

office, or other fixed place of business within the United States, *only that part* shall be treated as effectively connected with the conduct of a trade or business within the United States.” (Emphasis added)

While these statements of Congressional intent are helpful, it is believed there should be no possible ground for a contrary interpretation.

c. U.S. Tax Treaty Commitments

A fair apportionment of the foreign corporation's income is also required by many of the income tax treaties to which the United States is a party.

As indicated above under these treaties,⁶ the U.S. is clearly barred from taxing the U.S. branch office of a foreign corporation (having its domicile or seat of management in the treaty country) on more than that portion of the profit arising from its U.S. activities “which it might be expected to derive if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length” with its home office in the treaty country.

It is submitted that the United States should not attempt to tax a greater amount to those foreign corporations belonging to countries having no such tax treaty with the United States. Most of the non-treaty countries are the “less developed countries” of Latin America, Africa and Asia. It is the policy of the United States to assist the economic development of these “less developed countries.” Consistency with that policy would prohibit the United States from imposing more stringent taxes on those countries' corporations engaged in importing their products into the United States than on corporate importers belonging to treaty countries.

The Council believes that H.R. 13103 should provide that the amount of income of a foreign corporation attributable to sales to U.S. customers made through a U.S. office should not exceed the amount which would be allocable to that office if it had been maintained by a separate subsidiary corporation of the foreign corporation.

Foreign Sales With No Foreign Office

In addition, a similar allocation should be permitted with respect to sales by a foreign corporation, which has substantial economic activities outside the United States but no office outside the United States, of goods of foreign origin sold for use, consumption or disposition outside the United States. The corporation should not be subject to U.S. tax on its entire income from sales negotiated through its U.S. office if part of its income is economically attributable to other factors.

For example, the foreign corporation may purchase goods in one for-

⁶ Provisions of this type appear, for example, in the U.S. Tax Treaties with Belgium, Germany, Netherlands, the United Kingdom, and South Africa.