

TEMPORARY SUSPENSION OF DUTY ON CERTAIN
FORMS OF ZINC

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

REPORT

[To accompany H.R. 6191]

The Committee on Finance, to which was referred the bill (H.R. 6191) to amend the Tariff Schedules of the United States to provide that certain forms of zinc be admitted free of duty, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

I. SUMMARY

House bill.—The House bill would suspend until June 30, 1977, the duty on zinc-bearing ores and certain other zinc-bearing materials.

Committee bill.—One committee amendment would extend the duty suspension to cover zinc waste and scrap.

The second committee amendment does not relate to the subject matter of the House bill. It deals with certain disaster losses where taxpayers were allowed casualty loss deductions and subsequently were compensated for those losses based on claims of tort. This provision specifies that in these circumstances in lieu of taking the compensation into income immediately, the taxpayers may reduce the basis of their damaged property (or replacement property) by the amount of compensation they received up to a maximum of \$5,000 of tax benefits. Excess benefits over this level are to be included in the income of a taxpayer over a five-year period.

II. GENERAL STATEMENT

A. SUSPENSION OF DUTY ON CERTAIN FORMS OF ZINC

In the period 1969-1973, the U.S. demand for slab zinc metal has increased from 1.4 million tons in 1969 to 1.5 million tons in 1973.

During this same period, U.S. production of slab zinc metal has declined from 1.1 million tons in 1969 to 688,000 tons in 1973. The decline in U.S. production was caused by the closures of several smelters in the United States. These closures resulted from a number of inter-related factors such as high production costs, plant and technology obsolescence, environmental control regulations and a lack of zinc ores and concentrates. Within the last year, certain U.S. firms have announced their intentions to construct large technologically advanced zinc smelters in the United States. These plants would smelt both domestic and imported zinc ores and concentrates.

Historically, imported zinc ores and concentrates have been used to a significant degree in the production of slab zinc in the United States. In 1969, about 54 percent of U.S. production of slab zinc was smelted from foreign ores and concentrates compared to only 29 percent in 1973. One of the primary reasons for this decline in the imports of zinc ores and concentrates in relationship to the needs of the existing and proposed U.S. zinc smelters is the U.S. tariff on zinc ores and concentrates and other zinc-bearing materials. Zinc ores and concentrates are imported duty free into other major zinc metal-producing countries. Thus, the U.S. tariff places both the existing and proposed U.S. smelters at a competitive disadvantage in purchasing zinc ores and concentrates on the world market.

H.R. 6191 would end this tariff related competitive disadvantage of domestic smelters for the temporary period provided in the bill. As amended by the committee, the bill would amend the Appendix of the Tariff Schedules of the United States (TSUS) to suspend until the close of June 30, 1977, under rate column numbered 1 (applicable to imports from countries accorded most-favored-nation treatment) the duty on zinc-bearing ores provided for in TSUS item 602.20, zinc dross and zinc skimmings provided for in item 603.30, the zinc content of other metal-bearing materials provided for in items 603.49, 603.50, 603.54, and 603.55, and zinc waste and scrap provided for in item 626.10. The committee felt that the purposes of the bill would best be served by including zinc waste and scrap along with the other zinc-bearing materials included in the House bill. The rate column numbered 1 duty on the zinc content of zinc-bearing ores and other zinc-bearing materials is currently 0.67¢ per pound and on zinc dross and skimmings is 0.75¢ per pound. On the basis of 1972 import data, the *ad valorem* equivalent of these duties ranges from 6 to 20 percent, depending on the zinc content and, in turn, the price of the zinc-bearing material. The column numbered 2 duties (applicable to imports from Communist countries, except Poland and Yugoslavia) would remain unchanged. These duties are 1.67¢ per pound on zinc-bearing ores and other zinc-bearing materials and 1.5¢ per pound on zinc dross and skimmings.

The committee believes that enactment of H.R. 6191 will assist in maintaining and improving the position of U.S. smelters vis-a-vis foreign smelters, thereby reversing the increasing dependence of this country on imports of zinc metal as distinguished from ores and concentrates. According to statistics provided by the Department of the Interior, imports of zinc in ore and concentrate declined 88,000 tons, or 26 percent, in 1972 from the previous year, while imports of zinc

metal increased 203,000 tons, or 64 percent. Moreover, the committee is further advised that had not large quantities of zinc been released from the Government stockpiles in that year, imports of metal probably would have exceeded the previous year's imports by more than 140 percent.

The committee is assured that suspension of the duty for the temporary period provided in this bill will not adversely affect domestic zinc mines. No unfavorable reports or comments were received by the committee on the bill.

B. Treatment of Certain Disaster Losses

Under present law (sec. 165), taxpayers generally are allowed to deduct their losses sustained during the year and not compensated for by insurance or other means. Individuals generally are allowed to deduct their losses of property (not connected with their business) only to the extent the amount of the loss exceeds \$100; losses attributable to an individual's business are fully deductible. In the case of any loss attributable to a major disaster which occurred in an area authorized by the President to receive disaster relief a special rule allows the loss, at the election of the taxpayer, to be deducted on the return for the year immediately preceding the year of the disaster (that is, the return generally filed in the year of the disaster). If the disaster loss would have generated a refund for the prior year and the taxpayer has already filed his return for that year he could then file an amended return which would allow him to receive the refund in the year of the disaster. This provision was designed to provide immediate tax relief in the case of these major disasters.

Cases have come to the attention of the committee, however, where taxpayers who have claimed refunds arising by reason of deductible disaster losses, but then have been reimbursed for these losses in later years. In these cases the reimbursement was not anticipated at the time of claiming the refund. A problem arises in these cases because tax deductions may not be taken to the extent losses are compensated for by insurance or other means. In these cases, the taxpayer is generally required to include the reimbursement in income for the year in which the reimbursement is received. The procedure is a substitute for re-computing the tax for the year in which the deduction was originally taken.

In recent years, the tax treatment of disaster losses resulting from floods has produced severe hardships on the part of certain people affected by them. In such cases the taxpayers often were either not covered by insurance or their losses were in excess of their coverage and they claimed their disaster losses, with the result that they usually received tax refunds. Subsequently, a number of these taxpayers were compensated for their losses based upon claims of tort. In cases of this type, where compensation for losses occurs shortly after the disaster but in a different year from the one in which the deduction was taken, the taxpayers often are still in a severe hardship situation. Moreover, in the cases called to the committee's attention many of the taxpayers had spent both the tax refunds and the reimbursements before they were aware of the tax consequences. As a result, the committee believes

it is appropriate not to require the immediate inclusion of the compensation in their income.

The committee provision specifies that the taxpayer may elect to exclude from his income the amount of any compensation which he properly did not take into account in computing the disaster loss deduction (that is, the payment of the compensation was unexpected at the close of the taxable year in which the disaster occurred or at the time of making the election to claim the deduction in the year immediately preceding the year of the disaster). However, if the taxpayer makes this election, he must enter into an agreement with the Treasury Department to reduce the basis of the damaged or replacement property by the compensation he received. This basis adjustment with respect to the damaged or replacement property is to be made to the extent of compensation received, first by reducing the basis of any damaged or replacement property which is depreciable, then by reducing the basis of any trade or business property which was damaged or destroyed by the disaster (other than depreciable property), and finally by reducing the basis of any other such affected property.¹

The committee believes, however, that under this deferral procedure, a taxpayer should not be permitted to exclude any amount of compensation which would result in an "excessive tax benefit." In the case of an individual taxpayer whose adjusted gross income does not exceed \$15,000 (\$7,500 in the case of a married individual filing a separate return), the term "excessive tax benefit" means a tax benefit of more than \$5,000. Where the individual taxpayer's adjusted gross income exceeds \$15,000 the term "excessive tax benefit" means a tax benefit exceeding an amount which bears the same ratio to \$5,000 as \$15,000 bears to such adjusted gross income. Thus, if an individual taxpayer's adjusted gross income for the year of the election is \$15,000, he may elect this deferral treatment for the first \$5,000 of tax benefit and must make the corresponding basis adjustments to reflect compensation received which results in up to (but not in excess of) \$5,000 of tax benefits. However, if an individual taxpayer's adjusted gross income for the year of the election is \$20,000, he may elect this deferral treatment for only the first \$3,750 of tax benefit.

The committee provision applies a similar rule in the case of a taxpayer other than an individual. However, where the taxpayer is other than an individual, the excessive tax benefits are determined by using taxable income rather than adjusted gross income.

Any amount of compensation resulting in an excessive tax benefit must be included in the income of the taxpayer. The committee believes however, that since these taxpayers may still be suffering from hardships, it would not be appropriate to require the inclusion of this excess compensation in income in one year. Consequently, the committee has provided that the excess compensation is to be included in the taxpayer's income in equal installments over a 5-year period, commencing with the year in which it was received.

¹ In the case of replacement property, the basis adjustment is to apply only to property which is like the kind of property originally destroyed and only if the replacement property is acquired within 3 years of the disaster. If replacement property is not acquired within 3 years of the disaster (apart from the adjustments made to any damaged property), then no other tax consequences are to arise with respect to this part of the tax benefit.

In order for the taxpayer to elect the benefits of this provision, he must originally have been allowed to claim a loss attributable to a disaster occurring during calendar year 1972, although he need not have made the election to take the loss in the year immediately preceding the year in which the disaster occurred. In addition, he must have received the compensation (which was not taken into account when computing the amount of the loss deduction attributable to the disaster) in settlement of his claim against another person for that other person's liability in tort for the damage or destruction of his property in connection with the disaster.

This provision applies to compensation received in calendar year 1972 or later if the taxpayer deducted the disaster loss on his return either for the tax year immediately preceding the tax year in which the disaster occurred or for a later year.

The decrease in tax liability resulting from this provision would be small for each of the years 1972-1974.

III. COSTS OF CARRYING OUT THE BILL AND EFFECT ON THE REVENUES OF THE BILL

In compliance with section 252(a) of the Legislative Reorganization Act of 1970, the following statement is made relative to the costs to be incurred in carrying out this bill and the effect on the revenues of the bill. The committee estimates that the revenue loss resulting from the duty suspension on zinc-bearing ores and certain zinc-bearing materials in the first full year would be approximately \$3.1 million. The committee estimates that the decrease in tax liability resulting from the provision for special treatment of certain disaster losses would be small for each of the years 1972 through 1974.

IV. VOTE OF COMMITTEE ON REPORTING THE BILL

In compliance with section 133 of the Legislative Reorganization Act, as amended, the following statement is made relative to the vote of the committee on reporting the bill. This bill was ordered favorably reported by the committee without a roll call vote and without objection.

V. CHANGES IN EXISTING LAW

In the opinion of the committee, it is necessary, in order to expedite the business of the Senate, to dispense with the requirements of subsection 4 of rule XXIX of the Standing Rules of the Senate (relating to the showing of changes, in existing law made by the bill, as reported).

