

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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## UNITED STATES TAX LEGISLATION (DISC)

The following communication was submitted by the Commission of the European Communities on 29 April 1982, with the request that it be circulated to contracting parties.

### Draft Decision

In accordance with the findings and conclusions in the report of the Panel (document L/4422 of 2 November 1976) instructed to examine, pursuant to paragraph 2 of Article XXIII, the DISC tax legislation of the United States, this legislation must be regarded as an export subsidy, having in certain respects effects which are not compatible with obligations under the provisions of Article XVI, paragraph 4, and it must be considered that there is a prima facie case of nullification or impairment of benefits which other contracting parties were entitled to expect under the General Agreement.

Moreover, the incompatibility of the DISC subsidy with the relevant provisions of the General Agreement is even more clearly confirmed by the illustrative list of export subsidies annexed to the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade.

The EEC wishes to point out that this dispute under Article XXIII goes back to 1972. Long discussions have taken place in the Council on several occasions since the Panel submitted its report in November 1976. This situation was produced by the approach of the United States, which tied the adoption of one report to the adoption of three other reports concerning separate and different complaints.

At its meeting on 7-8 December 1981, the Council finally approved the report of the Panel which had examined the DISC legislation. The Council's decision accompanying the adoption of this report and of the three other reports in no way alters the content of the Panel's report on the DISC legislation. The Chairman of the Council noted, inter alia, that the decision did not modify the existing rules set forth in Article XVI, paragraph 4 as regards the taxation of exported goods. The DISC legislation relates to the taxation of profits derived from export activities operated from United States territory.

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In view of the findings and conclusions of the Panel, and of the statements made to the Council by other contracting parties equally concerned by the DISC subsidy, the EEC requests that the Council recommend, in accordance with the provisions of Article XXIII, paragraph 2, that the United States take appropriate action without delay to bring the DISC legislation into conformity with the provisions of GATT.

Furthermore, as the DISC legislation has been in force since 1972, and as the United States, in spite of the adoption of the DISC report by the Council, does not consider that the DISC programme constitutes a subsidy (cf. document SCM/19 of 19 April 1982), the Community requests the Council to recognize that the circumstances characterizing this infringement of the provisions of GATT are very serious, and that the question should remain on the Council's agenda, with a view to ascertaining whether the action shortly to be taken by the United States is likely to remedy the situation, and with a view to any appropriate follow-up.