

shoes, even before the Desma process, could be bought at retail at prices of \$1.25 or \$1.35.

The usual answer was that it was necessary to use the official price lists because these were the only products that were freely offered to all purchasers in the usual course of trade under the old valuation law, rubber footwear being on the "Final List" of products not valued under the Customs Simplification Act of 1956.

Finally, however, in 1962, the Commissioner of Customs concluded that there was merit in the complaints and directed a full investigation. As indicated above, it quickly became known that lower prices were likely to result and higher prices would not, so, under the spur of competition, imports were priced into the market at prices well below those that would have resulted from the use of the old American selling prices.

There never was any official Customs policy of utilizing the highest-priced similar American shoes as the basis for ASP. There was a practice of using the U.S. Rubber and Hood-Goodrich price lists in order to simplify administration, but when the importers complained, as early as 1956, to our direct knowledge, they were told in the Customs Bureau that if they would bring a similar domestic shoe to the appraiser and satisfy him that the various conditions of Section 402a of the Tariff Act of 1930 were met, the appraiser would be willing to adopt the price of such shoes as the basis if they were "more similar" to the imports. We know of no written instruction by the Bureau of Customs requiring use of the highest-priced shoes. Court decisions which have sustained the appraiser in the use of such price lists have simply affirmed his discretion to select among products which are similar to the imports.

In the case of most other products subject to American selling price valuation, namely, chemicals, it has not been the practice to use the highest-priced similar American product. The ASP duties on chemicals derive from statute, and the standard is the "similar competitive" American product. This is defined to include articles that are not similar but are competitive in use. Thus, in seeking to give the maximum protection to the chemical industry, the Congress utilized the standard of competitiveness. This is the only sensible yardstick in Section 336 where it is necessary to choose among "similar" products.

There are two points to the new guidelines. Appraisers are instructed to use the American product which is most similar in physical characteristics to the imports. This concept of "more similar" follows with irresistible logic from Congressional use of the terms "like or similar." The second point is that if one or more products are found to be equally similar, the appraisers are to select that which is closest (not "lowest") in price. In practice, this may be the lowest price, but this is not the instruction and it distorts the principle involved.

Contrary to a general impression, the new guidelines did not effect a significant reduction in duties as compared with the old practice, if account is taken of all types of products presently entered under Item 700.60 of the Tariff Schedules and assessed on the American selling price. As indicated by the attached tables and chart, Exhibit 2 at the hearing, imports reached their peak in 1962, and in 1961 and 1962, according to our estimates, imports were 26% of U.S. production. One reason imports reached this peak is that during these years there were substantial numbers of so-called low-duty sneakers introduced which were not reported under the statistical numbers for sneakers. We stressed this point in our brief to the Tariff Commission of March 17, 1964, and offered the best available estimates of the quantities that were involved. Table II of Exhibit 2 shows that in 1961 approximately 29% of the imports were not assessed on the American selling price, and in 1962 almost 40%. Therefore, even though the ASP duties were around 100% of export value in 1962, a weighted average for that year would be considerably lower. It should be noted that these are rough estimates, and if 1962 experience were considered germane, it would be essential to seek the actual data by questionnaires to the leading importers.

In sum, there is no foundation for the position of the RMA that the appraisements under the new guidelines are not a proper basis for the report which is to be made by the Tariff Commission in this investigation, and the attacks upon the new guidelines are based upon misapprehensions as to the reasons for them and their consequences.