BIAC Comments on the Safe Harbour Section of the OECD Transfer Pricing Guidelines and Discussion Draft on Timing Issues

September 14, 2012

BIAC appreciates the opportunity to provide comments on safe harbour and timing issues in context of the OECD Transfer Pricing Guidelines currently under review, and provides initial comments as noted below. We continue to engage in and support the comments of BIAC Members on these issues going forward.

BIAC Comments on the OECD Discussion Draft on the Revision of the Safe Harbours Section of the Transfer Pricing Guidelines

Paragraph 3, E.1

1. Paragraph 3 of E.1 states that “Despite these generally negative conclusions, a number of countries have adopted safe harbour rules. Those rules have generally been applied to smaller taxpayers and less complex transactions.” We understand that the key issue in the transfer pricing is the “Risk and Function”. Therefore, it should also be possible to apply this rule to a big company which makes less complex transaction, like a toll manufacturer or a low-risk wholesaler.

Paragraph 36, E.5

2. We suggest that the last sentence of the paragraph 36, E. 5 should be changed as follows:

Where safe harbours can be negotiated on a bilateral or multilateral basis, they may provide significant relief from compliance burdens and administrative complexity without creating problems of double taxation or double non-taxation. Therefore, the use of bilateral or multilateral safe harbours under the right circumstances should be encouraged used in principle.
BIAC Comments Regarding OECD Discussion Draft on Certain Transfer Pricing Timing Issues

**Adjustments at year-end or when filing a tax return,**

3. Regarding the issues related to the making of taxpayer initiated adjustments to prices reported by taxpayers in their books either at year-end or when filing a tax return, it is difficult to obtain the management's understanding. In general, the determination of the royalty rate of the license fee is made at the conclusion of the contract based on the most reasonable valuation of the economic value of the intangibles at that time. Therefore, it is difficult for the management to understand the reason why this royalty rate should be changed at year-end or when filing a tax return, considering the arm’s length principle.