

B. "BRUSSELS VALUATION" AND THE PROBLEM OF OVERVALUATION

While the export value method used by the United States is subject to undervaluation, the Brussels definition of value applied by most of our principal trading partners often results in overvaluation. Brussels valuation is based upon "the price which [the imported goods] would fetch . . . on a sale in the open market between buyer and seller independent of each other." Although this avoids the necessity of having to determine dutiable value on the basis of prices prevailing in foreign countries, it also gives Customs officials considerable discretion in establishing the dutiable value, especially where the buyer and seller are not completely independent of one another.

The International Chamber of Commerce has severely criticized Brussels valuation because of its uncertainty and tendency towards overvaluation.¹ This criticism coincides with the export experiences of some of our member companies, from whom the resulting overvaluation has become known as the "uplift" or "Maidenform" tax.

C. THE AMERICAN SELLING PRICE SYSTEM

1. *Objective Standards for Evaluating Methods of Valuation*

American Selling Price valuation avoids the problems of undervaluation inherent in our existing system of import valuation, and the overvaluation problems of Brussels valuation.

An appropriate set of objective standards for evaluating any method of valuation would be that it be (1) certain, (2) readily ascertainable by importers, domestic industry and Customs, (3) not subject to manipulation, and (4) not inconsistent with the purpose of our tariff. The American Selling Price system meets these objective standards far better than either the "export value" method currently applied by the United States or the so-called Brussels method of valuation applied by many of our principal trading partners.

2. *Whether ASP provides higher valuation base is irrelevant*

Unfortunately American Selling Price valuation has been much maligned both by our trading partners and by our own Government on the grounds that it provides for a higher basis of valuation and consequently higher amounts of duty than the other methods currently applied. This criticism is completely unjustified and is certainly not a consideration in the determination of which is the most appropriate method of valuation.

It should be recognized by all concerned that the fact that one method of valuation results in a higher value than another is completely irrelevant, since, consistent with international obligations, the rate of duty may be adjusted in such a manner as to assure that any change in valuation base does not result in change in the amount of duty collected. The fact that American Selling Price valuation usually results in a higher valuation base than the "export value" system is no more of an argument against American Selling Price than the fact that the Brussels valuation (based on landed value including insurance and freight) results in a higher basis of valuation than "export value" is an argument against the Brussels method.

3. *The merits of American selling price valuation*

We outline below the reasons why we believe the American Selling Price is a more appropriate basis of valuation than either export value or the Brussels method. For these reasons, we believe that American Selling Price valuation should be retained for benzenoid chemicals. In doing so we also answer the principal criticisms which have been made of ASP valuation.

a. *American Selling Price valuation is certain.*—It is based upon the price for which the product is sold or offered for sale in the United States in the ordinary course of trade and in the usual wholesale quantities at the time of exportation. Where the product is being sold at more than one price, Customs uses the price at which the greatest quantity was being sold as of the time in question.

American Selling Price valuation has been criticized for being uncertain, not as to the value itself, but as to whether or not there is an American Selling Price in instances where the product is not produced in the United States.

¹ International Chamber of Commerce, *The Brussels Definition of Value—The Case of the "Sole Buyer"* (February, 1963); International Chamber of Commerce, *Customs Valuation of Imported Goods—A Review of the Brussels Definition and of Its Application* (February, 1959).