

In recent years, the vexations for the customs service and the trade attendant upon the enforcement of the American selling price valuation have probably equalled those caused by any other single problem in tariff administration.

To grasp the inequity of this method of valuation, it is necessary to go back to first principles. The only reasonable basis for valuing imports is their actual transaction value, which is normally reflected in the invoice. This is the only true value that the importer knows, and it is the only realistic value. The Customs Service of the United States has long recognized this, and the vast majority of all import valuations are actually based on the invoices. It has been thought necessary, however, to have some kind of theoretical value which will give the appraiser the right to reject an entered value that seems out of line without having to prove that it was not the actual transaction value. This is the reason that actual transaction value is not used in principle in customs administration, although the method adopted permits the customs service to use actual transaction value most of the time.

However, when resort is had, not to the value of the imported article, but to the value of some American-made product that is "like", "similar", or "competitive" of which the importer has no knowledge, then the results are highly arbitrary and unfair. In many cases, the duty is increased by five or six times over what it would be on the transaction value; and moreover, great uncertainties are introduced. It is even possible for the basis of valuation to change between the time the order is placed and the time of shipment, through circumstances of which the importer has no knowledge or control. This method of valuation is contrary to basic principle as set forth in the General Agreement on Tariffs and Trade, which provides that the value of imported merchandise for customs purposes should be based on the actual value of the imported merchandise on which duty is assessed and not on the value of merchandise of national origin or on arbitrary or fictitious values.

It is high time the American selling price method of valuation was removed from U.S. customs practice and products subject thereto valued on the same basis as other items in the schedules. This can be done by legislation or through trade negotiations under the Trade Expansion Act of 1962.

The final list

One of the cardinal reforms of the Customs Simplification Act of 1956, originally proposed by the Administration in 1950, was the abolition of "foreign value" and the establishment of "export value" as the first and principal basis for customs valuation. Foreign value is the value of such or similar goods sold in the home market. Export value is the value of such or similar goods sold for export to the United States. The same law made important changes in the value definitions to permit Customs to select realistic prices at which most goods were actually moving in commerce. The basic language—"freely offered to all purchasers in the usual wholesale quantities in the usual course of trade"—had become so restricted by court decisions that it often required the selection of transactions at which few goods moved.

Under protectionist pressures, the Senate Finance Committee balked at adopting the new standards until Treasury came up with a compromise to except articles whose duties would be affected by 5 per cent or more. The bill aimed at customs simplification thus ended up by producing two parallel systems of valuation (Section 402 and 402a of the Tariff Act of 1930, as amended). The Treasury proposal was intended to be temporary; but somehow in the shuffle of legislation, the final list of articles not subject to the new standards became firmly imbedded where only another act of Congress is likely to dislodge it.

It is estimated that less than 15 per cent of dutiable imports fall within the "final list"; and of these, many are actually valued upon the invoices, whether denominated foreign value or export value. However, the new definitions, which cannot be applied to articles on the "final list", are of critical importance. Interestingly, these definitions are important for many of the articles subject to American selling price valuation. It was the opposition of the American chemical industry that caused the Congress to create exceptions in approving the Customs Simplification Act of 1956; and this opposition was based largely upon the new definition of "freely sold" as applied to the American selling prices of coal tar chemicals. The inequity of ASP valuation is thus compounded by the inability of the Customs Service, as it construes the law, to select the most realistic American transactions as the basis for valuation.