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

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OBJECTIVE: Conclusion of an Agreement between the European Communities and the United States of America designed to encourage the use of positive comity principles in the application of their competition law. SUBSTANCE: The draft Agreement is linked to the 1991 Agreement on the application of competition rules between the United States and the Community. Its main aims are to elaborate the principles of positive comity set out in the 1991 Agreement (Article V) and to lay down the implementing rules. The Commission believes that the Draft Agreement is an important development in relations with the US and represents a political commitment on the part of the US to cooperate with the Commission rather than seeking to apply its antitrust laws extraterritorially in the EU. Specifically, the draft Agreement specifies the circumstances in which positive comity should be invoked and how requests for positive comity should be dealt with. The principle of positive comity applies where one of the Parties believes that anticompetitive activities are occurring in the territory of the other Party, and are adversely affecting its interests. That Party may then request the competition authorities of the other Party to implement appropriate measures. In this event, the Requesting Party will defer or suspend its own enforcement activities while the Requested Party is investigating the alleged anticompetitive activities. A number of provisions lay down the implementing rules governing the deferral or suspension of enforcement activities. The confidentiality of information provided under the Draft Agreement is guaranteed.