

The ASP package negotiated at Geneva clearly meets the standards for acceptance. It was a fully reciprocal bargain with a balance of concessions. The reciprocal nature of the ASP package will be described below.

Failure of ratification would indicate to our trading partners a serious disability on the part of the United States to enter into such negotiations and would impede progress in the elimination of other non-tariff barriers to trade. Any future negotiation, furthermore, would again run into the ASP barrier, accentuated by failure of ratification of the Geneva protocol. Thus efforts to eliminate foreign non-tariff barriers to the products of American farms and factories would be frustrated if ASP is not abolished.

These remarks are not intended to suggest that Congress is under constraint to accept the ASP package if it is not satisfied that it is a fair and reciprocal deal. It is, on the other hand, a realistic appraisal of the consequences should the ASP package be rejected. It is inconceivable that serious negotiation on problems of vital importance to United States agricultural and industrial exports could materialize should ASP not be abolished. We suggest that these consequences be kept in mind as Congress proceeds to deliberate ASP.

*ASP is an objectionable non-tariff barrier to trade*

The peripheral issues raised by those opposed to the abolition of American Selling Price should not be allowed to obscure the central issue: ASP is an indefensible barrier to international trade and inconsistent with internationally accepted standards of valuation. It would be illegal for the United States to maintain this system under the GATT were it not for a waiver allowing practices existing prior to the GATT. ASP is an anomaly in American valuation law and contrary to the policy of the Congress expressed in reforms of the Customs laws over the last two decades which were designed to achieve simplicity, ease of administration and certainty of application.

The intricacies of the ASP system of valuation should also not be allowed to obscure the extraordinarily high rates of duty resulting from application of this system of valuation. The nominal rates in the benzenoid sector are high in comparison to rates of duty on other manufactures. Astronomical heights result from the application of these nominal rates on the basis of American Selling Price valuation. The Tariff Commission found that duties under ASP range as high as 172 percent. Even this figure understates the true heights of duty which are involved since the 172 percent rate is an average rate for 11 dyes, some of which are as high as 300 percent. Furthermore, there is no question but that ASP in some instances could reach even higher rates of duty not revealed by the Tariff Commission study since such rates are completely prohibitive of any trade.

An examination of the legislative history clearly reveals that one purpose of the sponsors of this system in 1922 was to obscure the high rates of duty involved, to make them more palatable to the public and Congressional conscience.

What makes ASP a non-tariff barrier (as distinguished from the very high tariff achieved under the system) are the uncertainties involved in arriving at a rate under the system and the fact that such rates are subject to manipulation by the American producer of competitive benzenoid chemicals.

The essence of the ASP system is that the valuation basis to which ad valorem rates are applied is not the transaction price of the imported chemical (as in the case of normal valuation) but rather the price at which an American producer is willing to sell a competitive product in the American market. The uncertainties for the importer or foreign exporter are:

1. whether a competitive product is being offered by an American producer, and
2. the price at which such product is being offered. In actual practice a foreign manufacturer or American importer may not know for months after a transaction has been contracted whether or not American selling price will be applied and the level of duty. This uncertainty inhibits commercial transactions which require a measure of security and certainty in order to be consummated.

The opportunities for manipulation are manifest. There are innumerable actual examples of such manipulation. The offer to sell may not be bona fide and the price at which such offer is made may be fictitious. Out of the thousands and thousands of benzenoid chemicals potentially covered by the American selling price system, a very large proportion are items produced by only one company, giving the American manufacturer tremendous leeway in setting his offered price and therefore controlling the duty of imported competitive products.