NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

BARCLAYS BANK PLC *v.* FRANCHISE TAX BOARD OF CALIFORNIA

CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA, THIRD APPELLATE DISTRICT

No. 92–1384. Argued March 28, 1994—Decided June 20, 1994[1]

During the years at issue in these consolidated cases, California used a ``worldwide combined reporting'' method to determine the corporate franchise tax owed by members of unitary multinational corporate groups doing business in California. California's method first looked to the worldwide income of the unitary business, and then taxed a percentage of that income equal to the average of the proportions of worldwide payroll, property, and sales located within California. In contrast, the Federal Government employs a ``separate accounting'' method, which treats each corporate entity discretely for the purpose of determining income tax liability. In *Container Corp. of America* v. *Franchise Tax Bd.,* 463 U. S. 159, this Court upheld the California scheme as applied to domestic-based multinationals, but did not address the constitutionality of the scheme as applied to domestic corporations with foreign parents or to foreign corporations with foreign parents or foreign subsidiaries. Both petitioner Barclays Bank PLC (Barclays)—a foreign multinational—and petitioner Colgate-Palmolive Co. (Colgate)—a domestic multinational—have operations in California. In separate cases, two members of the Barclays group and Colgate were denied refunds by the California authorities.

Held: The Constitution does not impede application of California's tax to Barclays and Colgate. Pp. 10–33.

(a) Absent congressional approval, a state tax on interstate

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[1]Together with No. 92–1839, *Colgate-Palmolive Co.* v. *Franchise Tax Board of California,* also on certiorari to the same court.

or foreign commerce will not survive Commerce Clause scrutiny if the taxpayer demonstrates that the tax (1) applies to an activity lacking a substantial nexus to the taxing State; (2) is not fairly apportioned; (3) discriminates against interstate commerce; or (4) is not fairly related to the services the State provides. *Complete Auto Transit, Inc.* v. *Brady,* 430 U. S. 274, 279. A tax affecting *foreign* commerce raises two additional concerns: one prompted by the ``enhanced risk of multiple taxation,'' *Container Corp., supra,* at 185, and the other related to the Federal Government's capacity to ```speak with one voice when regulating commercial relations with foreign governments,''' *Japan Line, Ltd.* v. *County of Los Angeles,* 441 U. S. 434, 449. California's tax easily meets all but the third of the *Complete Auto* criteria. As to the third, Barclays has not shown that the system in fact operates to impose inordinate compliance burdens on foreign enterprises, and its claim of unconstitutional discrimination against foreign commerce thus fails. Pp. 10–15.

(b) Nor has Barclays shown that California's ``reasonable approximations'' method of reducing the compliance burden is incompatible with due process. Barclays argues that California employs no standard to determine what approximations will be accepted, but Barclays has presented no example of an approximation California rejected as unreasonable. Furthermore, the state judiciary has construed California law to curtail the discretion of state tax officials, and the State has afforded Barclays the opportunity to seek clarification of the meaning of the relevant regulations. Rules governing international multijurisdictional income allocation have an inescapable imprecision given the subject matter's complexity, and rules against vagueness are not mechanically applied; rather, their application is tied to the nature of the enactment. Pp. 15–17.

(c) California's system does not expose foreign multinationals, such as Barclays, to constitutionally intolerable multiple taxation. In the face of a similar challenge, *Container Corp.* approved this very tax when applied to a domestic-based multinational. The considerations that informed the *Container Corp.* decision are not dispositively diminished when the tax is applied to a foreign-based enterprise. Multiple taxation is not the inevitable result of California's tax, and the alternative reasonably available to the State—separate accounting—cannot eliminate, and in some cases may even enhance, the risk of double taxation. Pp. 17–21.

(d) California's scheme also does not prevent the Federal Government from speaking with ``one voice'' in international trade. Congress holds the control rein in this area. In the 11 years since *Container Corp.,* Congress has not barred States from using the worldwide combined reporting method. In the past three decades, aware that foreign governments deplored

use of the method, Congress nevertheless failed to enact any of numerous bills, or to ratify a treaty provision, that would have prohibited the practice. Executive Branch actions, statements, and *amicus* filings do not supply the requisite federal directive proscribing States' use of worldwide combined reporting, for the regulatory authority is Congress' to wield. Executive Branch communications that express federal policy but lack the force of law cannot render unconstitutional California's otherwise valid, congressionally condoned scheme. Pp. 21–32.

No. 92–1384, 10 Cal. App. 4th 1742, 14 Cal. Rptr. 2d 537, and No. 92–1839, 10 Cal. App. 4th 1768, 13 Cal. Rptr. 2d 761, affirmed.

GINSBURG, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and BLACKMUN, STEVENS, KENNEDY, and SOUTER, JJ., joined, and in all but Part IV–B of which SCALIA, J., joined. BLACKMUN, J., filed a concurring opinion. SCALIA, J., filed an opinion concurring in part and concurring in the judgment. O'CONNOR, J., filed an opinion concurring in the judgment in part and dissenting in part, in which THOMAS, J., joined.