

EUROPEAN PARLIAMENT

EUROPEAN PARLIAMENT DELEGATION

for relations with the

UNITED STATES

COMMITTEE ON EXTERNAL ECONOMIC AFFAIRS

Notice to Members

Re: Unitary taxation discussions and trade policy measures in the
US Congress

Members will find attached:

1. An excerpt from the Congressional Record of 8 March 1984,
entitled "European Parliament Protests US Unitary Taxation".
2. An article from US Import Weekly of 14 March 1984 on the
course of the Trade Remedies Bill introduced in the US Congress
by Congressman Sam GIBBONS.

The Secretariat for Interparliamentary Delegations has a copy of
HR 4784, the bill "to reform the remedies available to United
States producers regarding unfair import competition, and for
other purposes" for consultation by those interested.

DIRECTORATE-GENERAL FOR COMMITTEES
AND INTERPARLIAMENTARY DELEGATIONS

Annex

26 March 1984

PE 89.745

EUROPEAN PARLIAMENT PRO-TESTS U.S. UNITARY TAXATION

HON. BILL FRENZEL

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 8, 1984

● Mr. FRENZEL. Mr. Speaker, printed below is a resolution passed by the European Parliament on 12 December 1983, which protests unitary taxation laws which have been passed by a number of States as being contrary to the spirit of double taxation treaties currently in effect, as well as discriminating against European-based companies which have operations in the United States. A statement by European Parliament Member Michael Welsh United Kingdom follows that resolution and explains the European position.

The Europeans are dead right. Unitary taxation is unfair. I will continue my effort to try to persuade those States, including my own, which have passed this kind of law to reverse them. It is ironic that States would pass unitary tax laws which discourage new foreign investment. Not only do they risk losing existing investment, and jobs, but they have slammed the door on new business investment which all of them claim to be seeking.

It is bad enough that States pass inequitable unitary tax laws, but it is pure folly that States shoot themselves in their "jobs" foot as well.

The Secretary of the Treasury will report late this fall on alternatives available to the Federal Government on control of unitary tax system. I await his report with great interest.

EUROPEAN COMMUNITIES—EUROPEAN PARLIAMENT: WORKING DOCUMENTS, 1983-84

The European Parliament motion for a resolution tabled by Mr. Welsh, Mr. Gauthier, Mrs. Gredal, Mr. Lange, Mr. Moreau, Mr. Blumenfeld, Mrs. Moreau, Sir Fred Catherwood, Mr. Provan, Mr. Spencer, Mr. Tyrrell, Mr. Delorozoy and Mrs. Veil for entry in the Register pursuant to Rule 49 of the Rules of Procedure on taxation of companies by American States.

A. Noting that a number of American States have adopted a world wide system of taxing companies on an imputed percentage of their profits known as Unitary Tax, effectively taking profits earned outside the USA.

B. Aware that the US Supreme Court has accepted the legality of such a system for domestic US corporations.

C. Concerned that this decision may be taken to extend to American companies with subsidiaries in Europe and the American subsidiaries of Community based companies.

1. Considers that the principle of Unitary Tax is contrary to the spirit of the various double taxation treaties and discriminates unfairly against European based companies with operations in the United States.

2. Regrets that the United States Administration did not file an Amicus Curiae Brief in the Supreme Court case of Container Corporation of the US vs. California Trustees which would have enabled the position of overseas Companies to be clarified.

3. Urges the Administration to give full hearted support to legislation before the Congress which would exempt overseas Companies from this discriminatory form of tax.

4. Urges the Commission to instruct its Delegation in Washington to continue to press this matter which can only damage relations between the Community and the United States to the detriment of their mutual economic and political interests.

5. Believes that failure by the administration and Congress to act in this way would justify the suspension of the double taxation treaties by the Member States.

6. Instructs its President to forward this resolution to the President of the Commission, the Head of the US Mission to the European Communities and the Chairman of the Delegation of the US Congress to the European Parliament.

RE UNITARY TAXATION—PRESS STATEMENT OF MICHAEL WELSH, MEMBER, EUROPEAN PARLIAMENT (UNITED KINGDOM)

Mr. Michael Welsh, Member of the European Parliament for Lancashire Central (UK) addressed the Government Operations Committee of the National Conference of State Legislatures on behalf of the Parliament and presented the text of a Resolution re-iterating European concern about the increasing incidence of Unitary Tax legislation by American States.

Mr. Welsh said that the Unitary Tax issue was a major irritant in relations between the United States and the European Community at a time when their economic interdependence was growing rapidly. European investment in the United States amounts to \$61,000 million, 60 percent of all foreign direct investment, and U.S. investment in the EEC amounted to \$78,000 million or 35 percent of all direct investment abroad. Representations had been made at every level of the Federal Government starting with the President and the Congress, and we have yet to hear of any senior officer of the Administration or member of the Congress who was prepared to make a defense of Unitary Tax. They would acknowledge that it was wrong, but would then say it was a question of States' rights and therefore "very difficult." Under those circumstances European opinion regarded the establishment of the working group on Unitary Tax under the chairmanship of Secretary Regan with a certain degree of skepticism. The European Parliament had sent him to Washington to talk to State Legislators because they recognized that this was where the decision-making power lay; if the States could be persuaded not to pass unitary tax bills the problem would quickly disappear.

No one was disputing the right of States to decide how they would tax their corporate citizens, but it was the essence of democracy that rights must be exercised with discretion, paying due regard to the wider implications, and with proper respect for the rights of others.

Unitary tax clearly infringed a basic principle of tax practice, namely that the same benefit should not be taxed twice. Yet under the Unitary Tax system one company was taxed in California on income of \$46 million a year when it had reported a loss for Federal Tax purposes of \$255 million. A leading British Bank with 0.01 percent of its worldwide income attributable to California had 1.16 percent of worldwide income apportioned to its California operation and its tax bill amounted to 97.5 percent of its federal taxable income.

The system was arbitrary, discriminatory and unfair, especially as there was no accepted standard method of worldwide re-

porting. As a consequence the United States was in breach of its international obligations. As far as the United Kingdom was concerned, the U.S. Senate removed Article 4 (4) from the UK/US Taxations Convention after it had been considered by the House of Commons. The Treaty was ratified only after Government Ministers confirmed that they had received categorical assurances from the Administration that legislation to avert the use of Unitary Taxation would be introduced. It was difficult to see how international trade and commerce could be conducted in an orderly fashion if long established rules could be upset at the whim of a single partner. The Europeans could hardly be expected to make a separate taxation treaty with each individual state.

In the third place, Mr. Welsh believed that those states applying Unitary Taxes were already losing out in terms of foreign investment. Recently the London Chamber of Commerce had to cancel a trade and investment trip to Florida. Out of fifty companies intending to go, only six wished to do so once they heard that the State had adopted Unitary Tax. We could cite other examples where major corporations had decided not to locate manufacturing plants in Unitary Tax States.

Everyone appreciated the need to find relatively painless means of raising revenue but it was legitimate to ask if the interests of the people of the States concerned were best served when long term job creative investment was sacrificed to short term revenue gain.

Finally, Mr. Welsh said that in his view, retaliation by European states against U.S. companies would be inevitable if the situation could not be satisfactorily resolved. The European Parliament Resolution especially referring to this, had been signed by over 230 members representing all ten member States and every shade of political opinion—it was an unusual demonstration of unanimity. Unitary Tax had been condemned by the OECD, the UN, Canada and Japan and had been the subject of numerous direct representations by heads of Government.

"If the United States is unable or unwilling to respond to this crescendo of protest, we will inevitably have to take action to defend ourselves—if you like, to assert our own "States rights". This would mean the imposition of similarly arbitrary systems of taxation on American companies operating abroad affecting their profitability and their investment potential. Such a development would be bad for trade, bad for the economy, bad for jobs and very very bad for international relations. I appeal to this Committee to make a recommendation to all its Members to drop or repeal all pending and existing Unitary Tax legislation. By so doing they will have removed the need for panels, federal legislation and Supreme Court cases and will have demonstrated the responsibility and maturity of judgement which we, their friends, have a right to expect. The State Legislatures have the power to make a significant contribution to U.S./European understanding to promote international trade and prosperity, to speed recovery and increase employment on both sides of the Atlantic. I am here on behalf of my Parliamentary colleagues throughout the European community ask you to use the power today." ●

Trade Policy**WAYS AND MEANS TRADE SUBCOMMITTEE REPORTS
TRADE REMEDIES BILL INTRODUCED BY GIBBONS**

Legislation (H.R. 4784) significantly revising the U.S. anti-dumping and countervailing duty statutes was ordered reported Feb. 29 by the House Ways and Means Trade Subcommittee.

The panel took the action by voice vote after concluding earlier in the month an exhaustive section-by-section review of a draft of the proposal. The final bill was introduced Feb. 8 by Chairman Sam Gibbons (D-Fla) and by members of the panel of both parties, but the absence of a quorum at subcommittee sessions on Feb. 9 and 22 delayed the vote on the measure.

Amendments Expected

The proposal now goes to the full committee, where efforts to amend the measure are anticipated. Ways and Means Committee Chairman Dan Rostenkowski (D-Ill) reportedly will try to keep the amendments at a minimum, however, in an effort to expedite consideration of the legislation.

No date has yet been set for committee action on the bill. However, Gibbons told BNA that he is hopeful Ways and Means will get to H.R. 4784 after it completes work on a budget deficit proposal.

Supporters of Gibbons' legislation are generally optimistic that the full committee will approve the bill, but are also said to be worried about possible efforts in Ways and Means to toughen significantly some of the provisions and to try to broaden the coverage to include other trade statutes. Proponents are hoping for a vote on the House floor this session, but some congressional observers doubt that the House will pass such a controversial measure in an election year.

Provisions In Bill

The proposal adopted by the subcommittee makes numerous changes in the antidumping and countervailing duty laws in an effort to address new unfair trade practices, reduce costs and delays, improve administrative procedures, and make the statutes more accessible to potential petitioners. Included in the bill are provisions altering the rules governing settlement agreements; including government export targeting subsidies within the scope of the countervailing duty law; governing natural resource trans-

actions; including upstream subsidies in countervailing duty law; prohibiting interlocutory judicial review; and establishing a trade remedy assistance office and a targeting subsidy monitoring program (9 ITIM 92, Oct. 19, 1983).

In addition, the panel originally proposed a revision of the existing standards for assessing nonmarket economy countries under the trade laws. This section stated that if a normal dumping test were not possible, there would be a new "nonmarket pricing" test as an alternative to the current "surrogate country" test applied by the Commerce Department.

However, the pricing formula provision was removed during the markup, and the matter will now have to be worked out in the full committee. There will also be further discussion in Ways and Means on the section governing settlement agreements, according to committee staff members. Among the amendments expected then is one giving U.S. industries veto authority over settlements.

Source: U.S. Import Weekly of 14 March 1984.

