

If this matter reaches the Customs Court, we would no longer be faced with the problem of reconciling the imposition of the desired countervailing duty with the standards set forth in Article VI of GATT. It is our opinion that even if a trade agreement such as GATT should conflict with domestic legislation, the domestic legislation should control. This is so even though under international law, the United States would be deemed guilty of violation of the international trade agreement. In the present matter, however, as we explained above, the domestic legislation is not in conflict with GATT because of the Protocol of Provisional Application.

It should be pointed out that it is quite possible that the Secretary of the Treasury's decision to impose countervailing duties to the extent of \$20 will be protested by the importer of Italian electrical transmission towers. If so, domestic manufacturers do not have the right to intervene as parties-in-interest in such an action under the Customs Court's Rules of Procedures. However, Rule 35 of the Customs Court's Rules provides that the Court may permit other parties to appear as *amicus curiae* and file briefs on the legal questions involved. Such *amicus curiae* are not permitted to participate in the trial of the issues involved. We believe that it would be advisable to request the Court to permit us to file *amicus curiae* briefs in the event the importers do bring their protest to the Customs Court. Inasmuch as domestic manufacturers are apparently not permitted to participate as parties-in-interest, the outcome of that litigation should not prejudice the domestic manufacturers' own protests pursuant to section 1516 (b). As a protective measure, it may be advisable to attempt to intervene even though no provision for intervention is made so as to lessen the chance of some type of *res judicata* or collateral estoppel argument being successfully made in the subsequent section 1516 (b) case.

In conclusion, therefore, we believe that there is a good legal basis for the imposition of additional duty to countervail the refunds under Italian Laws 570 and 639 and that such action should be sought first with the Treasury Department and then, if necessary, in the Customs Court. On the basis of the authorities cited and the arguments set forth above, we believe the possibility of success in one or the other of these forums justifies proceeding in the suggested manner.

Very truly yours,

DAVID T. SEARLS, *Counsel*.

The CHAIRMAN. Are there any questions?

Mr. CURTIS. Yes.

The CHAIRMAN. Mr. Curtis.

Mr. CURTIS. First I want to thank Mr. Gannaway for his statement and for coming before us and giving us this information. I am deeply interested in the subject matter.

To some degree you have pointed up some of the inadequacies that you have experienced in application of the countervailing duty statute. I am wondering if you have any recommendations of where the law might be amended in a statutory way that would make it more useable.

Mr. GANNAWAY. Do you mean law 303?

Mr. CURTIS. Yes.

Mr. GANNAWAY. Mr. Congressman, I don't believe the law needs to be amended. I think it needs to be just followed.

Mr. CURTIS. Pardon me. Would you repeat that.

Mr. GANNAWAY. I say I don't feel that the law needs to be amended. I think it needs to be followed and it has not been followed. The law is on the books. Maybe I should direct that question to Mr. Searls.

Mr. CURTIS. Yes, please respond to that if you would.

Mr. SEARLS. We don't think there needs to be an amendment of this law, Congressman, because the law makes it mandatory upon the Secretary of the Treasury to impose countervailing duties any time that there is a bounty or grant made by a foreign country and, if the Secretary of the Treasury would just go ahead and impose these counter-