

107TH CONGRESS }
1st Session }

COMMITTEE PRINT

{ WMCP:
107-3 }

COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

WRITTEN COMMENTS

ON

**TEMPORARILY SUSPENDING THE
DUTY ON CERTAIN STEAM OR
OTHER VAPOR GENERATING BOIL-
ERS USED IN NUCLEAR FACILITIES**



MAY 14, 2001

Printed for the use of the Committee on Ways and Means

U.S. GOVERNMENT PRINTING OFFICE

73-536 DTP

WASHINGTON : 2001

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ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

FOR IMMEDIATE RELEASE

CONTACT: (202) 225-1721

May 4, 2001

No. FC-7

Thomas Announces Request for Written Comments on Temporarily Suspending the Duty on Certain Steam or Other Vapor Generating Boilers Used in Nuclear Facilities

Congressman Bill Thomas (R-CA), Chairman, Committee on Ways and Means, today announced that the Committee is requesting written public comments for the record from all parties with an interest in the possible amendment of the HTSUS by altering subheading 9902.84.02 (permanent listing at 8402.11.00), Watertube boilers with a steam production exceeding 45 t per hour, for use in nuclear facilities, to become temporarily duty-free. The Committee is not asking for public comment on other duty suspensions at this time.

BACKGROUND:

Energy costs have risen to alarming levels resulting in hardship and blackouts in parts of the country. Perhaps hardest hit have been people and businesses in California, who are looking for ways to increase immediately the capacity to generate electricity. Suspending the duty on boilers used in nuclear power plants will directly help the operators of nuclear power plants and increase their efficiency and generating capacity. In particular, nuclear plants that provide electricity to California are intended to benefit from the proposal, as well as other states purchasing boilers. The provision could be included at a later date in "The Electricity Emergency Act of 2001," introduced by Rep. Joe Barton (R-TX), for the purpose of providing relief to electricity users this year. The current rate of 4.9 percent was enacted in last year's Public Law 106-476, "Tariff Suspension and Trade Act of 2000." Last year's duty reduction of 4.9 percent is due to expire on December 31, 2003, at which time the rate will return to 5.2 percent. The language follows:

(a) IN GENERAL.—Heading 9902.84.02 of the Harmonized Tariff Schedule of the United States is amended—

- (1) by striking "4.9%" and inserting "Free"; and
- (2) by striking "12/31/2003" and inserting "12/31/2006".

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Any person or organization wishing to submit a written statement for the printed record should submit six (6) single-spaced copies of their statement, along with an IBM compatible 3.5-inch diskette in WordPerfect or MS Word format, with their

name, address, and comments date noted on label, by the close of business, Monday, May 14, 2001, to Allison Giles, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515.

FORMATTING REQUIREMENTS:

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All statements and any accompanying exhibits for printing must be submitted on an IBM compatible 3.5-inch diskette in WordPerfect or MS Word format, typed in single space and may not exceed a total of 10 pages including attachments. Witnesses are advised that the Committee will rely on electronic submissions for printing the official hearing record.

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. A witness appearing at a public hearing, or submitting a statement for the record of a public hearing, or submitting written comments in response to a published request for comments by the Committee, must include on his statement or submission a list of all clients, persons, or organizations on whose behalf the witness appears.

4. A supplemental sheet must accompany each statement listing the name, company, address, telephone and fax numbers where the witness or the designated representative may be reached. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press, and the public during the course of a public hearing may be submitted in other forms.

Note: All Committee advisories and news releases are available on the World Wide Web at http://www.house.gov/ways_means/.

McDERMOTT INTERNATIONAL INCORPORATED
ARLINGTON, VIRGINIA 22209
May 14, 2001

Allison Giles
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Re: Request for comments on temporary suspension of duty on nuclear facility boilers

Subheading 9902.84.02/Permanent subheading 8402.11.00

Dear Ms. Giles:

McDermott International is strongly opposed to the proposed temporary suspension of tariffs on certain steam or other vapor generating boilers used in nuclear facilities as referenced in the above subheadings. Such action would appear to be contrary to the guidelines for tariff reductions which are established within the committee.

McDermott is a leading energy services and manufacturing company providing engineering, procurement, and manufacturing of equipment and project management for customers involved in the production of energy and in other industries. Babcock & Wilcox is a subsidiary of McDermott that manufactures power generation systems, including steam or other vapor generating boilers used in nuclear facilities. McDermott's North American facilities, inclusive of those of Babcock & Wilcox are located in Alliance, Ohio; Barberton, Ohio; Cambridge, Ontario, Canada; Ebensburg,

Pennsylvania; Harbour Island, Texas; Lancaster, Ohio; Melville, Saskatchewan, Canada; Morgan City, Louisiana; Mt. Vernon, Indiana; West Palm Beach, Florida; and West Point, Mississippi.

Suspension of the 4.9% duty to 2003 and the 5.2% duty from January 1, 2004 through the end of 2006 on certain steam or other vapor generating boilers used in nuclear facilities would result in substantial loss of revenue to the U.S. Treasury. Enclosure 1 is an excerpt from the U.S. International Trade Commission report last year to the House Ways and Means Committee. The potential amount of customs duty loss stated in this report for the period 2000–2005 exceeds \$30 million. This is far in excess of the revenue neutral criteria utilized by the Committee in judging the merits of a tariff suspension.

To further support the ITC Report, in calendar year 2000, dutiable imports into the U.S. were \$96,208,070. At the applied rate of 5.2%, revenue to the U.S. Treasury was \$5,002,819. This would have been lost had the duty suspension been in effect. Again, this amount cannot be considered revenue neutral. Through February 2001, there has been a further dutiable import from Italy amounting to \$23,415,000. At the applied duty rate of 4.9% in effect in 2001 this translates to a duty of \$1,147,000. This also would be lost if the duty suspension being considered in the Ways and Means Committee was enacted into law, and the duty loss in 2001 for this import alone exceeds the revenue neutral criteria.

Enclosure 2 details dutiable and potentially dutiable imports into the U.S. of vapor generating boilers used in nuclear facilities that are expected to be imported into the U.S. during the 2001–2005 timeframe. Per the enclosure, a number of these projects have already been awarded to overseas manufacturers. Excluding the Italian import earlier this year, there are already-contracted imports on nuclear boiler contracts for six units that are expected to enter the U.S. between 2001 and 2005. They aggregate \$256 million in imports with a duty totaling \$12.7 million. In addition, and also noted on Enclosure 2, are as-yet-unawarded but potentially dutiable imports of \$400 million which are expected to enter into the U.S. by 2005. Total duty on these is expected to be an additional \$20.7 million. This revenue to the U.S. Treasury of \$33.4 million would be lost if the duty suspension being considered by the House Ways and Means Committee is enacted.

Nuclear boiler contracts are often awarded on a supply, remove and install basis. The company awards the overall contract and then contracts with a nuclear boiler manufacturer for the supply of the equipment. The contract price for the overall contract, including removal and installation, is often public knowledge. However, the price just for the equipment is often not made public. But, there are only a few major models of nuclear boilers in the U.S. and by knowing the pricing of nuclear boilers at another plant with the same basic model of boilers, one can closely approximate the pricing of nuclear boilers at a plant where the pricing of the boilers is not publicly known. We have used our extensive knowledge of nuclear boiler models at specific plants to complete the pricing shown on Enclosure 2.

A second criteria of the House Ways and Means Committee in reviewing possible tariff suspensions deals with U.S. production. Babcock & Wilcox maintains the capability to manufacture steam or other vapor generating boilers for use in nuclear facilities at our plants in Cambridge, Ontario, Canada; Mt. Vernon, Indiana and Barberton, Ohio. We have performed significant nuclear boiler manufacturing work in our U.S. facilities (component fabrication, component installation, heavy assembly, final inspection and testing). There are a number of upcoming nuclear plants requiring replacement nuclear boilers, for which the U.S. facilities are the only ones capable of performing the work. This is principally a size issue. We conduct virtually all of our research and development in the United States. Our North American manufacturing requires significant procurement of U.S. sourced materials and services—14 suppliers in 12 states. We also undertake extensive manufacturing of boilers for non-nuclear use in the United States. Our ability to manufacture boilers for nuclear use in the United States will depend on how future orders develop and the duty of HTSUS Subheading 8402.11 remaining at current levels only through 2003.

A temporary duty suspension would have an adverse economic impact on U.S. suppliers to Babcock & Wilcox. Over the past 3 years, Babcock & Wilcox's operations in Cambridge, Ontario have issued purchase orders to U.S. suppliers exceeding \$8 million. These purchase orders were strictly issued against Babcock & Wilcox's nuclear boiler contracts. These vital suppliers are located in California, Connecticut, Maine, Michigan, Missouri, Nevada, North Carolina, Ohio, Pennsylvania, Texas, Virginia and West Virginia. As the duty suspension being considered by the Ways and Means Committee would make Babcock & Wilcox less competitive, then this could have a direct adverse impact on our U.S. suppliers.

While the House Ways and Means Committee considers the suspension of the U.S. duty under HTSUS Subheading 8402.11, U.S. competitors, such as the Euro-

pean Union and Korea (a significant supplier), both maintain duties on this product—2.7 percent and 8.0 percent, respectively. The continued existence of duties in the EU and Korea coupled with the concomitant suspension of duties on U.S. imports would undermine the intent of NAFTA and encourage the migration of production from North America to overseas.

As a final point, suspension of the duty on these boilers would have absolutely no impact on the energy crisis in California or any other state. It is the reliable supply of electricity that is crucial. A tariff suspension, if it would have any impact at all, would be so extremely minimal as to be invisible to the ratepayer.

In conclusion, the suspension of the duty on certain boilers classified under HTSUS Subheading 8402.11 would adversely impact McDermott International and its subsidiary Babcock & Wilcox and would affect its production of such boilers in the United States. For the reasons stated above, McDermott International and Babcock & Wilcox oppose the suspension of the duty and request that these comments be given formal consideration.

Sincerely,

BRUCE N. HATTON
Vice President and General Manager

Enclosure 2—Expected Imports of Nuclear Boilers (2001–2005)

Nuclear Plant	Expected Import Date	Origin	Approx Import Value	Duty
Kewaunee, Wis.	Feb 2001	Italy	\$30m	\$1.5m
South Texas 2, Tex	2002	Spain	\$80m	\$3.9m
Sequoyah 1, Tenn	2002	Korea	\$40m	\$2.0m
Palo Verde 2, Ariz	2002	Italy	\$80m	\$3.9m
Prairie Island 1, Minn	2004	France	\$25m	\$1.3m
Potential Contracts for Delivery by End of 2005				
Crystal River 3, Fla	By 2005	Potentially dutiable	\$70m	\$3.6m
ANO 1, Ark	By 2005	Potentially dutiable	\$70m	\$3.6m
Callaway, Mo	By 2005	Potentially dutiable	\$65m	\$3.4m
Salem 2, N.J.	By 2005	Potentially dutiable	\$55m	\$2.9m
Waterford 3, La	By 2005	Potentially dutiable	\$70m	\$3.6m
TMI 1, PA	By 2005	Potentially dutiable	\$70m	\$3.6m
Beaver Valley 1, PA	By 2005	Spain	\$31m	\$1.6m

[An additional attachment is being retained in the Committee files.]

NUCLEAR ENERGY INSTITUTE
WASHINGTON, DC 20006-3708

Hon. Bill Thomas
Chairman
House Committee on Ways and Means
Washington, DC 20515

We are writing in response to the Committee's May 4 request for written public comments for the record from all parties with an interest in the possible amendment of the Harmonized Tariff Schedule of the United States by altering subheading 9902.84.02 (permanent listing at 8402.11.00), Watertube boilers with a steam pro-

duction exceeding 45 tons per hour, for use in nuclear facilities, to become temporarily duty-free.

The Nuclear Energy Institute (NEI) submits the following statement for consideration by the Committee and for inclusion in the printed record. The statement briefly comments on the Miscellaneous Tariff and Duty Suspension Act (P.L. 106-467). The statement also addresses a more fundamental issue: the steam generator tariff is a detriment for the U.S. electricity supply system at a time when electricity shortages are limiting economic growth and impairing consumers' quality of life.

NEI coordinates public policy for the nuclear energy and technologies industry, and participates in both the national and global policy-making process. NEI's objective is to ensure the formation of policies that promote the beneficial uses of nuclear energy and technologies in the United States and around the world.

NEI members that operate pressurized water reactors (PWR) to produce electricity must import steam generators because there has been no U.S. manufacturer since 1999. Of the 103 nuclear power reactors that generate 20 percent of U.S. electricity, 69 are pressurized water reactors. These companies seek the elimination of the steam generator tariff to produce electricity more economically and more reliably.

NEI encourages the Committee to suspend the tariff on steam generators because there is no U.S. supplier, thus it does not injure U.S. industry, and because it is in the best interest of U.S. consumers.

Several regions of our nation have encountered significant power shortages, which have led to brownouts or rolling blackouts in recent weeks. Projections are for these trends to continue throughout the summer. There is no short-term solution to increase electricity production, however it would be illogical to preserve a tariff on an imported manufactured good that enhances reliability, reduces power generation costs and increases the production of electricity.

There is no current capability to produce steam generators in the United States, nor does there appear to be any plans to develop a domestic capability in the near future. Westinghouse, the last U.S. manufacturer of steam generators, ceased production at its Pensacola, Fla., facility in 1999. With no domestic alternative to importing steam generators, U.S. electric companies are subject to a tariff that is unnecessary.

Our country's electricity shortages will become even worse if U.S. electric companies face delays in the acquisition of new steam generators. Additionally, electricity prices will unnecessarily rise if the industry doesn't have access to an open competitive market for steam generators.

Steam generator replacement is a normal part of maintaining a well-run nuclear power plant. Thirteen nuclear power reactors are planning to replace 34 steam generators during the next five years. Steam generator replacements are scheduled for nuclear power plants in Arizona, Georgia, Maryland, Minnesota, Missouri, North Carolina, South Carolina, Tennessee, Texas and Wisconsin. As demand for power increases, it is imperative that the steam generator replacement process be made more efficient, cost-effective and free of impediments.

With no domestic capability to produce steam generators, U.S. electric companies are forced to import them. Steam generator prices from abroad range from between \$10 million and \$25 million for each one of these important components. At that cost, the 4.9 percent tariff for each steam generator is \$500,000 to \$1.25 million—and some companies must replace up to four steam generators. Therefore, replacement could cost as much as \$100 million, and the tariff would be an additional \$2 million to \$5 million.

Last year, Congress adjusted the tariff on steam generators from 5.2 percent to 4.9 percent in the Miscellaneous Tariff and Duty Suspension Act (P.L. 106-476). This change did little to ease the burden U.S. nuclear reactor owners must bear for importing these components.

Congress was unable to remove the tariff because of restrictions that prohibit such action if the industry-wide tariff exceeds \$500,000 and if there is opposition to the removal of the tariff. However, because there is no U.S. capability to manufacture steam generators for nuclear power plants, it is unreasonable to burden our domestic nuclear energy industry and electricity consumers with any tariff on these components. Because no domestic steam generator manufacturer has existed since 1999, it is also reasonable for this Committee to apply the elimination of this tariff to steam generators delivered on or after January 1, 2000.

BWX-Canada, a subsidiary of New Orleans-based McDermott International, is the only North American producer of steam generators. Although this facility is an important supply source for U.S. industry, BWX-Canada has not met all of U.S. demand, so U.S. electric companies must import steam generators. Furthermore, BWX-Canada does not have agreements with previous U.S. steam generator manu-

facturers to produce all types of steam generators used in our nation's nuclear power plants.

McDermott International has stated that removal of the tariff would be contrary to provisions of the North American Free Trade Agreement (NAFTA). Congress and the committees of jurisdiction (Finance and Ways and Means) on this issue last year rejected concern about NAFTA by approving a tariff reduction, albeit limited because of congressional budget concerns regarding the Miscellaneous Tariff and Duty Suspension Act as a whole. In fact, NAFTA was never intended to be a trade protection agreement, and certainly was not intended to harm U.S. industry and electricity customers. Congressional budget concerns have been alleviated so Congress should eliminate the tariff.

National energy policy initiatives are encouraging improved efficiency and production of domestic electricity sources. Steam generator replacement dramatically improves efficiency, increasing production by as much as 50 megawatts at large reactors. Eliminating the tariff on steam generators should be among the policy initiatives this Committee undertakes to promote affordable, reliable consumer electricity, U.S. energy security and diversity of energy supply.

In these times of uncertainty in some sectors of the energy market, we need to do all we can to remove any impediments toward securing much-needed electricity. It is incumbent on us to remove unnecessary obstructions to increased electricity production. The just solution to such an outcome is legislation eliminating the steam generator tariff.

Sincerely,

MARVIN S. FERTEL
NEI Senior Vice President, Business Operations

PINNACLE WEST CAPITAL CORPORATION
WASHINGTON, DC 20006
May 4, 2001

To: David Kavanaugh
Office of Congressman Bill Thomas
From: Robert S. Aiken
Subject: Babcock & Wilcox Steam Generator Backlog

The attached letter from Carl Churchman, Director, Palo Verde Steam Generator Replacement Project, dated April 27, 2001 provides specific details to support the contention that the B&W Canada SG manufacturing facility was backlogged and unable to meet the replacement schedule for Palo Verde. And, therefore, it has been necessary for Palo Verde and other nuclear plants to order SGs from manufacturing facilities in other countries.

To summarize the key facts I offer the following as outlined in the letter:

1. Palo Verde management selected Ansaldo in Milan, Italy because of two important factors—price and schedule.
2. In 1996, Palo Verde management after reviewing B&W Canada's shop capability believed there to be a significant risk for a delay due to the possible backlog in the manufacturing facility.
3. This proved to be correct when B&W Canada announced two years later in 1998 that "This contract . . . maintains a backlog of work through the year 2002," after a new steam generator order was signed. (See attached)
4. This backlog, as self-described by the B&W press release, is buttressed by the announcement of the six replacement steam generators for Duke Oconee Nuclear Station in 1999. (See attached)
5. The backlog is further supported by the phone call placed by Jim Smith (General Manager of the steam generator fabrication shop at B&W Canada) to Carl Churchman in June of 2000 when unbelievably he attempted to drum up new business for the Canadian firm by offering to contract with Palo Verde to manufacture the four replacement SGs for units one and three for delivery in the 2006–2008 range. Remarkably, he told Carl Churchman that the SGs would have to be fabricated in Korea through a joint venture because the Canadian shop was at capacity and B&W had "no plans to pour millions of dollars into their Mt. Vernon shop in Ohio."
6. The attached documentation further demonstrates that the Canadian plant is backlogged because B&W Canada is touting the fact that they are "exporting

a billion dollars in business over the next 10 years and has 50% of the world market.”

7. Nuclear plants (such as Palo Verde), who have ordered replacement SGs directly from fabrication plants in those countries for price and schedule considerations shouldn't be penalized by having to pay the 4.9% duty to have them delivered into the U.S.

I'll be pleased to answer any further questions you may have. Thank you for your support.

Attachment

PINNACLE WEST CAPITAL CORPORATION
WASHINGTON, DC 20006
April 6, 2001

To: David Kavanaugh
Office of Congressman Bill Thomas
From: Robert S. Aiken

Palo Verde Nuclear Generating Station is essential to the energy security and day-to-day lives of citizens in the American Southwest, including California. When the plant began operation in 1986, Energy Secretary John Herrington called it the “energy cornerstone of the Southwest” and a vital asset for generations to come. That was true then, as it is today, with the added relevance underscored by the ongoing energy crisis in California.

Palo Verde provides hope that the lights can stay on and that the economy can remain strong and return to the levels we continue to strive to achieve.

Every year for the last six years, Palo Verde has set successive records for total generation. Last year, Palo Verde produced more than 30 billion kilowatt hours of electricity. The next largest producer—the Grand Coulee Dam in the state of Washington—has topped out at 26.8 billion kilowatt hours (in 1997). And it is important to point out that Palo Verde's production is not simply the result of its impressive size—three identical units of nearly 1,300 megawatts (MW) apiece. It is a testament of Palo Verde's sustained excellence since 1994. In the past seven years, Palo Verde has attained three ratings of “INPO 1.” The Institute of Nuclear Power Operations (INPO) is the industry organization formed after the accident at Three-Mile Island to define and help bring about excellence in the operation of America's fleet of more than 100 nuclear plants. INPO's top rating—“1”—is elusive and much coveted.

Palo Verde has come to the forefront. And I must point out that Palo Verde—located in the Arizona desert—is not for Arizona alone. Its owners are based additionally in Texas, New Mexico and California. In fact, more than a quarter of the interest in Palo Verde is owned by California entities—Southern California Edison, the Los Angeles Department of Water and Power and Southern California Public Power Authority. Fully 27.3 percent of the electricity Palo Verde produces, goes to California homes and businesses. That's nearly 8 billion kilowatt hours a year, or enough for more than a million citizens.

It is clear that Palo Verde is an essential resource—especially today—that must be kept strong and at the current level of excellence and production. But that won't happen by itself. Ongoing maintenance and upgrades are required.

The staff at Palo Verde has done an outstanding job in that regard, at least according to standards set by INPO as well as the U.S. Nuclear Regulatory Commission. But they need our help.

Like every other nuclear plant of its design and vintage, Palo Verde needs new steam generators. They are required in Unit 2 simply to maintain operation through the current license, which expires in 2026. Units 1 and 3 will need new steam generators in the coming years as well, if those licenses are to be extended.

Work is proceeding aggressively on the steam generator replacement at Unit 2. The project will improve plant efficiency and increase output by 55 MW. Without replacement of these components, the units would soon lose output at the very substantial rate of 4.7 percent per year and face a forced shutdown by 2010. As we complete the replacement project and avoid the negative effects and accrue the benefits, the 27% of the generation owned by California will be protected and increased.

But Palo Verde faces an unfair penalty. Steam generators are produced in Canada, Spain, Italy and Korea. Ansaldo of Italy is now building the steam generators for the Unit 2 replacement project, a more than \$40 million undertaking. No U.S. companies manufacture steam generators on American soil. So you can see, Palo Verde has no other choice.

Nonetheless, Palo Verde faces a ‘penalty’ of approximately \$2 million for this required, strategic and forward-looking undertaking. A half-million dollars of this cost

would go directly to California rate payers. Today, a tariff of 4.9 percent is in place on the import of steam generators into the United States.

The evidence clearly shows that this project is critical to the energy future of California and the economy of the West and beyond. We ought to be providing incentives for solutions to this crisis, not hurdles that serve only to lengthen and exacerbate the situation.

What I propose, therefore, is a permanent repeal of the tariff through 2012. This will allow relief to the Palo Verde Unit 2 steam generator replacement project and provide the flexibility for the owners of Palo Verde to move forward without penalty on steam generator replacement for Units 1 and 3, if and when they decide over the next few years.

The logic and priority is clear. I urge you to do all you can to enact this tariff relief.

Thank you.

Graph 1—Owners of Palo Verde Nuclear Generating Station

Pinnacle West (Arizona Public Service)	29.1%
Salt River Project	17.5%
El Paso Electric	15.8%
Public Service of New Mexico	10.2%
California Owners:	
Southern California Edison	15.8%
Southern California Public Power Authority	5.9%
Los Angeles Department of Water & Power	5.7%
Total California: 27.4%	

Graph 2

Plant Name	Year	Total Production
Palo Verde	1999	30,438,939
Palo Verde	2000	30,383,570
Palo Verde	1998	30,097,419
Palo Verde	1997	29,209,066
Palo Verde	1996	28,590,965
Grand Coulee Dam	1996	27,358,179

**Totals are in megawatt hours.

[Additional attachments are being retained in the Committee files.]

