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GENERAL AGREEMENT ON
TARIFFS AND TRADE

COUNCIL

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INCOME TAX PRACTICES MAINTAINED BY BELGIUM

Communication from Belgium

1. The practices were the subject of a complaint by the United States, which asserted that they constituted an export subsidy and therefore violated Article XVI:4 of the General Agreement.

2. The practices complained of concern economic activities abroad involving products imported from Belgium. Their aim is to avoid double taxation. Briefly, the practices are:

- reduction of the tax on the profits, transferred to Belgium, of foreign establishments of Belgian companies, when such profits have already been taxed abroad;
- exemption from the tax on dividends, already taxed abroad, derived by Belgian companies from their permanent participations in foreign companies.

3. The Panel established to investigate the United States complaint made its report on 2 November 1976 (document L/4424). The report concluded that in certain cases these tax practices of Belgium had effects which were not consistent with Article XVI:4 of the General Agreement.

4. Belgium pointed out that the tax practices in question:

(a) were aimed at, and had the effect of, limiting double taxation, that similar practices were moreover applied in various countries including the United States, and that they were the subject of bilateral treaties between States which had never been considered contrary to the provisions of the GATT;

(b) that the tax practices dealt with earnings derived from activities which were no longer export activities under the terms of the General Agreement.

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5. Since the Panel made its report, the drafting and adoption, inter alia by the United States, of the Code on Subsidies and Countervailing Duties has resulted in recognition of the fact that measures aimed at avoidance of double taxation cannot be assimilated to export subsidies (see annex to the Code - Note No. 2).

What is more, the fact has been emphasized that export activity ends at the moment of sale to the purchaser abroad and therefore does not cover the resale of products by that purchaser.

6. Furthermore, in bilateral contacts, including contacts with Belgium, the United States has recognized that it was for the country of origin to tax economic activities involving a product "up to the point of export"; the activity of the foreign buyer after purchase of the product should therefore not be subject to the taxation of the country of origin.

7. There is still the fear of the United States that Belgian enterprises might invoice at abnormally low prices products they sell to associated foreign buyers, thereby securing, by the combined effect of measures to avoid double taxation and a foreign rate of taxation lower than the Belgian rate, a significant reduction of income tax and hence a possibility of exporting at a lower price. Belgium has given an assurance, both bilaterally to the United States and by its adherence to the Code on Subsidies and Countervailing Duties, that products would be invoiced to an associated foreign buyer at the same price as would be charged if he were an independent buyer. What is more, the Belgian tax administration had long since taken measures to that effect.

8. In view of the above, Belgium notes that the issue with which the United States complaint and the report of the Panel (document L/4424) are concerned has ceased to exist. It therefore proposes that the Council should adopt the report while stating what has happened since the report was made, namely,

(a) that economic activities involving exported products but taking place outside the territory of the country of origin need not necessarily be taxed by that country and cannot be regarded as an export activity under the terms of the General Agreement;

(b) that measures for the avoidance of double taxation are not to be assimilated to export subsidies.