

No. 50135

**European Communities
and
United States of America**

Agreement between the European Communities and the Government of the United States of America on the application of positive comity principles in the enforcement of their competition laws. Brussels, 3 June 1998, and Washington, 4 June 1998

Entry into force: *4 June 1998, in accordance with article VIII*

Authentic text: *English*

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1 October 2012*

**Communautés européennes
et
États-Unis d'Amérique**

Accord entre les Communautés européennes et le Gouvernement des États-Unis d'Amérique concernant la mise en œuvre des principes de courtoisie active dans l'application de leurs règles de concurrence. Bruxelles, 3 juin 1998, et Washington, 4 juin 1998

Entrée en vigueur : *4 juin 1998, conformément à l'article VIII*

Texte authentique : *anglais*

Enregistrement auprès du Secrétariat de l'Organisation des Nations Unies : *Conseil de
l'Union européenne, 1^{er} octobre 2012*

[ENGLISH TEXT – TEXTE ANGLAIS]

AGREEMENT
BETWEEN
THE EUROPEAN COMMUNITIES
AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA
ON THE APPLICATION OF POSITIVE COMITY PRINCIPLES
IN THE ENFORCEMENT OF THEIR COMPETITION LAWS

THE EUROPEAN COMMUNITY AND THE EUROPEAN COAL AND STEEL COMMUNITY of the one part (hereinafter "the European Communities"), and THE GOVERNMENT OF THE UNITED STATES OF AMERICA of the other part:

Having regard to the 23 September 1991 Agreement between the European Communities and the Government of the United States of America Regarding the Application of Their Competition Laws, and the exchange of interpretative letters dated 31 May and 31 July 1995 in relation to that Agreement (together hereinafter "the 1991 Agreement");

Recognizing that the 1991 Agreement has contributed to coordination, cooperation, and avoidance of conflicts in competition law enforcement;

Noting in particular Article V of the 1991 Agreement, commonly referred to as the "Positive Comity" Article, which calls for cooperation regarding anticompetitive activities occurring in the territory of one Party that adversely affect the interests of the other Party;

Believing that further elaboration of the principles of positive comity and of the implementation of those principles would enhance the 1991 Agreement's effectiveness in relation to such conduct;

and

Noting that nothing in this Agreement or its implementation shall be construed as prejudicing either Party's position on issues of competition law jurisdiction in the international context,

HAVE AGREED AS FOLLOWS:

ARTICLE I

Scope and purpose of this Agreement

1. This Agreement applies where a Party satisfies the other that there is reason to believe that the following circumstances are present:

- (a) anticompetitive activities are occurring in whole or in substantial part in the territory of one of the Parties and are adversely affecting the interests of the other Party; and**
- (b) the activities in question are impermissible under the competition laws of the Party in the territory of which the activities are occurring.**

2. The purposes of this Agreement are to:

- (a) help ensure that trade and investment flows between the Parties and competition and consumer welfare within the territories of the Parties are not impeded by anticompetitive activities for which the competition laws of one or both Parties can provide a remedy, and**

- (b) establish cooperative procedures to achieve the most effective and efficient enforcement of competition law, whereby the competition authorities of each Party will normally avoid allocating enforcement resources to dealing with anticompetitive activities that occur principally in and are directed principally towards the other Party's territory, where the competition authorities of the other Party are able and prepared to examine and take effective sanctions under their law to deal with those activities.

ARTICLE II

Definitions

As used in this Agreement:

1. "Adverse effects" and "adversely affected" mean harm caused by anticompetitive activities to:
 - (a) the ability of firms in the territory of a Party to export to, invest in, or otherwise compete in the territory of the other Party, or
 - (b) competition in a Party's domestic or import markets.
2. "Requesting Party" means a Party that is adversely affected by anticompetitive activities occurring in whole or in substantial part in the territory of the other Party.