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SENATE

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## TEMPORARY SUSPENSION OF DUTY ON MATTRESS BLANKS OF RUBBER LATEX, AND OTHER MATTERS

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SEPTEMBER 15, 1977.—Ordered to be printed

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Mr. LONG, from the Committee on Finance,  
submitted the following

### REPORT

[To accompany H.R. 2849]

The Committee on Finance, to which was referred the bill (H.R. 2849) to suspend until July 1, 1978, the rate of duty on mattress blanks of rubber latex, having considered the same, reports favorably thereon with amendments to the text and an amendment to the title and recommends that the bill as amended do pass.

#### I. SUMMARY

The first section of H.R. 2849 would temporarily permit, through June 30, 1978, duty-free entry of mattress blanks of rubber latex which are now dutiable at 15 percent ad valorem.

Section 2 of H.R. 2849 would permit duty-free entry of competition bobsleds and luges which are now generally dutiable at 9 percent ad valorem.

Section 3 of the committee amendment, to the Internal Revenue Code of 1954 treats certain persons as not being "substantial contributors" under the private foundations self-dealing rules merely because of contributions made in lieu of payments required under leases before 1969.

#### II. REASONS FOR THE BILL

There are no domestic producers of rubber latex mattress blanks. Enactment of the first section of H.R. 2849 would reduce the cost of imported rubber latex mattress blanks to domestic mattress manu-

facturers. The duty is now about \$5.25 per unit on imports which vary in f.o.b. price from \$32 to \$38 per unit. This duty represents an unnecessary cost to domestic mattress manufacturers.

There are no domestic producers of bobsleds and luges of the kind used in international competition. Duty-free entry of bobsleds and luges as provided in section 2 of the bill would reduce the cost of these items to U.S. athletes and enhance the ability of U.S. athletes to participate in bobsled and luge competition.

The committee understands that Public Welfare Foundation, Inc., owns all of the stock of three corporations: The Gadsden Times, Inc.; The Tuscaloosa News, Inc.; and the Spartanburg Herald and Journal, Inc. These three wholly owned subsidiaries have, for a substantial period of time, leased all of the assets of three newspapers to operating companies. Apparently, after the Internal Revenue Service suggested that the original rentals specified in the lease agreement were unreasonably high, the operating companies decided to make charitable donations to the foundation in exchange for reduced rentals.

Since each of the operators contributed more than \$5,000 and more than 2 percent of the total contributions to the foundations as of October 31, 1969—the end of the fiscal year which includes October 9, 1969—each operator is considered to be a “substantial contributor” to the foundation, within the meaning of code section 4946(a)(1)(A). Therefore, the operators are “disqualified persons” and their leasing arrangements with the private foundation—through its subsidiaries—fall within the statutory definition of “self-dealing.”

The three newspaper operators are Newspaper Management-Production, Inc., Gadsden Times Publishing Corp., and Tuscaloosa Newspapers, Inc. The principal owners of the three operating companies are, respectively, Phil Buchheit, Frank Halderman, Sr., and James B. Boone, Jr. The newspapers operate in South Carolina and Alabama.

The committee has concluded that these amounts should not be treated as “contributions” for purposes of determining against whom the prohibitions on self-dealing apply.

### III. GENERAL EXPLANATION

#### A. MATTRESS BLANKS OF RUBBER LATEX

The first section of H.R. 2849 would amend subpart B of part 1 of the Appendix to the Tariff Schedules of the United States (TSUS) by adding a new item, 912.08, providing for duty-free treatment of imports of rubber latex mattress blanks from countries accorded non-discriminatory (MFN) tariff treatment entered, or withdrawn from warehouse, for consumption before July 1, 1978. Mattress blanks of latex rubber are now dutiable at 15 percent ad valorem under TSUS item 726.86 unless they are produced in a beneficiary developing country eligible for duty-free treatment under the Generalized System of Preferences.

This section of the bill applies the duty-free treatment beginning on the date of enactment and, upon request, applies it retroactively to articles entered after May 9, 1977. May 9 was the day on which the Subcommittee on Trade of the Committee on Ways and Means reported the bill to the full committee.

Mattress blanks of latex rubber are a mixture of synthetic latex and natural rubber. Mattress manufacturers sew a quilted cover on the mattress blanks to form a finished foam mattress. Approximately 15 percent of U.S. mattress consumption is foam mattresses. Foam mattresses are either polyurethane, latex, or polyurethane-latex. Polyurethane, which is domestically produced, dominates the foam mattress market with latex and polyurethane-latex taking up a small part of total foam mattress sales. Mattress blanks of rubber latex are generally much more expensive than mattress blanks made of polyurethane.

The Subcommittee on International Trade of the Committee on Finance held public hearings on H.R. 2849 on July 14, 1977. The committee received a report stating no objection to H.R. 2849 from the Department of Commerce and an information report from the U.S. International Trade Commission. The committee has heard no objections to H.R. 2849 from any source.

#### B. COMPETITION BOBSLEDS AND LUGES

Section 2 of H.R. 2849, which is a committee amendment containing the substance of H.R. 5146, 95th Congress, would amend subpart D of part 5 of schedule 7 of the TSUS by repealing item 734.97 and adding items 734.98 and 734.99. New TSUS item 734.98 would provide for duty-free treatment for imports from any country of bobsleds and luges of a kind used in international competition. New TSUS item 734.99 would continue present duty treatment on the remaining articles which are now classified under item 734.97. Competition bobsleds and luges are now dutiable at 9 percent ad valorem if imported from a country accorded nondiscriminatory (MNF) tariff treatment and at 45 percent ad valorem if imported from a non-MFN country. Competition bobsleds and luges produced in a beneficiary developing country are eligible for duty-free treatment under the Generalized System of Preferences. Section 2 of H.R. 2849 would apply duty-free treatment to competition bobsleds and luges beginning on the day of enactment of H.R. 2849.

There is no domestic production of competition bobsleds and luges. Imports are estimated at 10 to 20 units per year, and are mainly from Italy, Switzerland, and Austria. The end users, primarily amateur athletes, are the importers of the bobsleds and luges. Therefore, duty-free entry would be directly beneficial to the consumer.

The Subcommittee on International Trade of the Committee on Finance held public hearings on H.R. 5146 on July 14, 1977. The committee received a report favoring the enactment of H.R. 5146 from the Department of Commerce and an information report from the U.S. International Trade Commission. The committee has heard no objections to H.R. 5146.

#### C. SUBSTANTIAL CONTRIBUTIONS TO CERTAIN PRIVATE FOUNDATIONS

Under present law (sec. 4941 of the Internal Revenue Code of 1954), private foundations are generally prohibited from engaging in transactions with disqualified persons. The prohibited acts (referred to as acts of "self-dealing") include the "sale or exchange, or leasing, of property between a private foundation and a disqualified person". A "disqualified person" is defined to include anyone who is a "sub-

stantial contributor" to the foundation. A "substantial contributor" includes any person who has contributed more than \$5,000 to the foundation, if the total contributions from the person exceed 2 percent of the total contributions received by the foundation. A person who becomes a substantial contributor retains that status forever.

The committee amendment modifies the definition of "substantial contributor" by providing that, for purposes of determining who is a disqualified person with respect to a private foundation for purposes of applying the section 4941 "self-dealing" rules, contributions made before October 9, 1969, which were made on account of or in lieu of payments required under a lease in effect prior to that date and which were made by reason of a reduction in the rental payments required under the lease, are not to be treated as contributions to the foundation. In addition, if anyone is a "disqualified person" merely because of ownership of a corporation that made these "contributions," then that person would no longer be treated as a disqualified person.

As a result, the effect of this provision is to prevent the private foundation provisions from requiring the termination of the leases of the newspaper assets. Also, the bill would permit the sale of these newspaper assets to the corporations that are now operating the newspapers or to the owners of those corporations.

This amendment is prospective only, except for a technical amendment to the general rule that a person who has ever been a substantial contributor with respect to a foundation retains that status forever.

#### IV. COST OF CARRYING OUT THE BILL

In compliance with section 252(a) of the Legislative Reorganization Act of 1974, the committee estimates the effect on customs revenues of carrying out the first section of this bill will be a loss of customs revenue of not more than \$15,000 annually. The committee estimates the effect on customs revenues of carrying out section 2 of this bill will be a negligible loss of customs revenue. Section 3 would have no effect on revenues.

#### V. REGULATORY IMPACT OF THE BILL

In compliance with paragraph 5 of rule XXIX of the Standing Rules of the Senate, the committee states that the first section and section 2 of the bill will not regulate any individuals or businesses.

The committee estimates that one private foundation, 6 corporations, and fewer than 10 individuals will be affected by section 3 of this bill. The section, in effect, forestalls present law from requiring changes in economic circumstances by the end of 1979 if the parties involved have concluded that such changes are not desirable. Section 3 of the bill is not expected to have any impact on personal privacy and is not expected to affect existing requirements for keeping records and filing reports.

#### VI. VOTE OF COMMITTEE

In compliance with section 133 of the Legislative Reorganization Act of 1946, the committee states that the bill, as amended, was ordered favorably reported by voice vote.

## VII. CHANGES IN EXISTING LAW

In compliance with paragraph 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown below (existing law proposed to be omitted is enclosed in black brackets, new matter is in *italics*, existing law in which no change is proposed is shown in roman):

## TARIFF SCHEDULES OF THE UNITED STATES

## SCHEDULE 7.—SPECIFIED PRODUCTS: MISCELLANEOUS AND NONENUMERATED PRODUCTS

Item	Articles	Rate of duty	
		1	2
PART 5.—ARMS AND AMMUNITION; FISHING TACKLE; WHEEL GOODS; SPORTING GOODS, GAMES AND TOYS			
Subpart D.—Games and Sporting Goods			
734.97	Other	95% ad val	45% ad val.]
734.98	<i>Bobsleds and luges of a kind used in international competition</i>	<i>Free</i>	<i>Free</i>
734.99	Other	9% ad val.	45% ad val.

## APPENDIX TO THE TARIFF SCHEDULES

Item	Articles	Rates of duty		Effective period
		1	2	
PART 1.—TEMPORARY LEGISLATION				
Subpart B.—Temporary Provisions Amending the Tariff Schedules				
912.07	Externally-powered electric elbow prosthetic devices for juvenile amputees (provided for in item 709.57, part 2B, schedule 7), and parts thereof, if imported solely for charitable therapeutic use, or distribution free of charge, by any public or private nonprofit institution established for educational, scientific, or therapeutic purposes.	Free	No change	On or before 6/30/78.
912.08	<i>Mattress blanks of rubber latex (provided for in item 727.86, part 4A, schedule 7)</i>	<i>Free</i>	<i>No change</i>	<i>On or before 6/30/78.</i>

## INTERNAL REVENUE CODE OF 1954

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## Subtitle D.—Miscellaneous Excise Taxes

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## CHAPTER 42.—PRIVATE FOUNDATIONS

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## SEC. 4946. DEFINITIONS AND SPECIAL RULES.

(a) DISQUALIFIED PERSON.—

(1) IN GENERAL.—For purposes of this chapter, the term “disqualified person” means, with respect to a private foundation, a person who is—

- (A) a substantial contributor to the foundation,
- (B) a foundation manager (within the meaning of subsection (b)(1)),
- (C) an owner of more than 20 percent of—
  - (i) the total combined voting power of a corporation,
  - (ii) the profits interest of a partnership, or
  - (iii) the beneficial interest of a trust or unincorporated enterprise,

which is a substantial contributor to the foundation,

(D) a member of the family (as defined in subsection (d)) of any individual described in subparagraph (A), (B), or (C),

(E) a corporation of which persons described in subparagraph (A), (B), (C), or (D) own more than 35 percent of the total combined voting power,

(F) a partnership in which persons described in subparagraph (A), (B), (C), or (D) own more than 35 percent of the profits interest,

(G) a trust or estate in which persons described in subparagraph (A), (B), (C), or (D) hold more than 35 percent of the beneficial interest,

(H) only for purposes of section 4943, a private foundation—

(i) which is effectively controlled (directly or indirectly) by the same person or persons who control the private foundation in question, or

(ii) substantially all of the contributions to which were made (directly or indirectly) by the same person or persons described in subparagraph (A), (B), or (C), or members of their families (within the meaning of subsection (d)), who made (directly or indirectly) substantially all of the contributions to the private foundation in question, and

(I) only for purposes of section 4941, a government official (as defined in subsection (c)).

[(2) SUBSTANTIAL CONTRIBUTORS.—For purposes of paragraph (1), the term “substantial contributor” means a person who is described in section 507(d)(2).]

(2) *Substantial contributor.*—For purposes of paragraph (1), the term “substantial contributor” means a person who is described in section 507(d)(2), except that for purposes of section 4941 (relating to taxes on self-dealing), contributions made before October 9, 1969, which were made on account of or in lieu of payments required under a lease in effect prior to such date and which were coincident with or by reason of the reduction in the required payments under such lease shall not be taken into account for purposes of applying section 507(d)(2).

(3) STOCKHOLDINGS.—For purposes of paragraphs (1)(C)(i) and (1)(E), there shall be taken into account indirect stockholdings which would be taken into account under section 267(c), except that, for purposes of this paragraph, section 267(c)(4) shall be treated as providing that the members of the family of an individual are the members within the meaning of subsection (d).

(4) PARTNERSHIPS; TRUSTS.—For purposes of paragraphs (1)(C)(ii) and (iii), (1)(F), and (1)(G), the ownership of profits or beneficial interests shall be determined in accordance with the rules for constructive ownership of stock provided in section 267(c) (other than paragraph (3) thereof), except that section 267(c)(4) shall be treated as providing that the members of the family of an individual are the members within the meaning of subsection (d).

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