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GENERAL AGREEMENT ON TARIFFS AND TRADE

COUNCIL
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INCOME TAX PRACTICES MAINTAINED BY FRANCE

Statement by the Delegation of France

Revision

After a close examination of the report by the Panel appointed "to examine the matter referred by the United States to the CONTRACTING PARTIES, relating to income tax practices maintained by France" (document L/4423 of 2 November 1976), the French Government wishes to express formal reservations on the approach followed by the Panel and to state that it does not concur with the Panel's conclusions concerning the French tax practices. However, before setting out in detail these reservations and the technical reasons for its position, which will be the subject of a memorandum to be submitted to the Council, the French Government considers it necessary to ask a previous question of fundamental importance for the evaluation of the Panel's report on the tax practices maintained by France.

This previous question relates to the concept of "export" or "export activity". Indeed, the wording of the report on the French tax practices, like that of 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, going well beyond that deriving 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 abroad of a domestic product or service, the criterion being the crossing of the customs frontier of the exporting country. The process includes the following stages: production, sale by the producer to an intermediary, crossing of the customs frontier of the exporting country and, to some extent, transport to the customs frontier of the importing country. In any case, the export ends with crossing of the customs frontier of the importing country. This is evident from the letter, the spirit and the practice of the General Agreement.

*English only/anglais seulement.

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Now, to the extent that the Panel brings into question the French tax provisions which apply to foreign branches or subsidiaries of French companies, the Panel has considered export as continuing well beyond the customs frontier of the importing country. Indeed, the activities of foreign branches and subsidiary companies of French corporations do not relate to exports within the above meaning, but to operations subsequent upon export which take place within the customs frontiers of the importing country. These are, in fact, internal trade activities in the importing country.

Since the Panel has concluded that the French practices concerning taxation of such activities tend, in certain circumstances, to constitute a subsidy on exports, it is because the Panel has considered that the concept of export encompasses such activities which are internal trade activities.

However, if one abides by the concept of export prevailing in GATT and which is the only admissible one, it is clear that there are no grounds for bringing into question the French practices which are beyond this concept, since these practices do not concern exports.

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 aspect this concept leads directly to distortions as between sales in a foreign market 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 subject to a tax system identical to the one applied in its country of origin. But, while such a system 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 that exercise such activities. There would, therefore, automatically be a discrimination at the level of the market in the country of destination between integrated trading undertakings (branches, subsidiaries) and transactions with independent enterprises.

From the political aspect, the Panel's reasoning would also force upon 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 into question the competence of States in matters of taxation, which is one of the basic components of their sovereignty.

It should be noted, however, that no taxation system in the world is based on such a principle. Conversely, I would 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 concur with the Panel's conceptions, it cannot accept the conclusions in the Panel's report and is convinced that the Council will endorse this position.