

[Attachment 2—Excerpt from Imported Footwear Group Brief of June 17, 1966]

PROBLEMS OF NOMENCLATURE

Members of the trade in imported rubber footwear make three important points, all of which bear upon the request in the terms of reference to determine rates of duty "in accordance with sound standards of tariff nomenclature."

1. *Revision of rubber and plastic portion of the footwear schedule.* A glance at the entire footwear schedule which is reproduced at the back of this brief without the statistical annotations, demonstrates that the rubber and plastic portions of the footwear schedules have become a monstrosity. This was accomplished in the name of simplification in the course of drafting the TSUS through an excess of zeal to protect the American selling price products. The Congress has now abolished the American selling price duties for protective footwear, and the present exercise will lead, we hope, to the abolition of the American selling price duties on rubber-soled footwear with fabric uppers. It would be a serious mistake not to take a fresh look in this exercise at the footwear schedule and to restate it in simpler form. Items 700.05 through 700.40 cover in 13 lines and 11 item numbers the whole field of what is commonly called leather footwear, all of it simply stated. The same can very well be done for the remainder of the schedules. We have made some trials along this line, but representing four different organizations with many different members, are not in position to make a specific proposal at this time. The Tariff Commission should, in any event, make a proposal available for comment by all interested parties, since there are bound to be some bugs in the first few drafts of such revision.

2. *Products predominantly of vinyl should be removed from 700.60 and placed in 700.55 at 12½%.*—We remonstrated at the hearings on the TSUS that it was unwise to make the ASP products a basket category. When the TSUS was in its final stages, we took to the Tariff Commission's staff samples of vinyl slippers and snow boots with cuffs and pointed out that they would be subject to ASP although they were nothing like the products of the American industry. This schedule had been through many revisions, however, and it was too late. The result in 1965, when 47% of the products were non-ASP and a very large percentage were of types entirely different from the products of the American industry, bears out our worst surmises.

This is an appropriate occasion for the Tariff Commission to recommend, in dealing with the problem of nomenclature, that the types that were not intended to be included in the first place be taken out of Item 700.60 and placed in 700.55 where they belong. The type of which this is especially true is shoes and slippers that have PVC uppers and rubber or PVC soles. There are two principal reasons why such products, which ordinarily would enter under 700.55, come under 700.60. Both relate to the language of Item 700.55.* One is if ornamentation such as mylar tape or beading or textile cuff amounts to 10% or more of the outer surface of the upper. This does not change the character of the merchandise at all in any practical or commercial sense, but under present rulings of the Customs Bureau it has the tariff consequences of increasing the duty from 12½% to 20% and of subjecting them to the danger of American selling price valuation. Fortunately, the latter has not occurred because, on the whole, similar American products have not been found.

The other important reason is the presence of a rubber foxing, bringing into play the parenthetical exception in Item 700.55. This parenthesis was put in because there had existed a product with a sneaker-type appearance with an upper of vinyl, and the draftsmen thought it was appropriate to subject such a product to the American selling price. Such a product has never been found merchantable, but, as exhibited at the hearing, there are a variety of vinyl-upper products, one name for which is "vinyl floater," which have a foxing, in some cases cemented and in some cases vulcanized. These products bear no resemblance to the traditional products of the American rubber-soled footwear industry, and, in the course of abolishing ASP, should not be subjected to an ASP rate. Nor should they be subjected to the 20% rate but rather to the 12½% rate for non-waterproof products with vinyl uppers. A simple method to achieve this is to eliminate the parenthesis in Item 700.55.

*"Having uppers of which over 90% of the exterior surface area is rubber or plastics (except footwear having foxing or a foxing-like band applied or molded at the sole and overlapping the upper)."