RUBBER FOOTWEAR

HEARING

BEFORE THE

COMMITTEE ON FINANCE

UNITED STATES SENATE

EIGHTY-FIFTH CONGRESS

SECOND SESSION

ON

H. R. 9291

AN ACT TO DEFINE PARTS OF CERTAIN TYPES OF FOOTWEAR

MAY 19, 1958

Printed for the use of the Committee on Finance

UNITED STATES
GOVERNMENT PRINTING OFFICE
26214 WASHINGTON : 1958

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RUBBER FOOTWEAR

MONDAY, MAY 19, 1958

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met, pursuant to call, at 10:20 a. m., in room 312, Senate Office Building, Senator Harry Flood Byrd (chairman) presiding.

Present: Senators Byrd, Frear, Anderson, Gore, Williams, Bennett, and Jenner.

Also present: Elizabeth B. Springer, chief clerk; and Serge Benson, professional staff member.

(The text of H. R. 9291, a memorandum of the Tariff Commission, and the reports of the State and Treasury Departments follow:)

[H. R. 9291, 85th Cong., 2d sess.]

AN ACT To define parts of certain types of footwear

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That paragraph 1530 (e) of the Tariff Act of 1930, as amended, is amended by striking out the period at the end thereof and adding thereto the following: ", and footwear having soles as herein described and with uppers composed in greater area of the outer surface of wool, cotton, ramie, animal hair, fiber, rayon or other synthetic textile, or silk, including substitutes for or combinations of any of the foregoing (but excluding any other material superimposed), shall be deemed to have uppers in chief value of the material as enumerated in this paragraph."

SEC. 2 (a) For the purposes of section 350 of the Tariff Act of 1930, as amended, the foregoing amendment shall be considered as having been in effect continuously since the original enactment of section 350: *Provided*, That, for the purposes of including a continuance of the customs treatment provided for in such amendment in any trade agreement entered into pursuant to section 350 prior to the entry into force of the amendment pursuant to subsection (b), the provisions of section 4 of the Trade Agreements Act, as amended (19 U. S. C. 1354), and of sections 3 and 4 of the Trade Agreements Extension Act of 1951, as amended (19 U. S. C. 1360 and 1361), shall not apply.

(b) The foregoing amendment to the Tariff Act of 1930, as amended, shall enter into force as soon as practicable, on a date to be specified by the President in a notice to the Secretary of the Treasury following such negotiations as may be necessary to effect a modification or termination of any international obligations of the United States with which the amendment might conflict, but in any event not later than July 1, 1958.

Passed the House of Representatives April 3, 1958.

Attest:

RALPH R. ROBERTS, *Clerk*.

UNITED STATES TARIFF COMMISSION MEMORANDUM ON AN ACT (H. R. 9291, 85TH CONG.) TO DEFINE PARTS OF CERTAIN TYPES OF FOOTWEAR, PASSED BY THE HOUSE OF REPRESENTATIVES ON APRIL 3, 1958

H. R. 9291 is another legislative counterattack in the battle of wits between the Government and ingenious importers and foreign manufacturers in a contest to determine whether a tariff classification for rubber-soled footwear can be devised which would be impervious to the artfulness of importers and foreign manufacturers.

An effort to devise a "foolproof" tariff classification for rubber-soled footwear was made in Public Law 479, 83d Congress, and this redefinition of the footwear products concerned became effective after negotiations with foreign countries to reconcile international commitments to the change in the law and payment of compensation by the United States in the form of tariff concessions on other products. Upon the entry into force of the new definition for rubber-soled footwear, importers and foreign manufacturers immediately set about to contrive subtle changes in the manufacture of such footwear and have succeeded in developing modifications which enable the avoidance of the statutory redefinition of the footwear concerned.

H. R. 9291 attempts to frustrate these new devices of importers and foreign manufacturers. The enactment of the bill will result in one of the most complex tariff provisions in the tariff laws and will no doubt overcome some of the more recent manipulations. However, ingenuity and a will to continue the battle of wits will no doubt develop ways of slipping through the new language. It may be, however, that importers will grow weary of the contest.

The matter preceding the proviso in section 2 (a) of the bill provides that, for the purposes of section 350 of the Tariff Act of 1930, as amended (Trade Agreements Act), the amendment made by the bill shall be considered as having been in effect continuously since the original enactment of section 350 (June 12, 1934). The report on H. R. 9291 of the Committee on Ways and Means (H. Rept. No. 1503, 85th Cong.) states that the purpose of this provision "is to permit any future modification of the duties on rubber-soled footwear with textile uppers pursuant to trade-agreement legislation to apply without question to the type of footwear which will be added to this classification by the amendment in the present bill." Since any future modification of duties on rubber-soled fabric-upper footwear for the purposes of section 350 would have to be by Presidential proclamation is not the stated purpose of the language in question already accomplished by the language added to paragraph 1530 (e) by Public Law 479, 83d Congress? If not, then it would seem that the footwear included in the rubber-soled-footwear category by Public Law 479, 83d Congress, should also be subject to the language in question.

It is understood that one of the reasons for inserting in the bill the language in question was that, in the event there is a future "escape clause" action with respect to rubber-soled fabric-upper footwear, the rate on the footwear covered by the amendment could be increased to the same extent that the rate on the rubber-soled fabric-upper footwear originally encompassed by the classification in question could be increased—which would be 150 percent of 35 percent ad valorem based on American selling price. This would assume that the footwear which would be added by the amendment in question to the rubber-soled-fabric-upper-footwear category would be covered by a trade-agreement tariff concession. Assuming that the footwear that would be so added is now covered by the provision in paragraph 1530 (e) for footwear wholly or in chief value of leather, such footwear is either covered by an existing trade-agreement concession at a much lower rate than is applicable to rubber-soled fabric-upper footwear or is not covered by a trade-agreement concession at all.

Possibly it is contemplated that the footwear which would be added to the rubber-soled-fabric-upper-footwear category would be included in a tariff concession (binding) contemplated by the proviso to section 2 (a) of the bill. There is no assurance, however, that such a concession will be negotiated, or even that present trade-agreement obligations will be reconciled with the amendment as contemplated by section 2 (b) of the bill.

It seems to the Commission that the language of section 2 (a) preceding the proviso should be carefully examined with a view to determining whether it should be retained in its present form or at all. Despite the explanation in the report of the Committee on Ways and Means, the language could create difficult questions of interpretation.

The proviso in section 2 (a) of the bill authorizes a trade-agreement "binding" of the rate which would become applicable to footwear covered by the amendment without compliance with the procedures of section 4 of the Trade Agreements Act (relating to notice of intention to negotiate and hearings) and section 3 of the Trade Agreements Extension Act of 1951 (relating to "peril point" determinations by the Tariff Commission).

Section 2 (b) of the bill again allows the President opportunity to negotiate with foreign countries so as to bring United States obligations under trade agreements into conformity with the provisions of the legislation.

APRIL 28, 1958.

Hon. HARRY F. BYRD,
Chairman, Committee on Finance,
United States Senate.

DEAR SENATOR BYRD: Further reference is made to your letter of April 10, 1958, in which you requested the views of the Department of State on H. R. 9291, a bill to define parts of certain types of footwear.

This Department had previously reported to the House Ways and Means Committee that it had no objection to the legislation provided it was confined to preventing the current circumvention of Presidential proclamation 2027 of February 1, 1933, which made certain types of footwear dutiable on the basis of the American selling price.

It is noted that the bill will make certain types of footwear now dutiable at 20 and 10 percent ad valorem, based on foreign value, dutiable at 20 percent ad valorem, based on American selling price. The effect of this will be to increase the rate of duty on some of these products to about 100 percent ad valorem. The principal countries involved are the United Kingdom, the Netherlands, and Japan.

While the Department's position remains the same, in that it does not object to the enactment of this legislation, it would be desirable from a foreign-relations standpoint, if the effective date of the bill be changed to not later than 180 days after enactment. This wodld provide the Government with a more reasonable time within which to negotiate its way out of any international obligations with respect to the products in question.

The Department has been informed by the Bureau of the Budget that there is no objection to the submission of this report.

Sincerely yours,

WILLIAM B. MACOMBER, Jr.,
Assistant Secretary
(For the Secretary of State).

OFFICE OF THE SECRETARY OF THE TREASURY,
Washington, April 28, 1958.

Hon. HARRY F. BYRD,
Chairman, Committee on Finance,
United States Senate, Washington, D. C.

MY DEAR MR. CHAIRMAN: Reference is made to your letter of April 10, 1958, requesting a statement of this Department's views on H. R. 9291, to define parts of certain types of footwear.

The proposed legislation would better define certain terms determinative of the classification and rate of duty on certain rubber-soled footwear. Under Presidential proclamation No. 2027 of February 1, 1933, certain types of rubber footwear are dutiable on the basis of American selling price. In recent years some importers have been successful in finding and exploiting loopholes in the proclamation. The proposed legislation would cl the existing loopholes.

In view of the above, this Department recommends the enactment of the proposed legislation.

This Department has been advised by the Bureau of the Budget that there would be no objection to the submission of an identical report on this bill to the Committee on Ways and Means.

Very truly yours,

LAURENCE B. ROBBINS,
Acting Secretary of the Treasury.

The CHAIRMAN. The committee will come to order.

We will start hearings on a bill, H. R. 9291, to define parts of certain types of footwear.

The agreement is that 30 minutes be given to the proponents and 30 minutes to the opponents.

The proponents are represented by Mr. A. P. Funk. Does Mr. Funk desire to make a statement?

Senator ANDERSON. Do you take time out for questions out of that?

The CHAIRMAN. Yes; if more time is needed.

STATEMENT OF A. P. FUNK, PRESIDENT, LA CROSSE RUBBER MILLS CO.; ACCOMPANIED BY W. H. SMITH, PRESIDENT, BRISTOL MANUFACTURING CORP., AND J. J. BRADY, SALES POLICY MANAGER, UNITED STATES RUBBER CO.

Mr. FUNK. Mr. Chairman, Senators, my name is Albert Funk, and I am the president of the La Crosse Rubber Mills Co., where we manufacture rubber and canvas footwear in La Crosse, Wis. I am here this morning representing a special committee of the footwear division of the Rubber Manufacturers Association, composed of Mr. W. H. Smith, who is the president of Bristol Manufacturing Corp., Bristol, R. I., Mr. J. J. Brady, sales policy manager of United States Rubber Co. Both Mr. Smith and Mr. Brady are present here at my left.

The fourth member of our committee is Mr. W. E. Brimer, who is the president of Tyer Rubber Co., Andover, Mass.

Mr. Brimer unfortunately could not be present because today is the day of his annual stockholders meeting of the corporation and the bylaws of his corporation require his presence at that meeting.

We have been appointed by the rubber-footwear manufacturers as a special committee to appear before your committee, and especially urge your endorsement of H. R. 9291.

This measure was passed by the House of Representatives on April 3, 1958, and subsequently it was referred to your committee.

We feel this bill merits your approval because any contrary action would be an injustice to an American industry which provides gainful employment to more than 20,000 men and women, and which supplies necessary footwear to many millions of our people. Failure to enact this bill would be denying to this industry vital protection which Congress intended it to have.

H. R. 9291 merely closes a loophole through which competitive imported footwear is evading the duty that is provided in the law.

It is so stated in the report on the bill submitted to the House of Representatives by the Ways and Means Committee.

The Ways and Means Committee referred to this bill as necessary to close a loophole in existing legislation.

The same opinion is expressed in the State Department in its letter of August 30, 1957, to the late Hon. Jere Cooper, then chairman of the Ways and Means Committee. The following excerpts are taken from that letter which was signed by John S. Hoagland II, Acting Assistant Secretary for Congressional Relations. [Reading]:

> The Department would not object to legislation whose only effect would be to prevent current circumvention of Presidential Proclamation 2027.
>
> It is the Department's understanding that the effect of H. R. 9291 would be confined to preventing current circumvention of the 1933 proclamation. On the basis of this understanding, the Department would not object to the enactment of H. R. 9291.

Senator ANDERSON. Mr. Chairman, without taking time out from his side, will you tell me how that language meets what you said it meets just ahead? You said that it closes a loophole through which competitive imported footwear is evading the duty provided in the law and you quote this to prove it. Will you show how it proves it?

Mr. FUNK. Senator, I think perhaps the best way of illustrating what we mean——

Senator ANDERSON. No, no; will you take the language and show how it proves it?

Mr. FUNK. If I understand you, you mean this language of the State Department?

Senator ANDERSON. That is right; you quote the State Department to a specific purpose. Now will you prove it?

Mr. FUNK. As I understand it, this letter from the State Department indicates that— –

Senator ANDERSON. It does not have any objection if it only does this, but it does not say that it does it, does it? You find it.

Mr. FUNK. It uses the word "circumvention," and to me the meaning of the word "circumvention"——

Senator ANDERSON. We are not talking about the same thing. This language says [reading]:

> The Department would not object to legislation whose only effect would be to prevent circumvention.

Mr. FUNK. That is correct.

Senator ANDERSON. And you quote that to say that the Department says the only purpose of the bill is to prevent circumvention. It does not mean any such thing. I might say that I do not object to a law which permits it to rain, but that does not mean I say a certain law will produce rain.

Mr. FUNK. I think that is undoubtedly correct, Senator.

Senator ANDERSON. Will you just find the language now that justifies your statement?

Mr. FUNK. I think that your interpretation could be put on the letter, but it indicates——

Senator ANDERSON. You say "the same opinion is expressed by the State Department."

Will you find language from the State Department that says that this language is to close a loophole by which people are evading the duty provided in the law?

Mr. FUNK. I have no language other than the language that I read.

Senator ANDERSON. You mean you do not have any language?

Mr. FUNK. Only the term "to prevent current circumvention."

Senator ANDERSON. But that doesn't say it. You know that doesn't say it; don't you, really?

Mr. FUNK. That is true but——

Senator ANDERSON. Well, then, why say it?

Mr. FUNK. I think that surely it indicates that the State Department—still it seems to me that there is an implication that the State Department—well, perhaps not.

Senator ANDERSON. It may be a good case for the bill, but let's not make it this way.

Mr. FUNK. I think you are undoubtedly correct, that your interpretation—perhaps we are drawing more inference than there is in the language, but at least it indicates that the State Department is not opposed for policy reasons to 9291.

Senator ANDERSON. That I think is a correct assumption.

Mr. FUNK. The circumvention referred to is effected by attaching or inserting in the uppers of rubber-soled fabric footwear pieces of leather in sufficient value and quantity to make the uppers as a whole in chief value of leather.

Senator GORE. How does that evade or circumvent? Is not that the requirement of the law?

Mr. FUNK. I think perhaps the best way of illustrating what we mean is to show you actual shoes, Senators.

I have in my hand here a typical example of an American child's oxford of a fabric upper with rubber sole, vulcanized construction, and I have here a shoe which has been imported from Hong Kong which in all respects of appearance, and we feel utility, is actually identical to this shoe.

Senator GORE. Do you really mean that?

Mr. FUNK. Yes; I do.

Senator GORE. Do you believe it is as good a shoe?

Mr. FUNK. I do. I can see no——

Senator GORE. Do you think it is of comparable value?

Mr. FUNK. Yes, I do; and I am not an expert on technical matters, but I definitely do.

Senator GORE. I am not an expert on technical matters or on shoe manufacturing, but I have looked at the two shoes. I do not consider them of the same value.

Mr. SMITH. Why don't you let the Senator see the two shoes?

Mr. FUNK. Now the point is that at the present time through the addition to the shoe imported from Hong Kong of a piece of leather on the tongue and some pieces of leather on the insides of the eyelet stay, that shoe is being classified for duty purposes with this type of shoe which I hold in my hand, in other words, and ordinary children's leather shoe, leather oxford.

The intent of the Presidential proclamation of 1933 establishing a duty on what we call rubber footwear, in other words, tennis shoes, or sneakers, to our minds obviously was designed to protect the American industry against that type of shoes and not against this type.

Senator GORE. My point, Is not the requirement of the law the value of the uppers? If the greater value of the uppers is of leather, then it meets the requirement of the law; is that correct?

Mr. FUNK. As presently constituted I think that is correct.

Senator GORE. Would you say that leather strengthening the eyelets would add to the value of the shoe?

Mr. FUNK. I wouldn't think that leather as such, Senator, would add any value to the shoe. In other words, it is common practice in American shoes of that type to use a rubberized-fabric reinforcement which serves an identical purpose of leather. Again I do not know what actual tests would prove, but certainly it would appear that the rubberized-fabric reinforcement in all respects from the utility viewpoint is fully as good as the leather.

Senator GORE. Would it be your view that leather in the tongue of a shoe, giving the tongue more body, would add to the comfort of the shoe, rather than to have a tongue that might tend to wad up, to wad and become uneven?

Mr. FUNK. I don't know, but I do know——

Senator GORE. Which you would prefer to wear?

Mr. FUNK. I don't know that because I haven't tried one with leather tongues.

Senator GORE. All right, Mr. Chairman.

Mr. FUNK. But there are millions of youngsters——

Senator ANDERSON. I can tell you my wife wears Keds. I don't want to advertise any particular company. She wears these Keds right along, so I assume they are very satisfactory.

Mr. BRADY. Thank you, sir.

Mr. FUNK. These imported shoes are offered in the markets in competition with the rubber-soled fabric-upper footwear produced by the companies whom we represent, and in whose behalf we appear here. Whenever they are sold to the domestic trade, they supplant the products of these American companies.

They are bought by the American consumers as rubber-soled fabric-upper footwear, sometimes called "sneakers."

Obviously, they should take the import duty imposed by law on tennis shoes.

This issue was before the committee before. The 83d Congress enacted H. R. 6465, which became Public Law 479, July 8, 1954. The issue was the same and the circumstances only slightly different. In the earlier case, the proper duty was evaded by inserting a piece of leather in the sole of rubber-soled fabric-upper footwear. This strip of leather was held to make the sole in chief value of leather.

Senators, back there in 1954 this leather sole, as I recall, was inserted between the rubberized fabric insole and the vulcanized rubber outsole.

In other words, it was in the middle of a sandwich and again was what we feel is a typical example of an artificiality inserted in the shoe solely for the purpose of evading duty.

Congress closed that loophole with Public Law 479.

In a way, it might be said that Public Law 479 made H. R. 9291 necessary. With the door slammed on the sole trick, the importers simply applied the same gimmick to the upper. This was not unforeseen by the American manufacturers, nor by Members of Congress, and other Government officials.

Representatives of the industry tried to broaden the legislation that finally became Public Law 479 to cover also the present situation, which they anticipated. There was reluctance on the part of some governmental agencies and some Congressmen to endorse corrective legislation that went beyond then-existing conditions.

Congress recognized the evasion in 1954 and took steps to prevent it.

We trust that your committee will recognize the evasion now, and again take appropriate action to stop it by recommending, and urging the adoption of, H. R. 9291.

In making this statement we speak for the following manufacturers:

Bata Shoe Co., Inc., Belcamp, Md.
Bristol Manufacturing Corp., Bristol, R. I.
Cambridge Rubber Co., Taneytown, Md.
Converse Rubber Co., Malden, Mass.
Endicott-Johnson Corp., Johnson City, N. Y.
Goodyear Footwear Corp., Providence, R. I.
Goodyear Rubber Co., Middletown, Conn.
B. F. Goodrich Footwear & Flooring Co., Watertown, Mass.
La Crosse Rubber Mills Co., La Crosse, Wis.
Mishawaka Rubber Co., Inc., Mishawaka, Ind.
Servus Rubber Co., Rock Island, Ill.
Tingley Rubber Corp., Rahway, N. J.

Tyer Rubber Co., Andover, Mass.
United States Rubber Co., New York, N. Y.

That is our statement, gentlemen.

If you have any further questions, I will be happy to try to answer them.

The fact of the matter is that this is a very serious problem for us. These shoes are being offered for sale in this country at less than half of the cost that we can make them at. Now that is it in a nutshell, and we are faced with a serious problem on it.

Senator GORE. Does that mean you want to force the children to pay twice as much for tennis shoes?

Mr. FUNK. Senator, I don't know; that is getting into the broad theory of trade relations internationally.

Senator GORE. That is not a broad theory. That is very personal. People are having difficulty buying shoes for their children.

Mr. FUNK. It is; but on the other hand, we have 700 people working in La Crosse and there are approximately 20,000 people in this country that are engaged solely in making rubber and canvas footwear.

Now we all know what the labor rates in this country are, and I do not know what the answer is, but I know very well that those people are going to be out of jobs if they try to compete with oriental-labor rates, which unfortunately are 14 to 20 cents an hour, we are informed.

Senator GORE. I supported the bill 2 years ago, and I may support this one when I hear the full story, but I would not want you to dismiss the differential in price entirely by reference to difference in cost of labor. There are, as I understand it, some considerable additional elements to be considered, but the ultimate result of the passage of the bill is to increase the price of shoes for American children.

Mr. FUNK. I wouldn't say "to increase". There is no reason that I know of, why prices would go up from what they are at the present time, because it is just a fact that on what we call this type of footwear you cannot get your prices any lower.

The CHAIRMAN. The Chair finds it necessary to interrupt the witness for a moment to say that Senator Pastore is unable to be here this morning, and he has requested that his statement be read for the record.

(The statement referred to follows:)

It is my belief that H. R. 9291, enacted to define certain types of footwear within the provisions of the Tariff Act of 1930, is a timely defense of our rubber-shoe industry in America against the capricious ingenuity of certain manufacturers in foreign countries who would subvert the intent and purpose of the Tariff Act itself.

This bill will make it a little harder for foreign exporters to send us rubber footwear identified as something other than rubber footwear. A leather patch here and there—a touch of one kind of fabric or another—will not be permitted to let rubber footwear masquerade on the tariff table as something else—only an hour later to pop up on the counter for just what it is—rubber footwear.

There is nothing in this measure to keep out legitimate rubber footwear that wishes to come in under its honest name. The terms under which it will be applied are in keeping with good international practice. It has the favor, I understand, of the State Department and the Treasury Department.

I do hope that in view of the injurious effect that this practice has had upon our American rubber-footwear industry that the committee will act favorably and with expedition.

Senator ANDERSON. Has the Treasury Department reported favorably on this bill?

The CHAIRMAN. They have reported favorably; also the State Department. Is that correct, Mr. Funk?

Senator JENNER. Mr. Chairman, I have to go to the Judiciary Committee, but I would like to be recorded in favor of reporting out this bill.

The CHAIRMAN. Senator Jenner, we will not vote on this bill until tomorrow morning.

Senator Anderson.

Senator ANDERSON. If you have more questions, Bill, I can wait.

Senator JENNER. No; I have to go to Judiciary.

Senator ANDERSON. Would you explain to me the term "to make the uppers as a whole in chief value of leather." Do I understand that all this around here is cloth, ordinary cloth?

Mr. FUNK. It would be cloth and rubber, Senator.

Senator ANDERSON. Yes, I understand; but it is not leather.

Mr. FUNK. Not to my knowledge, not at least on the American shoe, there is no leather whatsoever in there.

Senator ANDERSON. Now the tongue is the only part of this that is leather?

Mr. FUNK. I think that the inside of the eyelet stay also has strips of leather sewn to it.

Senator ANDERSON. And with the addition of that piece added to the tongue, does the worth of the leather exceed the worth of the other part of the shoe?

Mr. FUNK. I think it does.

Senator ANDERSON. And that results in putting it in the category of leather goods rather than rubber?

Mr. FUNK. That is correct.

Senator ANDERSON. This little piece down here appears to be also cloth, does that have anything to do with it?

Mr. FUNK. I do not believe so, Senator. I think that is what we would call a conventional insole cover of fabric.

Senator ANDERSON. The only thing that you can find that would give it a leather classification is the tongue and the inside of the eyelets?

Mr. FUNK. I believe so. I haven't cut that shoe open. The only other possibility that I think of would be in the counter.

Senator ANDERSON. But that wouldn't help any; would it? You say you stopped it in 1954 on this question of the leather strip that was in the sole?

Mr. FUNK. That is correct.

Senator ANDERSON. Is rubber so much cheaper than leather then that it is rubberized cloth?

Mr. FUNK. That is correct.

Senator ANDERSON. What happened when the act was passed in 1954? Did importation of Japanese tennis shoes drop out of the market for a while?

Mr. FUNK. As I recall—perhaps Mr. Brady could answer that question, Senator.

Senator ANDERSON. Where was the competition coming from?

Mr. BRADY. Mainly from Europe—Holland, England, and I think there was a plant in Belgium.

Senator ANDERSON. Did the State Department favor trimming off the imports of those plants in Europe?

Mr. BRADY. The State Department, as I recall it, favored the bill, but the State Department was required to make—I don't know their terminology—an offsetting concession under the Trade Agreements Act.

Senator ANDERSON. Will they be required to make some offsetting concession on these?

Mr. BRADY. In my opinion, no; because the concession has already been made.

Senator ANDERSON. What would an offsetting concession be? Let in a little more potash?

Mr. BRADY. No; fish sticks, I think it was.

Senator ANDERSON. For my own information, you have listed a whole bunch of companies here. Are they significant contributors to this market or does United States Rubber make most of the shoes?

Mr. BRADY. The companies listed, who are members of RMA, I would say make about 85 percent of the total. There are some who are not members; and United States Rubber Co., in my opinion—I haven't got all the figures of course—is the largest. We do not make the majority.

Senator ANDERSON. Does it make half?

Mr. BRADY. No, sir.

Senator ANDERSON. I am trying to find out if Senator Pastore just filed a statement for a couple of firms in Rhode Island. Does Bristol Manufacturing make any large quantities?

(NOTE.—Letter from William H. Smith, president, Bristol Manufacturing Co., Bristol, R. I., inserted in record on p. 40.)

Mr. BRADY. Mr. Smith, the president, is here.

Mr. SMITH. We probably make, this year, about 5 percent of the canvas footwear.

Senator ANDERSON. Thank you very much. They may look like extraneous questions, but I am trying to find out—my first impression, I will say to you frankly, was that this was designed solely to help out Goodyear and United States Rubber and they get along pretty well by themselves and I wasn't so concerned about that. My heart bleeds a little bit for the smaller companies.

Mr. BRADY. Senator, may I say this, in case you misunderstand these names. The Goodyear Tire & Rubber Co., who are big competitors of ours in tires, do not make make rubber footwear.

Senator ANDERSON. Goodyear Footwear & Goodyear Rubber——

Mr. BRADY. Goodyear Corp., of Providence, is a small, independent company and Goodyear of Middletown is a small, independent company.

Senator ANDERSON. They have no connection with Goodyear?

Mr. BRADY. None whatever.

Mr. SMITH. They are trading on the name of Goodyear.

Mr. BRADY. That is natural because, you see, Goodyear licensed everybody in the world at the beginning.

Senator GORE. In other words, they have perhaps taken some advantage of the advertised name of Goodyear and are now saddled with it.

Mr. BRADY. As a matter of fact, we ourselves own the name Goodyear, too, and still use it.

The CHAIRMAN. Are there any further questions?

Senator BENNETT. I would like to just clear up the record that is now being developed. Is that true also of Goodrich, B. F. Goodrich Footwear & Flooring?

Mr. BRADY. B. F. Goodrich is the same manufacturer who is prominent in tires.

Senator BENNETT. That is a subsidiary of the Goodrich Co. that makes tires?

Mr. BRADY. That is right.

Senator BENNETT. So the only tire companies are United States Rubber—how many tire companies are involved on this list?

Mr. BRADY. Only two.

Senator BENNETT. Goodrich and United States Rubber?

Mr. BRADY. Yes, sir.

Senator BENNETT. Can you tell us approximately what percentage of the total American production of rubber footwear is accounted for by these two?

Mr. BRADY. I can only give the same answer that I gave to Senator Anderson when I said in reply to his question, "Do you make half," I said "No; less than half." I cannot speak for Goodrich.

Senator BENNETT. You are with United States Rubber?

Mr. BRADY. Yes, sir; and it is considerably less than half.

Senator BENNETT. Thank you.

The CHAIRMAN. Half of what? What did you say?

Mr. BRADY. We supply considerably less than half the production of canvas rubber-soled shoes, speaking for the United States Rubber.

The CHAIRMAN. Are these any further questions? Thank you very much, Mr. Funk.

Mr. FUNK. Thank you, gentlemen.

The CHAIRMAN. Testimony for the opponents will be presented first by Mr. Arthur Lynn.

STATEMENT OF ARTHUR LYNN, CHAIRMAN, FOOTWEAR GROUP, NATIONAL COUNCIL OF AMERICAN IMPORTERS, INC.

Mr. LYNN. Mr. Chairman and members of the committee, my name is Arthur Lynn. I am chairman of the footwear group of the National Council of American Importers. We were organized on April 9, 1958, primarily to represent the interests of the American importers of rubber-soled footwear, before the Congress of the United States in connection with this bill, H. R. 9291.

Firstly, I would like to thank this committee for according us this hearing, although no hearing was held by the Ways and Means Committee.

I am confident that the facts and arguments that we have to present will completely justify our objections to this bill.

It is my intention to discredit the theory that the proponents of this bill imply, and that is that this bill, if passed, closes a loophole in the present tariff regulations. Such is not the case at all, and is a false implication. I had some notes prepared but I am going to digress for a moment because I think that that is the most important issue for the moment.

I would like to explain to the members of the committee that it is customary for an importer to consult with the appraiser's office in the general run of things when he an item that he plans to import and get

advice from the appraiser as to what the duty will be on the particular item, and very often the appraiser will suggest some changes in the article that will enable the importer to get the benefit of a change in tariff because of a change in the article.

This is common practice, nothing new. We have done it for years. And so when it comes to this particular type of footwear, we have designed and created the type of footwear that has added features to it. The things that the proponents of this bill seem to want to establish is that it is done for the purpose of circumventing a law. It is not our object, it was not our object, and I would like to point out that every detail in that shoe where it contains leather has a particular function.

Now it so happens that by adding these features we are enabled to establish a slightly lower rate of tariff because of the feature in the shoe, and that is not establishing a loophole in the law. I would like to quote from some of these notes that I have here some illustrations of articles that are being brought into this country every single day that represent practically the same procedure, and there is no legislation against the importers or against the practice.

Senator GORE. Mr. Chairman, to understand the point, did I correctly understand you to say that the producer of this particular article, upon the advice of the importers, had modified the product in order to meet the requirements of the law?

Mr. LYNN. Well, there is a double purpose here, Senator.

Senator GORE. Leave out the purpose. Is that what has happened?

Mr. LYNN. Yes.

Senator GORE. And you are proceeding now to give examples?

Mr. LYNN. That is right.

Senator GORE. Of other examples which have happened?

Mr. LYNN. That is right.

Senator WILLIAMS. Was one of those purposes to get in at the lower duty?

Mr. LYNN. Yes; I would say that that is part of the purpose, too. It is the normal purpose. It is the regular business procedure.

Senator ANDERSON. You will give us some examples now?

Mr. LYNN. Yes; I am going to do that now. As a first example, there is a woolen glove that is imported that carries on it embroidery. When this woolen glove with embroidery is entered in this country, it carries with it a 90 percent ad valorem duty. But if the very same embroidery were put on a piece of material first and then appliqued onto the glove, or, in other words, superimposed on the glove by just stitching to the glove this extra piece of material which carries exactly the same embroidery motifs that the other has, and you could hardly tell that one was superimposed on the other, then the duty would be 45 percent.

You have a situation with ladies' blouses. You gentlemen know what tucking is. It is the same as pleating in a shirt. We generally wear them in evening wear.

Now this tucking or pleating if it is part of the original fabric that is doubled over in order to make a pleat and it is so manufactured and it comes into this country, the duty on that is 45 percent, but if on the other hand these same little pleats are made in separate strips and then stitched together and placed on the front of the blouse where they belong, the duty is 20 percent.

Then we have a situation—as a matter of fact, I have a list of 17 that we just picked up, and I would like if you folks would care to browse over them, we have prepared a few copies, there are 17 of these that we have made up that would indicate and illustrate clearly that these changes are modified or are made for the purpose of getting an opportunity of bringing in some of these articles at the lowest rate possible within the law, and we do not digress from the law.

Senator GORE. Mr. Chairman.

Senator ANDERSON (presiding). Senator Gore.

Senator GORE. I do not hold that an industry that modifies its product for the purpose of meeting the rules and regulations and the law is properly subject to condemnation for that account. As businessmen I suppose many people undertake to comply with rules and regulations and at the same time profit by the compliance if possible.

I am impressed in this particular case that by modification the category of the product has been changed from rubber footwear to leather footwear. It was for that reason, as I recall, that I supported the bill 2 years ago.

Now would you address yourself to that particular point? I do not wish to condemn the people who modify their product in order to meet the regulations. If the regulations are such as to permit rubber footwear to be treated as leather footwear, then the regulations may be at fault or the law may be at fault, not the importer, necessarily.

Mr. LYNN. I simply have this to say. We create in most cases articles that are marketable, and if we can make any changes to develop or to give us an opportunity to sell the article against competition, it becomes the normal procedure of every businessman. I have here to illustrate for you folks a shoe, not the tennis oxford that was shown to you but a basketball shoe. This also has leather functions. It has leather features. They actually constitute a function in this footwear.

Senator ANDERSON. Is that classified as a leather shoe?

Mr. LYNN. Yes, sir.

Senator ANDERSON. Is that sole all rubber?

Mr. LYNN. This is all-rubber sole.

Senator ANDERSON. And the top?

Mr. LYNN. It has a canvas top but it has leather features in here that make for a much better shoe.

Senator ANDERSON. I won't argue that. That, though, is classified as a leather shoe?

Mr. LYNN. That is, as far as we are concerned.

Senator ANDERSON. How much of the total amount of material in that do you suppose is leather?

Mr. LYNN. Well, I would say in the breakdown which we have—

Senator ANDERSON. Not as to value, but as to quantity. Would it be 5 percent?

Mr. LYNN. I cannot tell you about quantity, Senator, but I can tell you in dollar value.

Senator ANDERSON. There is an awful lot of rubber in the sole there.

Mr. LYNN. You know, unfortunately for the general public, you know we are dealing with customs and methods by which the customs regulate their decisions. A shoe may look like a completely rubber

and cotton shoe, but it may have, as this particular shoe that I think was shown to you has, the leather in that shoe is of greater value, it is of chief value as against the cotton and the rubber in the very same shoe.

To the average eye it is a rubber or a canvas sneaker, but to the customs authorities, to the appraisers who dissect it and with whom we must fit in as far as filling the bill, as far as the law is concerned, they recognize that that shoe is a leather shoe, chief value, I should say.

Senator GORE. May I see that exhibit?

Mr. LYNN. Sure.

Senator ANDERSON. How do you figure the value of the leather? What are the relative values in that particular shoe as between the rubber and the rest of it and the leather? When you say "chief value," I should be, but I am not familiar with the customs regulation that says the chief value is in leather. What is the percentage?

Mr. LYNN. I would have to recite it offhand. I do not have the breakdown in front of me. But I would say that in that particular shoe the leather would be—well, it would be principal value.

It would be higher than either of the other two component parts.

Senator GORE. Mr. Chairman, one thing that concerns me about this legislative proposal is the perhaps inadvisability, the perhaps unfortunate precedent of congressional enactment, successive and repetitive and perhaps multitudinous congressional enactments as importers modify product to meet the law.

I think that must be considered. It does seem to me that in this particular case that this is a rubber shoe rather than a leather shoe, and I think I will support the bill.

Mr. LYNN. May I at this time respectfully ask that I turn the chair over to our attorney, Mr. Hemmendinger, who will discuss the technical and legal situation.

Senator ANDERSON. Mr. Hemmendinger, go right ahead.

STATEMENT OF NOEL HEMMENDINGER, STITT & HEMMENDINGER, WASHINGTON, D. C., ON BEHALF OF FOOTWEAR GROUP, NATIONAL COUNCIL OF AMERICAN IMPORTERS, INC., AND SUNDRIES DIVISION, JAPANESE CHAMBER OF COMMERCE OF NEW YORK, INC.

Mr. HEMMENDINGER. My name is Noel Hemmendinger. I am a member of the law firm of Stitt & Hemmendinger in this city and I represent the footwear group of the National Council of American Importers, whose chairman, Mr. Lynn, has preceded me, and I represent also the Sundries division of the Japanese Chamber of Commerce of New York, Inc.

The members of these two groups among them bring in a very high proportion of the imports of rubber-soled footwear into the United States.

Let me take up immediately a number of things that have been the subject of discussion just now. I should first like to offer as an exhibit the list of the 17 examples of products designed to enjoy the most favorable available tariff rate.

Senator ANDERSON. That list will be received and put in the record at this point.

(The list referred to is as follows:)

EXHIBIT OF THE FOOTWEAR GROUP, NATIONAL COUNCIL OF AMERICAN IMPORTERS, INC. AND THE SUNDRIES DIVISION, JAPANESE CHAMBER OF COMMERCE OF NEW YORK, INC.

Examples of design of products to enjoy most favorable tariff rate

1. Wool knit gloves, dutiable at 90 percent ad valorem if fully embroidered and 45 percent if embroidery is appliqued.
2. Blouses with tucking, dutiable at 45 percent if all 1 piece, at 20 percent if tucking is made from separate material.
3. Children's slippers, dutiable at 40 percent if bottoms are of molded rubber; 20 percent if a little leather is added to the wearing surface.
4. Certain wool gloves, dutiable at 50 percent ad valorem and 37½ cents, but if a small strip of braid is added to the cuff, simply at 45 percent ad valorem.
5. Certain shoe skates, 17 percent if the shoes are cemented, and 12½ percent if some stitching is used.
6. Ladies' sportswear with bows of separate material are dutiable at 45 percent, at 20 percent if bows are made from the basic material.
7. Dish towels are dutiable at 10 percent if of chief value linen, at 50 percent if of chief value rayon.
8. Damask tablecloths enjoy a lower duty if chief value cotton than if chief value rayon.
9. Cashmere and wool sweaters are imported at 20 percent ad valorem plus 37½ cents per pound. After importation they are embroidered or trimmed with lace, etc., which rate would be 45 percent.
10. Cotton sport shirts imported at 25 percent. After importation are trimmed with emblems etc., which rate would be 45 percent.
11. Wool wearing apparel (slacks) 37½ cents a pound plus 23½ percent ad valorem. After importation elastic bands are added, which duty would have been 50 percent ad valorem.
12. Manicure kits in leather cases imported as fitted leather cases at 20 percent ad valorem. If each item is imported separately, they would pay a higher duty on each individual item.
13. Cotton hosiery if imported with embroidery, duty is only 30 percent ad valorem. If imported without embroidery, duty is 50 percent ad valorem.
14. Bicycles and all accessories if imported as an entirety pay a lower rate than if accessories are imported separately.
15. Razors if imported with accessories and hones pay duty at 14 percent ad valorem plus 21½ cents each. Hones if imported separately are free of duty.
16. Electric household utensils of aluminum, iron, or steel, pay a higher rate of duty if imported completely manufactured than if imported in parts as electrical items.
17. Electric pumps if imported as an entirety pay 13¾ percent ad valorem. If motors are imported separately, they would be dutiable at 11 percent ad valorem.

Senator GORE. Could I ask a question? Do you consider this an example of rubber-soled footwear?

Mr. HEMMENDINGER. Yes, sir.

Senator ANDERSON. That is leather?

Mr. HEMMENDINGER. No, sir.

If you will excuse me, nobody in his right mind would call that a leather shoe.

Senator ANDERSON. I hate to indict the man that just left here, but he seemed to think it was.

Mr. HEMMENDINGER. No, sir.

Senator ANDERSON. What did he think it was?

Mr. HEMMENDINGER. Excuse my speaking as an attorney but we are dealing with a very technical matter here. I am sure Mr. Lynn will agree with me that the only correct description of that shoe is a rubber-soled shoe with a canvas and leather upper which, in custom's terms, is in chief value of leather.

Senator GORE. Now I agree that that is the technical description insofar as I am acquainted with it. Does that then give it an import duty as a leather shoe?

Mr. HEMMENDINGER. No, sir. It gives it an import duty in the bracket of shoes which are described by the Tariff Act as shoes of in chief value of leather, and I submit that there is a tremendous difference.

Among these 17 examples, for instance, is the case of a towel which is composed in area or in weight chiefly of rayon, but if you put a little bit of linen in it, it makes it chief value linen and it gets a much lower tariff bracket than if you call it rayon.

Now I suppose any merchant who offered that towel as a linen towel would run into trouble with the Federal Trade Commission.

Any merchant who offered that as a leather shoe, apart from the fact that the customer would think he was insane, would also run into trouble. Of course, it is not a leather shoe, but the Tariff Act is a very technical act. The chief value test runs throughout the Tariff Act. There are innumerable borderline cases, and the chief value test is the normal way in which a determination is made which side of the line you fall on.

Therefore, you have to talk, if I may put it this way, customs' language and not popular language.

I submit that the domestic industry has sought to present this in popular parlance when in fact popular parlance has nothing to do with the case. It is a very technical question and, if you will allow me, I should like to proceed with some further technical points which I think have to be appreciated.

Senator GORE. Mr. Chairman, may I clear up a point? Will the staff of the committee obtain the exhibit submitted to the committee here earlier of a leather shoe which the witness described as containing the same import duty as this shoe? Now I ask for information, Do these two items bear the same import duty?

Mr. HEMMENDINGER. I believe so.

Well, I cannot say for sure because there are a series of different duties for leather shoes, so I would have to check. I do not know.

Let me put it this way: They both come in at ad valorem duties and not American selling price duties.

Senator GORE. After the witness has concluded, I would like the staff of the committee to inform us on that.

Senator WILLIAMS. Could the staff inform us at this point? I think it would be very nice. I notice he is nodding his head.

Mr. BENSON. My name is Serge Benson. I am on the professional staff of the committee.

Unless there are technical differences which do not appear on the surface, these two shoes will be dutiable at the same rate of duty.

There may be some technicalities, but the one shoe containing leather that does not show will be dutiable at the same rate of duty as the other shoe which contains mostly leather and it does show, unless there are some technical differences which do not appear on the surface.

Senator ANDERSON. This distinction has me bothered from this standpoint.

I read about a very rich English family that had an automobile that was all decked out in gold and silver. If they had imported that into this country, since its chief value is in gold, it would not come in as an automobile, but as a mineral?

Mr. HEMMENDINGER. I cannot tell you. It may be.

Senator ANDERSON. It has got me perplexed. I just do not understand this in chief value.

Mr. HEMMENDINGER. My experience as an attorney, who is not previously experienced in customs' matters, is that the deeper you get into customs' matters, the more perplexed you are. But I think we had better stick to this very point for just a moment.

You might suppose that there were distinct categories, a leather shoe as you usually understand it, a rubber-soled shoe and perhaps a rubber overshoe as you usually understand it.

This is not true in the customs' sense. This is only true in popular sense. There is every gradation of commodity, composition of commodities. You can have a rubber-soled shoe, visualize a golf shoe, for instance, a sewn shoe, a rubber-soled shoe with uppers that are half canvas and half leather. Any proportion of components that you can think of, you can find a commodity in the last 50 years that has been produced in that proportion. Therefore, it is just a question—the reason the result of this case is astonishing, gentlemen, is not that you go from one tariff bracket to another by a slight change in the commodity, it is the tariff bracket that you escape. And I would like to direct my remarks for a few minutes to that.

Senator GORE. If you escape from one, you go from one to the other. It seems to me you are saying the same thing.

Mr. HEMMENDINGER. I say it is the fantastically high duty not enacted by the Congress of the United States, not approved within 25 years by the Tariff Commission, not the subject of any recent decision of policy by any part of the United States Government—it is the fantastically high rate of duty to which a shoe without leather, a rubber tennis shoe without leather, is subject to, which is the real question involved in this case.

Senator BENNETT. Where did that rate come from?

Mr. HEMMENDINGER. That rate, sir, comes from a proclamation of President Hoover in 1933 preceded by a Tariff Commission investigation under section 336 of the Tariff Act which refers to equalization of costs of production. That is, it I may put it bluntly, an archaic and virtually obsolete section of the Tariff Act, because if you really tried to equalize the costs by tariff rates, the only products that would come into this country would be products that are not competitive with American products.

The reason it is obsolete is under the Trade Agreements Act if the rates have been affected by a trade agreement, then that section is inapplicable. So we cannot even go before the Tariff Commission and ask that that 1933 finding be changed, because under the Trade Agreements Act they would throw us out.

Moreover, and I want to be very technical here, the Tariff Commission made an investigation of the costs of production of shoes with rubber soles and uppers of variously described kinds of fabrics.

How anyone can say that the consequences, the results of that investigation, are applicable in 1958 to a product which the Customs Bureau finds to be in chief value of leather, I do not see.

As a matter of fact, the Tariff Commission, if I correctly understand the nature of their comment on this bill, agrees with me, because they do not think this is proper legislation. They have a different idea of how this should be done, if it is the policy of the Congress to do it. But the reason this legislation is couched in terms of an interpretation

of a 1933 proclamation is precisely the point of view that the State Department took. They do not object. Mind you, nobody said they approve of it. They did not say they favor it. If I understand their communication, they said they do not object to it and the Treasury Department took the same position, if it is limited to this narrow issue. But if you approach this correctly and say that the 1933 proclamation was limited to a described shoe and that it cannot and should not be extended by legislation, then the only thing you can do is frankly to amend the Tariff Act and you are making a decision of policy in which you have to do what the proponents of this bill would not want you to do. You have to look at the whole situation and decide just as if you were enacting a new tariff Commission acting on an escape clause. You have to decide if the American rubber-footwear industry is entitled to this protection.

Senator ANDERSON. Could I just read into the hearing here then two paragraphs from the letter of August 30 which does bear on this [reading]:

The Department would not object to legislation whose only effect would be to prevent current circumvention of Presidential proclamation 2027 of February 1, 1933, which made certain types of footwear dutiable on the basis of the American selling price. The Department considers, however, that H. R. 445 and H. R. 9064 go further, and would make the American selling-price basis of valuation applicable to types of footwear not involved in such current circumvention, including a number of types on which the existing tariff treatment is bound in concessions negotiated with other countries. The Department, therefore, considers that enactment of H. R. 445 or H. R. 9064 would be undesirable.

The Department is informed that there is also before the committee another bill, H. R. 9291, which deals somewhat differently with the classification and rate of duty on certain footwear. It is the Department's understanding that the effect of H. R. 9291 would be confined to preventing current circumvention of the 1933 proclamation. On the basis of this understanding, the Department would not object to enactment of H. R. 9291.

hat is what you are referring to.

Mr. HEMMENDINGER. Thank you, Senator.

I should like also to suggest that you direct your attention to the last communication from the State Department to the Senate Finance Committee.

I have not seen that letter but I have been led to believe that it raises some questions or at least is couched in somewhat different terms from its previous communications.

Senator ANDERSON. That letter is probably already in the record. If not, we will put it in the record at this point.

(The letter referred to is as follows:)

AUGUST 30, 1957.

Hon. JERE COOPER,
Chairman, Committee on Ways and Means,
House of Representatives.

DEAR MR. COOPER: Reference is made to the letters dated January 29, 1957, and August 3, 1957, both signed by Mr. Irwin, requesting reports on H. R. 445 and H. R. 9064, respectively, which are bills to amend pertinent paragraphs of the Tariff Act of 1930 with respect to the classification and rate of duty on certain footwear.

The Department would not object to legislation whose only effect would be to prevent current circumvention of Presidential proclamation 2027 of February 1, 1933, which made certain types of footwear dutiable on the basis of the American selling price. The Department considers, however, that H. R. 445 and H. R. 9064 go further, and would make the American selling-price basis of valuation applicable to types of footwear not involved in such current circumvention, including a number of types on which the existing tariff treatment is bound in

concessions negotiated with other countries. The Department therefore considers that enactment of H. R. 445 or H. R. 9064 would be undesirable.

The Department is informed that there is also before the committee another bill, H. R. 9291, which deals somewhat differently with the classification and rate of duty on certain footwear. It is the Department's understanding that the effect of H. R. 9291 would be confined to preventing current circumvention of the 1933 proclamation. On the basis of this understanding, the Department would not object to enactment of H. R. 9291.

Because of the urgency of this matter, this report has not been cleared with the Bureau of the Budget, to which copies are being sent.

Sincerely yours,

JOHN S. HOGHLAND II,
Acting Assistant Secretary for Congressional Relations
(For the Secretary of State).

Senator ANDERSON. Go ahead.

Mr. HEMMENDINGER. The American selling price is inequitable for the reason I have mentioned but also for another areason.

It isn't just United States Rubber Keds getting the protection of a duty of 100 percent. I have here a shoe with a Goodyear label on it which I bought in Alexandria on Saturday. This shoe retails for $1.99. It is an American-made shoe retailing for $1.99. I do not know the wholesale price, but it cannot be much more than $1. And this is the shoe that is competing, if any shoe is competing, with the imports.

This shoe you may find in the same stores or in adjacent stores. You do not find any competition commercially between the imports and the Unites States Rubber Keds that are getting this protection, and this shoe is getting the protection of a fantastic duty and yet this is the shoe, if any, that is competitive, and this is the shoe I submit, although only an expert could say for sure.

Senator GORE. What did you say is the retail price?

Mr. HEMMENDINGER. $1.99.

Senator GORE. You do not mean to say that the merchant is putting a hundred percent retail markup on the shoe? Didn't I understand you to say the wholesale——

Mr. HEMMENDINGER. I will defer to some of those more knowledgeable in the trade but my understanding is that that would be a normal markup. Perhaps $1.10 would be an ordinary wholesale price on that shoe. This is not implying that the merchant is getting too much. I think he probably needs something like that.

Senator BENNETT. Let's clear that up. You are not implying that the merchant puts a higher markup on the American shoe than he does on the Japanese shoe?

Mr. HEMMENDINGER. I am implying that he puts what you call a normal markup on it.

Senator BENNETT. As a matter of fact, he is more apt to put a higher markup on the Japanese shoe because he can buy it at a lower price in a market that is partially protected by the American price.

Senator ANDERSON. Now that we have gotten into the price business, does anybody know what the price is on this shoe retail?

Mr. HEMMENDINGER. May I see it, sir? Is that the so-called "Rover"?

I believe that is a $3.50 retail shoe.

Senator ANDERSON. Somebody must know it.

Mr. BRADY. That is about right, $3.25.

Senator ANDERSON. $1.99, $3.25. How much does this sell for? That is the Japanese?

Mr. BRADY. Having a bearing on the question asked a moment ago, I have seen these retail all the way from $1 to $2.49.

Mr. BRADY. And up to $2.49.

Mr. HEMMENDINGER. The 88 cents is obviously a promotion item to be compared with the American shoe I saw in Woolworth's on Saturday for $1.29 in the ladies' size. It had the Colby label in it. I do not know who makes it, but it is an American shoe. I do not think any of these are marked "Colby." So the fact is that there is an American product which is commercially highly competitive with these imports.

The imports have a lot of hurdles to overcome before they can be accepted, and you can find the American shoe selling to Woolworth's and Murphy's and all the same houses.

In fact, I doubt if there is an American house that is selling the Japanese shoe that is not selling an American shoe in pretty much the same price class. I talked to the Hahn manager about Keds in Alexandria on Saturday and I said, "Are you being bothered by competition?" and he said, "We do not know anything about it. The Japanese shoes don't interest us. The people who buy Keds are not in the same market."

Senator WILLIAMS. Mr. Chairman, may I ask the witness a question? You mentioned a moment ago you felt the Tariff Commission did not approve of this legislation and had an alternative plan.

Mr. HEMMINDINGER. That is right, sir.

Senator WILLIAMS. Do the importers approve of the alternative plan of the Tariff Commission?

Mr. HEMMENDINGER. No, sir.

Senator WILLIAMS. You disapprove?

Mr. HEMMENDINGER. I propose to go before the Tariff Commission on the 3d of June when they are holding hearings on their alternative plan as a part of their revised and consolidated tariff schedules and offer reasons why it should not be done.

And that is one of the considerations which I hope this committee will take into account, that the fact is that the Tariff Commission has developed its own legislative technique for doing what it assumes to be congressional policy.

Now I do not know what the Tariff Commission will do, but I am making a very narrow technical point there, and that is that this is bad legislation.

This is legislation which amends by act of Congress a Presidential proclamation based upon findings of the Tariff Commission with respect to certain narrowly and technically defined products, and I submit that whether or not it is legal, and it may not be legal, it is a poor way to legislate.

Senator WILLIAMS. The point that I am not quite clear on, I understand you are opposed to this particular approach, this bill's approach.

Mr. HEMMENDINGER. Yes.

Senator WILLIAMS. You are opposed to the recommendations of the Tariff Commission. What steps would you suggest that we take to meet this situation?

Mr. HEMMENDINGER. Well, if you propose to regard this as an impropriety which should be rectified by legislation, then I say leave it to the Tariff Commission to make the recommendation as a part of its

revised and consolidated tariff schedules, and review it as the Congress will review all of the recommendations of the Tariff Commission.

Incidentally, this is not the only way in which this is before the Tariff Commission. As Mr. Lynn mentioned, the American producers who are before you now were before the Tariff Commission in September 1957, under the escape clause, and that I suggest is where they really belong if they have an interest in being protected from these imports, because once you accept the proposition, gentlemen, that this is no different from what every importer does who wants to stay in business, namely, he designs a product that will get the lowest tariff bracket available, then you have another piece of tariff legislation which involves all the considerations of equity, all the interests of the consumer, all the questions of injury through the imports which you have when a special interest tariff measure is brought before you.

I have skipped around here so much——

Senator ANDERSON. May I ask here whether you want this entire statement that you referred to a moment ago, I believe, put into the record?

Mr. HEMMENDINGER. Thank you, Senator. I do ask that our full statement which has been submitted to the clerk be offered in the record.

Senator ANDERSON. The entire statement will be put in the record at this point.

(The statement referred to is as follows:)

MEMORANDUM IN OPPOSITION TO H. R. 9291, DEFINING PARTS OF CERTAIN TYPES OF FOOTWEAR FOR TARIFF PURPOSES, ON BEHALF OF FOOTWEAR GROUP, NATIONAL COUNCIL OF AMERICAN IMPORTERS, INC., AND THE SUNDRIES DIVISION, JAPANESE CHAMBER OF COMMERCE OF NEW YORK, INC.

SUMMARY OF PRINCIPAL POINTS

1. Although presented as closing a "loophole" in the Tariff laws, H. R. 9291 is simply another Tariff Act in the interest of a special group of producers, which should be dealt with under the procedures established in the Trade Agreements Act, not by special legislation.

2. Rubber-soled shoes with uppers in chief value of leather are now dutiable at ad valorem rates based upon the foreign value if the shoes are found to be in chief value of leather. The purpose of H. R. 9291 is to change this tariff classification to subject such shoes to an extraordinary and unfair duty basis—the American selling price of similar articles of American manufacture—which was proclaimed under the now virtually obsolete section 336 of the Tariff Act.

3. It is improper and possibly illegal to extend by legislation the effect of a 25-year-old presidential proclamation based upon a cost-of-production investigation of a different product.

4. In administering the American selling-price duty, the Customs Bureau selects the highest prices at which comparable American products are sold, leading to a duty equal to over 100 percent on foreign value.

5. There is nothing novel, improper, or illegal about designing a products so as to enjoy a favorable tariff rate. The use of leather on the uppers of the shoes enhances both their durability and customer appeal and is not of purely tariff significance.

6. It is essential, before any change is made in the present classification, that the fairness of the new rate to be applied and the need of the domestic industry for such protection be examined. The American rubber footwear industry applied applied to the Tariff Commission in September 1957 for relief under the escape clause, alleging precisely the same facts as are offered in support of H. R. 9291. The application was rejected by the Tariff Commission, which declined to institute an investigation, on the ground that on the face of the petition no injury was shown, imports being less than 3 percent of the domestic production.

7. The Tariff Commission has announced hearings for June 3 on a revised and consolidated tariff schedule involving problems similar to those presented by H. R. 9291. If this is regarded as a tariff anomaly, the Tariff Commission should be allowed to deal with the matter and makes its recommendations as prescribed in the Customs Simplification Act of 1954.

THE ISSUE

H. R. 9291 has been presented as a bill to close a "loophole" in the Tariff Act "through which foreign producers have continued, through artful manipulation of products, to avoid an import duty imposed specifically for the protection of the domestic rubber-soled-footwear industry" (Ways and Means Committee Rept. No. 1503, March 13, 1958). This question-begging formulation artfully manipulates symbols [1] to conceal the real issue. The real issue is the justification for continuing the extraordinary protection granted the American industry by President Hoover 25 years ago in using the American selling price as the basis for duty, and the fairness of extending that basis to new products legally dutiable as leather. The problem is much more complicated than is described by the Ways and Means Committee report and an extended explanation is required.

The Tariff Act of 1930 includes the following paragraphs relevant to the commodities here involved (numbers in left margin are added for reference; trade agreements rates as shown in right margin):

1. 1530 (e).	Footwear (including athletic or sporting boots and shoes), wholly or in chief value of leather, not specifically provided for. Other:		
	Boys', men's or youth's	20% ad val.	10% ad val.
	For other persons	20% ad val.	
2. 1530 (e).	Footwear (including athletic or sporting boots and shoes), the uppers of which are wholly or in chief value of animal hair, cotton, fiber, ramie, rayon, or other synthetic textile, silk, wool, or substitutes for any of the foregoing, whether or not the soles are of leather, wood or other material: With soles wholly or in chief value of india rubber or substitutes for rubber.	35% ad val.	20% ad val. American selling price.
3. 1537 (b).	Manufactures wholly or in chief value of gutta-percha or india rubber, or both, not specifically provided for: Footwear wholly or in chief value of india rubber.	25% ad val.	12½% ad val. American selling price.

In 1932 the Tariff Commission instituted an investigation under section 336 of the Tariff Act of the differences in costs of production of the footwear defined in categories 2 and 3 above. If found that the duties fixed by statute did not equalize the costs of production of the domestic articles and of the like or similar foreign articles produced in the principal competing foreign countries, and that to equalize such costs it was necessary to apply the statutory duties to the American selling price of American products like or similar to the imports. President Hoover so proclaimed. The investigation, the finding, and the proclamation applied to the precise articles described, namely, rubber-soled footwear with uppers of chief value of various kinds of fabric and footwear in chief value of rubber. Categories 2 and 3 thus came to be dutiable at much higher effective rates than category 1.

The present bill is occasioned by the fact that there have begun to enter the United States new products for which importers claim a category 1 status, because both uppers and whole shoe are in chief value of leather.[2] These shoes are of different types, but the bulk of them are either tennis oxfords with leather tongues (mostly children's), or high shoes (sneakers and basketball shoes) with leather reinforcements along the eyelets, back, and sides of the uppers. These changes are

[1] For instance, by using the term "loophole" to describe the common circumstance that a change in product design brings it under a different tariff bracket. For another instance, by saying that foreign producers are avoiding American duties. Duties are paid by the importers and are normally passed on to the American buying public. These products are also largely designed by the importers, who are mostly American firms.

[2] This point appears to be incorrectly stated in the Ways and Means Committee report, which says that the use of leather makes the footwear "either (*a*) in chief value of leather as a whole or (*b*) with uppers in chief value of leather." If it is found that the uppers are of chief value leather, the import does not fall into category 2. It must then be decided whether it falls in category 1, whole shoe of chief value leather, or category 3, whole shoe of chief value rubber. In fact, few customs entries of rubber-soled shoes with leather used as part of the uppers have been finally liquidated, and there is no way of knowing with certainty at this time what duty will finally be found to be payable.

functional in two senses, since they improve both durability and customer appeal. The use of leather is neither functionally meaningless nor purely of tariff significance.[3] A purchaser having a choice between such a shoe and an ordinary tennis sneaker or basketball shoe, price and quality otherwise equal, would normally prefer the shoe with the leather.

There is nothing novel, improper, or illegal about designing a product in such a manner as to enjoy a favorable tariff bracket, particularly when there are also valid commercial reasons for such design. There are many illustrations of this in foreign trade practice.

Wool knit gloves are dutiable at 90 percent ad valorem if fully embroidered and 45 percent if embroidery is appliqued. Blouses with tucking are dutiable at 45 percent if all one piece, at 20 percent if tucking is made from separate material. Children's slippers are dutiable at 40 percent if bottoms are of molded rubber but 20 percent if a little leather is added to the wearing surface. Certain wool gloves are dutiable at 50 percent ad valorem and 37½ cents but if a small strip of braid is added to the cuff, simply at 45 percent ad valorem. The duty on certain shoe skates is 17 percent if the shoes are cemented and 12½ percent if some stitching is used. Ladies' sportswear with bows of separate material are dutiable at 45 percent, and 20 percent if bows are made from the basic material. Dish towels are duitable at 10 percent if of chief value linen, 50 percent if of chief value rayon. Damask table cloths enjoy a lower duty if chief-value cotton than if chief value rayon. In every one of these cases a product was redesigned to enjoy the lower duty, and dozens, perhaps hundreds, of other cases could be cited. American producers are sending without reproach to many countries of the world, goods designed to enjoy the most favorable tariff bracket of the foreign countries.

Contrary to the impression created by proponents of H. R. 9291, categories 1, 2, and 3 above do not describe distinct commodities. One might think at first impression of all-leather shoes, of rubber and canvas sport shoes, and of rubber boots and overshoes as three distinct categories. As a matter of fact, however, there exist and have long existed almost every conceivable combination of principal components with many different utilizations. Consider, for instance, golf shoes with rubber soles and combined leather and canvas uppers. As is true in many places in the tariff schedules, the range of products permits of no clearcut differentiation. Whatever the definitions, there will be borderline cases. That is why the Tariff Act employed the test of "chief value," which is standard throughout the Tariff Act. There is no more reason to depart from it here than in dozens, perhaps hundreds, of other situations.

If present rates were as originally enacted in the Tariff Act of 1930, the design of a new commodity of chief value leather would not cause the lifting of an eyebrow. What is extraordinary is not that a new design has tariff consequences, but the fantastically high tariff protection to which the old design is subject through the device of levying duty on the American selling price. The properity of the proposed reclassification cannot be considered without considering the equity of extending after 25 years the extraordinary relief granted under section 336.

UNFAIRNESS OF AMERICAN SELLING PRICE AS BASIS FOR DUTY

The imported children's tennis shoes have a foreign value in the neighborhood of 40 to 50 cents a pair [4] and the sneakers and basketball shoes are approximately twice this. Wholesale prices for American children's tennis shoes run from around 90 cents to $2.30 a pair for the smaller sizes. It is thus apparent that, however administered, applying the duty to the American selling price would increase the ad valorem foreign value duty by anywhere from 2 to 6 times, i. e., make the duty 40 to 120 percent on the foreign value basis, depending on the American selling price selected. There are cases in which the duty would be as great as 150 percent. In general, use of the American selling price makes the duty on category 2 imports more than 100 percent ad valorem on the foreign value. Today, 40 percent is a high duty and 100 percent is an extraordinary duty. Extraordinary reasons must be shown to justify a duty of this level.

[3] The product is accordingly entirely different from that which prompted Public Law 479, 83d Cong., since that was a piece of leather inserted between the insole and the outsole which was considered to be neither functional nor visible and to have purely tariff significance.

[4] This is before transportation, insurance, duty, brokerage, delivery charges, importer profits, etc., which makes the wholesale price considerably higher in the American market.

The situation would not be so bad if in the administration of the Tariff Act the Bureau of Customs selected the lower prices of the most similar of competitive American products. In facts, however, the Bureau has been assessing duty on the basis of the highest prices quoted for products which could be regarded as in any sense competitive, disregarding differences of quality and price. The Treasury Department has ruled that the wholesale price of the prestige American producers, United States Rubber, Goodrich, and Hood, is the basis for duty, notwithstanding that these companies sell to large purchasers at substantial discounts and notwithstanding that other American producers sell a much cheaper and more nearly similar shoe. We quote from a Treasury Department ruling (letter of November 14, 1956, signed by Ralph Kelly, Commissioner of Customs):

"The appraiser at New York reports that after examination of your importation, and inquiry in the trade, he has determined that the merchandise you imported is like or similar to certain rubber-soled footwear manufactured in the United States by the United States Rubber Co., the Hood Rubber Co., and the B. F. Goodrich Co. Each of these companies has the same resale prices and the price at which appraisement is contemplated is the price at which such firms sell to small retailers, as it represents the only price available to all purchasers in wholesale quantities * * *

"The appraiser has reported that there are domestic shoes made by other manufacturers to which the imported shoe also is 'similar' although he does not believe that such shoes are more 'similar' except that their price is lower. A difference in price alone does not prevent a finding of similarity * * *

"Inasmuch as the appraisement contemplated by the appraiser at New York is in accordance with a longstanding practice, the Bureau is in agreement with such contemplated appraisement based on the American selling price of like or similar merchandise manufactured and sold by the above-named companies at $1.90 per pair for children's sizes, $2.25 per pair for women's sizes, and $2.40 per pair for men's sizes, less 2 percent cash discount, packed."

Since this ruling was made, the quoted price for these particular children's tennis shoes at wholesale by United States Rubber Co., Goodrich, and Hood went in 1957 from $1.90 to $2.25, then in 1958 to $2.30. Corresponding increases have been made in other styles and sizes.

This raises another issue which is most vexatious and inequitable to the importing trade. Use of the American selling price means that the American producers can increase the duty after orders have been placed abroad and prices stipulated, by simply raising their own prices. This introduces an intolerable uncertainty with respect to the duty which will have to be paid when the goods enter several months later at the port of New York.

It is improper and possibly illegal to extend the effect of an existing proclamation under section 336 by congressional reclassification

There are two ways of looking at the actions heretofore taken pursuant to section 336 of the Tariff Act. Both ways lead to the conclusion that H. R. 9291 is unjustified.

The first is to take the letter of the law as it reads and to assume it still has full meaning as originally intended. The proclamation was made in 1933 based upon a detailed Tariff Commission investigation of the difference between foreign and domestic production costs of 2 particular commodities as specifically described in categories 2 and 3 above. It is clearly improper, and we submit very likely legally invalid, for the Congress, without purporting to make any new cost of production investigation, to extend the effect of that ancient proclamation by a statutory declaration that a new and different product "shall be deemed" to be one of the products covered in the President's proclamation. It is absolutely clear that the product is different because enough leather has been used in the manufacture of the shoe to make the chief value of the whole shoe leather. Manifestly, a cost of production investigation that related to shoes of rubber and fabric only cannot be presumed to be valid for a product that has added a new and different component more valuable than any of the others. Moreover, a lapse of 25 years in which different supplying countries have entered the market destroys any presumption that the facts are still the same. Even in 1933 the Tariff Commission was divided and the majority recommended that there be a new investigation soon. Yet, it is extremely doubtful that the importers could reopen the old finding and seek a new investigation and finding by the Tariff Commission because under section 2 (a) of the Trade Agreements Act, section 336 is not applicable to duties which have been reduced under the Trade Agreements Act, and these duties were reduced in 1947 and 1955.

The second, and we think more realistic, way to regard actions taken under section 336 is to accept the undoubted fact that section 336 is an anachronism based upon an outmoded and discredited theory of tariffmaking and that it is virtually a dead letter. The theory of equalizing cost of production was a strongly protectionist concept which, if applied consistently, would stifle all trade in products competing with domestic products. In the whole history of section 336, there have only been three cases (rubber footwear, certain wool knit gloves, and canned clams) in which the American selling price has been proclaimed as the basis for duty pursuant to an investigation under section 336. Modern tariff philosophy is embodied in the Trade Agreements Act, which regards trade as a good thing, to be encouraged, subject to the limitation that serious injury should not be inflicted on an American industry as a result of a tariff concession. The only practical way to regard actions taken under section 336, from this point of view, is that they have now become a part of the history of the tariff structure and that new decisions should instead be taken pursuant to the terms and the spirit of section 350 of the Tariff Act.

This means that regardless of the dubious antecedents of so many of the duties presently in force, adjustment downward should be made through the trade agreements procedure and adjustment upward should be made through the escape clause. The escape-clause avenue is open in the present case if the domestic industry considers itself injured. Each of the duties here involved has been reduced through a trade agreement except children's shoes, chief value leather (category 1) and that rate was bound in 1[illegible]7. If there is a case—and we think this is clearly not one—in which there is injury and the authority of the Trade Agreements Act is not adequate to protect an American industry which requires protection, then, in exercising its authority in tariff matters, it is incumbent upon the Congress to hold hearings and to examine all relevant circumstances including injury to the domestic industry. The Congress can, as the Senate Finance Committee has recently done in the case of tunafish, request an investigation by the Tariff Commission under section 332 of the Tariff Act to assist it in determining the facts. In such an investigation, all of the relevant materials can be considered.

The domestic industry does not need the protection that H. R. 9291 would afford

The fact is that the American manufacturers of rubber footwear did file an application with the Tariff Commission for relief under the escape caluse on September 12, 1957. The petition was by 17 firms, the same group that is seeking the passage of H. R. 9291. In that petition, they recited among reasons for relief the fact that some footwear competing with their products were being entered as shoes in chief value leather without paying duty at the American selling price. The showing was so abjectly weak that, by letter of October 1, 1957, the Tariff Commission rejected the application and declined to institute an investigation on the ground that the factual data set forth (imports less than 3 percent of domestic production) were clearly insufficient to support a reasonable inference of injury.

The Tariff Commission is the appropriate body to consider the question of injury under the escape clause or section 332. If, however, there should be any disposition by the Senate Finance Committee to report the bill favorably, it should, in fairness, itself give consideration to the question of injury and hold hearings for that purpose. We repeat the basic issue involved here. The object of H. R. 9291 is to reclassify shoes with rubber soles which under the present Tariff Act are dutiable as chief value leather, in order to shift the present ad valorem duty basis to a duty computed upon the American selling price, resulting in a duty of 100 percent or more of foreign value. The case for such a change in duty must be based upon the need for the protection demanded, which is the criterion now fully accepted in tariff matters by the Congress of the United States.

This memorandum does not purport to go deeply into the question of injury, which requires an official investigation. It is interesting, however, that the United States Rubber Co. in its annual report for the year ending December 31, 1957, stated that while overall 1957 sales were 3.1 percent under 1956, this resulted from a decrease in the sale of tires and other products to automobile manufacturers and in defense items, and there was a continued good demand for footwear and certain other items. According to the New York Hearld-Tribune of March 23, 1958, the shoe industry as a whole had its best year in history in 1957, with all major footwear classifications showing big increases with the exception of men's shoes.

It is essential, in considering the question of injury from the imports, that it be investigated fully by a competent body and that hasty judgments not be drawn from disparities in price between the imports and the prestige of domestic

products. There are some domestic products quite comparable to the imports, when it is considered that the imports have many hurdles to overcome before they can receive trade and consumer acceptance comparable to the American products. Problems of delivery, uniformity, adjustments, even the possibility of a higher markup on a higher-priced product, work against the imports. Moreover, there is a tendency for the imports to make their own market. We are confident that investigation would show that both total consumption and consumption of the domestic manufactures have increased in the last several years.

THE CONSUMER INTEREST

Extremely relevant also to the question whether the extraordinary high American selling price duty should be extended to a new product is the value of the competition of imports in furnishing goods of lower prices to people who need them and in stimulating the domestic manufacturers to engage in old-fashioned price competition.

We have not had an opportunity for more than a brief examination, but it does not take much knowledge of business to grasp the fact that if the three largest American manufacturers are quoting the same prices and these prices are more than twice the prices of some American competitors, even allowing for quality differences, the giants of the industry are pursuing the policy of achieving maximum profits through high prices rather than mass sales at competitive prices. For 25 years, since the Presidential proclamation of 1933, the American rubber-footwear industry has had an easy protected market at the expense of the American consumer. H. R. 9291 poses the question whether this protected position will be extended, without scrutiny of its merits, or whether these companies will be required to do business in the competitive American way.

THE TARIFF COMMISSION IS THE APPROPRIATE BODY TO RECOMMEND REMOVAL OF TARIFF ANOMALIES

We have pointed out that a change of duty through reclassification requires investigation of all relevant data, and that the Tariff Commission is the appropriate body to conduct the investigation under the escape clause or under section 332. We recognize that H. R. 9291 has been presented as merely rectifying an anomaly in the tariff schedule. From this point of view (with which we do not agree), the appropriate method is that provided by the Congress in the Customs Simplification Act of 1954—review by the Tariff Commission with hearings as a part of the revised and consolidated tariff schedules it is now preparing.

In fact, on April 18, 1958, the Tariff Commission published a proposed revised tariff schedule for footwear and announced that hearings would be held on it on June 3, 1958. The proposed new description of rubber-soled footwear is intended to cover all of the footwear here involved and is designed to accomplish the same purpose as H. R. 9291, although the drafting technique is different. The proposed new description is:

	Percent ad valorem	*Percent ad valorem*
"Footwear (whether or not described elsewhere in this subpart), of rubber, or of fibers and rubber, of which the soles are rubber, or of which rubber is the basic wearing material of the outer soles:		
700.80. With uppers not of rubber	20	35
700.85. Other	12.5	25"

A headnote states that these two numbers are dutiable at the American selling price.

Although we have not seen the Tariff Commission's factual report on H. R. 9291 to the Ways and Means Committee, we understand that this proposed new tariff description conforms to a suggestion made in that report. It is also our understanding, however, that the Tariff Commission addressed itself only to the technical question of legislative drafting and not to the merits of the question whether the tariff classification of rubber-soled shoes with uppers partly of leather should be changed.

The importers will, of course, appear before the Tariff Commission to oppose this new definition. Since the hearing has not yet been held, this tentative Tariff Commission proposal should be given no weight on the merits of the issue. The Tariff Commission should be given full opportunity to consider, after hearing all the interested parties, all of the issues involved in this proposed reclassification before any decision is made by the Congress.

ENACTMENT OF H. R. 9291 WILL REQUIRE RENEGOTIATION OF OTHER TARIFF CONCESSIONS

As is recognized by the text of the bill and by the Ways and Means Committee report, enactment of this bill would require the United States to take the matter up with the contracting parties to the GATT and to negotiate with supplying countries concessions on the part of the United States equivalent to the value of the benefits of which these countries have been deprived, or to invite the countries affected to apply retaliatory measures. Such action has repercussions for other American producers on both the import and the export side. Such negotiations, moreover, are a departure from the basic reciprocal trade structure and in the interest of world trade as a whole should be kept to a minimum. Normally these considerations would be pointed out by the Department of State. We venture to think that it would have done so if the objections to H. R. 9291 made in this memorandum has been fully brought to its attention.

UNITED STATES STAKE IN TRADE WITH SUPPLYING COUNTRIES

Initially, rubber-soled shoes with uppers in chief value of leather were imported from the United Kingdom and the Netherlands. Some now come from Hong Kong, and Japan has become the largest source. Every one of these areas bought much more from the United States in 1957 than it sold. Japan's purchases of $1.2 billion were more than double its sales to the United States in 1957.

Japan cannot continue to buy in high volume from the United States unless it can sell in this market in comparable quantities. A decision to protect the American footwear industry would be made in a very real sense at the expense of the American farmer and producers for export. Japan was America's first customer over recent years for cotton, wheat, barley, and soybeans and in 1957 was next after Canada as the biggest purchaser of all American exports. Beyond this, the United States has a grave political interest in the stability and well-being of Japan, which is being right now wooed in trade matters by the Chinese Communists with unscrupulous skill.

CONCLUSIONS

1. The bill should be reported adversely on its merits by the Senate Finance Committee.
2. Investigation should be made by the Tariff Commission under the escape clause or section 332 before any decision is made to extend the tariff protection now afforded the domestic industry.
3. If the bill is regarded (contrary to our views) as rectification of a tariff anomaly, it should be left to the Tariff Commission to deal with after hearings as part of the revised and consolidated tariff schedules.

Senator ANDERSON. We had a limitation, so if you will take about 10 minutes to sum up.

Mr. HEMMENDINGER. Thank you very much. I think in skipping around here, I have covered most of the points that I want to make, but I should like to make quite sure of that. The reason among other things that I referred to the most recent communication of the Department of State to this committee, is that if I am correctly informed, the Department has raised some questions with respect to its responsibility to negotiate reciprocal concessions if this change in the American tariff structure is made.

One of the gentlemen from the other side expressed the opinion that no concessions would be required. I personally would like to offer you the opposite opinion, that concessions by the United States will be required, and that, therefore, enactment of this bill would be at the cost of American exporters. I want to point out also that it involves, as do most tariff changes, delicate questions of international relations and the Department of State should, in any event, be given plenty of time to negotiate the concessions before this is put into effect.

I don't want to spend any time on the effective date, because I am assuming that this is a bad bill which the committee shouldn't approve.

But I hope that if the committee holds against us, that they will take a good hard look at the effective date.

It involves the interest of our clients as well in a very heavy way. They had effective notice of the possibility of enactment of such a bill when it was passed by the House.

There are so many tariff bills pending that get no serious consideration, without hearings in the House, nobody can say there was effective notice until then.

They need 3 to 6 months to bring in their goods and that is another reason why a good look should be had at the effective date, but I hope you won't get to that point.

Another question which you may wish to think about is the way in which this American selling price is administered.

I am not sure I made clear that what the appraiser does, if Mr. Lynn takes a shoe down to him as a sample and says, "What will this be dutiable at?" he gets out his price list for United States Rubber, Hood, and Goodrich, and Hood and Goodrich are the same company, and finds the product that looks most similar to him on that price list, and that is the price that he picks for the wholesale price on which the American duty is laid, notwithstanding the existence of many products which are much closer and much more competitive, and that is why the effective duty on the American selling price is over a hundred percent, a fantastic duty these days, which requires unusual circumstances to justify.

Senator ANDERSON. Do I understand you that if the shoe that you bought that ran $1.99 had been presented to the appraiser instead of the United States Rubber shoe, that cost $3.50, he might have come up with some different figure?

Mr. HEMMENDINGER. I am assuming that this has happened and he doesn't. He sticks to the United States Rubber price list. There seems to be a general impression that this is the United States Rubber duty, Senator.

I don't think there is justification for that, but independently of this bill, I think the committee might well consider amending the definition of American value that is found in section 402 of the Tariff Act of 1930, which has a number of definitions of American selling price, and I think this committee should consider at some point rectifying the abusive administration of that provision by the Treasury Department.

It may or may not be true that by taking it to court, our principals could get some rectification, because there is a great deal of latitude which is given to the appraiser by the statute.

I have set forth in our memorandum a letter from the Chief Counsel of the Treasury Department, which sustains the appraiser in such a situation, and anybody who brought goods in and did so on the premise that he was going to reverse the decision of the appraiser would be making a bad business judgment.

Senator ANDERSON. Would you just for my own guidance, if for no other member of the committee, furnish me with a little information on how this selling price of 402 concerns itself with these exhibits of shoes today?

In other words, if a duty is based on an article selling for $3.50 and yet you can't distinguish the article that is being imported from

an article that sells regularly for $1.99, and that has some effect upon this decision, I'd like to know what it is.

Does it have any effect upon the duty that is charged?

Mr. HEMMENDINGER. It has a very serious effect, sir, under the act—and this is a very extraordinary and anomalous thing.

There are only two other cases where an American selling price has been proclaimed by Presidential proclamation in the whole history of the Tariff Act.

Senator ANDERSON. Do you know what those are?

Mr. HEMMENDINGER. Yes; they are canned clams——

Senator ANDERSON. Canned clams?

Mr. HEMMENDINGER. Canned clams and certain kinds of knit gloves, certain categories of knit gloves, not, incidentally, the same ones to which Mr. Lynn referred.

If there is any anomaly in this situation, it is the application of American selling price, because although ad valorem foreign value is standard throughout the Tariff Act, you have a couple of situations by legislation and you have three situations by Presidential proclamation where the American selling price of the "like or similar product of American manufacturer" is applied.

That means that when the product comes in, the appraiser has to decide what the "like or similar American product" is, and he then has to take the wholesale price.

Now long age before there were anywhere near as many commodities as there are today, there was a test case in the courts in which a Japanese shoe was brought in.

The appraiser picked the United States Rubber product as the "like or similar product." There wasn't any cheaper product. And the importer said, "It isn't 'like or similar,' it is much more expensive, it is much better made," and it was taken to court and they held that the word, "similar," had a broad enough meaning so that this was similar within the intent of the act.

The appraiser has gone merrily on looking at the United States Rubber wholesale price quotations, and, mind you, this is the quotation to any comer, not to the people who buy in quantities and get good discounts.

This is the price that Tom, Dick, and Harry, little wholesalers, can walk in and get the shoe at.

He picks that price, and the importers have brought in cheaper shoes, more competitive shoes, and he has said I am sorry this is the way it is, and it has been sustained and this is the way it is going to be. You can appeal it if you want to.

As a lawyer, I have my opinion that if you really proved to him that it was a more similar shoe, that you could take it to court, but you can't do business on taking things to court.

You have got to know in advance what the duty is going to be. Does that answer your question, sir?

Senator ANDERSON. Yes; it does. I want to, when we get time, ask the other group if they agree with the fact that $3.50 is the yardstick whereas $1.99 shoes for sale regularly might be taken as the yardstick.

Would you have any comment on that? Who was testifying before, before the committee? Does Mr. Brady or anybody have any comment on that?

Mr. BRADY. My understanding, Senator, is that the appraiser or examiner is simply required by law to take the like or similar shoe at the wholesale price and a shoe which is freely offered.

Beyond that, I would hesitate to speak for the Customs Bureau or for the appraiser or the examiner in his work.

Senator ANDERSON. We have got these two here in the front of us. Would you mind losing $1.99 and putting those up here? Oh, there they are. Now do I understand—I am trying to get this down in terms where I can understand it—do I understand, Mr. Hemmendinger, that these shoes you bought for $1.99, this was no bargain sale, that this is the regular price?

Mr. HEMMENDINGER. Absolutely.

Senator ANDERSON. Then that these Keds are $3.50?

Mr. HEMMENDINGER. I heard someone say $3.25. I thought they were $3.50. They may vary.

Senator ANDERSON. What do these sell for, the Japanese shoe?

Mr. HEMMENDINGER. I will accept the statement that one of the witnesses for the other side just made, that it is anywhere from $1.99 to, he said, $2.49.

Senator ANDERSON. From $1.99?

Mr. HEMMENDINGER. No, from $0.99 to $2.49. I heard $0.88 mentioned, but that is obviously a promotion item.

Senator ANDERSON. This says top score or something of that nature on it. Now when they come to fix the duty, does it make any difference that this is $3.50 and this is $1.99?

Mr. HEMMENDINGER. Under the rulings of the Treasury Department, the price makes no difference, the question of which American product is closer in price, makes no difference whatever.

Senator BENNETT. Are you making a flat statement for the record of the committee that they always use United States Rubber's prices?

Mr. HEMMENDINGER. Yes, sir.

Senator BENNETT. Can we find out from the United States Rubber man whether that is also true?

Senator ANDERSON. Mr. Brady, this is an unusual round-robin proceeding, but I think Senator Bennett has made a fine suggestion. Do you recognize United States Rubber is used as standard of value?

Mr. BRADY. From my knowledge, and I have been called upon more than once by the appraiser to furnish a shoe that might be like or similar to the imported product, I know for a fact that the appraiser does not always use the United States Rubber Co.'s shoe.

Senator ANDERSON. What does he use? Hood?

Mr. BRADY. I have known him to use Hood.

Senator ANDERSON. Have you ever known him to use this that is manufactured, who did you say made that shoe?

Mr. BRADY. I don't recognize that shoe.

Senator ANDERSON. Mr. Hemmendinger, did you say who made this shoe?

Mr. HEMMENDINGER. It has the Goodyear label on it, Goodyear Footwear Corp.

Senator ANDERSON. This is Goodyear Footwear that is not associated with the Goodyear Tire & Rubber, as I understand it.

Mr. HEMMENDINGER. I assume it is their trademark, sir.

Senator ANDERSON. No, no.

Mr. HEMMENDINGER. We had testimony that they weren't the same company, but what the royalty arrangements may be between them is another matter, because that is a Goodyear mark.

Senator ANDERSON. It is tough enough getting into duties without getting into all that. This is a Goodyear but not quite the same.

Now Goodyear Co. sells this. This would never be regarded as similar then because the price is too low; is that your contention?

Mr. HEMMENDINGER. I cannot say why. It is going pretty far to say what is in the appraiser's mind.

Senator BENNETT. But you are undertaking to say positively that United States Rubber or Hood are always used?

Mr. HEMMENDINGER. I will put it this way: I represent a group of importers who are responsible, two groups of importers who are responsible for a high proportion of all the imports. They all have told me in meetings assembled that they have gone down to the appraiser and he has told them that he looks at the wholesale prices of United States Rubber, Hood, and Goodrich.

Hood and Goodrich are the same company, and the three quotations are always the same, their published list prices, and those are the prices he takes.

As a matter of fact, I spoke personally to the appraiser on this question and he told me the same thing.

Senator BENNETT. Thank you.

Mr. HEMMENDINGER. Well, sir, you have been most indulgent in your time and I wish only to conclude by pointing out that there are quite a number of choices open to this committee. This committee can consign, as I think it should do, the applicants for relief to the Tariff Commission under the escape clause.

This committee can recognize that a very similar question with respect to tariff anomalies is going to be the subject of a hearing before the Tariff Commission on the 3d of June, and the Tariff Commission will in due course be making recommendations if it finds that this is a tariff anomaly that should be changed, to the Congress, that can be enacted in the regular and orderly way.

In other words, while we think there are ample grounds for flatly rejecting the bill, there are also grounds upon which this committee can decide that it is not called upon to make a decision on the merits.

Senator ANDERSON. Would another alternative be to get a new appraiser?

Mr. HEMMENDINGER. Another alternative would be for this committee to ask the Treasury Department to confirm the account that we have been given of the practices here, and if it finds that the practices are as we have said, and that these practices are unjustified, as I think they clearly are, then it can amend the Tariff Act to see to it that the Treasury Department administers this provision more fairly, and we would be prepared, if the committee is interested, to offer some drafting language for that purpose.

Senator BENNETT. And a fourth alternative is that the committee can act on the bill.

Senator ANDERSON. That is right.

Senator BENNETT. Don't you think the committee has the power to act on the bill?

Mr. HEMMENDINGER. From where I sit, Senator, I regard that as the poorest of the choices open to the committee.

Senator BENNETT. I am interested in a sentence in your statement which raises my hackles, Mr. Chairman.

The sentence says, "It is clearly improper for the Congress to extend the effect of that ancient proclamation." It also says, "It is very likely invalid legally," that, "it is very likely legally invalid for the Congress."

Would you like to submit some information showing that the Congress does not have the power to act in a tariff problem?

Mr. HEMMENDINGER. The Congress has complete power to amend the Tariff Act, Senator, there is no question whatever about it. This point is addressed to a narrow, technical and legal question which I discussed earlier, and that is that when you have a Tariff Commission factual finding, and a Presidential proclamation based on it, it is, I think, improper for the Congress to proceed by telling the Customs Bureau how it shall interpret a Presidential proclamation.

The Congress has got the power to junk the whole Tariff Act and reenact a new Tariff Act.

Senator BENNETT. The final responsibility for all tariffs rests with the Congress.

Mr. HEMMENDINGER. It is the technique, sir, which we regard as improper.

Senator BENNETT. Then you think it is improper for Congress to act on this bill now under the present circumstances, and if it does act, that its action is legally invalid?

Mr. HEMMENDINGER. I say, as an attorney, that in my judgment it could be contested in the courts and I would not wish to predict how it would come out.

Senator BENNETT. You are willing to test it on the constitutional ground that Congress does not have the power to pass a law affecting tariff regardless of what the President may have said in 1933 or what the Tariff Commission may have said then?

Mr. HEMMENDINGER. Well, the argument, I think, would be that Congress has got complete power to change the rate if it wishes, but if it proceeds by telling the Executive that certain language in a Presidential proclamation based on a factual proclamation shall be deemed to mean something quite different from what it clearly says, when the other legislative technique is clearly open to the Congress, then I think the courts might decide——

Senator BENNETT. The Congress has the right to decide which legislative technique it uses, and Congress frequently says in effect certain language shall be deemed to mean a certain thing. That is a rather common device.

Mr. HEMMENDINGER. Language of an act, sir, but this is language of a Presidential proclamation based upon facts, not theories.

Senator BENNETT. But that Presidential proclamation was made on the basis of power given to the President by the Congress, because the Congress has the ultimate responsibility for tariff legislation.

Mr. HEMMENDINGER. I can only say, as I did before, that I have some agreement in the executive branch and the Tariff Commission that this is not the way it ought to be done.

Senator BENNETT. It seems to me, as I say, I always resent a witness who comes before us and says that what we are considering doing is, A, improper, and B, is illegal.

Maybe it is just public relations, but I don't think you have helped your cause much by telling us that we do not have the ultimate responsibility to handle a tariff problem.

Now this may not be from your point of view the best way to handle it, but in the last analysis, we have the power.

Mr. HEMMENDINGER. I am sorry, Senator, that the language offends you. I think that witnesses and, particularly, counsel who come before you have an obligation to advise you what problems they see with the act.

Senator BENNETT. Don't you think we can be advised without telling us we are improper and legally invalid, legally inept or legally incapable of handling our problem?

Mr. HEMMENDINGER. I accept your opinion.

Senator BENNETT. Thank you.

Senator ANDERSON. Could I ask for the box and the sales slip? I don't know that any other Senator is going to be interested in looking.

Mr. HEMMENDINGER. Yes, sir.

Senator ANDERSON. There are a great many Senators who are not here today and I am just going to turn these over to the clerk of the committee, if you don't mind.

Mr. HEMMENDINGER. I hope you will. I don't know whether there has been any procedure of marking exhibits, but if there is any question about it, I should like the Goodyear shoe to be considered an exhibit on behalf of the importers.

Senator ANDERSON. You are dealing with a chairman that knows nothing about law, so we will just put that down for the members of the committee to keep track of as to which is which.

Thank you very much. Does that finish your statement?

Mr. HEMMENDINGER. Thank you very much for your excellent hearing.

Senator ANDERSON. I believe, Senator Bennett, that the chairman announced 30 minutes per side. I think we have had more than that from the opponents of this legislation.

Do the proponents feel that I have mistreated them? If so, will they take some time? Are you satisfied?

Mr. FUNK. I think, Mr. Chairman, that you have given us a very fair hearing. It is getting late and we don't want to take any more of your time.

Senator ANDERSON. That is very generous of you.

Thank you both very much. Thank you all for being here.

(By direction of the chairman, the following are made a part of the record:)

ASSOCIATION OF AMERICAN SHOE IMPORTERS, INC.,
New York, N. Y., May 16, 1958.

Statement opposing H. R. 9291.

Hon. HARRY FLOOD BYRD,
Chairman, Senate Finance Committee,
United States Senate, Washington, D. C.

DEAR MR. CHAIRMAN: Our most sincere thanks to your committee for having granted the request for public hearings on H. R. 9291, which we are opposing. We have been informed by the chief clerk of your committee that we may submit a substantiating written statement for the record, which we are herewith doing.

We have been informed that H. R. 9291 was presented in the House for the purported purpose of closing a "loophole" in the Tariff Act, supposedly by which foreign producers were allegedly avoiding import duties. Imposed, for the protection of the domestic rubber-sole-footwear industry.

We shall show to your committee that this is not so-called "loophole legislation" but that it is an uncalled for measure for "special interests" who have no need for additional protection against the imports as we shall describe in this letter to you.

A group of rubber manufacturers under the leadership of United States Rubber Co., which is the largest rubber manufacturer in the world, has been trying for many years to completely control and monopolize the American market in the products which they manufacture and even in products which they have never manufactured, which they do not now manufacture and the improved modern styles, which they seemingly do not intend to manufacture.

To achieve these objectives the "special interest" group has set for itself and for this country, the following program:

1. The American rubber-manufacturers group seeks to limit production and thereby create a scarcity of the product and ask for unreasonably high prices from the American consumer, who is usually in the more modest class in this country.
2. The American rubber-manufacturers group further seeks to eliminate competition among American manufacturers by selling at the same fixed and identical prices.
3. The American rubber-manufacturers group seeks further to eliminate the necessary competition that is now being created and caused by the merchandise imported from foreign countries and, through H. R. 9291, to arbitrarily decide, at any time, what the customs duty payable on such imported merchandise will be instead of leaving this power to the United States Government where such power belongs.

We shall make only some brief remarks with respect to the first and second statements made above, because they are not directly connected with H. R. 9291 but explain the background of this legislation. We shall, however, go into more detail with respect to statement No. 3, which we have made above.

As to statement No. 1, it is to be noted that United States Rubber Co. exhibited at the Popular Price Shoe Show of America, as usual, in December 1957. One of their representatives stated the following, which is almost verbatim, to one of the members of this association:

> We do not know why our company wants us to exhibit here. We have nothing to sell. Our production for 1958 is all sold. We are salesmen making our living from commissions, but we are wasting our time here. This division has had the best year in its history. I wish our company would increase production because we could sell all of it.

The salesman of United States Rubber Co. was right, because at the next Popular Price Shoe Show of America, which was held May 4 to May 8, 1958, in New York, United States Rubber Co. did not exhibit anymore.

Why should the company exhibit when it had nothing more to sell for that season? Can anyone believe that the largest rubber manufacturer in the world could not increase its production of rubber footwear? These shoes are manufactred within less than 30 days. Why should this company refuse orders?

Why not book orders for the remainder of the season? The answer is very simple: it is only through limited production and consequent scarcity of the domestic product that prices can be manipulated and fixed at an unreasonably high level.

As to statement No. 2: Mr. Ralph Kelly, Commissioner of Customs, in a letter of November 14, 1956, to one of our members, wrote as follows:

"Each of these companies (United States Rubber Co., Hood Rubber Co., B. F. Goodrich Co.)has the same resale prices * * *"

It is a very "curious" fact that the three largest rubber manufacturers in the United States and in the world should all have the same resale prices.

As to statement No. 3: There are two principal methods provided for in the Tariff Act of 1930 to determine the dutiable value of merchandise imported into the United States. The first method is to base the duty on a certain percentage of the actual value of the merchandise. This method of figuring customs duty is applied to most of the commodities entering the United States. According to paragraph 1530 (e) of the Tariff Act of 1930 as amended, certain shoes pay customs duty on the above basis.

The second principal method of figuring customs duty is to base the customs duty on a certain percentage of the "American selling price." The Tariff Act in section 402 (e) provides that the American selling price is "the price * * * at which such article is freely sold or in the absence of sales, offered for sale for domestic consumption in the principal market of the United States, in the ordinary course of trade in the usual wholesale quantities, * * *"

In the darkest days of depression, the Tariff Commission instituted an investigation under section 336 of the Tariff Act, as a result of which President Hoover proclaimed that certain types of shoes should be dutiable according to the American selling price. We have never objected to such legislation. At that time such legislation was certainly warranted. It was based on the cost of production prevailing at that time and has not been revised since 1932. It is hard to assume that the cost of production today is the same as it was 26 years ago and no doubt a revision is called for in view of changed present conditions. However, H. R. 9291 is not in any way based upon an investigation into the cost of production. This notwithstanding the fact that section 336 states that the change to American selling price is made as an equalization of cost of production if the Tariff Commission finds, after investigation, that such differences could not be equalized by proceedings provided for in the law.

In addition to the fact that H. R. 9291 is contrary to the spirit as well as the letter of the Tariff Act, the basic and most important differences between the law passed in 1932 and the bill presently pending before your committee are as follows: The Presidential proclamation in the Hoover administration caused a substantial increase of customs duties on imported merchandise similar to the merchandise manufactured by American producers. The proclamation referred specifically to footwear with fiber uppers and rubber soles. However, H. R. 9291 refers to shoes "in chief value of leather," which shoes have never been manufactured and are not now being manufactured in the United States of America. Just how far can this special interest group go in preventing the American public from getting more modern and greatly improved models of certain types of strong, durable, and popular shoes worn mostly by the children and youth of our country? The improvements which American importers and Japanese manufacturers have made on the footwear imported, cannot, in any sense be said to be an "artful manipulation" of product. If we are to impose penalties on improvements, then progress and invention become expensive words.

We could understand the purposes of American manufacturers if the imports of footwear were a substantial percentage as compared to American manufacture and sale. But the fact is that, according to the National Shoe Manufacturers Association, over 594 million pairs of footwear were produced in the United States in 1957. According to the United States Department of Commerce, 1957 imports of footwear totaled about 4,846,000 pairs. This is much less than 1 percent of domestic production. We are sure the Government does not want to give such complete control and monopoly over the market to American manufacturers. It is not healthy for our economy and it is not good for our relations with the world.

It is to be emphasized that the above figures of imports in the amount of 4,846,000 pairs refers not only to the kind of footwear manufactured by the rubber-manufacturing companies of this country, but to all kinds of footwear of whatsoever nature, including types and styles never manufactured in this country and not now manufactured in this country. Therefore, the actual quantity of shoes which may compete with American rubber manufacturers is much smaller than shown above.

The economic traditions of our country, which have made it great and prosperous, are founded on the principles of free competition and free enterprise. It is not the intelligent American way of doing things to permit one group of manufacturers to block the use and sale of merchandise which is dissimilar to the merchandise that they manufacture and which they have no trouble whatsoever in selling.

We have set forth in statement No. 3 that the American rubber-manufacturers group seeks, arbitrarily to decide at any time, what the customs duty payable on such imported merchandise shall be instead of leaving this power to the Government of the United States where it belongs. Let us follow up this thought. Since the proclamation in the Hoover administration, the Bureau of Customs bases the dutiable value upon the American selling price, at which United States Rubber Co. sells to "all purchasers in wholesale quantities." Since United States Rubber Co. is the sole judge in deciding at what price it deems it advisable to sell "to all purchasers in wholesale quantities," therefore United States Rubber Co. decided to have several sets of prices, the highest of which would then apply. United States Rubber Co. sells at a lower price to a large chainstore which buys for hundreds of its stores, as compared to the price it charges to a small retailer who may buy for only his shop. The result is that whereas the Bureau of Customs says "wholesale price," actually, the highest wholesale price becomes higher than the retail price charged by the large firms. Therefore, instead of making imported

shoes dutiable at the wholesale level, they are dutiable at the actual retail price to the ultimate consumer. Furthermore, United States Rubber Co. has full power to raise its wholesale price at any time that it desires without any hindrance, and thereby, under the method employed by the Bureau of Customs, it decides for the Government what the duty shall be on imported shoes, irrespective of whether they are similar or not to the domestic product.

But this is not all; United States Rubber Co. has now decided to quote extremely high "list prices" on which it grants high discounts, but the Bureau of Customs refuses to deduct such discounts in figuring the actual prices.

The passage of the instant legislation before this committee would not in any way promote the welfare of labor, agriculture, commerce, or the foreign relations of this country, but would be detrimental and harmful to all of them.

(*a*) There is no unemployment in the rubber-footwear industry and as has been set forth, the whole footwear industry has enjoyed its best year in history as far as production is concerned, notwithstanding the negligible imports, and notwithstanding that there is a marked recession in other industries. By granting an actual monopoly to the special interest group of big rubber manufacturers the Congress would not increase employment but would only increase the prices of the domestic product. Imports give rise to much employment among office workers in importers offices, to American steamship companies, to American railroads, to American trucking companies, to American customs brokers, to American insurance companies, and to every American firm which serves the aforesaid. Imports in and by themselves give rise to all manner and kinds of labor and commerce in the United States for American employees.

Besides those directly concerned with imports, there are wholesalers and their employees and retailers and their employees. These are retailers who might not otherwise obtain this type of merchandise if such goods were not imported. United States Rubber Co. sells to the elite stores, but these imports go to any stores.

(*b*) American agriculture benefits in several ways from these imports. Japan is the traditional supplier of most of this footwear, buys raw cotton from the United States Government to make the cotton uppers of these shoes. They furthermore buy the leather in the United States for the same shoes. In addition to buying the raw cotton required in the making of these shoes, Japan is the largest single buyer of raw cotton in the world. Japan has an unfavorable trade balance with the United States. If Japan is prevented from selling to the United States, the footwear which it has so far introduced into the United States and which has also been to the benefit of the United States, then its trade balance will further deteriorate. It is to be remembered that the United States buys very large quantities of raw cotton from American farmers to support farm prices, and therefore it is against the interest of the United States Government to cut off the foregoing imports.

(*c*) Foreign trade is of paramount interest to our country in stimulating our economy at this time by utilizing the channels of reciprocal trade. Any volume of trade, which must be in both directions, both as to imports and as to exports, will make a significant contribution to our general economic growth. This is the gist of the Rockefeller Brothers fund report on economic growth from a statement made by the American Bankers Association:

" 'If the United States tightens import restrictions, there will be immeasurable worldwide repercussions which could result ultimately in a dislocation of world economy,' Japan's Foreign Minister Aiichiro Fujiyama said.

" 'For one thing, other countries, faced with an aggravated trade deficit, and suffering acutely from dollar shortage, would certainly follow the leader,' Mr. Fujiyama said in a luncheon speech at the Waldorf-Astoria.

"Mr. Fujiyama, discussing his country's trade with the United States, noted that Japan gets 35 percent of her imports from this country and sends 20 percent of her exports here.

" 'What might appear to Americans to be a trifling cut in imports would be a fatal blow to modest Japanese enterprises,' he said. 'In some cases, the very livelihood of entire Japanese towns and cities are at stake.' "

The above is quoted from New York World-Telegram and Sun of September 20, 1957.

"I am communicating with the Board of Trade in London on the question of of representations to the United States Government. It would be helpful if you could let me know by what date you expect to complete the contract you have placed with Hong Kong for the type of shoes which will be affected by this legislation."

This is a quotation from a letter received by one of our members from the British Embassy in Washington. It might sound like a very simple and harmless statement, but actually the fact is that the little workshops or factories in the Far East (Japan and Hong Kong), who are the traditional suppliers of this kind of footwear and who are the bulwarks of democracy in the Far East, may have to close up shop if this law passes, because no other country but ours buys the kind of shoes bought in the United States. If prohibitive duties are demanded by the United States, then these imports will have to cease completely and those factories will not be able even to use their present equipment and most raw materials for a manufactured product no one else will buy. Their situation is just as bad as the situation of American importers who have to face great economic stress if such a law goes into effect at an early date. Therefore, if by any stretch of imagination such disastrous legislation be enacted its effective date is of grave importance, for our members have contracts until the end of this year and even into early 1959. Permit them to liquidate their business in an orderly fashion without giving rise to any possible bankruptcy or insolvency by reason of sudden enactment.

It is customary in bills increasing customs duties which have been introduced into the House Ways and Means Committee that they become effective 150 days from the date the law is enacted. The special interest group cannot go so far as to disrupt trade and to cause economic hardship by asking that the law goes into effect not later than July 1, 1958, as the present bill reads.

We are sending copies of this letter to all the members of your committee, to the House Ways and Means Committee, to the Tariff Commission, to the Department of Justice, Antitrust Division, to the Department of Agriculture, to the Department of Commerce, to the Department of Labor, to the Department of State and to the Treasury Department, Bureau of Customs.

We have utmost confidence that in your discussions and in your deliberations, you will consider the greater good of the consumers of this country, the economy of this country, and our better relations in the World.

Please believe us to be,

Most faithfully yours,

ASSOCIATION OF AMERICAN SHOE IMPORTERS, INC.
By A. ZERKOWITZ, *President.*

APRIL 29, 1958.

Hon. HARRY FLOOD BYRD,
Chairman, Committee on Finance,
United States Senate, Washington, D. C.

DEAR SENATOR: Thank you very much for your letter of April 28 concerning H. R. 9291. I can certainly understand the position the committee has taken with respect to hearings on this proposal and I hope that a representative of the Bata Shoe Co. will be given an opportunity to testify.

With further reference to this bill, I am enclosing a statement forwarded to me which may be of interest to the committee. Furthermore, accompanying this letter is an exhibit which I believe graphically illustrates the need for this remedial legislation.

With best wishes and warmest personal regards, I am

Sincerely yours,

JOHN MARSHALL BUTLER,
United States Senator.

MEMORANDUM RE HOUSE OF REPRESENTATIVES BILL 9291 SUBMITTED ON BEHALF OF BATA SHOE CO., INC.

Under the unfortunate terms of a definition contained in the Tariff Act as amended, sneakers and other canvas footwear by the addition of only a leather tongue or a small leather patch are classified as leather shoes.

The duty on leather shoes is 10 to 20 percent on the importer's invoice price.

The duty on canvas shoes is 20 percent on the selling price of a similar shoe made in the United States of America.

The expense of the leather tongue or patch, the basis of the subterfuge, is much less than the duty saved.

HISTORY

The Tariff Act of 1930 classified leather shoes, shoes the major value of whose soles or uppers consisted of leather. In 1950 or 1951, importers began putting a leather patch into a rubber sole or a piece of leather behind the rubber sole, thereby enabling essentially rubber-soled canvas shoes to be classified as leather shoes.

The 83d Congress amended the Tariff Act by specifying that to be classified as a leather-soled shoe, the major wearing area of the sole should be of leather. This action stopped this form of abuse and evasion of the intent of the Tariff Act.

Now foreign manufacturers are putting a leather tongue or a leather patch on the ankle of a canvas rubber-sole shoe (a sneaker or basketball shoe) and qualifying such shoes as leather shoes because the major value of the material of the uppers is leather. Actually this leather tongue or patch costs much less than the saving in duty thereby achieved. A sneaker (to use a popular term) has to have a tongue anyway. The difference in cost of manufacture between a leather tongue and a canvas tongue is very small because the labor, etc., is the same and the cost of the finished shoe is only slightly increased by using an expensive leather to make the tongue instead of a fabric. Yet thereby the essentially canvas shoe is classified as rubber at a tremendous saving in duty.

The addition of the tariff evading leather tongue or patch adds nothing to the life of the shoe or to its value to the consumer since the uppers are essentially fabric and the shoes wear out just as rapidly as they would without the leather tongue or patch.

House bill 9291 provides that shoes having uppers, the greater area of which are fabric, shall be classified as fabric shoes, and hence take the rate of duty intended to be imposed on shoes with fabric uppers and which, in fact, would be imposed except for the duty-evading leather tongue or patch.

THE EXISTING SITUATION

Foreign made fabric rubber-soled shoes are being imported in steadily increasing quantities. The largest volume of these imports (after evading duty at the proper rate) sell at wholesale in this country for 53 to 80 cents a pair duty paid f. o. b. this country. Fabric rubber-soled shoes cannot be manufactured in the United States and sold at wholesale for anything approaching this figure. There is keen competition among the American manufacturers of fabric rubber-soled footwear and active price cutting, yet the actual wholesale price on such footwear made in the United States is at least 50 percent above the duty-evading foreign import.

THE EFFECT ON BELCAMP

Approximately 1,150 of the 1,700 employed at Belcamp, Harford County, Md., are principally engaged in the manufacture of fabric rubber-soled shoes. The Belcamp factory cannot produce fabric rubber-soled shoes at a price to compete with the foreign fabric shoes imported as leather shoes under the subterfuge permitted by the loophole in the existing law. It is useless to talk about possible economies in manufacture and technological improvements to overcome this gap because the fabric rubber-soled footwear trade in the United States is highly competitive, Bata being in competition with United States Rubber Co. and B. F. Goodrich, and all possible technological improvements are made from time to time as a matter of course to meet domestic competition. We are not talking about an industry which has failed to avail itself of all possible manufacturing economies.

The subterfuge permitted by the existing law threatens the jobs of between 1,100 and 1,200 of the 1,700 Bata employees at a time when Aberdeen, Edgewood, and Bainbridge have reduced their employees. It also threatens the operations of the Bata Shoe Co. which employs far more people in Harford County than any other privately owned industry, if not more people than any industry in the State of Maryland east of the Martin Co. plant at Middle River. The laying off of two-thirds of the employees of Bata would not only have a serious effect on the economy of this region but could result in the closing of the Belcamp plant as a whole since it is geared to a production requiring 1,700 employees.

It is to be stressed that House bill No. 9291 does not seek to nor does it change the tariff rate fixed by existing law. The purpose of the bill is to enforce the present rate of duty by putting a stop to an abuse of the existing law by clarifying a definition that experience has shown can be evaded.

TARIFF ACT OF 1930 (46 STAT. 667, 19 U. S. C., SEC. 1001, SCHED. 15, PAR. 1530 (E); 19 U. S. C. A. AT 591)

SEC. 1001 *Articles dutiable, and rates; schedules.*

On or after June 18, 1930, except as otherwise specially provided for in this Chapter, there shall be levied, collected, and paid upon all articles when imported from any foreign country into the United States or into any of its possessions (except the Philippine Islands, the Virgin Islands, American Samoa, and the Island of Guam) the rates of duty which are prescribed by the schedules and paragraphs of the dutiable list of this title, namely:

* * * * * * *

SCHEDULE 15 (PAR. 1530 (E))

Boots, shoes, or other footwear (including athletic or sporting boots and shoes), made wholly or in chief value of leather, not specially provided for, 20 per centum ad valorem; boots, shoes, or other footwear (including athletic or sporting boots and shoes), the uppers of which are composed wholly or in chief value of wool, cotton, ramie, animal hair, fiber, rayon, or other synthetic textile, silk, or substitutes for any of the foregoing, whether or not the soles are composed of leather, wood, or other materials, 35 per centum ad valorem.[1]

United States import duties (1952)

Par. No.	Description	Full rate	Reduced rate
1530 (d) (con.)	Forms or shapes suitable for conversion into footwear all the foregoing by whatever name known and to whatever use applied	30% ad val	13½% ad val. 6/30/57.
(e)	Footwear (including athletic or sporting boots and shoes), wholly or in chief value of leather, nspf:		
	Having molded soles laced to uppers	20% ad val	10% ad val.
	Huaraches	30% ad val	
	Made by the method or process known as welt, and valued per pair—		
	Under $2	20% ad val	18% ad val. 6/30/57.
	$2 or more but not over $7.20	20% ad val	30¢ per pair 6/30/57.
	Over $7.20	20% ad val	5% ad val. 6/30/57.
	Moccasins of the Indian handicraft type, having no line of demarcation between the soles and the uppers	20% ad val	10% ad val.
	Sewed or stitched by the method or process known as McKay:		
	Skating boots and shoes, attached to ice skates	30% ad val	12½% ad val.
	Boots and shoes for men, youths, or boys	30% ad val	20% ad val.
	Other boots and shoes	30% ad val	18% ad val. 6/30/57.
	Footwear other than boots and shoes	20% ad val	
	Slippers for housewear	20% ad val	10% ad val.
	Turn or turned:		
	Boots and shoes for misses or women	10% ad val	5% ad val.
	Other boots and shoes	10% ad val	
	Footwear other than boots and shoes	20% ad val	18% ad val. 6/30/57.
	If products of Cuba which are for boys, men, or youths		16% ad val.
	Other:		
	Boys', men's, or youths'	20% ad val	10% ad val.
	For other persons	20% ad val	
	5-11 inch		
Oxfords	Footwear (including athletic or sporting boots and shoes), the uppers of which are wholly or in chief value of animal hair, cotton, fiber, ramie, rayon or other synthetic textile, silk, wool, or substitutes.		

[Penned notation:]
Leather tongues:
5-11 oxfords ..... 20% ad val.
11 and up oxfords ..... 10% ad val.
All Hicuts ..... 10% ad val.
[Penned notation:] For canvas shoes see page 1066 in 1957 Custom Guide.

[1] Rates changed pursuant to reciprocal trade agreement to actual figures shown on attached photostats of United States import duties.

BRISTOL MANUFACTURING CORP.,
Bristol, R. I., May 1, 1958.

Hon. JOHN O. PASTORE,
Senate Office Building, Washington, D. C.

DEAR SENATOR PASTORE: It is most disturbing to me to learn that the Senate Finance Committee held up the Sadlak bill because Senators Gore and Anderson wanted it delayed for a public hearing. This action could hold up passage of the bill for perhaps a year, which would be very damaging and costly to American rubber-footwear manufacturers.

In order to refresh your memory, allow me to give you a brief history of this particular loophole so critical to us:

In 1933 rubber footwear was put under the American selling price for assessment of import duties. About 5 years ago an importer found a loophole in the tariff regulations through which he brought in rubber-soled fabric footwear and evaded the duty based on the American selling price. This device was the insertion of a piece of leather as a filler in the sole. Under the definition then in effect the shoe was classified as having a sole in chief value of leather instead of rubber. This loophole was closed by Public Law 479, which was enacted in 1954 and which redefined the word "sole" in the paragraph of the tariff laws covering rubber footwear.

Within a matter of months importers took advantage of another loophole in the loose description of rubber footwear in the tariff schedule. They placed pieces of leather in the upper portion of the shoe and the imports were held to have uppers in chief value of leather.

Legislation was introduced immediately by Congressman Forand, of Rhode Island, and Congressman Sadlak, of Connecticut, to redefine "uppers" and close this loophole. For almost 3 years this simple bill was held up by objections from various governmental agencies, particularly the State Department. To meet these objections many revisions were made. Finally, just at the time of the adjournment of Congress last fall, the legislation was given the approval of all interested governmental agencies and H. R. 9291 was cleared for action in the Ways and Means Committee. On April 3 this year H. R. 9291 was passed unanimously by the House and referred to the Senate Finance Committee.

As you know, this bill pertains in no way to raising the tariff nor does it touch upon reciprocal trade. It was drawn solely to eliminate the subterfuge practiced by foreign competition. We believe in fair competition but this subterfuge is entirely unfair and will result in great harm to our industry.

We recently received a letter from a foreign (Hong Kong) manufacturer, who offers to build a complete line of tennis footwear for us by which we could substitute our present manufactured production, then sell at 50 percent less than our prevailing prices, which would result in a very handsome profit to us; i. e. foreign competition are now approaching American manufacturers to make their entire line, suggesting that their manufacturing units be closed and using the buildings as warehouses. In our own instance, should this scheme be followed, it would result in unemployment for 800 people and an additional 400 people in Providence—all this in Rhode Island alone. Naturally our entire industry would suffer and literally thousands of people would be put out of work.

It has been said that this bill favors the large manufacturer. This is untrue. The Sadlak bill favors the small manufacturer as foreign competition hits most directly and most immediately at the smaller producers. Should relief be withheld the small plants would be hit hardest.

The spring-shoe show commences in New York this coming Sunday. Because of the Sadlak bill many of our big buyers are withholding placing their orders. I understand many foreign competitors are having large displays; certainly if they feel there is a delay on passage of this bill, it will be conducive to push for these large orders and no doubt they will take some of them. These are orders which should be on the books of American manufacturers.

Anything you can do to help in the passage of the Sadlak bill to eliminate this unfair situation would be a real victory to all American rubber-footwear manufacturers. We urge your continued support and assistance on this vital issue.

Yours very truly,

BRISTOL MANUFACTURING CORP.,
WILLIAM H. SMITH,
President-Treasurer.

RAPP'S SHOES,
Palo Alto, Calif., April 28, 1958.

Senator THOMAS H. KUCHEL,
Washington, D. C.

DEAR SENATOR: For some time we have been watching the imports to this country, and as I have always said, and will continue to say that we just cannot compete, when we have to pay the wage scale and they don't. How can you compete?

We are in the retail business, and no doubt the average person would say, "Why are you concerned?"

Simple; in time it will get back to us, if we don't keep our own employed.

In looking over the bill of Mr. Sadlak, it will be a big help; nevertheless in the shoe business there was a word left out that would make a very big difference, and that was the word "rubber," used either in the soles of shoes or the uppers.

They have imported millions of pairs of rubber beach sandals. That certainly has ruined a lot of fine companies in this country, plus the fact that a lot of people are out of work, and a whole lot more will be if nothing is done.

Charles S. Gubser has certainly not been asleep on the above, and if you think we are right, anything you can do will sure help all of us out.

Thanking you in advance,

Very truly yours,

LOU RAPP.

CONVERSE RUBBER CO.,
South San Francisco, Calif., April 28, 1958.

Senator WARREN G. MAGNUSON,
United States Senate, Washington, D. C.

DEAR SENATOR MAGNUSON: Foreign manufacturers have been shipping into this country rubber-soled canvas footwear and, by attaching a piece of leather of no functional value, they have been able to pay duty on the lower rated classification of leather shoes—a loophole not intended by the law.

To eliminate this subterfuge, the House recently passed as a Members' bill, with the concurrence of all executive departments concerned, the so-called Sadlak bill, H. R. 9291. This bill is now before the Senate Finance Committee.

Because this bill does not increase tariffs, but merely closes a loophole, we seek your assistance in obtaining early and favorable consideration of the bill by the Finance Committee and, of course, by the Senate itself.

We, together with approximately 20,000 employees in our industry, will be grateful for all that you can do on our behalf.

Sincerely yours,

CONVERSE RUBBER CO.,
BERNARD NOODLMAN,
Manager, Pacific Coast District.

CONVERSE RUBBER CO.,
Malden, Mass., April 24, 1958.

Senator JOHN F. KENNEDY,
United States Senate, Washington, D. C.

DEAR SENATOR KENNEDY: Foreign manufacturers have been shipping into this country rubber-soled canvas footwear and, by attaching a piece of leather of no functional value, they have been able to pay duty on the lower rated classification of leather shoes—a loophole not intended by the law.

To eliminate this subterfuge, the House recently passed as a Members' bill, with the concurrence of all executive departments concerned, the so-called Sadlak bill, H. R. 9291. This bill is now before the Senate Finance Committee.

Because this bill does not increase tariffs, but merely closes a loophole, we seek your assistance in obtaining early and favorable consideration of the bill by the Finance Committee and, of course, by the Senate itself.

We, together with approximately 20,000 employees in our industry, will be grateful for all that you can do on our behalf.

Sincerely yours,

CONVERSE RUBBER CO.,
STEPHEN A. STONE,
Treasurer.

(Whereupon, at 11:50 a. m., the committee adjourned.)

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