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NOTES

THE STEEL PRODUCTS DECISION: AN INQUIRY INTO THE TREATMENT OF THE VALUE-ADDED TAX UNDER THE COUNTERVAILING DUTY LAW

I. INTRODUCTION

It is not often that one small clause in a tariff act becomes a major issue between domestic producers and the firms which import competitive foreign goods, a major issue in trade talks between the United States and the European Community, and a bone of contention between the Congress and the Executive Branch. Yet, section 303 of the Tariff Act of 1930 has done just that and no solution to the issues it has raised is in sight.

Section 303 of the Tariff Act of 1930[1] is simple enough on its face. It imposes a countervailing duty on any goods imported into the United States that have been given a price advantage over domestically produced goods by the payment or bestowal of a direct or indirect "bounty or grant" by any entity in any country from which they come or have passed through on their way to the United States. The imposed countervailing duty equals the payment or bounty given and is assessed in addition to regular customs duties.

The purpose of section 303 is to neutralize the advantage a bounty gives a foreigner in the American market. Trouble arises, however, when one attempts to construct an airtight definition of what constitutes a grant or bounty. Suppose a government devalues its currency for the sole purpose of giving its manufactured goods lower prices in the world market. Is that a bounty under section 303? Suppose a government wishes to channel investment capital into underdeveloped areas of its country and provides tax benefits equal to the extra cost of locating a factory in an area without good roads or available utilities. Would that be a bounty under section 303? May a government give employees a bonus for their locating in an unpleasant area which supplements the salary an exporting corporation pays? May a country remit tariffs on imported raw materials that are refined or incorporated into a finished product and then exported to a third country? As if these questions were not difficult enough to answer, three fairly recent developments have further complicated the situation.

1. 19 U.S.C. § 1303 (1970).

First, Congress undertook a major revision of the tariff laws in the Trade Act of 1974, which included a rewrite of section 303. Although the Trade Act has a sophisticated and well documented legislative history, ambiguities remain about what the Congress intended to do and intended not to do with respect to the countervailing duty.

Secondly, the European Economic Community countries have substantially changed their systems of taxation over the last decade. The Community is heading toward tax uniformity, and the primary action its members have taken has been to adopt various versions of a tax on value-added. (This is called T.V.A. on the Continent, but because the initials are easily confused with those of the Tennessee Valley Authority and because the British anglicized the name to "value-added tax," the tax hereinafter will be called V.A.T.). According to the Europeans, the V.A.T. is a tax on consumption, equivalent to a sales tax, and, as with all taxes on consumption, is not paid in a producing country on goods exported because the goods are not consumed there. If the country to which the untaxed goods are exported has no value-added tax, then, aside from any regular tariff, the goods will not be taxed in the consuming country either.

Thirdly, the United States goods and commodities have come under increasing foreign trade pressure both at home and abroad. This pressure has been felt particularly in such heavy industries as the steel industry. The tonnage of imported steel grew from 1.2 million tons in 1955—about 1.5 per cent of the market—to 10.383 million tons in 1965—about 10.3 per cent of the market.[2] Steel industry management and labor have been casting about for a way to increase the price of foreign steel in the United States; and among other things, they have hit on section 303.

Claiming that goods imported into the United States from countries using V.A.T. are bountified does not make sense unless the tax systems of the United States and the Community are juxtaposed and their effects examined. To oversimplify for purposes of introduction, American industry claims that while it must pay the American corporate income tax, it is forced to compete in the United States market with foreign manufacturers who either do

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2. From the statement of John P. Roche, President of the American Iron and Steel Institute before *Hearings on Resolution 149 Requesting The President to Cause a Study of Imports of Steel Mill Products to be Conducted by the Department of Commerce Before the Finance Committee of the Senate,* 89th Cong., 2d Sess. 269 (1966).

not pay any taxes or have their main tax—V.A.T.—remitted on export. On the other hand, when the United States manufacturer sells his goods abroad in a V.A.T. country, his final price includes both the United States corporate income tax of almost fifty per cent *and* the V.A.T. on consumption. Such a situation can put American manufacturers at a serious disadvantage, as the European Community average "normal" rate of V.A.T. ranges between 10 per cent and 23 per cent.[3]

Businessmen often claim they win or lose contracts over a fraction of a percentage point difference in price. The United States manufacturer would lay out the figures in the following way:

THE IMPACT ON PRICES IN TWO COUNTRIES COLLECTING THE SAME TAX REVENUES WITH A DIFFERENT TAX MIX[4]

	Country A	Country B
Total cost of production (including return on investment)	$100.00	$100.00
Corporate income tax collected	10.00	2.50
Value-Added Tax collected	—	7.50
Cost of Product to domestic consumer	$110.00	$110.00
Total Tax Collected	$ 10.00	$ 10.00
Export Price	$110.00	$102.50 (minus $7.50 V.A.T. remitted on export)

If one assumes that Country A in the chart is the United States, the export price, $110.00, will also be the domestic sales base price. If one assumes Country B is an European Community member assessing no V.A.T. on its exports, then the price of Country B's product on import to the United States will be lower than the price of the United States manufacturer's goods in its home market. The United States manufacturer would contend that the $7.50 difference in export price amounts to a bounty within the meaning of

3. SCHIFF, VALUE ADDED TAXATION 62, Table II, (Financial Executives Research Foundation, 1974).

4. *Id.* at 110.

section 303, and that V.A.T. is not the type of tax that it seems at first glance.

In Europe, the V.A.T. covers not only steel but most products in the economy. It substantially affects prices and ultimately jobs. Pressure has been building in the United States for a confrontation. The primary legal issue is whether the V.A.T. constitutes a grant or bounty within the meaning of section 303. If it does a second issue arises; whether the resulting countervailing duty imposed violates the General Agreements on Tariffs and Trade (GATT).

With respect to the first issue, the Department of the Treasury has recently released an opinion that disagrees with the steel manufacturers, who want a countervailing duty imposed: "Since value-added taxes are viewed by the Department as being indirect taxes directly related to the products upon which they are imposed, the rebate or remission of such taxes upon exportation does not constitute a bounty or grant."[5] The second issue was not reached. The United States Steel Corporation has announced that it will appeal the Preliminary Negative Determination to the Customs Court.[6]

This paper will inquire into the Treasury Decision in the following manner. First, the substance and history of section 303 will be dealt with, with particular attention to the original legislative purpose, the purpose of the 1974 revision, and the enforcement by the Treasury Department over the years. Secondly, the V.A.T. will be examined in some detail in order to determine if its characterization and incidence are what they at first seem and to determine where the tax fits into the GATT. And finally, the Steel Decision will be examined and conclusions drawn.

II. The Countervailing Duty and its Administration

A. *The Original Countervailing Duty and Its Purpose in the Context of Other Duties*

The core section of the countervailing duty law has been on the statute books since the Tariff Act of 1897.[7] It currently is embodied in section 303(a)(1) of the Tariff Act of 1930 as revised in 1974:[8]

5. Letter from Assistant Secretary for Tariff Affairs, David R. McDonald, to M.G. Heatwole, General Counsel to United States Steel Corporation, October 20, 1975.

6. 41 Fed. Reg. 2834 (1976).

7. Tariff Act of 1897, ch. 11, 30 Stat. 205.

8. Act of Jan. 3, 1975, Pub. L. No. 93-618, Title III, ch. 3, § 331(a), 88 Stat.

> *Whenever any country,* dependency, colony, province, or other political subdivision of government, person, partnership, association, cartel, or corporation, *shall pay or bestow, directly or indirectly, any grant or bounty upon the* manufacture or production or *export of any article* or merchandise manufactured or produced in such country, dependency, colony, province, or other political subdivision of government, then upon the importation of such article or merchandise *into the United States, whether the same shall be imported directly from the country of production or otherwise,* and whether such article or merchandise is imported in the same condition as when exported from the country of production or has been changed in condition by remanufacture or otherwise, *there shall be levied and paid, in all such cases, in addition to any duties otherwise imposed, a duty equal to the net amount of such bounty or grant, however the same be paid or bestowed.* (Emphasis added).

The section is complete. It encompasses every type of bounty, direct or indirect, by whomever paid. It includes a bounty given by a country even if the article has passed through numerous other countries on its way to the United States. It is mandatory in all cases.

Commentators generally agree that the duty was passed originally for the purpose of protecting domestic interests.[9] The Congress contemplated retaliation and not the Adam Smith ideal that "the effect of bounties, like that of all the other expedients of the mercantile system, can only be to force the trade of a country into a channel much less advantageous than that in which it normally would run of its own accord."[10] Certainly, the late nineteenth century was a period of high tariffs, and it is in the protectionist context that the original purpose of the bounty should be viewed. Indeed, the words "and such article or merchandise is dutiable" were contained in the law prior to the 1974 revision just before the words "then upon the importation."[11] Congress intended to counteract only those bounties that would breach the United States tariff wall, and thus non-dutiable goods were not reached by the 1897 Act. Also, no actual distortion of trade had to be found before the duty went into effect. Whether an injury to domestic producers

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2049, *amending* 19 U.S.C. § 1303(a)(1) (1930).

9. *See* Feller, *Mutiny Against the Bounty, an Examination of Subsidies, Border Tax Adjustments, and the Resurgence of the Countervailing Duty Law,* 1 LAW & POL. IN INT'L BUS. 17, 22 (1969) [hereinafter cited as Feller].

10. A. SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF WEALTH OF NATIONS 80 (J. Rogers ed. 1869), as cited in Feller, *supra* note 9, at n. 11.

11. 19 U.S.C. § 1303 (1970).

had occurred was irrelevant. Once the existence of a bounty was ascertained, the imposition of the duty was mandatory.[12] The effect of the 1897 law, then, was to protect the domestic trade for the financial interests politically potent enough to have their products and commodities shielded by high tariff walls, regardless of any inflationary effect on the price structure in the United States domestic market. On the other hand, the countervailing duty law did not shelter those products or commodities that Congress felt did not need tariff protection, no matter how badly the United States market was flooded with cheaper bountified goods. Whatever the precise congressional intent behind the Sherman Antitrust Act, which became law in the same decade,[13] the fairer trade contemplated for the domestic market was not extended to international trade.

There were at least two other duties in the early twentieth century labeled "countervailing" beside the duty imposed on foreign bountified goods. The only common denominator of all three duties seemed to be retaliation. One responded to foreign tariffs on petroleum products exported from the United States by ordering an equal and opposite tariff on the petroleum products exported to the United States from each country shielding itself from American oil.[14] The other retaliated against any country that put an export duty on its own wood pulp by placing an import surcharge equal to the export duty on the pulp's entry into the United States. The unfortunate pulp importer would be subject to the regular tariff, plus the exporting country's export duty, plus the American surcharge.[15] Even the section 303(1)(a) duty was first imposed with a specific commodity in view—sugar. The 1897 Act took an earlier countervailing duty on sugar[16] and extended protection from bountified imports to all dutiable imports. Thus, any commentator attempting to read some antitrust rationale into the original coun-

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12. Feller, *supra* note 9, at 24.

13. Sherman Anti-Trust Act, ch. 647, § 1, 26 Stat. 209, (1890) *as amended,* 15 U.S.C. §§ 1-7 (1970).

14. "If there be exported into the United States crude petroleum produced in any country which imposes a duty on products exported from the United States, there shall be in such cases levied, paid, and collected a duty upon said crude petroleum or its products so imported equal to the duty imposed by such country." Tariff Act of 1897, *supra* note 7, para. 626; *see also* T.D. 19,263, 1 TREAS. DEC. 623 (1898) for its practical application.

15. Tariff Act of 1909, ch. 6, §§ 406, 409, 36 Stat. 11; *see also* T.D. 33,684, 25 TREAS. DEC. 112 (1913) and T.D. 33,786, 25 TREAS. DEC. 248 (1913) for practical application.

16. Tariff Act of 1890, ch. 1244, § 237, 26 Stat. 584.

tervailing duty law should look again.[17] The countervailing duty is not synonymous with free trade.

A recognition that the original countervailing duty law was not intended as the antitrust device free-traders would wish it to be, however, does not prevent its use to enhance free trade today. Prior to the 1974 revision of the act, those commentators wishing the countervailing duty law to be an adjunct to the antitrust laws had split into two schools of thought. The first school viewed the mandatory duty as roughly equivalent to an antitrust tribunal's unquestioning sanction of a per se violation of the antitrust laws.[18] The foreign bounty was a practice which the United States would not allow, a *malum per se*, from which a distortion of trade would be implied, regardless of the effect of a particular bounty on the United States domestic market.[19] The second school would have added an injury provision to the countervailing duty law, combined it with the Anti-Dumping Act,[20] and analogized the combined acts to the anti-price discrimination provision of the Clayton Act.[21]

The Anti-Dumping Act has often been confused with the countervailing duty law. However, they differ in both purpose and operation. The anti-dumping duty was intended as a weapon to facilitate fair international trade. The Act authorizes the Secretary of the Treasury to investigate any complaint that a foreign country has been dumping goods into the United States. "Dumping" occurs if goods are sold in the American market for a lower price than those same goods would bring in their home market. If the Secretary finds that a foreign country has been dumping a product he

17. *See*, Ehrenhaft, *Protection Against International Price Discrimination: United States Countervailing and Anti-dumping Duties*, 58 COLUM. L. REV. 44, 58 (1958).

18. *Id.* This doctrine, which is not the precise one Ehrenhaft takes, to be altogether consistent would necessitate extention of the law to non-dutiable imports and abolition of all United States bounties, of which the D.I.S.C. was merely one. *See* INT. REV. CODE of 1954, §§ 991-7, Pub. L. No. 92-178, § 501 (1971).

19. "But it does not follow that agreements to fix or maintain prices are reasonable restraints and permitted by statute merely because the prices themselves are reasonable . . . . Agreements with such potential power may well be in themselves unreasonable or unlawful restraints, without the necessity of minute inquiry whether a particular price is reasonable or unreasonable." United States v. Trenton Potteries Co., 273 U.S. 392, at 396 (1927). The reader should insert "bounty" for "pricefixing". *See also* A. NEALE, THE ANTI-TRUST LAWS OF THE USA (1970).

20. 19 U.S.C. § 160 (1970).

21. Clayton Act, § 2, 38 Stat. 730 (1914), *as amended*, 15 U.S.C. § 13 (1973).

refers that finding to the United States Tariff Commission which then must determine within three months whether the American domestic market actually has been injured by the dumping. If the Tariff Commission determines that an injury has occurred, it levies a duty equal to the difference between the higher price charged in the home market and the lower United States price.[22] Unlike the countervailing duty law, it is not mandatory unless dumping is found *and* there is actual damage to American producers. Thus an article which has a price *at* the American domestic price and is sold here at less than its home market price will not be dutied, because no injury will have occurred. One commentator favored an extension of the injury requirement to the countervailing duty law, "in recognition of the fact that American consumers tend to benefit from the availability of subsidized imports at bargain prices."[23]

Both approaches taken to the countervailing duty from an international antitrust perspective are mooted as of this writing as a result of the extensive revision of the law undertaken by Congress in 1974. Congress took some of each approach. The two approaches remain vitally important over the long term, however. As the Earth shrinks, it is a safe guess that national tariff law and international trade agreements will become equivalent to a world law of fair trade; and the same issues that surfaced with respect to the countervailing duty and anti-dumping laws will re-emerge in the world fair-trade context.

B. *The 1974 Revision of the Countervailing Duty Law and Its Purpose*

Congress revised the countervailing duty law during 1974 in a way and with an intent relevant to the V.A.T. Perhaps the changes are summarized best in the Senate Finance Committee Report:

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22. *See* Rein, *Legal Remedies Against Unfair Import Competition,* 9 LAW NOTES (ABA) 45 (1973) for a distillation of the Anti-dumping Act.

23. Feller, *supra* note 9, at 25. The author also notes at 34 that a nice question exists on "whether those tax remissions on customs drawbacks which would otherwise be subject to countervailing duties should be handled under the Anti-dumping Act instead." Thus a remission of drawback which comes under the jurisdiction of both acts and does *not* damage American producers would be subject to a countervailing duty and would not be subjected to any anti-dumping duty. Should the Anti-dumping Act be allowed to "pre-empt" bountified products when there is "concurrent jurisdiction," no duty could be levied at all. The 1969 revision of the General Agreements on Tariffs and Trade at Article VI § 5 does, however, ask that both duties not be levied simultaneously.

The amendments to the existing law adopted by the Committee are designed to balance the need for assuring effective protection of domestic interests from foreign subsidies, on the one hand, with the need to afford some flexibility in the application of United States law which is essential for achieving a negotiated international agreement to the problems arising from the use of subsidies and imposition of countervailing duties. This flexibility would continuously be subject to supervision through a one house veto procedure.[24]

The Committee felt a need to institute iron-clad procedural reform in order to regain control over the Treasury Department, which had administered the old law. In the words of the Committee:

The Committee has been concerned over the past years that the Treasury has used the absence of time limits to stretch out or even shelve countervailing duty investigations for reasons which have nothing to do with the clear and mandatory nature of the countervailing duty law.[25]

The Treasury had not been enforcing the Act vigilantly, and Congress wanted the Act enforced. Yet, Congress realized the issues that would be raised, should the world's chief trading nation suddenly begin zealously to enforce her countervailing duty law, might be difficult to resolve, and it did not want to precipitate a world-wide trade war in which the United States might be the biggest loser. The lawmakers were cognizant, also, that there was as yet no international consensus concerning what constitutes a fair or unfair subsidy, and that "[i]n the long run, United States interests [would] best be served by an international agreement to eliminate subsidies which distort world-wide trade patterns and discriminate against the United States both at home and abroad."[26] What Congress did was to write a bill that would both rein-in the Treasury Department and speed international trade negotiations.

First, Congress formalized time limits and procedures. Under the new Act, the Treasury must make a Preliminary Decision within six months of the receipt of a countervailing duty petition from an aggrieved United States manufacturer. A Final Duty Determination is required within another six months.[27] In the past, the Treasury had simply refused to rule on a petition that it

24. S. Rep. No. 93-1298, 93rd Cong., 2nd Sess., *reprinted in* (1974) U.S. Cong. & Adm. News 7186, at 7318. [hereinafter cited as Senate Report].

25. *Id.*

26. *Id.*

27. 19 U.S.C. § 1303(a)(4) (1975).

wanted to avoid. In the news conference on October 20, 1975, announcing the Steel Negative Countervailing Duty Decision, this colloquy took place:

MEMBER OF THE PRESS: Why did Treasury wait so many years to make this decision rather quickly, since they had only gotten the second petition a month or so ago; when there was the first petition pending since 1968? (That is, the Treasury had received the first steel petition in 1968 and sat on it until mid-1975, when the petition was withdrawn, see 40 F.R. 23,899, 1975. The second steel petition went to Treasury in September.)

SECRETARY MACDONALD: Well, the petition of 1968 was about to be acted upon by the Treasury Department when it was withdrawn.

MEMBER OF THE PRESS: Why did it wait so many years: Six or seven years?

SECRETARY MACDONALD: Why did it wait so many years? You have to ask the people who were around the Treasury Department at that time why they waited so many years. I don't know.[28]

In addition, Congress made mandatory a practice that the Treasury had inaugurated in 1967; this change being a formal notice and comment procedure[29] with the *notice* of any formal investigation pending to be published in the Federal Register.[30] In order to make the policy of the Treasury Department clearer to legal practictioners, the Treasury was required to publish all countervailing duty *determinations,* whether positive or negative.[31] Prior to the 1974 bill, publication of a negative determination had been a rare event; and while attorneys had some idea what practices would be called bounties, they had no knowledge of what specific practices had been judged not to be bounties in the past.[32]

The second major change was an extension of the countervailing duty law's coverage to non-dutiable goods.[33] However, this new area is administered more like the Anti-Dumping Act than the old countervailing duty law, which was on dutiable goods alone. The Treasury Secretary, just as under the prior Act, makes a determi-

28. Press Briefing by David R. McDonald, Assistant Secretary for Enforcement Operations and Tariff Affairs on Rejection of Petition in Steel Company Countervailing Duty Cases, Oct. 20, 1975, at 6, Miller-Columbian Reporting Service 347-0224 (1975).

29. T.D. 67-119, 1 CUST. BULL. 452 (1967).

30. 19 U.S.C. § 1303(a)(4) (1975).

31. 19 U.S.C. § 1303(a)(6) (1975).

32. *See generally* APPENDIX—A, and Feller, *supra* note 9, at 39.

33. 19 U.S.C. § 1303(a)(2) (1975).

nation as to whether an imported item is being bountified. If it is not, that is the end of the matter, as under the prior law. However, if the Secretary determines that a bounty is being granted, the United States Tariff Commission must determine whether damage is being inflicted on United States manufacturers before a duty is imposed. The Tariff Commission has a three month time limit for its investigations of harm.[34]

The third major change made by Congress ameliorates the effect of the Act's sharper provisions by providing a four year period during which the Treasury Department may waive imposition of the duty in order to facilitate negotiations with the country whose goods are countervailed.[35] The four year period, beginning on January 3, 1975, is intended also to be used to revise the GATT.[36] Congress remained wary, though, and a countervailing duty may not be suspended merely on the basis of wishful thinking. Three requirements must be satisfied: (1) Adequate steps must have been taken to reduce or to eliminate the adverse effect of the bounty; (2) there must be a reasonable chance for a successful resolution of the problem by negotiation; and (3) the failure to waive the duty during the period of negotiation must be judged to seriously jeopardize the satisfactory completion of such negotiations. Should the Secretary of the Treasury not find all three circumstances to be present, he must levy the duty immediately.[37]

Congress still was not satisfied with its ability to control the Treasury Department. Not only does the Finance Committee Report advise the Treasury to waive only in exceptional circumstances,[38] but the bill itself provides for a legislative veto of any waiver by a majority vote of the members present and voting in either house of Congress.[39]

The Senate Finance Committee went further yet by inserting a paragraph in its report indicating that it had excluded from the bill a clause that would have allowed the Secretary of Treasury to substitute negotiated quotas for a countervailing duty. "The Committee did not want to provide the Executive with the power to loosen quotas to the point where they are meaningless, and at the

34. 19 U.S.C. § 1303(b)(1) (1975).
35. 19 U.S.C. § 1303(d)(2) (1975).
36. 19 U.S.C. § 1303(d)(1) (1975). The GATT will be dealt with later in this note.
37. 19 U.S.C. § 1303(d)(2)(A), (B), & (C) (1975).
38. Senate Report, *supra* note 24, at 7322.
39. 19 U.S.C. § 1303(c)(2) (1975).

same time, *not* impose countervailing duties on subsidized exports to the United States."[40]

There simply is no way in which the revision of the countervailing duty law cannot be interpreted as a repudiation of past Treasury enforcement of the countervailing duty. The bill amounts to an order to the Treasury to go out and levy countervailing duties. However, the Congress did not take three actions to limit the Treasury Department that it might have. First, the Treasury was left with absolute power to determine the *amount* of the duty to be levied. This decision is not reviewable by the courts.[41] Secondly, the Treasury still has wide discretion over the determination of *what* constitutes a bounty. Congress easily could have created a legislative veto provision covering this. Instead it chose only to create a veto over decisions by the Department to waive the duty. And thirdly, the bill does not include a provision for judicial review of negative duty decisions. The Finance Committee Report did contain such a provision,[42] but the clause must have been deleted by a conference committee. However, a subsequent court decision has mooted whatever problem this might have created.[43] Thus, the Treasury still has the same two important powers that it has had since 1897: (1) the power to not find a bounty; and (2) the power to dilute the effect of its positive determination by levying only a small countervailing duty.

C. *What Constitutes a Bounty? The Treasury and Court Decisions Since 1897 Summarized Into Categories of Subsidy*

A reasonably accurate outline of the type of transactions that will usually result in the assessment of a countervailing duty can be constructed. The Treasury Department has rarely publicized

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40. Senate Report, *supra* note 24, at 7323.

41. American Express Co. v. United States, 332 F. Supp. 191 (C.C.P.A. 1973).

42. Senate Report, *supra* note 24, at 7320.

43. Section 516(b) of the Tariff Act of 1930, 19 U.S.C. § 1516 (1970) gave importers the right to protest a duty assessment, but was not so clear on whether an injured domestic competitor could protest a negative determination. The Treasury Department succeeded in keeping Hammond Lead Products Company out of Customs Court on grounds of standing. Hammond had been trying to get a *mandamus* writ that would force Treasury to issue a decision. United States v. Hammond Lead Products, Inc., 440 F.2d 1024 (C.C.P.A. 1971). Three years later, however, in *National Milk Producers Fed'n v. Schultz,* the District of Columbia District Court took jurisdiction for so long as the Customs Court refused jurisdiction under the *Hammond Doctrine* over a countervailing duty determination appealed by domestic producers. 732 F. Supp. 745 (1974).

the rationale behind its decisions. Indeed, most of the verbiage in each Treasury Decision is merely quotation directly from the statute. However, judicial opinions, particularly in the remission-type cases, serve to fill in most of the gaps.

Not many types of bounty exist. Most of the cases over the years have fallen into the same fact patterns, and clearly can be labeled as bounties without Treasury direction. Only the bounty areas of currency manipulation and tax remission can truly be called complex; but even they fall into patterns, and tend to be factually rather than conceptually confusing.

1. *Direct, Per Unit Subsidies to Exportation.*—Outright, direct and specific subsidies obviously come within the proscribed practices. Perhaps the most blatant case of the direct subsidy on exports is detailed in T.D. 68-192,[44] in which the Treasury levied a countervailing duty on all French exports entering the United States equal to 2.5 per cent of the F.O.B. price. The French Government, in order to spur the country's economy after the student riots of 1968, had decreed certain "temporary" measures under which all exporters received cash payments for a percentage of their labor costs. The "temporary" measures are still in effect and so is the duty.

2. *A Direct Subsidy to an Entire Industry, Which Gives a Benefit to Exports.*—A direct subsidy to the whole of a domestic industry of necessity cannot help but lower export prices for its product, and therefore, becomes an indirect subsidy of the exported product. T.D. 41,500,[45] which ordered the suspension of the liquidation of duty charges on steel from India, illustrates the point. India had been giving a cash bounty on the pig-iron ingots that went into the offending steel ingots, not as an export bounty but only to encourage production of its own pig iron. "The Department cannot escape the conclusion that the payment of a bounty on ingots stimulates all processes of manufacture from the ore to the completed ingot and constitutes an indirect bounty on pig iron within the meaning of the act."[46]

Hills Brothers Coffee Co. v. United States[47] shows that a direct subsidy to a product constitutes a bounty and points up the difficulty in splitting up all offending practices into neat categories

44. 2 CUST. BULL. 409 (1968).

45. 49 TREAS. DEC. 694 (1926). India repealed her subsidy shortly thereafter; *see* T.D. 42,161, 51 TREAS. DEC. 667 (1927).

46. *Id.*

47. 107 F. 107 (C.C.S.D.N.Y. 1901).

when they are in the context of a whole tax program. In *Hills Brothers*, the Treasury Department assessed a countervailing duty on Dutch sugar. At that time, all domestic and imported sugar sold in Holland was subject to an excise levy of 27 florins per 100 kilos. Sugar grown in Holland and processed there entitled the people handling it to a sugar credit or deduction worth 2.38 florins per 100 kilos, or roughly one tenth of the excise levy. In addition, excise tax credit of 27 florins per 100 kilos was given on sugar exported, since the tax was an excise on consumption, and the sugar exported was not consumed in Holland. Thus, a Dutch sugar grower/refiner could export all of his production, use his export credits against his excise bill to pay no excise, yet still be entitled to a credit worth one-tenth of the excise tax per 100 kilos on all the sugar he grew. That one-tenth was held to be an export bounty. The Court commented: "Undoubtedly, this premium or 'deduction' is called a bounty on production; but the other provisions of the law have the practical effect of making it, from the standpoint of other countries, a bounty on exportation."[48]

3. *Government Conferred Benefits Equivalent to Cash Subsidies.*—Government benefits which are the equivalent of cash subsidies can either be tied directly to the individual export unit, as in item one above, or support the whole of an industry, as in item two above. Both practices will result in a countervailing duty. For instance, in 41 Fed. Reg. 1298,[49] the South African ferrochrome manufacturers were investigated by the Treasury Department and found not to be getting concessionary harbor fees. A reduced harbor fee would have helped only exported ferrochrome, and would have been considered a direct bounty. On the other hand, the ferrochrome makers were found to be receiving reduced electricity rates, preferential financing, and concessionary rail rates. Such subsidies tended to aid the South African ferrochrome industry as a whole and would have been considered indirect bounties on exportation had they not been stopped shortly before the Final Countervailing Duty Decision.

4. *Indemnification for Export Losses.*—Any indemnification for export losses constitutes a bounty under section 303. An example is given by a recent decision:

> In accordance with section 303, the net amount of the bounties or grants has been ascertained and determined, or estimated to be the

48. *Id.* at 108.
49. *See also,* 40 Fed. Reg. 34423 (1975).

amounts of the deficiency payments made at the end of each fiscal year by the Swiss Government to the Swiss Cheese Union to compensate for losses incurred in marketing Emmenthaler and Gruyere cheese in both domestic and export markets.[50]

5. *Commodity Support Prices.*—A commodity price support paid by a government to its growers when the world price goes below a domestically set parity level amounts to a direct cash subsidy to the whole industry. The subsidy inevitably gives the subsidized growers an advantage over foreign unsubsidized growers. Australian sugar has been subject to a countervailing duty for over twenty-five years, ever since the world price dipped below the support parity in 1958.[51] The countervailing duty has fluctuated with the world price.

6. *Unequal Bartering.*—Any type of barter transaction in which commodities are exchanged at premium prices will be labeled a dutiable transaction if such transaction is equivalent to a bounty on exports to the United States. In 1939, it appears that the Treasury Department received information convincing it that the strategic commodities of copper and cotton were being bought by the Germans by barter, and that the American importers were getting too good a deal for the transactions to be entirely what they seemed. The excess profit, judged by the prevailing market prices, was held to be a bounty.[52] Such transactions illustrate the weakness of United States import laws when applied to totalitarian countries. Communist state trading companies, like the German traders above, often set arbitrary and unrealistically low prices. Because there are no books to examine, the Treasury has a difficult time not setting a countervailing duty that is equally arbitrary. There may be depths to the German precedent that injured American manufacturers have yet to explore.[53]

7. *Currency Manipulation and the Use of Multiple Rates of Exchange.*—Currency manipulation used by a foreign government to promote the export of certain of its products will cause the

50. T.D. 76-5, 10 CUST. BULL. ___ (1976), 41 Fed. Reg. 1467, (1976). T.D. 76-6 waived the duty. 10 CUST. BULL. ___ 41 Fed. Reg. 1467, (1976).

51. T.D. 54,719, 93 TREAS. DEC. 500 (1958).

52. T.D. 49,821, 74 TREAS. DEC. 389 (1939).

53. It is common knowledge that many communist countries also set low prices on their wares both to buy strategic commodities and to acquire needed foreign exchange. Whether or not the goods are bartered, this writer has seen no cases challenging the low prices under the countervailing duty law. If on appeal a court found a subsidy, the mandatory nature of the law would force the Treasury to liquidate a countervailing duty.

Treasury to assess a countervailing duty equal to the manipulation. In the early 1930's, the German Government established two classes of marks that could be held by foreigners; "free" marks, and registered marks. Free marks could be bought only at the official rate of exchange (approximately $.40/mark), and were freely alienable within Germany. Registered marks could be transferred only within Germany and only with prior government approval, and as a result were worth approximately one-half the value of free marks to foreigners. Thus, if an importer bought a quantity of registered marks, as from another foreign holder, and used those marks to make payment to a German exporter, the "real" cost of that transaction to the importer would be less than the nominal price of the goods by the difference between the market value of the registered marks and the value of that number of marks at the official exchange rate. Since the exporter could convert registered marks into an equal number of free marks, that difference amounted to an export subsidy paid by the German Government.[54] Such imports were subjected to countervailing duties under section 303.[55]

Uruguay used a simpler technique to promote exports. It set different official exchange rates for different types of transactions. The country particularly wanted to sell combed wool tops, so it set the exchange rate for wool-top transactions at (for purposes of illustration) two pesos bought for one dollar. The other exchange rates all made pesos more expensive. The Treasury Department, unable to determine what the one "real" exchange rate should be, decided that a weighted average based on the previous year's official currency transaction should be the rate. It called the difference between the combined rate and the wool-top rate a bounty. In *Energetic Worsted Corp. v. United States*,[56] the Treasury lost its case, ostensibly because the weighted average technique was statistically invalid and inaccurate for the year in which the countervailing duty was assessed. While the "real" exchange rate may be difficult to determine and therefore the duty more difficult to liquidate than in the *Woolworth* case, the judges may have been influenced by the fact that Uruguay is a developing country, the currency of which, at the time of the disputed transaction, had a black market exchange rate of over three pesos to the dollar. If the unoffi-

54. Feller, *supra* note 9, at 47.

55. *See* F.W. Woolworth Co. v. United States, 115 F.2d 348 (C.C.P.A. 1940); T.D. 49,878, 74 TREAS. DEC. 475 (1939).

56. 53 C.C.P.A. 36 (1966).

cial rate is taken as the "true" value of the currency, then the price paid for wool-tops by the importer was something of a premium, and not a subsidy at all.

The *Energetic Worsted* case probably is as far as the Treasury will want to take the exchange rate problem under the countervailing duty law. Determining the "real" exchange rate of currencies was difficult enough under the Bretton Woods system of official fixed rates. Calculations would become surreal if the department tried to liquidate the amount of countervailing duty to be assessed in this day of the "Snake" and the "dirty float."

8. *Tax Reductions Intended to Encourage Economic Development.*—Whether a foreign government may give tax concessions for the purpose of promoting development in high unemployment areas without the imposition of a countervailing duty on the import of the promoted product into the United States depends upon the particular circumstances of each case. In T.D. 73-10,[57] the Treasury assessed a countervailing duty on Michelin X-Radials imported from Canada equal to what it felt was the net effect of a bounty bestowed by way of: (1) a special accelerated depreciation provision under Canadian income tax law; (2) a low interest loan from the Province of Nova Scotia; and (3) reduced property tax assessments by local municipalities.

> Thus the government apparently (a) disbelieved Michelin's contention that this aspect of the large Canadian subsidy program was aimed chiefly at luring business and industry into high unemployment and underdeveloped areas of the country, or (b) felt the domestic effect of the subsidies was secondary to the effect upon exportation, or (c) felt the domestic effect or purpose was irrelevant if it also had a substantial effect upon exportation.[58]

Seventy-five per cent of the Canadian concern's production was shipped to the United States market.

On the other hand, the Treasury did not choose to call almost precisely the same tax benefits given to float glass production in Belgium and Germany bounties under the countervailing duty law.[59] The department noted that almost none of the float glass found its way into the United States markets, and that less than two per cent of the product value was affected by the subsidies. Cynics might infer the decisions were determined not on the merits

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57. 7 CUST. BULL. 11 (1973).
58. Comment, 8 TEX. INT'L L.J. 437-39 (1973).
59. 41 Fed. Reg. 1298, 1299 (1976).

but on the relative political influence of the nations involved, especially as Italy's float glass was held to be within section 303 and assessed a countervailing duty on the same day.[60] However, such a conclusion probably would be unfair. The department would seem to have developed a sliding scale with regard to such indirect bountification of products manufactured in less developed areas. Italian float glass was assessed a ten per cent *ad valorem* duty. Michelin X-Radials were finally assessed at 6.6 per cent. German float glass was held not to be bounty-fed, when, had the decision gone the other way, it could have been assessed only a two per cent duty. How the Treasury uses its discretion in a case in which the bounty lies in the two to 6.6 per cent range probably depends as much on the skill of the lawyer litigating the issue as any other factor. Indeed, a skilled litigator for American manufacturers might succeed even in having the float glass cases reversed on an *ultra vires* theory, for section 303 is mandatory and makes no discretionary exceptions for bounties to poor areas.

9. *Over-Remission of Customs Duties when the Product is Exported: Excise Class, but Non-Sales Excise.*—When a country remits on re-exportation more than the original tariff that was collected on a product's importation, that excess is classed as a bounty. In *Gray v. United States,*[62] raw silk had been imported into Great Britain. It was charged a tariff upon its entry at a certain rate per pound. Once in Britain, the raw silk was processed for re-export to the United States. However, at that time, during processing of a pound of silk an amount of waste material was created. Some of this waste could be sold as a by-product, but the remainder had to be junked. Britain "drewback" all of the tariff paid by the silk manufacturer on importation when the finished product was re-exported to the United States, except that paid on the poundage that the manufacturer had sold in Britain as by-product. The British exporter got back his original import duty even for the wastage that had been junked. This remission of tariff on the junked waste was held to be a bounty on exported silk. The silk manufacturer was getting a rebate on more poundage than he was exporting; something that his American competitors would not get if they had wished to re-export silk products, and something that the British silk manufacturer would not get if he sold his finished product at home.

60. T.D. 76-9, 10 CUST. BULL. ___ (1976), 41 Fed. Reg. 1274 (1976).
61. T.D. 74-254, 8 CUST. BULL. 490 (1964).
62. T.D. 48,679, 69 TREAS. DEC. 811 (Cust. Ct. 1936).

Allowing a non-excessive drawback makes perfect sense. Otherwise a product that went through several countries on its way to a final retail market would have the cost of each new tariff added to its base price. The product would be virtually unsalable at such a price; and international trade would be discouraged because of the multiple taxation. However, in *Gray,* the British chose a method that the courts term indirect[63] to divert a traffic in silk, which otherwise might have gone through other countries. The legitimate nature of most of the drawback should not obscure what was done. A direct bounty to the export of silk products was disguised in the drawback mechanism. Britain paid her silk manufacturers the equivalent of what they normally would have lost to the trash heap to process their product in Britain. The over-drawback is merely a camouflaged form of the first type of subsidy mentioned above, direct, per unit subsidies to exportation.

10. *Any Remission of Indirect Taxes Not Related Directly to the Product Exported. Excise Class, but Tax Occulte.*—The Treasury Department will not allow a foreign government to rebate any of its internal taxes when such rebate amounts to a direct subsidy on the whole of the foreign industry. In *American Express Co. v. United States,*[64] the Treasury Department was upheld by the Court of Customs and Patent Appeals in its assessment of a countervailing duty on structural steel towers for rebated Italian *tax occulte,* or "hidden taxes." There, the Italian Government had remitted what it termed "Basic Rate Taxes," which included overhead items such as registration taxes, stamp taxes, transportation documents taxes, insurance taxes, and mortgage taxes. Such taxes are excises, but are to be distinguished from a tariff, also an excise, and particularly from a sales or use or manufacturing tax, all three of which are excises that are tied directly to the number of units sold.

Undoubtedly the rule stated by the *American Express* Court was and is the correct one under the current countervailing duty law. "[T]he remission, rebate, refund, abatement, however accomplished, of taxes which are not directly related to the exported product or of the raw materials or components used therein" are

63. All remissions are labeled indirect subsidies. Though they pass directly from the government to a manufacturer, the duty has been bestowed indirectly because it follows a tax payment from the manufacturer to the government. There have been two steps, thus the courts refer to direction and not effect when they call remissions indirect bounties. *See* note 88 *infra.*

64. 472 F.2d 1050 (C.C.P.A. 1973).

grants or bounties under section 303. Apparently, once a country makes the decision to tax, it may not selectively remit the tax even partially to a certain industry without having that industry's products countervailed on their export from that country to the United States. Such a remission would amount to a direct subsidy to the whole of that industry relative to those industries in the foreign country which did *not* get their *tax occulte* remitted. In other words, a direct subsidy to the whole of an industry, although cloaked in the remission process, is a subsidy all the same.

Aside from the obvious clash with the *German* and *Dutch Float Glass* cases, which were mentioned above,[65] the *American Express* case has created problems by misstating the rationale underlying the rule which it upheld. What the Customs Court did was to cite a European Community Court decision concerning precisely the same *tax occulte,*[66] and use that Court's rationale. The European Court decision of *Re Drawback on Italian Machine Parts*[67] was based on an interpretation of article 96 of the Treaty of Rome,[68] which provides that products exported to a member state may "not benefit from any drawback of internal charges in excess of those charges imposed. . .on them." The decision and the article reflect a Community policy allowing the remission on export of taxes on consumption, as opposed to taxes such as *tax occulte*. The tax concessions given in order to encourage development of depressed regions of the Community are specifically negotiated exceptions to article 96, and are designed to give equal economic opportunity to all regions in the E.E.C. The Community Court decision not to allow remission of *tax occulte* is thus an arbitrary one taken in the light of the knowledge that depressed regions already are getting help and that the Community favors the more easily calculated Border Tax Adjustments, made after remission of taxes on consumption, over the more difficult to allocate remission of indirect taxes not directly related to the unit cost of each subsidized product.[69]

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65. *See* note 59 *supra.*

66. 11 Recueil de la Jurisprudence de la Cour (Cour de Justice de la Communauté Europêene) 1057, 2 CCH COMM. MKT. REP. ¶ 8038, 5 Comm. Mkt. L.R. 97 (1966).

67. *Id.*

68. Treaty Establishing the European Economic Community (EEC), March 25, 1957. The authoritative English text of the treaty may be found in TREATIES ESTABLISHING THE EUROPEAN COMMUNITIES (Office of Official Publications of the European Communities, 1973). An unofficial English text may be found in 298 U.N.T.S. 3 (1958).

69. This will be dealt with at length in subsection 12.

Community law is interesting, but it has nothing directly to do with the American Countervailing Duty Law. The countervailing duty on each bountified unit from Italy was no more difficult to calculate than the direct subsidy on each unit of Indian steel exported to the United States,[70] or the *de minimus* effect of tax concessions by Germany and Belgium to their float glass manufacturers.[71] Worse yet, the *American Express* decision expressly formulated the corollary to article 96[72] that if remission of taxes not directly related to the article exported will not be allowed, then the remission of taxes *directly* related to the article exported *will* be allowed.[73] As will be made more clear later, in the European mind the tax to which the product is directly related is the V.A.T., and in terms of section 303, that corollary applied to the V.A.T. is not necessarily valid.

11. *Any Remission of Corporate Income Tax, at Least When the Remission of Such Tax is Not For the Purpose of Aiding an Underdeveloped Area. Direct Class, Unrelated Directly to Exports.*—When a corporate income tax remission has not been given to all corporations, any favoritism as to one segement of industry must inevitably result in a bounty. The tax remission would amount to a direct subsidy to the industry receiving the remission relative as compared to those industries in the foreign country that did not get their corporate income taxes rebated. No cases have been found directly on point in this area, probably because it is so obvious. If one looks beneath the surface at the whole tax concession area, however, firm conclusions as to bounties are difficult to make. For instance, is oil coming into the United States from abroad that has been exported by companies able to take a perpetual percentage depletion allowance bounty-fed as against American oil which no longer receives a percentage of depletion allowance?

12. *Any Remission of such Excises as are Directly Related to the Exported Product. Turnover Taxes.*—No conflict exists over the question of whether the *over-remission* of a sales, use, or manufacturing tax measured by gross income constitutes a bounty; it does. It is the question of whether the remission of only so much of the excises as have already been paid when the product is ex-

70. *See* note 45 *supra.*

71. *See* note 59 *supra.*

72. *See* note 68 *supra.*

73. 472 F.2d at 1058. The Court previously had stated its precise holding; thus its statement on turnover taxes is dicta.

ported constitutes a bounty that causes difficulty. The difficulty is extreme, because it brings into question the correctness of the assumptions implicit in the very words used to describe and classify a tax.

Under classical theory:

> [t]axes are either direct or indirect. A direct tax is one which is demanded from the very persons, who it is intended or desired, should pay it. Indirect taxes are those which are demanded from one person in the expectation that he shall indemnify himself at the expense of another, such as the excise or customs.[74]

In other words, when a legislature passes an indirect tax, it expects the person collecting the tax to add the appropriate amount to the selling price, shifting the burden or incidence of the tax to the vendee. When a legislature passes a tax on consumption, the party on whom the incidence finally is shifted is the retail buyer. Thus an indirect tax is directly related to the dollar volume of products sold.[75]

When a legislature passes a direct tax, it does not expect the vendor to shift the tax, but to pay it out of his own net profits. If the vendor tries to shift an income tax, the most widely collected direct tax, he cannot accurately predict how much to raise his price on each unit of product he sells, for net profit bears only an indirect relation to gross profit or sales. Thus a direct tax has only an indirect relationship with the product sold.[76]

Though the foregoing is a semantic nightmare, it is one way to describe what obviously are two different kinds of taxation. The direct/indirect way of describing taxes works perfectly well so long as one deals only with one country. However, the shift in incidence assumed for the indirect tax necessarily carried certain consequences when placed in an import/export context, particularly if the legislature has intended the tax to be on domestic consumption. If the product is exported instead of consumed in the home country, then the taxable event—domestic consumption—never takes place, and no tax should be collected on the exported product. In practice, this is a two step transaction. First, the taxpayer pays the government a percentage of his gross income, derived

74. J.S. MILL, PRINCIPLES OF POLITICAL ECONOMY 823 (Ashley ed. 1936) as cited in J. HELLERSTEIN, STATE AND LOCAL TAX 25 (1969) with other definitional and background material.

75. K. DAM, THE GATT LAW AND INTERNATIONAL ECONOMIC ORGANIZATION 124 (1970) [hereinafter cited as DAM].

76. *Id.*

from both exports and products sold domestically. Then he totals his net exports and presents the total to the government, which will either remit cash to him or credit the total toward a reduction in his future consumption tax. As has been noted in the previous sections,[77] remission of direct tax may constitute a subsidy.

The products of two countries, one of which taxes directly and the other of which taxes indirectly, should be able to compete on an equal basis in the marketplace if the respective shifting and nonshifting of the taxes actually happens as it is supposed to in theory, assuming all other costs are equal. Since the cost of neither country's exports would include taxes, prices should be the same. The direct taxing country's corporation would use net profits to pay the tax, and the indirect taxing country's corporation would never even incur a consumption tax.[78]

In practice, however, the actual effect of the respective taxes has not conformed with what one would expect in theory. Instead, the businessman in the direct taxing country shifts whatever tax burden he can to the consumer, just as does the vendor in the indirect tax state. Businessmen almost uniformly assert that they shift as much of the tax burden forward as they can, as swiftly as they can. To the extent that he can, a manufacturer plans to make a certain percentage of after-tax profit. If he does not, investors soon will take their money to where it will make a satisfactory percentage return on their investment. Thus, when a business income tax increase cuts into profits, prices will soon rise to restore those profits.[79]

Admittedly, the amount which a businessman must raise his prices to restore a planned profit level after an income tax increase takes quite a lot of calculation. However, the corporate income tax is not graduated but proportional. It can be described as a proportional excise tax on profits.[80] The other non-tariff type of excise not directly related to the gross sales of a product is the *tax occulte;* and its remission on export results in the assessment of a countervailing duty on entry into the American market. Certainly a businessman will have no more difficulty in calculating the per unit

77. *See* note 44 *supra.*

78. McClure, *The Value Added Tax: Pros and Cons,* in C. McClure & N. Ture, Value Added Tax, Two Views 4 (1972) [hereinafter cited as McClure].

79. No citation here. Personal experience.

80. Ture, *Economics of the Value Added Tax,* in C. McClure & N. Ture, Value Added Tax, Two Views 80 (1972) [hereinafter cited as Ture]. Mr. Ture may have taken his argument further than he had to in Senate Finance Committee Hearings before passage of the 1974 Trade Act. His testimony makes lively reading.

cost increase after an income tax rise than the Treasury Department had in calculating the per unit bounty given to the Italian manufacturer in the *American Express* case. The extent to which the income tax is shifted forward by price increases has by no means been settled by the economists. However, there is little doubt that some shifting takes place.[81]

Little doubt exists that the converse is also true to some extent. A manufacturer in an indirectly taxing country has to swallow a consumption tax increase to the extent his net profits drop on account of decreased aggregate demand by his country's consumers for the more costly product. The profit drop will be a function of the domestic elasticity of demand over the short and long term. For example, a sales tax increase on oil can be passed along more easily and with less of a drop in demand than a sales tax increase on chocolate. In either case, however, the slack in domestic demand can be taken up by increased sales in the export market, where the consumption tax increase has no effect. Unless they wish to shrink their labor force, management will feel increased pressure to export.[82]

If all nations taxed manufacturers directly, *i.e.* taxes at the point of origin, and did not tax consumption, then no remissions could ever be made on exportation. No product price could ever include both an income tax at the point of origin *and* a consumption tax at its destination. There would be no chance of double taxation. Conversely, no double taxation would occur if all nations taxed only at the destination. However, such uniformity does not exist. The direct and indirect methods of taxation collide when it is recognized that the incidence of the income tax is shifted forward to the consumer.

This collision between tax structures becomes apparent when one takes three imaginary countries with different tax structures and analyzes the possible trade relations among them. First, assume Country A makes one product, widgets, and collects an income tax from its one manufacturing company of $1 million. Secondly, assume Country B also makes widgets, and collects $1 million in indirect taxes from widgets consumed domestically. Then assume Country C has neither widget manufacturers nor a con-

81. Messere, *Border Tax Adjustments, as reprinted in, Hearings Before the Subcommittee on Tariff and Trade Proposals of the House Ways and Means Committee,* 90th Cong. 2d Sess., Part 1 at 73 (1968), [hereinafter cited as *1968 Ways and Means Hearings*].

82. Ture, *supra* note 80, at 78.

sumption tax. The following three situations are possible. First, when the widget manufacturers in Country A sell their product to Country C, the cost will include the shifted income tax. When the manufacturers in Country B sell their widgets to Country C they need not include any tax cost in the price of their product, as the taxable event of consumption will not have occurred in Country B. All other things being equal, the widgets not burdened by any tax will have the advantage. Second, when a manufacturer in Country A tries to sell its products in Country B, not only do its widgets' price include the income tax from the point of origin, but Country B's consumption tax is included as well. Of course, Country B's manufacturers also collect the consumption tax, but their widgets' cost does not include the cost of any income tax. Third, when the manufacturers of Country B sell their widgets in Country A, they pay no consumption tax on exported goods and they can arrange the distribution so that they pay no income tax, either.[83]

Economists must answer how the three country trading area eventually will reach equilibrium. But over the short-run, the country which is dependent on the income or other direct tax will be at a distinct disadvantage relative to the country using the indirect tax.

To recapitulate, two positions may be taken on the question of whether or not a turnover tax measured by gross income should be characterized as a bounty. The position taken is dependent on whether or not one espouses the traditional view that the income tax is not shifted forward, or looks to the marketplace for the empirical effects. The Treasury Department has taken the traditional approach, and it will not assess a countervailing duty because of a rebate of indirect taxes.[84]

Whatever the Treasury Department's stated policy today, the early court cases clearly held that the remission of an excise tax directly related to the goods taxed was a bounty when such remission amounted to the setting of two price structures, one for the domestic market in the exporting country and another lesser price for the export market. A related line of case law distinguished when a remission of excise would establish two price structures and when it would not. Indeed, anyone reading the cases cannot help but be struck by the sophistication of the early decisions, some of

83. The distributor will pay a tax, but not the foreign vendor, if he arranges the transaction properly.

84. A reading of the years of 1975 and 1976 in APPENDIX A shows several decisions concerning indirect taxes which foreshadow the *Steel Products* decision.

which dealt with extraordinarily complex fact situations. Nothing in the countervailing duty area today would surprise those earlier jurists.

The first case in which the Supreme Court dealt with the countervailing duty was its most difficult. In *Downs v. United States,*[85] the Court upheld the assessment of a countervailing duty on imported Russian sugar. The Russian sugar control system was extremely complex, and if one wishes to understand the minutiae of what was done, one must go to the case. The Russian Government had constructed a system of three classes of sugar: one class that could be sold in Russia at a set price plus an excise equal to the value of the sugar; another class held in reserve, which could be used to augment supply in the domestic market in case prices rose too high; and a third class of sugar that could be exported without the payment of any excise, but that would pay a double excise duty if it were sold on the Russian home market. As all the sugar stored in warehouses had been pre-taxed,[86] a trader withdrawing sugar for exportation would receive a refund certificate entitling him to a credit for the needless pre-payment of the excise. In addition, negotiable certificates representing warehoused and classed sugar were traded freely between sugar merchants. By trading, a coastal sugar merchant could turn all his sugar into exportable sugar, while the interior merchant would acquire certificates allowing him to market all his sugar domestically without paying the double excise on his third class of sugar (which by his trading he had transformed into sugar of the first class). Since sugar is sugar by whatever class called, the certificates and not the sugar moved through the channels of the trade. (This trading of sugar certificates somewhat resembled the trading of gold certificates by governments during the days of the gold currency standard, in which the certificates flowed, but the gold stayed put until one government had a surplus of certificates and cashed them in.) Finally, a prohibitive tariff wall protected all this activity.

Whatever the complexity of the facts, the reasoning in the *Downs* case is the thing of importance. First, the court cited the result of the Sugar Conference of 1898, which had formulated the following statement:

85. 187 U.S. 496 (1903).

86. *Id.* at 509. Like most taxing authorities, the Russian Government collected an excise on all sugar in storage before it was sold and worried about rebates afterwards.

> The Conference . . . is of the opinion that bounties whose abolition is desirable, are understood to be all the advantages conceded to the manufacturers and refiners by the fiscal legislation of the States, and that directly and indirectly are borne by the public treasury.
>
> There should be classified as such, *notably:*
>
> (a) The direct advantages granted in the case of exportation.
>
> (b) The direct advantages granted to production.
>
> (c) The total or partial exemptions from taxation granted to a portion of the manufactured products.
>
> (d) The indirect advantages of growing out of surplus or allowance in manufacturing effected beyond legal estimates.
>
> (e) The profit that may be derived from an excessive drawback.
>
> In addition, the conference is of the opinion that advantages similar to those resulting from bounties hereinbefore defined may be derived from the disproportion between the rate of customs duties and that of consumption dues (surtaxes), especially when the public powers impose, incite, or encourage combinations among sugar producers.
>
> It would be desirable to regulate surtaxes in such manner as to confine their operation to the protection of home markets.[87]

Secondly, the Court went on to define a bounty.

> A bounty may be direct, as where a certain amount is paid upon the production of certain articles . . . or indirect, by the remission of taxes upon the exportation of articles which are subjected to a tax when sold or consumed in the country of their production, of which our laws, permitting distillers of spirits to export the same without payment of an internal revenue tax, or other burden, is an example.[88]
>
> [E]very bounty upon exportation must, to a certain extent, operate as a bounty upon production, since nothing can be exported which is not produced, and hence a bounty upon exportation, by creating a foreign demand, stimulates increased production to the extent of such demand. Conversely, a bounty upon production, operates to a certain extent as a bounty upon exportation, since it opens to the manufacturer a foreign market for his merchandise produced in excess of demand at home.[89]
>
> But if a preference be given to merchandise exported over that sold in the home market, by the remission of an excise tax, the effect would be the same as if all merchandise were taxed, and a drawback paid to the manufacturer upon so much exported.[90]

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87. 187 U.S. at 501.
88. *Id.* at 502.
89. *Id.* at 512.
90. *Id.* at 513.

> But where in addition to that, these regulations exempt sugar exported from excise tax altogether, we think it clearly falls within the definition of an indirect bounty upon exportation.[91]

Finally, the Court summarized its findings.

> The details of this elaborate procedure, for the production, sale, taxation, and exportation of Russian sugar are of much less importance than the two facts which appear clearly through this maze of regulations, viz.: that no sugar is permitted to be sold in Russia that does not pay an excise tax of R. 1.75 per pound, and that sugar exported pays no tax at all . . . *When a tax is imposed upon all sugar produced, but then is remitted upon all sugar exported, then by whatever process, or in whatever manner, or under whatever name it is disguised, it is a bounty upon exportation.*[92]

Nothing in the case qualified the definition of a bounty by stating that remission of an indirect tax on the export of a product was not a subsidy while the remission of a direct tax was a subsidy. Indeed, the *Downs* case carefully used the words "direct" and "indirect" in two ways only. The first way described the difference between a subsidy aimed specifically at products exported and a subsidy to a whole industry, a "subsidy to production." The Court used the words in a second way in order to distinguish a subsidy via selective rebate of taxes already paid from a direct payment to the favored industry. Nowhere did the Court use the words "direct" and "indirect" to describe a *type* of tax rebated. It simply noted if the excise was refunded only on export, and looked to the effect of such refund.

The Treasury Department supports its present rule by labeling the *Downs* language as dicta and pointing to two other cases that used the same broad language but nevertheless assessed a countervailing duty on the excess of remission over the original excise. In *Nicholas and Company v. United States,*[93] the Court upheld an assessment of countervailing duty on incoming British whiskey for the over-remission of that country's consumption tax. The remission itself was not called a bounty. Instead, the over-remission, which the importer called merely a compensatory allowance for "expenses" incurred during the useless excise process, was the only amount countervailed. Likewise in *Hills Brothers Coffee Co. v. United States,*[94] only the bounty on production of the Dutch sugar

91. *Id.*
92. *Id.* at 515.
93. 249 U.S. 34 (1919).
94. 107 F. 107 (C.C.S.D.N.Y. 1901).

was assessed a countervailing duty, while the remission of the Dutch tax on sugar consumption was not. No doubt the dollar results of these two cases differ from the language in *Downs*. However, it cannot be said with certainty that these decisions repudiate the reasoning of *Downs*. No court sitting on appeal of a customs case can be expected to assess a greater countervailing duty than the Treasury Department, the plaintiff of the case, has asked.

Moreover, the Supreme Court had already delivered a clear evaluation of what it thought of sales tax rebates in a case decided shortly before the *Downs* decision, which it cited in both the *Downs* and *Nicholas* cases. In *Passavant v. United States*,[95] the Court dealt with the question of what the fair value of a shipment of German cotton velvet was on its arrival in the United States. The Collector had included the value of the remitted German tax on consumption in his valuation. The importer argued that the true value did not include the value of the consumption tax because the goods has not been destined for German consumption. The Court, confronted with conflicting estimates of market value, held that the value of the velvet included the amount of the German excise.

> As the question in this case was what was the general market value and wholesale price of cotton velvets, as bought in the principal markets of Germany, the fact that the German duty was not in fact paid on such goods when exported [was] immaterial. Exoneration from its payment was a mere special advantage extended by the German Government, as we have said, in promotion of manufacturers and commerce.[96]

The dissents in the case written by Justices Brown and Peckham underline the holding. "If there be, in fact, two wholesale prices for these goods in the same markets, I know of no reason why the collector should not recognize this fact . . . ."[97] Once again, the Court had characterized the remission of a national tax on consumption as a bounty on exports, although in *Passavant* the characterization did not arise in the countervailing duty context.

In 1905, three years after the *Downs* case, the Second Circuit Court of Appeals heard a case similar to *Passavant*, and nicely distinguished a tax on consumption, which should be part of the national wholesale price, from an excise, which should not. In

95. 169 U.S. 16 (1897). We are concerned, here, with what the Court thought in 1897 and not with the GATT Art. VII practices of today.

96. 169 U.S. at 24.

97. *Id.* at 25.

Godillot v. United States,[98] the Customs Collector had included two different excises on consumption in his valuation. One was the general tax on the consumption of alcohol throughout France; the other a consumption tax for wine consumed only in Bordeaux. Under the French law, both taxes were remitted upon exportation. The issue of the case was whether the market value should include one or both taxes. The Court held that the market value in which United States law was interested was the national market value, and that while the national consumption tax should be included, the local Bordeaux duty should not. Similarly, the Countervailing Duty Law is interested in the effect which a tax rebate has on bountification of exports. The *Godillot* case provides an effective criterion for determining which excise remissions should be countervailed on their entry into the United States and which should not. A remission of a national excise should result in a countervailing duty, and a remission of a purely local excise should not. Such a standard promises both ease of administration and accuracy. Furthermore, a local tax rebate is likely to be small and have an insignificant effect on exports to the United States. The Treasury, should it be forced by litigation to assess a countervailing duty for the remission of sales taxes, probably would not choose to assess a countervailing duty for the remission of local sales taxes.

The Treasury position exalts tax form over substantive effect, while the Countervailing Duty Law looks to effect. Its enforcement is mandatory. Remission of a turnover tax on export amounts to a direct bounty on and incentive to exports, and such remission should result in a countervailing duty being assessed on entry into the American market.

III. THE VALUE-ADDED TAX AND ITS NICHE IN THE INTERNATIONAL FRAMEWORK, AS COMPARED WITH THE PLACE OF THE COUNTERVAILING DUTY LAW IN THE GENERAL AGREEMENTS ON TARIFFS AND TRADE

A. *The Description and Characterization of the Value-Added Tax*

The value-added tax is a new, multifaceted, accountant's construct that was created to fill a need in the European Community tax structure, and can be characterized accurately only by a thorough description. The idea of the tax on value-added came independently from two men just at the end of World War I. Thomas S. Adams, of Yale University, characterized his idea as a

98. 139 F. 1 (2d Cir. 1905).

"modified business tax." Wilhelm von Siemens, a German governmental consultant, characterized his proposal as a "refined turnover tax."[99] Neither received much support initially.

From 1918 until the creation of the Common Market, the Continental countries tended to use excise taxes measured by sales for much of their revenue. In France, a welter of special excises on oil, tobacco, services and the like were in effect. Each had multiple rates and numerous exemptions. In Germany and several of the Low Countries, a multi-level cascading turnover tax of up to five per cent was in effect. This tax was a turnover tax levied on a percentage of every transfer at every level of the production process. The vendor of raw materials was charged an *ad valorem* tax when he sold raw goods to the manufacturer. The manufacturer paid the same percentage of gross sales on the transfer or turnover of its finished goods to the wholesaler. The same tax accompanied every transfer on down to the consumer. "And at each stage, the tax was built into the price and thus became pyramided and swollen as each sector in turn applied its markup on price plus tax and then added its own tax."[100] In essence, the percentage of tax in the retail price of a product "cascaded" upward geometrically with the greater number of transfers. Inevitably, the system favored those able to vertically integrate their industries through as many stages as possible and penalized those who could not. This tended to warp the structure of the economy, once the tax bite got large enough so that businesses were organized so as to avoid the tax.

The creation of the European Common Market provided both the opportunity and the need to reform these capricious indirect tax structures. If the members of the European Community were to pursue economic integration, they eventually had to harmonize their tax structures in order to facilitate trade. After some years of studying the situation, the European Commission issued a series of directives.[101] Article Two of the First Directive neatly embodied the reason for creating the V.A.T.:

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99. INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION, IV GUIDES TO EUROPEAN TAXATION: VALUE ADDED TAXATION IN EUROPE, Introduction at 4 (1973). This looseleaf series contains the complete translation of every V.A.T. in Europe, as well as explanatory materials and E.E.C. Directives [hereinafter cited as GUIDES].

100. Remarks by Stanley Surrey, Assistant Secretary of the Treasury, before the National Industrial Conference Board on the Implications of Tax Harmonization in the European Common Market, *as reprinted in 1968 Ways and Means Hearings.*

101. *See* the First, Second, and Sixth Directives in IV GUIDES or [1973] ___ E.E.C. Jo. No. 71, at 1301/67.

> The purpose of the common system of tax on value added is to apply a general tax on consumption to goods and services directly proportional to the price of the goods and services, irrespective of the number of transactions during the production and distribution process preceding the stage at which the tax is imposed. On each transaction, the tax on value added, calculated on the price of the good or service at the rate applicable to such good or service, is to be payable after deduction of the amount of the tax value added which has directly affected the cost of the various components of the price.[102]

The easiest way to envision the V.A.T. is to look at it as a retail sales tax, the burden of which falls on the retail consumer, but the collection of which falls on each firm in the chain of production according to the amount of value it adds to the product. The retailer collects *all* of a retail sales tax directly from the consumer. All the V.A.T. does is to split up the collection of the same tax into as many parts as there are stages of production. So instead of a retail sales tax, V.A.T. is a multi-leveled turnover tax, the taxable event of which is the transfer or turnover by each respective vendor of his product to the vendee at the next stage of production. Each vendor pays only the taxable percentage of the value that he adds to the product. To take a simple example:

THREE-STAGE EXAMPLE OF A 10 PERCENT VALUE ADDED TAX[103]

	Stage of Production			
	A	B	C	Total
1. Sales Price	$300	$700	$1,000	—
2. Purchased Inputs	—	300	700	$1,000
3. Value added (1—2)	300	400	300	1,000
4. Tax on value added (10% of 3)	30	40	30	100
5. Retail sales tax (10% of C1)	—	—	100	100

102. *Id.* at First Directive 5.
103. McClure, *supra* note 78, at 11.

A ten percent retail sales tax on a purchase of $1000 would be $100. In the example, the V.A.T. also would total $100, with A paying $30, B paying $40, and C paying $30.

The example is oversimplified, because it does not divide the purchased input category into intermediate and capital goods. Two types of tax could be constructed if it did. One, the consumption type, does not distinguish new capital goods from other types of input and subtracts all input from the output price. The Europeans have chosen it to be their tax and the other, the income version, therefore is irrelevant for the purposes of this paper.[104]

Once the Community had decided on the consumption version, it had to decide how to collect it. There were four methods from which to choose, and each resulted in precisely the same amount of tax being collected. An examination of the four well illustrates the slippery nature of the V.A.T.[105] The four methods can best be illustrated as Allen Tait did in his book, *Value Added Tax:*

> A tax on value added is, briefly, a tax levied on businesses on the value they add to their purchases of raw materials, and goods and services. Leaving aside the problem of capital and stocks, we can represent this by writing value added (V/A), equals total output (O), minus total input (I) on purchases on current account.
>
> $$V/A = O - I \qquad \text{(a)}$$
>
> Clearly, the difference between output and the inputs of raw materials, energy, containers, etc., is the payment of wages and salaries (W), and the residual, which we will call profit (P).
>
> $$O - I = W + P \qquad \text{(b)}$$
>
> From (a) $V/A = O - I = W + P$ (c)
>
> So value added can be derived either by *subtraction* (O — I) or by *addition* (W + P). These forms of calculation are sometimes called the subtractive (or subtraction) method and the additive method (or procedure or process). The tax rate (t) on value added (tV/A) can then be applied in at least four ways:

104. The income V.A.T. would add only the cost of current capital depreciation to the cost of raw materials. The tax resulting would be the equivalent "to a flat rate personal income tax with no exemptions or deductions." McClure, *supra* note 78, at 15.

105. The inclusive-exclusive distinction would bring the number of possible collection methods to eight. Only the French use inclusive VAT. The distinction is irrelevant to an investigation of the nature of the tax. *See* TAIT, VALUE ADDED TAX 3 (1972) [hereinafter cited as TAIT].

direct additive	$tV/A = t(W + P)$	(d)
indirect additive	$tV/A = tW + tP$	(e)
direct subtractive	$tV/A = t(O - I)$	(f)
indirect subtractive or invoice method	$tV/A = tO - tI$	(g)

As will become clearer below, the indirect methods never actually calculate the value added at each stage, but only the amount of tax owed.[106]

Under the direct additive method, the businessman totals up all wages paid and net income accumulated during the taxing period, takes out the required percentage of tax, and pays the V.A.T. to the government. This method has the advantage of simplicity. The taxpayer knows precisely what activities are being taxed. In addition, he can take the figures directly from accounting ledgers that he probably keeps already; so if the tax were collected once a year, there would be little extra expense.

However, if the government wants payments every month, the businessman has to calculate his earnings figures once a month as well. This generates increased accounting costs. One way around such increased expenses is to use the indirect additive method of calculation. Instead of totaling profits and wages together, the indirect method allows the separate computation of tax on each component. The total wages are figured, and then the taxable percentage taken. The same figuring is done on the net income. Then the two tax totals are added together. This type V.A.T. would actually be two taxes masquerading under the same label—a proportional tax on wages attached to a proportional tax on profits. As such, it would have increased flexibility. For instance, the wage tax might be collected monthly, with the net income tax calculated and collected only once a year. This would probably eliminate the extra administrative expenses (which would have been generated by the once a month calculation of net profit under the direct additive method) and still would give the government a continuous flow of cash. The government also might fine-tune the economy by manipulating the wage and income rates against each other, or by raising or lowering either or both tax rates at different times during the year.[107]

Neither subtractive method has the same type of flexibility or

106. TAIT, *supra* note 105, at 2. The Tait book is the easiest one with which to learn the essentials of V.A.T.

107. *Id.* at 13.

simplicity as the additive method. Both subtractive methods require the accumulation of invoices. Consequently, the costs of record keeping are greater. However, the invoice requirement was probably the chief aspect that attracted the Community to the subtractive methods. First, the invoice collecting procedures were already in place throughout the Community, since the V.A.T. would replace the multi-leveled, cascade tax. Secondly, such extensive recordkeeping would make the system easier to police, particularly in such countries as Italy and France where tax evasion is a national sport. The taxing authorities could walk into any retail establishment, select a product, and then follow a trail of invoices back to that product's starting point. If an invoice was missing at any level, the taxing authorities would know where to begin auditing.[108]

One can easily calculate the V.A.T. due under the direct subtractive approach by first totaling all sales receipts for the taxing period, then totaling all invoices of incoming raw materials, subtracting the latter from the former to get the net value added throughout the taxing period, and finally taking a percentage of the net value added for remission to the government as tax.

The European Community eventually chose the indirect subtractive method, also known as the invoice method. Though cumbersome, the invoice method has two primary advantages. First, the method allows each vendor and vendee to calculate exactly how much tax is due on each individual transfer, no matter what the level in the production process. Thus each vendee knows how much V.A.T. has been passed onto him, and how much he should pass on in turn. The government also knows exactly how much money should be credited to the account of a vendor who exports a product.[109] Secondly, the invoice method lets the government set different rates of V.A.T. on different types of transactions, if it should want to channel consumption into certain areas. For instance, food can be rated at five per cent while motor cars are rated at thirty per cent. Similarly, certain commodities may be exempted from the V.A.T. altogether. The setting of different rates makes the administration of V.A.T. vastly more complex than it would have been had a flat all-inclusive rate been set.[110] Indeed, a multiple rate V.A.T. might warp an economy as much as the cascade taxes it replaced. However, whatever the adverse economic

108. *Id.* at 9.
109. *Id.*
110. *Id.* at 15.

consequences of a multi-rate V.A.T., European politicians apparently felt that a tax that looked regressive would be easier to sell to the public if it were strategically modified.[111]

The V.A.T. is not difficult to calculate under the indirect subtractive method. Suppose there exists a steel manufacturer, who has all his capital equipment in place, and who is about to make one-hundred tons of steel to be sold in one ton units. When he buys the coke, pig iron and other raw materials necessary to make the steel, he gets invoices, each of which lists the cost of the raw material and shows the V.A.T. being collected by the vendor of that raw material. The steel manufacturer, obviously, pays the cost plus the V.A.T. When he gets all his raw materials, it is a simple matter to add up all the V.A.T. already paid and divide that total by the number of steel units that will be produced. The steel manufacturer thus knows how much V.A.T. already has been paid on each unit of steel that he eventually sells. When he sells the steel to his wholesaler, the wholesaler will pay the asking price, plus the percentage of V.A.T., which is calculated just as with any sales tax. For example, a ton of steel sold for $100 in a country with a ten per cent V.A.T. will cost $110 to a buyer. So, the steel manufacturer has two sets of documents after the sale of all the units of steel. First, he has the invoices from the acquisition of all his raw materials, from which the respective V.A.T. percentages have been totaled and divided by the number of steel units manufactured to show the amount of V.A.T. already paid on each unit. (For purposes of illustration, suppose the V.A.T. costs per unit manufactured are $5, i.e. the raw materials cost $5 in all). Secondly, the manufacturer has his own sales slips which show that he sold each unit of steel for $100 plus a ten per cent V.A.T. tax. Thus, the manufacturer knows that he has collected $10 V.A.T. per unit sold as compared with $5 V.A.T. costs he already has paid for the raw material going into each steel unit. To figure his tax owed, the steelmaker simply subtracts the $5 of V.A.T. paid per "unit" bought from the $10 V.A.T. collected on each unit sold. Thus the *tax* on the value that the steel manufacturer has added to the raw materials he bought is $5. Under the indirect subtractive method, then, the vendor figures his tax by subtracting the tax paid on inputs from the tax collected on output. His share of the V.A.T. is the difference between the two. He never calculates the value which he has added to each product but figures only the tax which

111. Ture, *supra* note 80, at 72.

he owes—hence the label indirect. (The value added in the example would be $50.)

The invoice method is simple enough to understand, particularly for the consumer who sees the tax percentages itemized on his sales slips. It is only when multiple rates are added to the mix that the politicians can start manipulating the tax. Aside from setting a high or low rate on products that the legislature sees as luxuries or necessities, a product can be exempted from V.A.T. or zero rated. The effects of the latter two are by no means identical.

If a legislature wants to hide the V.A.T. content of a product from the retail buyer, it may exempt the retailer from the tax. "Exempting" means removing the transaction from the V.A.T. structure entirely. No V.A.T. is charged to the consumer, at least ostensibly, and no V.A.T. included in the retailer's input costs is remitted either.[112] Theoretically, the incidence of the tax will fall on the retailer, who will not get his remission and should not pass on the tax. Actually, the V.A.T. *is* passed along to the retail consumer in the form of a higher price, and only sophisticated consumers will be any wiser. A related ploy is to exempt one intermediate link in the production chain, while retaining the V.A.T. on the links following. The consumer again can be fooled, because his invoice shows only the V.A.T. collected *after* the exempted link. The so-called base price will hide the V.A.T. collected *before* the exempt stage of production. This is a cascade tax in V.A.T. clothing. The exemption effect and a related "catch up" effect (which occurs when a producer at one level of production is taxed for more than his value added because a producer at an earlier level paid a lower rate)[113] are basic to a full understanding of V.A.T., but are beyond the scope of this paper, which is concerned only with the characterization of V.A.T. as direct or indirect, as that characterization relates to section 303.

The zero rating of a product exported from a V.A.T. country is even more significant, however, because it and practices similar to it are the cause of the present international difficulties. Zero rating entitles the vendor to a credit equal to the amount of V.A.T. that he paid on his input, while simultaneously allowing such vendor to sell his product with a V.A.T. percentage of zero. In other words, when an exporter sells his goods outside his home country, he adds no V.A.T. to his sales price, and he is entitled to a rebate for the

112. The writer was in Britain during V.A.T. passage through Parliament. He knows precisely how the tax was sold to a very skeptical public.

113. TAIT, *supra* note 105, at 20 *et seq.*

V.A.T. that he paid to his suppliers.[114] Zero rating makes sense only if the V.A.T. is equated to a turnover tax on consumption, and only if one subscribes to the traditional view of the incidence of indirect taxes.

On the other hand, a product imported into a V.A.T. country will incur the excise on consumption like any other product consumed in a V.A.T. country. Should the product come from the United States, its price will include both the V.A.T..on consumption *and* any United States corporate income tax passed on by its manufacturer. Furthermore, if the product somehow should miss the V.A.T. by virtue of its sale to an exempt vendee in a later stage of production, the government will impose a surcharge of an equivalent amount upon entry.[115] The rebate and surcharge mechanisms are collectively called Border Tax Adjustments, and have been the subject of heated negotiation ever since American manufacturers began to feel their effects.[116]

The Treasury Department and other economic forecasting agencies cannot fairly be faulted for failing to predict the effect that the Community change to V.A.T. had. The Community characterization of its new tax as indirect should not have had the effect that it did. The cascade tax system had been an indirect one, and the European countries had been remitting their indirect taxes on exportation all along. The trouble was that no one, neither the governments nor their business taxpayers, knew the real extent of the tax under the old system. Instead, the governments had taken an educated guess as to what the tax cost within each product was, and rebated the "estimate." Not until the advent of V.A.T. with its exact accounting procedures, and the resulting recalculation of the Border Tax Adjustments, did the Europeans discover that their cascade tax estimates had been too low. After V.A.T., the amount of tax remission on Community exports rose, and consequently the export prices on their products dropped.[117] Certainly

114. *Id.* at 56.

115. This zero rating is used only for purposes of illustration. Actually, only the Dutch have a zero rating; the other V.A.T. countries do the same thing in effect. To be precisê, the remission of tax on consumption is the problem, not the zero rating per se.

116. Only the double taxation itself is important here, not the method by which it is accomplished.

117. In 1967, the Europeans even refused to discuss the matter. *See also*, Statement by Representative of the United States on Border Taxes Before GATT Working Party, April 30, 1968 [hereinafter cited as Spec. Rep. Statement of 1968].

the relative decline in the competitive stance of American products as against European products cannot entirely be ascribed to the institution of the V.A.T. The United States balance-of-trade position had deteriorated even prior to the effective date of the *Mehrwertsteuer* in the German Federal Republic on January 1, 1968.[118] Indeed, Congress had held hearings on the deteriorating position of the American steel industry in 1966.[119] But whatever the reason, beginning in 1968, American business stood up and took notice of section 303 for the first time since the end of World War II.[120] And as the V.A.T. rates rose, so did interest in the Countervailing Duty Law and in V.A.T. itself.

Nor were the Europeans unmindful of the ambiguous character of V.A.T. Indeed, the French actually repealed a 4.25 per cent payroll tax and replaced it with a one to five per cent increase in their several V.A.T. rates, knowing that the latter could be rebated on exports while the former could not.[121] Germans, prior to the Federal Republic's adoption of the V.A.T., complained of the "virtual customs protection" that the earlier French V.A.T., with its higher rates, gave to French products at the expense of German products, which were cascade taxed at a lower rate.[122] Even the indirect subtraction method of calculation was selected partly because it served to emphasize the indirect aspect of the tax.[123] There are no German complaints now.

The V.A.T. cannot simply be shrugged off as another variant of indirect taxation. The additive methods of calculation clearly must be characterized as direct. The V.A.T. can be a direct proportional tax on payroll and profits just as easily as it can be a tax on consumption.[124] No one disputes that the amount of tax collected is not identical under all four methods of calculation. If the V.A.T. serves to illustrate anything, it illustrates the breakdown of the traditional, theoretical assumptions of direct/indirect tax shifting in the import/export area. The direct and indirect aspects of V.A.T. are merely two sides of the same coin. One country calling the tax direct should not be held to have granted an export

118. Surrey, in *1968 Ways and Means Hearings, supra* note 81, at 70.

119. IV EUROPEAN GUIDES, Ger. Fed. Rep. at 4.

120. *See* note 2 *supra.*

121. Feller, *supra* note 9, at 49.

122. TAIT, *supra* note 105, at 15.

123. Stout, *Economic Aspects of a Value Added Tax in the U.K.* in THE VALUE ADDED TAX (1968) amply illustrates British expectations for the tax at a time before passage.

124. *Id.* at 12.

bounty when it remits the V.A.T. on export, while another country calling the tax indirect is allowed to remit the whole V.A.T. on export without violating international law. Any international treaty allowing such a result should be challenged.

B. *The GATT Position on Tax Rebates on Exports and Countervailing Duties*

The GATT position on the indirect/direct tax controversy is distinctly traditional. Article VI, section 4 clearly states the GATT position, both on excise tax remission and on countervailing duties:

> No product of the territory of any contracting party imported into the territory of any other contracting party shall be subject to anti-dumping or countervailing duty by reason of the exemption of such product from taxes bourne 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.[125]

Article VI, section 6(a), may contain the reason why the Congress wrote the provision into the Trade Bill of 1974 which required a finding of injury by the United States Tariff Commission before assessment of a countervailing duty on non-dutied goods, the import area to which the Countervailing Duty Law had not been extended before:

> No contracting party shall levy any anti-dumping or countervailing duty on the importation of any product of the territory of another contracting party unless it determines that the effect of the dumping or subsidization, as the case may be, is such as to cause or threaten material injury to an established domestic industry, or is such as to retard materially the establishment of a domestic industry.

However, the original countervailing duty as it applied to *dutiable* products was not amended to provide for a finding of domestic injury because the so-called "grandfather clause" exempted it from the Treaty. A recent Senate Finance Committee Staff Report bluntly has enunciated the congressional position on the General Agreements:

> The basic GATT agreement was completed in 1947 but it never had been submitted to the Congress for its study and approval. It is

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125. DAM, *supra* note 75, at 401.

being observed by the United States through a "protocol of provisional application."
The "protocol of provisional application" stated that the eight governments who signed it would undertake "not later than November 15, 1947, to apply provisionally on and after January 1, 1948":. . .

> (b) Part II of that agreement to the fullest extent not *inconsistent* with existing legislation.

This protocol is still in effect, although GATT has been amended a number of times . . . . Thus the basic treaty is a complex set of instruments, applying with different rigor to different countries.[126]

IV. Conclusion

The Treasury Department might have found the remission of V.A.T. by the Community on the export of its steel to be a bounty under section 303 by either one of two theories. First, the Treasury might have characterized the V.A.T. as a direct tax. Any rebate clearly would have been in violation of section 303 and the GATT. Or, the Treasury might have called the tax indirect and the rebate of V.A.T. upon export a bounty under section 303 and invoked the "grandfather clause" in the protocol of provisional application of 1947. Unfortunately, the Treasury did neither; instead, it characterized V.A.T. as an indirect tax and claimed that the remission on exportation of indirect taxes never had been labeled a bounty under section 303.

The Treasury did not take the same position in 1971. In hearings before the Senate Finance Committee, Secretary Connally stated:

> [T]he time has come for us to either demand the same treatment for direct taxes, or to play their game and insist that their value-added tax be treated the same as our direct taxes or that in any future tax measures, that we consider the possibility of adopting the value-added tax.[127]

The Secretary made his statement knowing that the 1969 revision of GATT did not reflect his view.[128] He was aware, also, that the strong position taken by the United States Representative to the GATT Working Party in 1968[129] had failed to convince the other signatories of the Treaty of the need for change.

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126. Staff Analysis of Certain Issues Raised by the GATT, Staff of Senate Committee on Finance 2, 92d Cong., 1st Sess. 920 (1970).

127. *Hearings of Subcommittee on International Trade of the Senate Committee on Finance*, 92d Cong., 1st Sess. 45 (1971).

128. Spec. Rep. Statement of 1968, *supra* note 117.

The Secretary was correct. The United States must either adopt V.A.T. itself or force a showdown over the direct/indirect tax shifting issue. The Congress was fully aware of these alternatives when it passed the Trade Act of 1974. It knew the inequitable situation could not go on indefinitely, and it was not prepared to adopt a V.A.T. for the United States. Clearly, the congressional intent was to force the issue, but to give the Treasury four years of manuevering time in which to do it. There were two legal routes to take, and the Congress probably did not care so much *how* the issue was forced so long as it *was* forced. Congress left the Treasury with the proper tools to implement either theory. However, instead of using the tools which it had been given within the limited areas of its remaining discretion, the Treasury chose not to press the issue at all. The Treasury has thus frustrated the will of Congress, and its position should be reversed on appeal.

The subject of countervailing duties and the V.A.T. is obscure, complex, and important. Those who are not in favor of protectionism and who are in favor of world-wide free trade would make a great mistake to dismiss the countervailing duty issue out of hand as merely another attempt by complacent industries to freeze foreign competition out of the American market. They might be surprised to find themselves on the same side as the steel industry, once they examine all the facts.

Charles L. Chambers

APPENDIX I—THE RECORD

A Log of Traffic Through the Collector's Office and the Courts in Chronological Order Since the Inception of the Countervailing Duty on Bounty-Fed Imports

1897

T.D. 18,345, [1897] Gen. App. Dec. 828 (1897): France is held to pay a bounty on dried codfish; a countervailing duty is assessed.

T.D. 18,387, [1897] Gen. App. Dec. 868 (1897): Dutch sugar shipped before September 1 will not be countervailed against.

T.D. 18,504, [1897] Gen. App. Dec. 972 (1897): H.L. Hobart Co. protested countervailing duty levied on Belgian and Dutch sugars to no avail.

T.D. 18,660, [1897] Gen. App. Dec. 1159 (1897): Beet sugar from Denmark countervailed at 13 1/2 cents per 100 pounds.

T.D. 18,679, [1897] Gen. App. Dec. 1172 (1897): Countervailing duty on Argentine sugar is set at 13 1/2 cents per 100 pounds.

1898

T.D. 18,784, [1898] Gen. App. Dec. Vol. I 31 (1898): Countervailing duty is set on dried fish from St. Pierre and Miquelon, France, at 10 francs per 50 kilos, fresh fish exempted.

T.D. 18,882, [1898] Gen. App. Dec. Vol. I 142 (1898): Those wishing amount of duty announced for Belgian sugar must wait until it is figured; liquidation of duty suspended.

T.D. 19,071, [1898] Gen. App. Dec. Vol. I 390 (1898): Direct and indirect bounties are found to be paid on French sugar; duties assessed.

T.D. 19,108, [1898] Gen. App. Dec. Vol. I 429 (1898): Sugar shipped without label showing country of origin will be assessed at the highest countervailing duty.

T.D. 19,256, [1898] Gen. App. Dec. Vol. I 610 (1898): Tate and Lyle sugar from England will be taxed at highest rate, as many different kinds are mixed in its refinery, making it impossible to determine from where the sugar originally came.

T.D. 19,318, [1898] Gen. App. Dec. Vol. I 693 (1898): Raw sugar from Germany polarizing below 90 degrees will not be countervailed, as it gets no bounty.

T.D. 19,361, [1898] Gen. App. Dec. Vol. I 754 (1898): Countervailing duty on granulated 90 degree sugar from Germany is levied at 3.55 marks per 100 kilos.

T.D. 19,397, [1898] Gen. App. Dec. Vol. I 793 (1898): Unbountified raw sugar from Java gets a countervailing duty set, if it is mixed with Dutch bountified sugar during its refining process in the Netherlands.

T.D. 19,425, [1898] Gen. App. Dec. Vol. I 826 (1898): Raw sugars from Holland and Belgium taxed at the higher Dutch rate when importer is unable to allocate percentages of his cargo.

T.D. 19,632, [1898] Gen. App. Dec. Vol. II 55 (1898): Sugar sweetened milk chocolate will not be assessed for its sugar content.

T.D. 20,039, [1898] Gen. App. Dec. Vol. II 534 (1898): Protest of Hills Brothers Co. against duty assessment on Dutch sugar is *overruled* by the General Board of Appraisers.

T.D. 20,407, [1898] Gen. App. Dec. Vol. II 996 (1898): R.E. Downs is assessed a countervailing duty on sugar held bountified by Russia. A duty is also assessed on sugar from Argentina, Austria-Hungary, Denmark, France, Germany and the Netherlands.

1899

T.D. 21,501, 1 TREAS. DEC. 252 (1899): *Wallace, Muller v. U.S.:* The Board of Appraisers may review the question of whether an export bounty exists, but if there is such bounty, its estimate by the Secretary of the Treasury is conclusive. The matter of amount is not reviewable.

T.D. 21,526, 1 TREAS. DEC. 292 (1899): The highest duty is charged to unlabelled sugar as per T.D. 18,323, 19,108 (1898).

T.D. 22,633, 1 TREAS. DEC. 972 (1899): Sugar produce from the French West Indies is held not subject to countervailing duty if imported directly to this country; however, said sugar, if imported indirectly, will be subject to the regular French duty.

1900

1901

Hills Brothers Co. v. United States, 107 F. 107 (C.C.S.D.N.Y. 1901): The holding of T.D. 20,039 (1898) *upheld.*

T.D. 22,984, 4 TREAS. DEC. 405 (1901): T.D. 20,407 against R.E. Downs on the countervailing duty on Russian sugar is *upheld* by the U.S. General Appraisers at New York.

1902

T.D. 23,503, 5 TREAS. DEC. 77 (1902): U.S. General Board of Appraisers at New York upholds the assessment and computation of countervailing duty on sugar from Germany based on the German bill of lading weight, despite evaporation enroute. The Franklin Sugar Co. appeals.

1903

Downs v. United States, 187 U.S. 496 (1903): T.D. 22,984 (1901) is *upheld.*

1904

T.D. 25,538, 8 TREAS. DEC. 211 (1904): Procedural question is resolved in favor of Treasury with regard to Russian sugar.

1905

T.D. 26,190, 9 TREAS. DEC. 503 (1905): Collector loses two procedural complaints over sugar imported from Germany before the General Board of Appraisers. This time Wallace, Muller Co. wins. *Franklin Sugar Refining Co. v. United States,* 137 F. 655 (C.C.E.D.Pa. 1905): T.D. 23,503 (1902) is *upheld.*

T.D. 26,225, 9 TREAS. DEC. 577 (1905): Duty of 11.25 centavos per kilo is levied on Argentine sugar.

1906

Franklin Sugar Refining Co. v. United States, 142 F. 376 (3d Cir. 1906): Justice Gray *reverses* the lower court and the Board of Appraisers decision of T.D. 23,503 (1902).

T.D. 27,309, 11 TREAS. DEC. 599 (1906): In a case not dealing with sugar weight, the Board of Appraisers rule against Franklin Sugar Co.

T.D. 27,701, 12 TREAS. DEC. 206 (1906): Treasury announces it will not acquiesce in *Franklin Sugar* unless the missing sugar can clearly be shown to have been thrown overboard.

1907

T.D. 27,864, 13 TREAS. DEC. 74 (1907): Board of Appraisers reverse Collector on precise *Franklin Sugar* point. American Sugar Company's protests are sustained. *See* T.D. 27,701 (1906).

T.D. 27,892, 13 TREAS. DEC. 148 (1907): Collector again assesses Franklin Sugar Co. on the basis of export weight as per T.D. 23,503 (1902).

1908

1909

1910

Franklin Sugar Co. v. United States, 178 F. 743 (C.C.E.D.Pa. 1910): T.D. 27,309 (1906) is *upheld.*

1911

Franklin Sugar Co. v. United States, 1 Ct. Cust. App. 242 (1911): T.D. 27,309 (1906) is *upheld* in the Court of Customs Appeals on appeal from the Circuit Court for the Eastern District of Pennsylvania.

Franklin Sugar Co. v. United States, 2 Ct. Cust. App. 116 (1911): The Court of Customs Appeals sustains the protest to T.D. 27,892 (1907) for precisely the same reasons as the Third Circuit Court of Appeals in 142 F. 376 (1906). The end of a saga!

T.D. 31,229, 20 TREAS. DEC. 125 (1911): Collector assesses countervailing duties on certain British spirits.

1912

T.D. 31,490, 20 TREAS. DEC. 692 (1912): Duty on British spirits is revoked.

T.D. 32,768, 23 TREAS. DEC. 107 (1912): Countervailing duties are announced on certain German agricultural imports as a result of an export certificate bounty scheme.

1913

T.D. 33,182, 24 TREAS. DEC. 203 (1913): Sugar refined in Denmark is no longer subject to countervailing duty; T.D. 18,660 (1897) is revoked.

T.D. 33,699, 25 TREAS. DEC. 134 (1913): Duty of two balboas per quintal on toquilla straw from Panama is announced to counter a direct subsidy.

T.D. 33,726, 25 TREAS. DEC. 161 (1913): Because Australia paid ten per cent or up to $6000 per year on exports of dried fruit and 1 d. per pound on the first 1 million pounds of combed wool tops exported, an equivalent countervailing duty on their import to the United States was announced.

T.D. 33,953, 25 TREAS. DEC. 579 (1913): The German agricultural duties announced in T.D. 32,768 (1912) are recalculated.

T.D. 34,466, 26 TREAS. DEC. 825 (1913): Duties are reassessed and reannounced on certain British spirits; Treasury invites judicial review.

1914

T.D. 34,752, 27 TREAS. DEC. 176 (1914): Clarification of British spirit order.

T.D. 34,982, 27 TREAS. DEC. 607 (1914): British rum is excluded from T.D. 34,466 (1913).

T.D. 35,055, 28 TREAS. DEC. 34 (1914): Scotch is subject to a T.D. 34,466 (1913) duty.

1915

T.D. 35,595, 29 TREAS. DEC. 59 (1915): Nicholas and Co. protests the countervailing duty on British spirits in T.D. 34,466 (1913), but the General Board of Appraisers *overrules* the protest.

T.D. 35,668, 29 TREAS. DEC. 175 (1915): Orange Bitters are added to T.D. 34,466 (1913) list.

1916

T.D. 36,073, 30 TREAS. DEC. 59 (1916): Announcement of countervailing duty on German white beans along with method of computation.

Nicholas and Co. v. United States, 7 Ct. Cust. App. 97 (1916): The Court of Customs Appeals *affirms* the General Board of Appraisers decision in T.D. 35,595 (1915).

1917

T.D. 37,088, 32 TREAS. DEC. 338 (1917): Duty on French codfish is upped to fifteen francs per quintel. *See* T.D. 18,345 (1897).

T.D. 37,264, 33 TREAS. DEC. 14 (1917): Duty on Australian combed wool tops is revoked. *See* T.D. 33,726 (1913).

T.D. 37,314, 33 TREAS. DEC. 130 (1917): Portugese wine is found to be receiving a direct bounty; a countervailing duty is announced.

T.D. 37,336, 33 TREAS. DEC. 166 (1917): Portuguese wine order is clarified.

1918

T.D. 37,575, 34 TREAS. DEC. 246 (1918): Wine from the Azores and Madiera is added to duty list. *See* T.D. 37,314 (1917).

1919

Nicholas and Co. v. United States, 249 U.S. 34 (1919): The Court of Customs Appeals in 7 Ct. Cust. App. 97 (1916) is *affirmed.*

1920

1921

1922

1923

T.D. 39,746, 44 TREAS. DEC. 45 (1923): Beef from South Africa is countervailed.

T.D. 39,830, 44 TREAS. DEC. 196 (1923): Coal from Spain held is bountified; liquidation of duty is suspended.

1924

1925

T.D. 40,895, 47 TREAS. DEC. 616 (1925): Prussiate soda from Holland is countervailed.

1926

T.D. 41,500, 49 TREAS. DEC. 694 (1926): Since Indian Government subsidizes all pig iron production, such support constitutes an indirect bounty and merits a countervailing duty. Liquidation of duties is suspended pending investigation of the amount of support.

T.D. 41,730, 50 TREAS. DEC. 189 (1926): Liquidation of duty on Indian pig iron remains suspended while the American counsel in Calcutta attempts to get the offending exporting company's books.

1927

T.D. 42,161, 51 TREAS. DEC. 667 (1927): T.D. 41,500 (1926) is revoked as India repeals her bounty on pig iron.

1928

T.D. 42,895, 54 TREAS. DEC. 101 (1928): Countervailing duty on British silk is announced because the British Government allows a drawback on exportation of processed silk which is more than the tariff it collects on importation of raw silk.

T.D. 42,937, 54 TREAS. DEC. 162 (1928): Because butter from Australia is bountified, countervailing duty is announced.

1929

T.D. 43,634, 56 TREAS. DEC. 342 (1929): Duty on British silk announced in T.D. 42,895 (1928) is extended to artificial silk.

1930

1931

T.D. 44,742, 59 TREAS. DEC. 697 (1931): British silk duties are recalculated.

1932

Abs. 22,079, 62 TREAS. DEC. 999 (1932): Anchovies from Italy are countervailed.

1933

1934

T.D. 47,312, 66 TREAS. DEC. 362 (1934): Because of refunds allowed German aluminium manufacturers on export, a countervailing duty on their importation is announced.

1935

T.D. 47,475, 67 TREAS. DEC. 79 (1935): British silk bounty information is supplemented.

T.D. 47,487, 67 TREAS. DEC. 128 (1935): Portugal stops her wine bounty, so T.D. 37,336 (1917) is revoked.

T.D. 47,502, 67 TREAS. DEC. 188 (1935): British silk duty information is again supplemented.

T.D. 47,594, 67 TREAS. DEC. 463 (1935): Information on British silk bounty amounts is re-supplemented.

T.D. 47,658, 67 TREAS. DEC. 685 (1935): Split green peas are found to be bountified by the Netherlands in the amount of 2 to 2.5 guilders per 100 kilos; duty is announced.

T.D. 47,675, 67 TREAS. DEC. 735 (1935): A direct bounty given to Finnish cheese of 2.50 markkas per kilo provokes a countervailing duty.

T.D. 47,693, 67 TREAS. DEC. 781 (1935): New rates for French fish from St. Pierre and Miquelon are ascertained. *See* T.D. 18,784 (1898).

T.D. 47,742, 67 TREAS. DEC. 926 (1935): Pending further consideration, provisions of T.D. 47,693 are suspended and collectors of customs will take no action under said decision.

T.D. 47,753, 67 TREAS. DEC. 939 (1935): British spirit duties are declared to be in full force and effect.

T.D. 47,896, 68 TREAS. DEC. 305 (1935): Danish butter is countervailed at .3986 Danish krone per kilogram; no explanation.

T.D. 47,944, 68 TREAS. DEC. 425 (1935): Countervailing duty is declared on rye grain from Poland of 7.89 zloty per kilogram; no explanation.

T.D. 47,945, 68 TREAS. DEC. 426 (1935): Yellow prussiate soda from Holland is found not to be bountified; therefore, the suspension of liquidation ordered in T.D. 40,895 (1925) is revoked.

1936

T.D. 48,238, 69 TREAS. DEC. 604 (1936): Irish canned hams are countervailed; no explanation.

T.D. 48,344, 69 TREAS. DEC. 977 (1936): Irish canned ham order is amended.

T.D. 48,360, 69 TREAS. DEC. 1008 (1936): Countervailing duty on ten German products is declared; no explanation.

T.D. 48,364, 69 TREAS. DEC. 1012 (1936): Irish repeal their bounty before the implementation date of T.D. 48,238, which would have countervailed the bounty; duty is revoked.

T.D. 48,444, 70 TREAS. DEC. 134 (1936): The countervailing duty on German goods detailed in T.D. 48,360 does not include gifts brought to the United States for personal use.

T.D. 48,551, 70 TREAS. DEC. 365 (1936): Australia ends bounty on butter, so T.D. 42,937 (1928) is revoked.

T.D. 48,588, 70 TREAS. DEC. 490 (1936): Under T.D. 33,699 (1913), a duty was announced on Panamian toquilla straw. Apparently, no bounties were ever paid under the law and it has been repealed; the countervailing duty is revoked.

T.D. 48,679, 70 TREAS. DEC. 811 (1936): Where a treaty and a later tariff are inconsistent, the latter will prevail.

T.D. 48,734, 71 TREAS. DEC. 1 (1936): Butter bounty paid by Denmark was discontinued for shipments direct to the United States as of twenty-seven days after the duty was announced. Direct imports will no longer be countervailed.

T.D. 48,914, 71 TREAS. DEC. 620 (1936): Poland stops payments on rye grain exports as of March 16, 1936, hence countervailing duty order issued in T.D. 47,944 (1935) is revoked.

1937

T.D. 48,973, 71 TREAS. DEC. 789 (1937): Where an importer on entry adds to the invoice value an amount which he alleges equals the bounty paid by the country of export, and declares such amount as entered value, the collector is without authority to assess duty on any lower amount. This is true not only as to the assessment of regular duty but also the countervailing duty.

T.D. 49,114, 72 TREAS. DEC. 225 (1937): As bounties are not currently being paid by the Netherlands on split pea shipments direct to the United States, duties will be dropped on direct imports but continued on indirect imports. *See* T.D. 47,658 (1935).

T.D. 49,122, 72 TREAS. DEC. 241 (1937): Lithuanian butter is countervailed at a rate of 0.30 litas per kilogram; no explanation.

T.D. 49,157, 72 TREAS. DEC. 305 (1937): Suspension of liquidation on all sugar products and products containing sugar from Australia is announced pending duty determination.

T.D. 49,196, 72 TREAS. DEC. 403 (1937): Duty on saltwater fish from Nova Scotia is announced; no explanation.

T.D. 49,269, 72 TREAS. DEC. 664 (1937): The countervailing duty on Nova Scotian saltwater fish does not include dried fish.

T.D. 49,280, 72 TREAS. DEC. 689 (1937): T.D. 33,726 (1913) on dried fruits, and T.D. 37,264 (1917) on wool tops from Australia, are

revoked as the bounty laws are no longer on that country's statute books.

1938

T.D. 49,351, 73 TREAS. DEC. 102 (1938): T.D. 49,196 (1937) duty on Nova Scotian fish amended.

T.D. 49,355, 73 TREAS. DEC. 107 (1938): The excess of drawback over duties collected on imported raw sugar by Britain make sugar products refined in Britain dutiable to the extent of that excess.

Minerva Automobiles v. United States, 96 F.2d 836 (C.C.P.A. 1938): The later countervailing duty law enacted by Congress must override the most-favored-nation clause in the Treaty with Belgium of 1875.

T.D. 49,471, 73 TREAS. DEC. 507 (1938): T.D. 37,088 (1917), which ordered a duty on codfish from certain French ports; T.D. 39,746 (1923), which ordered a duty imposed on beef from South Africa, and T.D. 39,830 (1923), ordering a duty on coal from Spain, are all revoked as outdated.

T.D. 49,490, 73 TREAS. DEC. 567 (1938): T.D. 32,768 (1912), T.D. 32,828 (1912), T.D. 32,939 (1912), T.D. 33,953 (1913), T.D. 33,975 (1913), and T.D. 36,073 (1916) are revoked, as the German Government ceased to pay a bounty as of September 24, 1937.

T.D. 49,719, 74 TREAS. DEC. 192 (1938): Ethylene dibromide from Germany is countervailed at 3.775 cents per pound; no explanation.

T.D. 49,729, 74 TREAS. DEC. 205 (1938): Suspension of liquidation of duties on Dutch dairy produce results from a determination that bounties are being paid. A deposit will be required pending calculation of the amount of countervailing duties; no explanation of type of bounty.

T.D. 49,741, 74 TREAS. DEC. 218 (1938): Suspension of liquidation of duties is ordered on direct and indirect shipments of chicory from the Netherlands pending ascertainment of amount of bounty paid; no explanation.

T.D. 49,749, 74 TREAS. DEC. 232 (1938): Suspension of liquidation on Dutch milk products in T.D. 49,729 is suspended after official notice that the procedure on which the duty was based had been discontinued.

1939

T.D. 49,809, 74 TREAS. DEC. 366 (1939): Suspension of liquidation of duties on certain meat produce from the Netherlands is announced, pending ascertainment of amount of Dutch bounties.

T.D. 49,821, 74 TREAS. DEC. 389 (1939): German products imported as a result of barter type transactions on which the product imported here is traded at a discounted value necessitate a countervailing duty equal to the premium.

T.D. 49,829, 74 TREAS. DEC. 400 (1939): T.D. 49,729 (1938) is modified. Only the bounty on direct shipments here was suspended by the Dutch. Duty remains in effect for dairy products entering indirectly from the Netherlands.

T.D. 49,849, 74 TREAS. DEC. 438 (1939): Items brought back as personal gifts will not be countervailed if the collector of customs is satisfied. This clarifies T.D. 49,821.

T.D. 49,870, 74 TREAS. DEC. 466 (1939): T.D. 49,809 is revoked on *direct* shipments of Dutch meat.

T.D. 49,878, 74 TREAS. DEC. 475 (1939): A form must be filed with the collector of customs on all incoming German goods showing (1) the route used and (2) the method of payment to determine if a bounty has been given by barter.

T.D. 49,909, 75 TREAS. DEC. 12 (1939): Suspension of liquidation of duty on silk goods from Italy is announced; a deposit will be required pending estimate of bounty given. No explanation of bounty's nature.

T.D. 49,932, 75 TREAS. DEC. 48 (1939): Duty on saltwater fish from Nova Scotia is revoked. *See* T.D. 49,269 (1937) and T.D. 49,351 (1938).

T.D. 49,981, 75 TREAS. DEC. 119 (1939): Drawback on customs duties in excess of import duty on British exported sugar is held to be a bounty again. Rates given. *See* T.D. 49,355 (1938).

T.D. 49,998, 75 TREAS. DEC. 139 (1939): Free samples of German merchandise will not be countervailed as per T.D. 49,821.

T.D. 50,093, 75 TREAS. DEC. 304 (1939): Cheeses 93 and 94 score countervailed from Canada; no explanation.

1940

T.D. 50,108, 75 TREAS. DEC. 328 (1940): New rates are announced on British sugar. *See* T.D. 49,981 (1939).

T.D. 50,127, 75 TREAS. DEC. 362 (1940): Clarification of T.D. 50,108.

T.D. 50,148, 75 TREAS. DEC. 390 (1940): Exceptions to T.D. 49,909 (1939) are announced.

F.W. Woolworth Co. v. United States, 115 F.2d 348 (C.C.P.A. 1940): German currency manipulation through free and registered marks, convertible into dollars at differing rates and the latter not freely alienable, constituted the bestowal of a bounty. T.D. 48, 360 (1936) is *upheld.*

V. Mueller & Co. v. United States, 115 F.2d 354 (C.C.P.A. 1940): Although very general and broad, T.D. 48,360 (1936) is sufficiently precise to withstand two procedural attacks.

1941

1942

1943

1944

1945

T.D. 51,371, 80 TREAS. DEC. 251 (1945): Due to changed circumstances, no duties will be collected pursuant to T.D. 48,360 (1936) after May 8, 1945.

1946

T.D. 51,476, 81 TREAS. DEC. 115 (1946): Under the Wine Export Bounty Act of 1939/40, bountified fortified Australian wine will be assessed a countervailing duty.

Robert Miller Co. v. United States, 34 C.C.P.A. 101 (1946): In a case analogous to *Woolworth,* buying German goods with cheap aski marks constitutes a bounty. T.D. 48,360 (1936) is *upheld.*

John Heathcoat & Co. v. United States, 34 C.C.P.A. 122 (1946): The word "fabrics" includes nets and nettings.

1947

T.D. 51,757, 82 TREAS. DEC. 237 (1947): Because of "payment of

bounties by an agency of the Spanish Government," a countervailing duty is necessary on incoming cork.

1948

T.D. 51,876, 83 TREAS. DEC. 113 (1948): Because Spanish cork subsidies have been discontinued as of November 1, 1947, T.D. 51,757 (which was issued on September 26, 1947) is modified to include only shipments made before November 1.

T.D. 51,884, 83 TREAS. DEC. 126 (1948): Changed conditions in Holland cause revocation of T.D. 49,741 (1938) as to chicory shipped after May 9, 1945.

T.D. 52,074, 83 TREAS. DEC. 471 (1948): Shelled almonds from Spain are countervailed at 6 pesetas per kilogram; no explanation.

1949

T.D. 52,350, 84 TREAS. DEC. 350 (1949): T.D. 39,722 (1923) is revoked, as Australia is no longer giving bounties for fencing wire, galvanized sheets, or wire netting.

1950

T.D. 52,555, 85 TREAS. DEC. 244 (1950): Duties on British spirits are revoked as of May 1, 1950, as Britain repealed bounty as of that date. *See* T.D. 34,466 (1913) and T.D. 47,753 (1935).

T.D. 52,604, 85 TREAS. DEC. 325 (1950): T.D. 52,074 of October 12, 1948, is revoked as of November 12, 1948, since Spain discontinued her bounty on almonds theretofore in effect on November 25, 1948.

T.D. 52,619, 85 TREAS. DEC. 341 (1950): Duties on Dutch milk, split peas, and meat produce revoked. *See* T.D. 49,729 (1938), T.D. 47,658 (1935), and T.D. 49,809 (1939).

1951

1952

T.D. 52,923, 87 TREAS. DEC. 43 (1952): Since world sugar prices now exceed Australian support prices, no bounty is currently being paid; hence no duty will be assessed until world prices fall below the Australian parity.

T.D. 53,182, 88 TREAS. DEC. 16 (1953): Canadian blue-veined cheese is countervailed; no explanation.

1953

T.D. 53,257, 88 TREAS. DEC. 105 (1953): A countervailing duty is imposed of eighteen per cent on Uruguayan wool tops; no explanation.

T.D. 53,310, 88 TREAS. DEC. 177 (1953): T.D. 43,634 (1929), T.D. 44,742 (1931), T.D. 47,502 (1935), T.D. 47,594 (1935), T.D. 49,909 (1939) (duties on British and Italian silk articles), and T.D. 50,148 (1940) are all revoked. Additionally, T.D. 49,122 (1937) (duty on Lithuanian butter) is revoked, as the country no longer exists.

1954

T.D. 53,446, 89 TREAS. DEC. 44 (1954): T.D. 53,257 (1953) concerning Uruguayan wool tops is amended.

T.D. 53,476, 89 TREAS. DEC. 84 (1954): British silk again is countervailed; no explanation.

T.D. 53,534, 89 TREAS. DEC. 153 (1954): "The Bureau has received information concerning import of cordage to the United States from Cuba which satisfies the Bureau that such imports receive grants or bounties within the meaning of § 303." Duty set at 2.488 cents per pound.

1955

1956

1957

1958

T.D. 54,582, 93 TREAS. DEC. 151 (1958): The world price of sugar has dipped below the Australian support parity; duty assessed.

T.D. 54,650, 93 TREAS. DEC. 331 (1958): T.D. 53,534 (1954) concerning Cuban cordage is amended to exclude baler and binder twine, as these products get no bounty.

T.D. 54,719, 93 TREAS. DEC. 500 (1958): Australian sugar duty is adjusted to match world market price. [Hereinafter Australian sugar duties were amended every six months to adjust to world prices. No citation will be given, as the decisions are all identical except for the amount of duty assessed].

1959

T.D. 54,792, 94 TREAS. DEC. 94 (1959): Countervailing duties are assessed at eight pesetas per kilo on Spanish almonds; no explanation.

T.D. 54,798, 94 TREAS. DEC. 110 (1959): Wool tops which have been registered with the Contralor de Exportaciones e Importaciones of Uruguay do not get a bounty, hence T.D. 53,446 (1954) is superseded as to these tops.

1960

T.D. 55,023, 95 TREAS. DEC. 13 (1960): The British silk duty promulgated in T.D. 53,476 (1954) is superseded with new rates.

T.D. 55,044, 95 TREAS. DEC. 56 (1960): The Uruguayan multiple rates of exchange have been abolished, hence the duty on wool tops promulgated in T.D. 54,798 (1959) is superseded and suspended for shipments made after December 17, 1959.

T.D. 55,184, 95 TREAS. DEC. 355 (1960): The duty on almonds from Spain in T.D. 54,792 (1954) is revoked by virtue of cessation of bounty payments.

1961

T.D. 55,365, 96 TREAS. DEC. 141 (1961): As Australian payments on fortified wines are not being and are not likely to be paid, the duty set by T.D. 51,476 (1946) is revoked for all wine shipped after May 31, 1955.

1962

T.D. 55,567, 97 TREAS. DEC. 56 (1962): As no bounties are or are likely to be paid on British silk exports, T.D. 53,476 (1954) is revoked as to all shipments after October 10, 1961.

1963

T.D. 55,812, 98 TREAS. DEC. 46 (1963): Whatever T.D. 52,555 (1950) left as a duty on British spirits, "Spirits sweetened in bond" will be exempted from it.

Energetic Worsted Corp. v. United States, 224 F. Supp. 606 (Cust. Ct. 1963): T.D. 53,257 (1953), which ordered countervailing duties on Uruguayan wool tops, is valid as to both the existence of a bounty and the amount of duty levied.

1964

T.D. 56,312, 99 TREAS. DEC. 677 (1964): The duties remaining on British silk from T.D. 55,567 (1962), on Uruguayan wool tops from T.D. 55,044 (1960), and on Spanish almonds in T.D. 55,184 (1960) are deleted from the countervailing duty list.

1965

1966

Energetic Worsted Corp. v. United States, 53 C.C.P.A. 36 (1966): T.D. 53,257 (1953) is *reversed.*

1967

T.D. 67-102, 1 CUST. BULL. 212 (1967): Steel units from Italy used for electrical transmission towers are countervailed; no explanation. American Express Co., the importer, protests the assessment.

T.D. 67-219, 1 CUST. BULL. 452 (1967): A notice and comment procedure is announced for future countervailing duty proceedings.

1968

T.D. 68-111, 2 CUST. BULL. 233 (1968): French canned tomato paste is countervailed; no explanation.

T.D. 68-112, 2 CUST. BULL. 235 (1968): Italian canned tomato paste is countervailed; no explanation.

T.D. 68-147, 2 CUST. BULL. 302 (1968): Canadian cheese order in T.D. 50,093 (1939) and T.D. 53,182 (1952) is rescinded and superseded.

T.D. 68-149, 2 CUST. BULL. 329 (1968): Steel welded wire mesh from Italy is countervailed; no explanation.

T.D. 68-184, 2 CUST. BULL. 393 (1968): Section 16.24 of the customs regulations is amended to provide that only products which actually receive bounties will be countervailed.

T.D. 68-192, 2 CUST. BULL. 409 (1968): A countervailing duty will be assessed on all imports from France of 2.5 percent of the F.O.B. price as a result of an export sales formula. The treasury reprints the French decree.

T.D. 68-270, 2 CUST. BULL. 604 (1968): The French duty is dropped to 1.25 percent.

T.D. 68-288, 2 CUST. BULL. 637 (1968): Ski lifts from Italy are countervailed; no explanation.

1969

T.D. 69-13, 3 CUST. BULL. 22 (1969): Duty rates on Italian canned tomato paste are superseded with new rates. *See* T.D. 68-112.

T.D. 69-91, 3 CUST. BULL. 317 (1969): New duty rate for Italian ski lifts is announced. *See* T.D. 68-288.

T.D. 69-113, 3 CUST. BULL. 357 (1969): Italian steel products are countervailed; no explanation.

1970

T.D. 70-83, 4 CUST. BULL. 179 (1970): Duty rate on Italian tomato paste is increased. *See* T.D. 69-13.

1971

T.D. 71-117, 118, 5 CUST. BULL. 225 (1971): Barley and molasses from France are countervailed; no explanation.

United States v. Hammond Lead Products, 440 F.2d 1024 (C.C.P.A. 1971): The Customs Court lacked jurisdiction over the case, because the allegedly damaged United States competitor does not have standing to protest a negative bounty determination by § 516(b) of the Tariff Act of 1930, 19 U.S.C. § 1516 (1970).

1972

T.D. 72-88, 6 CUST. BULL. 145 (1972): The Customs Service announces suspension of liquidation of duties on Grecian tomato products pending ascertainment of the amount of bounty paid; no explanation.

T.D. 72-122, 6 CUST. BULL. 231 (1972): Italian gas and air compressors are assessed a countervailing duty; no explanation.

T.D. 72-234, 6 CUST. BULL. 456 (1972): Bounties on canned tomato products from Italy shipped direct to the United States have been discontinued. T.D. 70-83 is modified so as to exclude the direct shipments.

1973

T.D. 73-85, 7 CUST. BULL. 206 (1973): Italian refrigerators and freezers are countervailed; no explanation.

American Express Co. v. United States, 472 F.2d 1050 (C.C.P.A. 1973): The absence of a direct relationship between the rebated Italian excise taxes and the exported products constitutes a bounty on Italian steel transmission towers. T.D. 67-102 is *upheld.*

1974

T.D. 74-65, 8 CUST. BULL. 118 (1974): Bounties paid on Grecian tomato produce are ascertained, pursuant to T.D. 72-88.

National Milk Producers Federation v. Schultz, 372 F. Supp. 745 (D.D.C. 1974): Milk producers have standing to get a hearing in Federal Court so long as the Customs Courts will not take jurisdiction under the *Hammond Doctrine.*

T.D. 74-165, 8 CUST. BULL. 304 (1974): Italian die presses are countervailed.

T.D. 74-203, 8 CUST. BULL. 366 (1974): Conditional negative duty determination on cut flowers from Columbia is announced. Since "The Government of Columbia has taken action, effective July 17, 1974, however, to require such payments will not be made to the producers of the merchandise but will remain within the sole control of the Government of Columbia by being paid instead to an agency thereof," no bounty is found.

T.D. 74-218, 8 CUST. BULL. 394 (1974): Correction made in T.D. 74-65 language.

T.D. 74-233, 8 CUST. BULL. 454 (1974): Rubber foot wear from Brazil is countervailed; no explanation.

T.D. 74-234, 8 CUST. BULL. 456 (1974): Bottled green olives from Spain are countervailed; no explanation.

T.D. 74-235, 8 CUST. BULL. 257 (1974): Non-rubber footwear from Spain is countervailed at 3 percent F.O.B.; no explanation.

T.D. 74-237, 8 CUST. BULL. 461 (1974): Michelin X-Radial Steel Belted Tires from Canada are countervailed at 3.7 percent F.O.B.; no explanation.

T.D. 74-254, 8 CUST. BULL. 490 (1974): Final notice of duty on Michelin tires is announced. Duty is set at 6.7702 percent F.O.B.

1975

40 Fed. Reg. 6791 (1975): Preliminary Countervailing Duty Determination on dairy products from the E.E.C. is announced. "On 2-7-75, the Commission of the European Community announced re-

institution of export payments on certain dairy products destined for the United States, which payments had been suspended since 7-12-74." *Held,* payments are being made, but amounts have not yet been ascertained.

40 Fed. Reg. 5378 (1975): Notice of Preliminary Determination of bounties paid on certain consumer electronic products from Japan is announced. Offensive programs are described as (1) preferential interest rate loans from the Japanese Development Bank, (2) promotional assistance from the Japanese External Trade Organization (JETRO), and (3) special tax deferrals under the Overseas Market Development Program. Reports will be required from each affected Japanese firm.

40 Fed. Reg. 6993 (1975): Preliminary Negative Duty Determination on Argentine Non-Rubber Footwear is announced. As of December 23, 1974, the Argentine Government abolished the bounty program.

40 Fed. Reg. 10698 (1975): Petition alleging bounties on dried apples from Italy withdrawn by petitioner.

40 Fed. Reg. 16119 (1975): Notice of petition received alleging bounties paid on Philippine glazed ceramic tiles is annnounced.

40 Fed. Reg. 23899 (1975): Withdrawal of petitions alleging bounties paid on (1) steel produced in the E.E.C., (2) German shoes, and (3) woven tie fabrics from Japan, West Germany, and Korea.

T.D. 75-113, 9 CUST. BULL. 223 (1975); 40 Fed. Reg. 21719 (1975): The Preliminary Determination made in 40 Fed. Reg. 6791 on dairy produce from the European Community is finalized.

T.D. 75-114, 9 CUST. BULL. 229 (1975); 40 Fed. Reg. 21720 (1975): "Re-suspension of duty" on European Community dairy produce is announced pursuant to the Secretary's power to grant a four year waiver of duty during negotiations.

40 Fed. Reg. 22007 (1975): Direct bounties are found on hard cheese exports from Austria in a Preliminary Decision. Suspension of liquidation of duty until final decision is announced.

40 Fed. Reg. 27498 (1975): Preliminary Determination finds that bounties are given by European Community countries on canned hams. Suspension of liquidations of duties until final decision is announced.

40 Fed. Reg. 27498 (1975): Preliminary Determination finds that bounties are being paid to South African ferrochrome exporters.

Liquidation of duties is suspended pending determination of amount until Final Determination.

40 Fed. Reg. 27499 (1975): German regional development programs could amount to bounties on exports. Liquidation of duties is suspended on float glass until a final decision is made.

40 Fed. Reg. 27499 (1975): Preliminary Determination of grants given to exporters of leather handbags from Brazil results in suspension of liquidation of duties until a Final Determination.

40 Fed. Reg. 27500 (1975): The Customs Service announces the closing of its investigation of a Canadian oxygen sensing probe manufacturer allegedly getting bounties, as it has ceased production.

40 Fed. Reg. 28 (1975): A Preliminary Negative Duty Determination by the Service on Indian cast iron soil pipe and fittings finds that export payments do not exceed the amount of indirect taxes paid.

40 Fed. Reg. 28103 (1975): The Customs Service again finds no cash payments or concessional prices have been given to Indian fiber textiles.

40 Fed. Reg. 28103 (1975): Mexican steel preliminarily is determined to be bountified by reduced freight rates and corporate tax exemptions. Rebate of *ad valorem* tax on goods related to the excise *held* not to be a bounty. However, freight bounty and tax exemptions are found *de minimis* and the Service preliminarily finds no duty needed.

40 Fed. Reg. 28104 (1975): A Preliminary Determination that export certificates given by Mexico to her domestic growers worth 10 percent of the exported asparagus are bounties results in suspension of liquidation of duty until a Final Determination.

40 Fed. Reg. 28104 (1975): Preliminary Determination by the Service holds that investment grants, low interest loans, employment premiums, exemptions from registration fees levied on increases of assets, exemptions from real estate taxes, exemptions from local taxes, and interest rate subsidies constitute bounties. Liquidation of duty is suspended on Belgian float glass pending a Final Decision.

40 Fed. Reg. 28104 (1975): Direct payments to Swiss cheese producers to indemnify them for a year's export losses preliminarily is held to be an export bounty; suspension of liquidation until Final Decision.

40 Fed. Reg. 28105 (1975): Accelerated depreciation and income tax deferrals on Korean footwear are preliminarily determined to be a bounty; suspension of liquidation until Final Decision.

40 Fed. Reg. 28105 (1975): The Customs Service preliminarily determines that no footwear producer from Taiwan is currently getting any bounty, as the local law only bountifies if *all* production of a company is exported. But exporters will be countervailed if it is later determined that they are getting export bounties.

T.D. 75-300, 9 CUST. BULL. 659 (1975); 40 Fed. Reg. 55638 (1975): The Preliminary Determination of 40 Fed. Reg. 27498 (1975) that European Community canned hams are bountified is finalized. Article 15 of E.E.C. Regulation No. 121/67, giving restitution payments, comes within § 303 and will be countervailed.

T.D. 75-301, 9 CUST. BULL. 661 (1975); 40 Fed. Reg. 55638 (1975): Waiver of duty on European Community canned hams is granted as a result of a drop in the level of subsidy. Waiver will remain in effect for four years during negotiations on the subject, so long as (1) United States producers are not critically hurt, and (2) European hams are not aggressively marketed in the United States. *See* T.D. 75-300.

1976

41 Fed. Reg. 782 (1976): A Preliminary Determination by the Customs Service finds that Sweden pays a bounty, a direct subsidy on cheese exports. Suspension of liquidation of duties is announced pending Final Determination.

41 Fed. Reg. 782 (1976): Notice of Final Duty Determination: No bounty is being paid since the Argentine Government abolished the bounty during the preliminary investigation.

T.D. 76-7, 10 CUST. BULL. No. 3, at 11 (1976); 41 Fed. Reg. 1273 (1976): Carbon steel plate is held to be bountied by Mexico at a rate more than the *de minimis* rate found in the Preliminary Determination. The Service announces suspension of liquidation of duty pending ascertainment of dutiable amount. *See* 40 Fed. Reg. 28103 (1975).

T.D. 76-8, 10 CUST. BULL. No. 3, at 17 (1976); 41 Fed. Reg. 1273 (1976): Waiver of Countervailing Duty Order is announced on steel plate from Mexico up to four years during negotiations under § 102 of the Trade Act of 1974. *See* T.D. 76-7.

T.D. 76-9, 10 CUST. BULL. No. 3, at 21 (1976); 41 Fed. Reg. 1274 (1976): A Preliminary Determination that float glass from Italy was made Final as to the one corporation receiving the benefits. Another company was held not to be bountified. *See* 40 Fed. Reg. 28105 (1975).

T.D. 76-10, 10 CUST. BULL. No. 3, at 25 (1976); 41 Fed. Reg. 1274 (1976): The Preliminary Determination that cheese from Austria received an export bounty in 40 Fed. Reg. 22007 (1975) is Finalized.

T.D. 76-11, 10 CUST. BULL. No. 3, at 29 (1976); 41 Fed. Reg. 1275 (1976): Waiver of Countervailing Order T.D. 76-10 on Austrian cheese for up to four years during negotiations conducted under authority of § 102 of the Trade Act of 1974 is announced.

41 Fed. Reg. 1298 (1976): Final Negative Countervailing Duty Determination on Japanese Electronic Consumer Products: 40 Fed. Reg. 5378 (1975), which preliminarily found bounties being paid, was correct, but the bounties are found to be *de minimis* and not dutiable.

41 Fed. Reg. 1298 (1976): Final Countervailing Duty Determination on ferrochrome from South Africa: The preferential freight rates and foreign promotions were discontinued as of January 1, 1976, after the Preliminary Determination of 40 Fed. Reg. 34423. Hence, no countervailing duty will be assessed.

41 Fed. Reg. 1298 (1976): Final Negative Duty Determination as to footwear from Taiwan, 40 Fed. Reg. 34423, is Finalized.

41 Fed. Reg. 1298 (1976); Final Negative Countervailing Duty Determination: On receipt of further information concerning the Mexican asparagus in 40 Fed. Reg. 28104 (1975), the Customs Service is of the opinion that the rebate of a sales excise tax does not constitute a bounty within the meaning of § 303.

41 Fed. Reg. 1299 (1976): Notice of Final Negative Countervailing Duty Determination: The Belgian subsidies mentioned in 40 Fed. Reg. 28104 (1975) were used for the development of depressed regions and amount to less than 2 percent of the price of float glass. Therefore, they are not bounties and will not be countervailed.

41 Fed. Reg. 1300 (1976): Notice of Final Negative Countervailing Duty Determination: The German subsidies mentioned in 40 Fed. Reg. 21804 (1975) were used to channel investment to underdeveloped areas, and the float glass made there is almost all sold within Germany. Therefore, the subsidies do not come within the meaning of § 303.

T.D. 76-5, 10 CUST. BULL. No. 3, at 1 (1976); 41 Fed. Reg. 1467 (1976): Final Countervailing Duty Determination: The Preliminary Finding of a bounty on Swiss cheese in 40 Fed. Reg. 28104 (1975) is Finalized.

T.D. 76-6, 10 CUST. BULL. No. 3, at 7 (1976); 41 Fed. Reg. 1468 (1976): Waiver of Countervailing Duties on Swiss Cheese: T.D. 76-5 is waived while negotiation procedures under § 102 of the Trade Act of 1974 are followed.

T.D. 76-13, 10 CUST. BULL. No. 3, at 35 (1976); 41 Fed. Reg. 1588 (1976): 40 Fed. Reg. 28105 (1975), which preliminarily found a bounty given to Korean footwear exports, is Finalized.

T.D. 76-14, 10 CUST. BULL. No. 3, at 41 (1976); 41 Fed. Reg. 1587 (1976): T.D. 76-13 is waived for a period of four years pursuant to § 102 of the Trade Act of 1974.

T.D. 76-3, 10 CUST. BULL. No. 2, at 21 (1976); 41 Fed. Reg. 1741 (1976): Final Determination of Countervailing Duties on Handbags from Brazil: 40 Fed. Reg. 27499 (1975) is Finalized.

41 Fed. Reg. 2834 (1976): United States Steel Corporation was notified that its petition of September 18, 1975 contending that V.A.T. in the E.E.C. was a bounty had been rejected on October 20, 1975. The Customs Service announces that United States Steel has decided to appeal the Negative Duty Determination to the Customs Court under § 516 of the Trade Act of 1974.