

At the request of the Contracting Parties, a group of experts has examined whether remission of indirect taxes upon exportation can be a subsidy or bounty under GATT. Their report, *Antidumping and Countervailing Duties*, (GATT/1961-2) was adopted by the Contracting Parties. They concluded as follows (at p. 20, *supra*) :

"Exemption from taxation does not constitute subsidization"

"The Group considered that it was perfectly justified that in conformity with the procedures of paragraph 4 of Article VI, countervailing duties should not be imposed on a product by reason of the exemption of such product from duties or taxes imposed on 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. If, however, it were established that the exemption or the reimbursement exceeded the real charge which the product would have to pay in the exporting country, the difference could be considered as constituting a subsidy."

Since the unshifted portion of an indirect tax is by the definition borne by the producer and not the product, the language of the last sentence of the paragraph would leave the United States free to treat as an export subsidy a rebate of either (1) an amount exceeding a tax actually paid, or (2) an amount representing the unshifted increment of a TVA tax.

3. *Antidumping Act*

With the previously described electrical utility equipment being sold in the United States at less than fair value, an action would ostensibly lie under the Antidumping Act of 1921 (19 USC 160 et seq). Here, it would seem, is precisely the sort of self-help remedy that the heavy electrical equipment industry, or any of its members, should pursue. The statute and regulations, however, require a finding of material injury or the likelihood of material injury to the domestic industry. Historically, this requirement has been so interpreted by the Tariff Commission that the U.S. electrical industry, which has relatively full employment, increasing production volumes and overall profitability, probably has not sustained injury within the meaning of the Act.

This observation does not mean General Electric believes the Antidumping Act should be used as a shield for domestic industry against inroads from fair foreign competition. To the extent a foreign manufacturer, exploiting advantages in costs, productivity or innovation, can produce and sell on a non-discriminatory basis, a product in this country at a price lower than the equivalent U.S.-made product, U.S. manufacturers must look to the economics of the situation—even to the extent of shifting production facilities to offshore locations and exporting to the United States.

General Electric suggests, however, that on the facts developed in this brief the concept of material injury could be broadened to permit the Tariff Commission to draw persuasive inference of injury where the dumped sales are in significant volume and such sales depend upon or are linked to the demonstrable exclusion of equivalent U.S. products from the home market of the foreign exporter.

C. *Certification*

The Brookings Institution proposal described at the outset of our concluding remarks, has considerable merit and should be considered as one of the methods for dealing with the dual pricing of heavy electrical equipment. The gravity of the situation, however, is such that government-to-government negotiation may not be concluded in time to make such an arrangement an effective remedy.

On a short-range basis, the serious trade imbalance caused by dual pricing might well be relieved by appropriate governmental action changing existing U.S. Government Procurement Regulations (e.g., 41CFR, Subtitle A, Chapter 1) to require foreign suppliers to certify specifically and in a prescribed manner, that the prices they are quoting are no lower than the comparable prices for like products sold in their respective domestic markets. If the foreign supplier has not sold such products in his home market, appropriate alternative procurement certifications could deal with either the supplier's prices to third countries, or the constructed value of the products as would be defined in the proposed new Procurement Regulations (compare provisions set forth in 19 CFR 14. 7). In view of the existing U.S. balance of payments problem and the consequent threat to the national interest from the current price discrimination practices of foreign suppliers, it seems clear there is ample authority to make such changes in the