

valuation, but a much better method of valuation than either "export value" or the Brussels method—

1. It is more certain;
2. More readily ascertainable by customs officials, importers and domestic industry alike;
3. Less subject to manipulation; and
4. More consistent with the purpose of a tariff in offsetting differences in production costs here and abroad.

I would like at this time to submit a memorandum on this point which evaluates ASP and other methods of valuation based upon these objective standards, and answers the criticisms made in these hearings. [The memorandum appears as Exhibit 1 at the end of this statement.]

Industry Proposed Amendments to Answer Criticisms of ASP

The criticisms of ASP valuation made by the Special Representative for Trade Negotiations seem particularly inappropriate. While we have yet to be shown concrete examples in support of their criticisms, we have responded to them. In meetings several years ago with the Bureau of Customs and the Office of the Special Representative and in subsequent correspondence, we pointed out that to the extent that there were any problems we were willing to support appropriate amendments to remove them. However, they were much more determined to eliminate ASP valuation than to cure any alleged defects in it. I would like to submit our correspondence on these points for the record. [The correspondence appears as Exhibit 2 at the end of this statement.]

But we have no cure for the main criticism of ASP made by the Special Representative—simply because it is invalid! The Special Representative maintains that the most sinister thing about ASP is that by raising the ASP the domestic industry can raise the amount of duty paid by importers and thereby obtain a competitive advantage. I can assure him that the domestic industry would hardly risk fixing prices in violation of the antitrust laws in an effort to raise the amount of duty to be paid by importers.

Even if they did, it would not make the domestic industry competitive with imports—indeed, it would make it less competitive. Assume, for example, a product with an ASP of \$1.00 and a 40% ASP duty (the highest ASP dye duty in effect at the time of the Kennedy Round). If the product sold in the U.S. for 99c, 40c would be duty, but it would still have a 1c competitive advantage over the domestic product. If domestic producers raised the ASP to \$1.10, the import would have to pay 4¢ more duty, thereby raising its price to \$1.03. But, instead of decreasing the competitive advantage of the import, the competitive advantage would actually increase from 1c (99c vs. \$1.00) to 7c (\$1.03 vs. \$1.10). The reason is simple—the tariff only offsets 40% of any increase in the domestic price.

Reasons for adoption of ASP valuation

Contrary to some folklore, ASP valuation was not developed for purposes of protecting the "infant" domestic chemical industry. In 1922, this Committee reported a bill, later to become the Fordney-McCumber Tariff Act, which established American Selling Price valuation for *all* imports. This Committee stated:

"There are two chief considerations which influenced the committee to recommend the adoption of the American valuation basis:

"(1) The assessing of duties on home values will to a large degree eliminate fraudulent undervaluation, a long-continued practice.

"(2) The assessment of ad valorem duties in American values will equalize the amount of duty to be collected on similar articles from various countries, regardless of variation in foreign market values and fluctuations in currency."¹

On the latter point, the Committee pointed out:

"An ad valorem duty assessed on a low foreign value affords little or no protection. Likewise, an ad valorem duty assessed on a high foreign value may make the duty much larger than is necessary. An ad valorem duty assessed upon foreign values affords the largest measure of protection where protection is least needed and gives the smallest degree of protection where protection is needed the most."²

¹ House Committee on Ways and Means, *General Tariff Revision*, H.R. Rep. No. 248, Part I, 67th Cong., 1st Sess. 21 (1921):

² *Id.* at pp. 21-22.