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INCOME TAX PRACTICES MAINTAINED BY FRANCE

Statement by the Delegation of France

After a close examination of the report by the Panel entrusted with the task of examining the question of the income tax practices maintained by France, brought before the contracting parties by the United States (document L/4423 of 2 November 1976), the French Government wishes to make formal reserves on the reasoning followed by the Panel and is unable to follow the Panel in its conclusions concerning the French tax practices. However, before setting out in detail these reservations and the technical reasons for its position, which will be done in a memorandum to be submitted to the Council, the French Government considers it necessary first to ask a question of fundamental importance for the evaluation of the Panel's report on the income tax practices maintained by France.

This previous question relates to the concept of "export" or "export activity". Indeed, the report on the French tax practices, like the report on the tax practices maintained by Belgium and the Netherlands leads one to believe that the Panel has taken an extremely broad view of the concept of export or export activity which goes well beyond the concept derived from the letter, spirit and practice of the GATT. This, therefore, leads one to wonder about the scope of the Panel's terms of reference.

In the GATT sense, it is obvious that export is the sale of a national product or service to a foreign country, the criterion being the passage of the customs frontier of the exporting country. The process includes the following stages: products, sale by the producer to an intermediary, passage of the customs frontier of the exporting country and to some extent transport up to the customs frontier of the importing country. In any case, the exportation ends upon passing over the customs frontier of the importing country. This is evident from the letter, the spirit and the practice of the General Agreement.

Now, to the extent that the Panel puts in doubt the French tax provisions which apply to foreign branches or subsidiaries of French companies, the Panel has considered that the exportation continues well beyond the custom frontier of the

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importing country. As a matter of fact, the activities of foreign branches and subsidiary companies of French corporations do not relate to exports within the above meaning, but relate to operations subsequent upon export which take place within the customs territory of the importing country. These are, in fact, internal trade activities in the importing countries.

The Panel has concluded that the French practices concerning taxation of such activities tend, in certain circumstances, to constitute an export subsidy because the Panel has considered that the concept of export encompasses such activities which are internal trade activities.

However, if one sticks to the concept of exportation prevailing in GATT which is the only permissible one, it is clear that the putting in doubt of the French practices which are beyond this concept is unfounded.

The French Government further holds the view that the reasoning and conclusions of the Panel, if they were to be followed, would lead to economic and trade discrimination and would raise serious political - not to say institutional problems.

From the economic point of view this concept leads directly to distortions as between foreign sales effected by independent outsiders or by branches and subsidiaries. Indeed, the principle laid down by the Panel is that the sales activities in the country of destination of the product concerned should be subjected to a taxation system identical with the one applied in the country of origin. But, while such assistance may be conceivable for branches and subsidiaries, in the country of destination, of corporations in the country of origin, this is totally inconceivable for independent enterprises in the country of destination exercising such activities. There would, therefore, automatically be a discrimination at the level of the market in the country of destination between integrated trading companies (branches, subsidiaries) and enterprises operating at arms' length.

Politically, the Panel's reasoning would also force upon the contracting parties the adoption of a uniform tax system based on the principle of "fiscal consolidation" at the level of the parent corporation. This would bring in question the competence of Governments in matters of taxation, which is one of the basic components of sovereignty.

It should be noted, however, that no taxation system in the world is based on such a principle. Inversely, I note that the territorial system of taxation is widely applied and cannot lead to any discrimination in the importing country.

As the French Government does not share the Panel's conceptions, it cannot accept the Panel's conclusions and is convinced that the Council will endorse this position.