

tion with our domestic goods, the duties on them shall be increased to that extent, and it is the result of such aid or advantage that Congress seeks to countervail, regardless of whatever name or in whatever manner or form or for whatever purpose it was given, and whether the thing done be called 'allowance,' 'bonification,' 'bounty,' 'grant,' 'drawback,' or what, matters not; the question is whether or not the result would be to admit the merchandise to our markets at a lower cost price."

In the *Nicholas* case Treasury had imposed countervailing duties on imported British spirits after finding that the British government gave an allowance of a specified sum upon export of the item from the United Kingdom. An appeal was taken from the Court of Customs Appeals to the United States Supreme Court, which affirmed the lower court in an opinion written by Mr. Justice McKenna. The British contended that the allowance that provided for exportation was not a bounty but was compensation to the distiller and rectifier for costs due to excise restrictions. In reviewing this contention the Supreme Court said the issue was much more simple than the British were attempting to make it and concluded that the allowance paid to the exporter of spirits resulted in the sale of such spirits to other countries being "relieved from a burden that their sale in the United Kingdom must bear. There is a benefit, therefore, in exportation,—an inducement to seek the foreign market." The Supreme Court addressed itself to the meaning of the term "bounty" or "grant" used in the Tariff Act of 1913 and made the following definition:

"The statute was addressed to a condition, and its words must be considered as intending to define it, and all of them—'grant' as well as 'bounty'—must be given effect. If the word 'bounty' has a limited sense, the word 'grant' has not. A word of broader significance than 'grant' could not have been used. Like its synonyms 'give' and 'bestow', it expresses a concession,—the conferring of something by one person upon another. And if the 'something' be conferred by a country 'upon the exportation of any article or merchandise,' a countervailing duty is required by Paragraph E."

In an earlier case the Supreme Court of the United States had supported the Treasury finding that sugar exported from Russia was receiving a bounty; Treasury had applied countervailing duties to this commodity under the Tariff Act of 1897. In that case the effect of the Russian law was to impose a tax on all sugar produced but to remit that tax upon all sugar that was exported. The court said in part:

"When a tax is imposed upon all sugar produced, but is remitted upon all sugar exported, then, by whatever process or in whatever manner, or whatever name, it is disguised, it is a bounty upon exportation." (*Downs v. U.S.*, 187 U.S. 496 at 515.)

The *Downs* and *Nicholas* cases are very important to this country. Both cases establish the fact that the statute in using the terms "bounty" or "grant" meant to include any type of advantage given to the exportation of goods whether by direct or indirect means and whether by tax remission or otherwise. Although both of these Supreme Court decisions antedated GATT and interpreted earlier provisions of the Tariff Statute, it is believed that unless the Supreme Court of the United States overrules these decisions that they must be controlling in the application of the present Countervailing Duty Statute. Under the Protocol of Provisional Application of the GATT, the signatories provided that they would apply that part of the agreement which dealt with countervailing duties "to the fullest extent not inconsistent with existing legislation", and in any event the treasury decision in deciding part of our transmission tower case shows they recognize that GATT is not an impediment to the application of the Countervailing Duty Statute which remains unaffected by the General Agreement.

TAX HARMONIZATION BETWEEN MEMBER COUNTRIES OF EUROPEAN ECONOMIC COMMUNITY

If the use of the internal tax systems of foreign countries to grant refunds on exports remains unchecked, the steel industry—indeed all industries—will be placed at an even greater disadvantage in the future since all EEC countries are to adopt a uniform value-added tax system by 1970. In many of these countries, including Italy, this will mean that the VAT system will replace the existing transaction tax. Reportedly Italy is considering reducing its payroll taxes,