ii) the relative significance and foreseeability of the effects of the anticompetitive activities on one Party's important interests as compared to the effects on the other Party's important interests;
- (iii) the presence or absence of a purpose on the part of those engaged in the anticompetitive activities to affect consumers, suppliers or competitors within the enforcing Party's territory;
- (iv) the degree of conflict or consistency between the enforcement activities and the other Party's laws or articulated economic policies including those expressed in the application of, or decisions under, their respective competition laws;
- (v) whether private persons, either natural or legal, will be placed under conflicting requirements by both Parties;
- (vi) the existence or absence of reasonable expectations that would be furthered or defeated by the enforcement activities;
- (vii) the location of relevant assets;
- (viii) the degree to which a remedy, in order to be effective, must be carried out within the other Party's territory;
- (ix) the need to minimise the negative effects on the other Party's important interests, in particular when implementing remedies to address anti-competitive effects within the Party's territory; and
- (x) the extent to which enforcement activities of the other Party with respect to the same persons, including judgments or undertakings resulting from such activities, would be affected.

Israel-US (1999)

Article VI Avoidance of Conflicts

1. Within the framework of its own laws and to the extent compatible with its important interests, each Party shall, having regard to the purpose of this Agreement as set out in Article I, give careful consideration to the other Party's important interests throughout all phases of its enforcement activities, including decisions regarding the initiation of an investigation or proceeding, the scope of an investigation or proceeding and the nature of the remedies or penalties sought in each case.

2. When a Party informs the other that a specific enforcement activity may affect the first Party's important interests, the second Party shall provide timely notice of developments of significance to those interests.

3. While an important interest of a Party may exist in the absence of official involvement by the Party with the activity in question, it is recognized that such interest would normally be reflected in antecedent laws, decisions or statements of policy by its competent authorities.

4. A Party's important interests may be affected at any stage of enforcement activity by the other Party. The Parties recognize the desirability of minimizing any adverse effects of their enforcement activities on each other's important interests, particularly in the choice of remedies. Typically the potential for adverse impact on one Party's important interests arising from enforcement activity by the other Party is less at the investigative stage and greater at the stage at which conduct is prohibited or penalized, or at which other forms of remedial orders are imposed.

5. Where it appears that one Party's enforcement activities may adversely affect the important interests of the other Party, each Party shall, in assessing what measures it will take, consider all appropriate factors, which may include but are not limited to:

- a. the relative significance to the anticompetitive activities involved of conduct occurring within one State as compared to conduct occurring within that of the other;
- b. the relative significance and foreseeability of the effects of the anticompetitive activities on one Party's important interests as compared to the effects on the other Party's important interests;
- c. the presence or absence of a purpose on the part of those engaged in the anticompetitive activities to affect consumers, suppliers or competitors within the enforcing State;
- d. the degree of conflict or consistency between the first Party's enforcement activities (including remedies) and the other Party's laws or other important interests;
- e. whether private persons, either natural or legal, will be placed under conflicting requirements by both Parties;
- f. the existence or absence of reasonable expectations that would be furthered or defeated by the enforcement activities;
- g. the location of relevant assets;
- h. the degree to which a remedy, in order to be effective, must be carried out within the other State; and
- i. the extent to which enforcement activities of the other Party with respect to the same persons, including judgments or undertakings resulting from such activities, would be affected.

Canada-US (1995)

Article VI Avoidance of conflicts

1. Within the framework of its own laws and to the extent compatible with its important interests, each Party shall, having regard to the purpose of this Agreement as set out in Article I, give careful consideration to the other Party's important interests throughout all phases of its enforcement activities, including decisions regarding the initiation of an investigation or proceeding, the scope of an investigation or proceeding and the nature of the remedies or penalties sought in each case.

2. When a Party informs the other that a specific enforcement activity may affect the first Party's important interests, the second Party shall provide timely notice of developments of significance to those interests.

3. While an important interest of a Party may exist in the absence of official involvement by the Party with the activity in question, it is recognized that such interest would normally be reflected in antecedent laws, decisions or statements of policy by its competent authorities.

4. A Party's important interests may be affected at any stage of enforcement activity by the other Party. The Parties recognize the desirability of minimizing any adverse effects of their enforcement activities on each other's important interests, particularly in the choice of remedies. Typically, the potential for adverse impact on one Party's important interests arising from enforcement activity by the other Party is less at the investigative stage and greater at the stage at which conduct is prohibited or penalized, or at which other forms of remedial orders are imposed.

5. Where it appears that one Party's enforcement activities may adversely affect the important interests of the other Party, each Party shall, in assessing what measures it will take, consider all appropriate factors, which may include but are not limited to:

- i. the relative significance to the anticompetitive activities involved of conduct occurring within one Party's territory as compared to conduct occurring within that of the other;

- ii. the relative significance and foreseeability of the effects of the anticompetitive activities on one Party's important interests as compared to the effects on the other Party's important interests;
- iii. the presence or absence of a purpose on the part of those engaged in the anticompetitive activities to affect consumers, suppliers or competitors within the enforcing Party's territory;
- iv. the degree of conflict or consistency between the first Party's enforcement activities (including remedies) and the other Party's laws or other important interests;
- v. whether private persons, either natural or legal, will be placed under conflicting requirements by both Parties;
- vi. the existence or absence of reasonable expectations that would be furthered or defeated by the enforcement activities;
- vii. the location of relevant assets;
- viii. the degree to which a remedy, in order to be effective, must be carried out within the other Party's territory; and
- ix. the extent to which enforcement activities of the other Party with respect to the same persons, including judgments or undertakings resulting from such activities, would be affected.

EU-US (1991)

Article VI Avoidance of Conflicts over Enforcement Activities

Within the framework of its own laws and to the extent compatible with its important interests, each Party will seek, at all stages in its enforcement activities, to take into account the important interests of the other Party. Each Party shall consider important interests of the other Party in decisions as to whether or not to initiate an investigation or proceeding, the scope of an investigation or proceeding, the nature of the remedies or penalties sought, and in other ways, as appropriate. In considering one another's important interests in the course of their enforcement activities, the Parties will take account of, but will not be limited to, the following principles:

1. While an important interest of a Party may exist in the absence of official involvement by the Party with the activity in question, it is recognized that such interests would normally be reflected in antecedent laws, decisions or statements of policy by its competent authorities.

2. A Party's important interests may be affected at any stage of enforcement activity by the other Party. The Parties recognize, however, that as a general matter the potential for adverse impact on one Party's important interests arising from enforcement activity by the other Party is less at the investigative stage and greater at the stage at which conduct is prohibited or penalized, or at which other forms of remedial orders are imposed.

3. Where it appears that one Party's enforcement activities may adversely affect important interests of the other Party, the Parties will consider the following factors, in addition to any other factors that appear relevant in the circumstances, in seeking an appropriate accommodation of the competing interests:

- a) the relative significance to the anticompetitive activities involved of conduct within the enforcing Party's territory as compared to conduct within the other Party's territory;
- b) the presence or absence of a purpose on the part of those engaged in the anticompetitive activities to affect consumers, suppliers, or competitors within the enforcing Party's territory;
- c) the relative significance of the effects of the anticompetitive activities on the enforcing Party's interests as compared to the effects on the other Party's interests;
- d) the existence or absence of reasonable expectations that would be furthered or defeated by the enforcement activities;
- e) the degree of conflict or consistency between the enforcement activities and the other Party's laws or articulated economic policies; and
- f) the extent to which enforcement activities of the other Party with respect to the same persons, including judgments or undertakings resulting from such activities, may be affected.

Australia-US (1982)

Article 2 Consultations

5. Both Parties during consultations shall seek earnestly to avoid a possible conflict between their respective laws, policies and national interests and for that purpose to give due regard to each other's sovereignty and to considerations of comity.

6. In particular, in seeking to avoid conflict:

(a) the Government of Australia shall give the fullest consideration to modifying any aspect of the policy which has or might have implications for the United States in relation to the enforcement of its antitrust laws. In this regard, consideration shall be given to any harm that may be caused by the implementation or continuation of the Australian policy to the interests protected by the United States antitrust laws; and

(b) The Department of Justice or the Federal Trade Commission of the United States, as the case may be, shall give the fullest consideration to modifying or discontinuing its existing antitrust investigation or proceedings, or to modifying or refraining from contemplated antitrust investigations or proceedings. In this regard, consideration shall be given to the interests of Australia with respect to the conduct to which the proceedings, or contemplated proceedings, relate, or would relate, including, without limitation, Australia's interests in circumstances where that conduct:

- (1) was undertaken for the purpose of obtaining a permission or approval required under Australian law for the exportation from Australia of Australian natural resources of goods manufactured or produced in Australia;
- (2) was undertaken by an Australian authority, being an authority established by law in Australia, in the discharge of its functions in relation to the exportation from Australia of Australian natural resources or goods manufactured or produced in Australia;
- (3) related exclusively to the exportation from Australia to countries other than the United States, and otherwise than for the purpose of re-exportation to the United States, of Australian natural resources or goods manufactured or produced in Australia; or
- (4) consisted of representations to, or discussions with, the Government of Australia or an Australian authority in relation to the formulation or implementation of a policy of the Government of Australia with respect to the exportation from Australia of Australian natural resources or goods manufactured or produced in Australia.

Germany-US (1976)

Article 4

(1) Each party agrees that it will act, to the extent compatible with its domestic law, security, public policy or other important national interests, so as not to inhibit or interfere with any antitrust investigation or proceeding of the other party.

(2) Where the application of the antitrust laws of one party, including antitrust investigations or proceedings, will be likely to affect important interests of the other party, such party will notify such other party and will consult and coordinate with such other party to the extent appropriate under the circumstances.