

Prepared Statement of the Federal Trade Commission
presented by Robert Pitofsky, Chairman

as possible. We believe we can implement some of the suggestions offered at the OIG hearing.

A few additional comments about positive comity, particularly as to selection and procedure, may be useful. First, positive comity is still a relatively new experience for the U.S. agencies. There has been only one formal referral to the EC, and none to the U.S., in

the six-month time frame in the agreement was probably too ambitious. The Commission does not complete most of its domestic investigations within that period, and positive comity cases may be more complex than our typical domestic investigation. However, the Commission is prepared to discuss with DCA an appropriate time frame in which DCA expects to complete its process.

Of course, predicting how long an investigation will take is inherently uncertain. For example, critical evidence may be more difficult to obtain than anticipated and may not exist at all -- and the target of the investigation may raise plausible defenses which must be investigated. The Commission, therefore, believes that it would be more productive to choose a target date once DCA has had a chance to start its procedure. Accordingly, we would expect to agree on a target date approximately three months after a positive comity referral takes place.

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provisions of the agreement and make it easier for both sides to fulfill their respective commitments.

SABRE also suggested that the referring U.S. agency maintain regular contact with the U.S. complainant on developments in the DG-IV investigation. While this is a good suggestion, some caution is appropriate. Some of the information we learn from DG-IV is confidential, and the U.S. agency would be prohibited from disclosing it to the U.S. complainant. For example, it may involve nonpublic (but not confidential commercial) information concerning a third party, or it may concern DG-IV's internal nonpublic processes. The Commission does not routinely provide status reports on its investigations ~~to its~~ complainants concerning investigations of U.S. firms, and there does not appear to be any reason to provide complainants in positive comity matters with any greater rights. Nonetheless, the Commission is willing to inform the complainant that ~~we will be~~ in regular contact with DG-IV about the matter, and that the complainant is free to contact us for whatever information we are able to provide. ⁽¹¹⁾ Again, we have generally followed that procedure in the Marathon matter.

In conclusion, the Commission appreciates the Subcommittee's continuing interest, which we share, in making the positive comity process work as effectively as possible. The Commission believes that the practices described in this statement can help improve the positive comity process. We understand and appreciate the concerns that the Subcommittee and witnesses before the Subcommittee have raised, and we will continue to work with you to make the ~~process~~ process as effective as possible.

1. This written statement represents the views of the Federal Trade Commission. My oral presentation and responses to questions are my own and do not necessarily reflect the views of the Commission or any other Commissioner.

2. Agreement between the Government of the United States of America and the European Communities regarding the application of their competition laws, Sept. 23, 1991, reprinted in Trade Reg. Rpt. (CCH) ¶ 13,504, and OJ L 95/45 (27 Apr. 1995), corrected at L 131/38 (15 June 1995) (hereafter "1991 Agreement"); Agreement between the Government of the United States of America and the European Communities regarding the application of positive comity principles in the enforcement of their competition laws, June 4, 1998, reprinted in Trade Reg. Rpt. (CCH) ¶ 13,504A; OJ L 173/26 (18 June 1998) (hereafter "1998 Agreement")

3. Agreement between the Government of the United States of America and the Government of Canada

