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INTERNATIONAL CHAMBER OF COMMERCE

Double Taxation Relief by Exemption and Obligations under GATT

At the request of the Secretary General of the International Chamber of Commerce, the following note, adopted by the ICC's Commission on Taxation, is distributed for the information of contracting parties.

A copy of the ICC publications referred to in the Annex to the note is available for consultation by delegations in the GATT Library.

COMMISSION ON TAXATION
(Meeting on 29 April 1977)

DOUBLE TAXATION RELIEF BY EXEMPTION AND OBLIGATIONS UNDER GATT

Comments Submitted by the Secretary General of the ICC to the Director-General of GATT

1. Reports by a GATT panel on three countries (Belgium, France, and the Netherlands) conclude that these countries have acted in contravention of GATT in granting tax concessions to exporters. The basis of the charge is that the profits of foreign branches or permanent establishments (or subsidiary companies) through which exports from these countries are sold, with or without further processing, are exempt or relieved from tax in those countries.
2. The conclusion is based on a fundamental misunderstanding of the nature of branch operations. When a supplier in one country sets up a branch or permanent establishment (or a subsidiary company), in another country to carry on distributive, wholesale or retail activities, he is engaging in two quite distinct businesses. Sales to the branch, etc. are export activities by the home enterprise; sales by the foreign branch etc. are internal trading activities in the foreign country.

3. It is a proper concern of GATT to monitor in the interests of signatories that no direct tax subsidies are granted to the export part of the operations and to this end every precaution should be taken to ensure that prices charged by exporting enterprises to foreign branches are consistent with those which would be charged to an independent distributor, wholesaler or retailer engaged in the same or similar activities.

4. It is not in our view a proper concern of GATT to require that profits arising from trading activities in imported goods within one country are taxed at the rates or under the conditions imposed for taxing profits from such activities in another country.

5. The fact that many countries, using the tax credit system of double taxation relief, do in fact impose profits taxes supplementary to those charged in the countries in which branches are situated (or on dividends from subsidiary companies) constitutes a self-imposed curb or penalty on the foreign investment and trading operations of their resident corporations. It is no part however of any country's obligations under GATT that it should distort competition within another country by subjecting activities there to taxation more onerous than that suffered by locally-owned enterprises.

6. The ICC regards the exemption method of avoiding international double taxation on income derived by a resident of one country from business carried on in another country, and taxed there, as the ideal policy. (See Annex for list of ICC publications in which adoption of this method has been urged.)

7. It would be most regrettable therefore if, due to failure to analyze and comprehend the nature of separate trading activities, this ideal method of solving the problem of international double taxation were to be interpreted as a nullification or impairment of other contracting parties' benefits under GATT.

ANNEX

List of ICC Publications in which the Exemption System
has been Recommended

Publication 180: "Avoidance of Double Taxation" (February 1955)
pages 6/7:

"The only sure method of avoiding double taxation is for the country of residence to exempt foreign income from any proportional or progressive tax".

Publication 218: "Taxation Policies in Relation to International Investment (May 1961)
page 13:

"Corporate profits should not suffer real taxation more than once, the appropriate place for taxation being the country in which the profits arise, wherever the company may be resident".

Publication 224: "Double Taxation in the Atlantic Community" (November 1962)
page 14:

"The inability of the Member States to agree to exemption in the country of residence as the method of avoiding double taxation is regretted".

Publication 235: "Avoidance of Double Taxation, Further Steps" (November 1964)
page 11:

"There is an urgent need however for a more complete remedy, and the Commission strongly recommends the general adoption of the practice of unqualified exemption for inter-company dividends in the hands of the receiving company".

Publication 241: "Tax Policies for Trade and Growth" (March 1966)
page 17:

"Adoption of the exemption method of double taxation relief to improve the general flow of international enterprise and investment is a key-stone of the fiscal policies recommended by the ICC. Pending the wider adoption of these policies, the Commission believes that exemption could be the most appropriate initial measure of encouragement for substantial corporate investments in the less-developed countries".

Publication 257: "Taxation of Company Profits and Dividends" (December 1968)
page 8:

"Parallel with the required treatment of domestic inter-company dividends, foreign dividends should also be exempt from taxation in the receiving company".