EC/United States agreement: application of positive comity principles in the enforcement of their competition laws

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Parliament should give its approval to the agreement between the EU and the United States on the application of "positive comity" principles in the enforcement of the competition laws of the two sides. This was the position taken by the Committee, when it unanimously adopted a report by Franco MALERBA (UFE, I).The agreement follows on from the 1991 EU-US Agreement on the application of the competition laws of the two parties. Article V of the 1991 agreement introduced the concept of "positive comity", meaning that if a Party believes that anticompetitive activities carried out on the territory of the other Party are adversely affecting its interests, the first party may notify the other and may request their competition authorities take appropriate enforcement measures. The rapporteur of the External Relations Committee shares the Commission's view that the new agreement is an important step forward from the 1991 agreement, as it not only provides guidelines on how positive comity requests should be dealt with, it also introduces a presumption that in certain circumstances a Party will defer or suspend its own enforcement measures. The main point at issue is, in fact, extraterritorial application of competition rules, which has been a recurrent bone of contention in EU-US relations (as illustrated by the case of the Helms-Burton Act). The new agreement emphasises the option of substituting international cooperation for extraterritorial application of competition rules where appropriate. In particular, a presumption of deferral or suspension of enforcement measures by a Party would "normally" apply where: -the anticompetitive activities in question did not have a direct, substantial and reasonably foreseeable impact on consumers in the Requesting Party's territory, or -the anticompetitive activities did have such an impact on the Requesting Party's consumers but occurred principally in and were directed principally towards the other Party's territory. This provision therefore adequately covers the case of extraterritorial application based solely on the effect on the export markets of the Requesting Party (as envisaged under US law) and introduces a presumption that such measures will be suspended.