

The effect upon our balance of trade is already apparent. In the first quarter of 1968, German exports to the United States rose a phenomenal 50% over the same period in 1967. From the point of view of its effect upon international trade, it is clear that the increased German border taxes and export rebates have the effect of a devaluation. This has been recognized by Germany's trading partners, including the U.S.

Because of the adverse trade effect, Belgium, Netherlands, Italy and Austria are adjusting their border taxes and export rebates upward even in advance of switching over to the "value added" type turnover tax.¹ Within the next two years, all of the Common Market countries (except France, which already has the "value added" tax) will move from a "cascade" to a "value added" type turnover tax system, which will similarly increase the disadvantage to our trade. Denmark has already adopted the "value added" tax and the U.K., Sweden, and other countries are also considering similar moves. Moreover, by the 1970's, the Common Market countries are planning to harmonize their turnover tax rates at 15%.

All of this is nothing new. Since 1963 the United States has been actively negotiating with its trading partners with respect to the effect of a border tax mechanism upon our trade, the added disadvantages which would be caused by harmonization, and the adverse effect which these actions would have upon the international payments system. The mystery is how the Government could believe that tariff reductions were meaningful when our trading partners not only left the border tax disadvantage untouched but were actually in the process of increasing this disadvantage.

Countervailing duties.—Our countervailing duty statute was designed to prevent unfair competition from imports which had the benefit of export rebates or other forms of exoneration from foreign taxes. Although there have been applications of countervailing duties with respect to some types of export rebates or tax exonerations, the Treasury Department has failed to apply the law to rebates of turnover taxes despite the unfair advantage they accord to imports.

Section 303 of the Tariff Act of 1930 requires the imposition of countervailing duties to offset any direct or indirect bounty or grant accorded by a foreign country upon export of a product. Both the language of the statute and its legislative history make it clearly applicable to the rebate or exoneration of turnover taxes. In spite of explicit Supreme Court decisions² interpreting this statute as applying to these types of tax rebates, the Bureau of Customs has administratively taken the position of not applying the countervailing duty statute in such cases. Indeed, following entry into the GATT, the Department of State sought legislation to change the statute in order to bring it in line with the manner in which it had been administered. The legislation was not passed.³

Earlier this year, the Treasury Department was asked why this law was not being applied to these export rebates. The Committee was informed that "grant and bounty had been interpreted by prior decisions not to involve a rebate of tax on the product itself".

We know of no court case so holding or, indeed, even any formal Treasury Decision directly in point. Earlier in the hearings it was suggested that the Treasury Department submit a memorandum explaining their administrative practice. We believe this would be helpful.

We have a memorandum on the applicability of the countervailing duty law to turnover tax rebates which I would like to submit for the record. [The memorandum is contained in this Committee's file.] This memorandum also points out that the U.S. has made no commitment in the GATT not to apply our countervailing duty to rebates of turnover taxes. Paragraph 1(b) of the GATT Protocol of Provisional Application reserves the right of the parties to apply previously existing statutes even though they may not be in harmony with the GATT. In any event, domestic law, which is paramount to the GATT, requires the application of countervailing duties to turnover tax rebates.

Balance of Payments Crisis

We support this Committee in its concern to find a solution to our balance of trade and balance of payments crisis. It is imperative that we act promptly to re-

¹ *Monthly Economic Letter*, First National City Bank, June 1968.

² *Nicholas & Co. v. United States*, 249 U.S. 34 (1919); *Downs v. United States*, 187 U.S. 496 (1903); cf. *United States v. Passavant*, 169 U.S. 16 (1898).

³ *Hearings Before the House Committee on Ways and Means on Simplification of Customs Administration* (H.R. 1535), 82d Cong., 1st Sess., p. 15 (1951).

Hearings Before the Senate Committee on Finance on H.R. 1612, 82d Cong., 1st Sess., p. 1197 (1951).