

tive action against precisely the sorts of non-tariff barriers and unfair competition practices we have faced for many years. Until rules or regulations are prescribed for this statutory authority and initiative taken by the Executive Branch to exercise the responsibilities vested in the President, Section 252 of the Act will not accomplish its legislative purpose.

2. Countervailing Duties

The provision for countervailing duties, Title 19 USC Section 303, recites that whenever any foreign country or business organization thereof "shall pay or bestow, directly or indirectly, any bounty or grant" upon the export of any article produced within a foreign country, and the article is dutiable under the U.S. Tariff laws, an additional duty shall be levied upon its importation into the United States "equal to the net amount of such bounty or grant, as estimated by the Secretary of the Treasury."

General Electric suggests the statute be re-examined in the light of the two types of trade imbalances previously discussed in this brief: dual pricing and the existing trade advantages of the European tax system.

Admittedly, in none of the reported cases brought under the present Act, or its earlier counterpart, has evidence of the alleged "bounty" or "grant" been predicated upon the subsidization of low prices for exports through payment to the exporter by government owned or controlled purchasers of significantly higher prices in the home market for the same goods.

In considering whether Section 303 of the current Act could not be interpreted to cover such a method of subsidizing exports, it is stressed: (1) the statute proscribes the payment of "any" type of bounty or grant, and covers those made "directly or indirectly," (2) the bestowal of the pecuniary benefit need not be made by the government, but by a corporation, partnership, association, or "any . . . person . . ." Indirect subsidy payments in the form of higher prices paid by a quasi-governmental body or a government owned utility would appear to come within the literal scope of the language.

In three early cases, remission of taxes at the border on account of the exportation of goods was held to be a bounty. *U.S. v. Passavant*, 169 US 16 (1897); *Downs v. U.S.*, 187 US 496, 47 L. Ed. 275 (1903); *Nicholas & Co. v. U.S.*, 249 US 34 (1919). In the *Nicholas* case, the Court was strikingly clear on this point and treated as irrelevant the fact that the goods were sold in the United States for the same amount as they would have been sold in the United Kingdom if the latter had imposed no domestic tax.

In spite of the *Nicholas* case, *supra*, the position of the United States Treasury has been that remission of indirect taxes on exports does not constitute a bounty. Hearings on H.R. 1535, Customs Simplification Act of 1951, before the House Committee on Ways and Means 16 (1951); see also *The Contracting Parties to the General Agreement on Tariffs and Trade, Antidumping and Countervailing Duties*, 9-10 (1958).

The Treasury's position is undoubtedly influenced by the fact that Section 303 is not literally consistent with GATT Article VI, which specifies that countervailing duties should be imposed only under the following conditions:

1. The purpose of the duty is to offset a bounty or grant bestowed directly or indirectly upon the manufacture, production or export of merchandise; (Sec. 3)
2. There is a showing of material injury to an established domestic industry, or retardation of the establishment of a domestic industry; (Sec. 6(a))
3. The importation is not also subject to an antidumping duty; (Sec. 5) and
4. Provided that: "No product of the territory of any contracting party imported into the territory of any other contracting party shall be subject to antidumping or countervailing duty by reason of the exemption of such product from duties or taxes borne by the like product when destined for consumption in the country of origin or exportation, or by reason of the refund of such duties or taxes." (Sec. 4)

U.S. law as expressed in Section 303, Title 19, USC, contains only the first condition; i.e., it does not require any showing of material injury, does not make antidumping and countervailing duties mutually exclusive remedies, and does not exclude from the bounty or grant category rebates or exemptions of indirect taxes. Legislation to conform Section 303 to the material injury requirement of GATT was introduced but failed to pass the Congress (H.R. 1535, 82nd Congress, 1st Session).