

Section of International Law and Practice (Midyear Meeting 1995)

RESOLVED, That the American Bar Association urges the Government of the United States, its representatives and designees ("Government of the United States"), in the application of competition law principles and policies in the international trade area, as follows:

- I. Recognizing that competition laws have an important but non-exclusive role to play, the Government of the United States should continue to seek to eliminate private restraints that have the effect of excluding United States exports from access to foreign markets through the application of United States or foreign antitrust laws, as appropriate. In this connection, the Government of the United States should:
 - A. Seek adoption and effective enforcement by foreign trading partners of competition laws that prohibit cartel behavior and anticompetitive monopolistic practices by enterprises with market power, particularly where such conduct excludes non-host country goods or services from entering or being effectively distributed in such countries' markets.
 - B. Encourage and support the efforts of United States firms to obtain relief under foreign antitrust laws, including bringing matters to the attention of foreign enforcement authorities as well as bringing private actions where available, and urge foreign antitrust authorities to welcome and facilitate such complaints.
 - C. Use the authority provided under the International Antitrust Enforcement Assistance Act of 1994 (the "IAEAA") to enter into reciprocal investigation arrangements with foreign competition law enforcement agencies to improve the ability of the United States authorities to obtain evidence of foreign anticompetitive practices and to utilize such evidence to encourage appropriate foreign governmental action or to bring their own action where appropriate under United States law.
 - D. Supplement the IAEAA by seeking to negotiate bilateral and multilateral arrangements to facilitate antitrust discovery rights for non-host country plaintiffs (governmental and private) and for the enforcement of non-host country antitrust judgments.
- II. Recognizing the limitations of the role antitrust enforcement can play to address market access barriers, the Government of the United States should:
 - A. Continue to focus attention on market entry barriers that involve governmental action and that are frequently not reachable by application of competition law, including local restrictions on foreign investment, inadequate protection of intellectual property rights, the grant of domestic

subsidies that distort the market, and requirements or practices in government procurement that discriminate against foreign suppliers. Also seek to address discriminatory product standards, certification procedures and lack of regulatory transparency, which prevent access to local markets by providers of goods, services or investment capital. Where such government-imposed restraints are already addressed in existing multilateral agreements, continue to assert rights under such agreements in order to eliminate such restraints. Where they are not, seek to address them at the WTO and other multilateral fora.

- B. Identify whether there is a category of private restraints that do not violate the antitrust laws of the United States or the host country but that significantly restrict access to foreign markets even assuming successful implementation of recommendations I A-D and II A, and if so, study whether it is desirable as a policy matter that such barriers be addressed through multilateral agreements.