

Our suggestion, very simply, is that you leave it open. The proposal is that an agreement be entered into, that the President be authorized to enter into an agreement.

All right, give him the authority to enter into an agreement. We certainly think it is high time that ASP was abolished—there is a fortunate apparent unanimity about that question—but authorize it to be done on the basis of an objective Tariff Commission study. Let the President go back to the Tariff Commission, if the negotiations brings to light objections which he feels have weight; because I have great respect for the work that the Tariff Commission does, but very few gentlemen up here think that its reports are always the last word.

Now, I come to the point which Mr. Cooper discussed at considerable length, because it is his real argument, and an argument which was intimated at least by the STR statement of June 5, for raising the rate, and that is this proposition that the so-called new customs guidelines—they are now old customs guidelines, because they have been in effect since the first of 1966—somehow did the American industry a great injustice.

I think it is important to explain to this committee just what those guidelines did. It has never been the practice of the Customs Bureau, and I have this on direct statement, years back, from high officials of the Bureau in Washington, to tell the appraisers what to do.

The appraisers had the responsibility, prior to the new guidelines. The appraisers were never told to pick the highest priced American products. As a matter of convenience, going back to the days when there were only a few products in the market, the appraisers did tend to use the high prices at which Hood-Goodrich, as it was then, and U.S. Rubber, offered their standard products to anybody who came off the street to buy a half dozen boxes of shoes.

They were actually selling many shoes at much lower prices. We complained about this, representatives of importers complained about this to the Bureau bitterly, and finally, the Bureau launched an investigation in the first part of 1963, the consequence of which was that it concluded that the practice was in error, that in fact, there were comparable, similar products being offered at lower prices, and then the guideline, which I suggest to you in fairness nobody could possibly reject, was given, that in trying to find the American shoe, they should first pick the shoe most similar in physical characteristics.

And then, if they found shoes equally similar to physical characteristics, they should take the shoe closest in price, not lowest, although it might very well be lowest, but closest in price. This is the guideline to appraisers. Now, a case was tried in New York within the last week, in which the RMA is attacking that in the Customs Court, and in order to win, they have to prove as a matter of law that the appraisers have to take the highest priced similar product.

Well, they don't have a chance, gentlemen. That is it. I offer that as a lawyer's judgment. And they have been making much of what was really an abuse over many years by the customs.

Now, they say that they actually enjoyed this practice, this high rate of 90 percent. The Tariff Commission found that if the principles that the appraisers had tended to use were applied to the sample, that the average would have been closer to 90 percent than to 60 percent.