

DUTY-FREE ENTRY OF TELESCOPE AND ASSOCIATED
ARTICLES FOR CANADA-FRANCE-HAWAII TELESCOPE
PROJECT

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

REPORT

[To accompany H.R. 11796]

The Committee on Finance, to which was referred the bill (H.R. 11796) to provide for the duty-free entry of a 3.60 meter telescope and associated articles for the use of the Canada-France-Hawaii Telescope Project at Mauna Kea, Hawaii, 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 permit the duty free entry of a 3.60 meter telescope and associated articles for the use of the Canada-France-Hawaii telescope project at Mauna Kea, Hawaii.

Committee bill.—The committee adopted two amendments. One committee amendment would suspend until June 30, 1977, the duty on zinc-bearing ores and certain other zinc bearing materials, including zinc waste and scrap. The second committee amendment would amend the gift exemption provisions of the Tariff Schedules to prohibit non-residents from importing alcoholic beverages and cigarettes duty free into the United States for gift purposes and would bring U.S. customs regulations for residents and nonresident into conformity with the treatment presently accorded U.S. travelers to Canada.

II. GENERAL STATEMENT

A. DUTY-FREE ENTRY OF A TELESCOPE

The purpose of H.R. 11796, as passed by the House, is to permit the duty-free entry of a 3.60-meter telescope, and the laboratories, equip-

ment, and installations necessary for its operation, in the Canada-France-Hawaii telescope project at Mauna Kea, Hawaii.

The Canada-France-Hawaii telescope project is a nonprofit international cooperative undertaking by the Centre National de la Recherche Scientifique of France, the National Research Council of Canada, and the University of Hawaii. The memorandum of understanding among these three agencies provides for the installation and development of a major astronomical observatory and facility at Mauna Kea, Hawaii.

According to the National Science Foundation, Mauna Kea, Hawaii, "is one of the best optical telescope sites in the United States for sky coverage, atmospheric clarity, and low level of interference from human activities." The National Aeronautics and Space Administration informed the committee that Mauna Kea "may be one of the best (observing sites) in the world." In addition to providing astronomers in France and Canada with a unique site for an optical telescope, the project will also benefit the U.S. scientific community, according to both the National Science Foundation and the National Aeronautics and Space Administration.

Specifically, the memorandum of understanding provides that the total cost of the construction of the project, including the telescope, its basic instrumentation, its dome, and associated buildings (approximately \$20 million), is to be borne equally by the scientific agencies of France and Canada. The initial contribution of the University of Hawaii will consist of a long-term lease of the site and provision of certain support services and facilities.

The memorandum of understanding also provides that once construction has been completed, operating costs will be shared as follows: 42.5 percent each for the Centre National de la Recherche Scientifique of France and the National Research Council of Canada, and 15 percent for the University of Hawaii. Likewise, interests in the nonprofit corporation established under the laws of the State of Hawaii to operate the project are assigned to the three cooperating agencies on the same proportional basis. A similar distribution of observation time on the telescope is provided.

The predominant interests and contributions of the two scientific agencies of France and Canada in the project are also recognized by the memorandum of understanding in the special provisions regarding the maximum use of French and Canadian industrial capacity in the design and construction of the telescope, its basic instrumentation, its dome, and associated buildings, and in the production of high-technology components. Related to this aspect of the project is H.R. 11796 which carries out the commitment of the University of Hawaii to ask "governmental authorities to grant, in accordance with applicable laws, relief from taxes, including but not restricted to, customs duties, excise and sales taxes on all goods imported specifically for use in the realization of the project and its continuing operation."

H.R. 11796, as reported by the committee, will provide for the duty-free entry of imported articles required by the Canada-France-Hawaii telescope project. The duty-free entry is limited to the optical telescope, and the laboratories, equipment, and installation necessary for its operation, as provided in the memorandum of understanding, signed at Ottawa on October 25, 1973, among the three agencies.

The bill provides that duty-free entry can only be accorded articles if certified by the executive director of the project (or associate director) as being required for the completion of the project in accordance with the memorandum of understanding.

In addition, the bill provides that the duty-free treatment shall not apply after June 30, 1980. As intended by the bill as originally introduced, H.R. 11796, as reported, provides that entries of articles made before the date of enactment may be accorded duty-free treatment upon appropriate request being filed with the customs officer concerned.

Public Law 89-651 implements the so-called Florence Agreement providing for the duty-free exchange of cultural, scientific, and educational material. Under that law, Congress provided that scientific instruments imported for use by nonprofit institutions may be afforded duty-free entry if it is determined that no instrument of equivalent scientific value is available from domestic sources. By establishing public policy and procedures regarding duty-free entry of scientific instruments for use by nonprofit institutions, Public Law 89-651 made it unnecessary to consider separate relief bills for nonprofit institutions seeking to import free of duty scientific equipment not available in the United States. In light of this public law, the committee has considered why the provision of Public Law 89-651 should not be applied to the Canada-France-Hawaii telescope project.

The committee has determined that the favorable consideration of H.R. 11796, as reported, is not a departure from public policy of Public Law 89-651 due to the unique characteristics of the joint international undertaking involving scientific agencies in Canada and France and the cooperation, including the provision of the site for the observatory, of the University of Hawaii. In addition, the size of the project and its development over an extended period of time make it most difficult, if not impossible, to use the detailed petitioning and approval procedures for the duty-free treatment of scientific instruments established by the Department of Commerce and the U.S. Customs Service under Public Law 89-651.

The committee has received no objections to the enactment of H.R. 11796 from any interested party. Favorable reports were received on the bill from interested executive branch agencies, and the committee has amended the bill at the suggestions of the Departments of Treasury and Commerce to more closely conform the provisions of the bill to the intent of Public Law 89-651.

Preliminary estimates furnished the committee relative to articles to be entered under the provisions of H.R. 11796 indicate an estimated value of \$7.6 million. A listing of products which will be imported into the United States for use in the telescope project is included below, immediately following the memorandum of understanding.

In view of the likelihood that import duties existing under present law would add unnecessary costs and complications to the project, the completion of which would be of real benefit to the American scientific community, and in the interest of the international practice of facilitating international scientific endeavors, the committee has favorably reported H.R. 11796, as amended.

B. SUSPENSION OF DUTY ON CERTAIN FORMS OF ZINC

In the period 1969-1973, the U.S. demand for slab zinc metal 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 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 interrelated 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.

The committee amendment would end this tariff related competitive disadvantage of domestic smelters for the temporary period provided in the bill. The Committee amendment 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 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 its amendment 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 in-

creased 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.

C. DUTY EXEMPTION FOR ALCOHOLIC BEVERAGES AND CIGARETTES BROUGHT INTO THE UNITED STATES

The purpose of the committee amendment is to equalize the personal liquor and cigarette duty exemption for returning residents and nonresidents. The amendment would amend Section 812.25 of the Tariff Schedules of the United States (relating to nonresident exemptions) to eliminate alcoholic beverages and cigarettes from the category of articles a nonresident can import duty-free under his \$100 exemption for bona fide gifts. The items he or she could bring in free of duty for his or her personal consumption would not be affected. The amendment would also change Section 813.30 of the Tariff Schedules to limit the number of cigarettes that could accompany a returning American resident to 200 (one carton). The amendment would also cut this number of duty free cigarettes a nonresident could enter for his own use from 300 to 200. Item 813.10 of the Tariff Schedules would be amended to provide that citizens of the United States who are residents of American Samoa, Guam, or the Virgin Islands, shall be treated as residents for the purposes of the applying these items of The Tariff Schedules.

The changes proposed by the Committee amendment would in effect limit all travellers entering the United States to the duty free purchase of one bottle of liquor and one carton of cigarettes. (The only exception would be in the case of residents returning from the Virgin Islands, Guam, or American Samoa, whose one gallon duty free exemption would be permitted to continue.)

When Congress amended Sections 813.30 and 813.31 of the Tariff Schedules in 1965, to reduce the personal exemption for alcoholic beverages allowed returning U.S. residents from one gallon to one quart, it neglected to make a corresponding adjustment in the exemption allowed nonresident visitors. Under present law, Section 812.25, a nonresident who intends to remain in the United States for more than 72 hours and has not made a previous visit in the preceding six months, has a duty-free personal exemption of one quart of alcoholic beverages for his personal consumption, and five fifths to be disposed by him as bona fide gifts, as long as the total value of the beverages stays within the overall \$100 personal exemption he is allowed. Alternatively, he can bring in up to \$100 in cigarettes, duty free, to be disposed of as gifts, or a combination of liquor and cigarettes not to exceed \$100.

Until now, this discrepancy has not threatened to complicate customs inspection at points of entry. Most non-residents making purchases at duty-free shops at foreign airports, prior to coming to the U.S., have not taken advantage of the five fifths liquor exemption or

the \$100 cigarette exemption, either because they are unaware of it or because of the difficulty in carrying this much liquor or cigarettes on an air journey with them. Nonresidents arriving by automobile must come from either Canada or Mexico, both countries in which liquor and cigarette prices for the popular brands are as high or higher than in the United States. Since neither country has had duty-free shops on their side of the border, it did not pay for nonresidents to purchase these products before entering the United States by auto.

For these reasons, the Customs Service has not felt it necessary to physically distinguish residents from nonresidents in making inspections for these goods. Oral declarations have been accepted, and no effort has had to be made to police the requirement that liquor and tobacco imported free of duty by visiting nonresidents must be bona-fide gifts.

This situation is about to change radically. The government of Canada has recently authorized the establishment of duty-free shops at all highway points on the U.S.-Canadian border, and such stores will begin operating as early as next summer.

In Fiscal 1972, almost five million persons and over two million vehicles entered the United States at the ten most heavily-used border points. This traffic was a 70% increase in volume over FY 1960. The total number of entries from all Canadian points last year was in excess of 65 million.

Under the current provisions of our tariff law, once such stores begin operating, every Canadian citizen or other foreign resident over 21 years of age will have the opportunity to purchase at these stores up to six bottles of liquor (one quart for personal use, five fifths for "gifts") and an unlimited number of cigarettes on their way into the U.S. These purchases can be made free to U.S. duty and Canadian excise tax, and thus at approximately 50% of the U.S. prices.

Once such purchases are brought into the U.S., there is nothing to prevent them from being surreptitiously sold or bartered for merchandise at U.S. stores, in violation of both the tariff law and revenue laws of the several states. For example at Champlain, New York, the most frequently used entry point from Quebec, where 1.4 million vehicles and 3.4 million people entered in FY 1972, many Canadian citizens regularly cross the border once a week to do their grocery shopping in nearby Plattsburgh, New York. A Canadian couple bound for Plattsburgh could, under the present exemption, purchase twelve bottles of scotch at the Quebec duty-free stores for approximately \$42.00. Those same bottles retail in New York State for \$84.00, a considerable profit upon resale or barter. The temptation to abuse the "bona-fide gifts" requirement would be strong, especially since no effort is now made to enforce compliance with this requirement except through brief oral declaration.

No unfavorable comments have been received by the committee on this amendment.

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 provisions of this bill dealing with the duty free entry of the telescope will result in a loss of revenue of no more than \$1.3 million. 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 no revenue loss would arise as a result of proposed changes in the personal exemption for gifts of alcoholic beverages and cigarettes.

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 rollcall vote and without objection.

V. CHANGES IN EXISTING LAW

In the opinion of the subcommittee 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).

