

The original documents are located in Box 63, folder “10/13/76 HR4654 Relief of Day's Sportswear Incorporated (vetoed)” of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.

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*POCKET VETO
(EFFECTIVE NOVEMBER 10/13/76)
MEMO OF DISAPPROVAL
ISSUED 10/14/76*

*POCKET VETO
10/13/76*

THE WHITE HOUSE

ACTION

WASHINGTON

Last Day: October 13

October 11, 1976

MEMORANDUM FOR THE PRESIDENT
FROM: JIM CANNON *HJC*
SUBJECT: H.R. 4654 - For the relief of Day's Sportswear, Incorporated

Attached for your consideration is H.R. 4654, sponsored by Representative Hicks.

The enrolled bill authorizes the payment of \$23,077.01 to Day's Sportswear, Incorporated, in settlement of the firm's claim against the U.S. regarding a dispute over duties assessed on the firm's imports.

The relief bill arises out of the mutual mistake on the part of Day's Sportswear, Incorporated and the U.S. Customs Office at Tacoma, Washington, in classifying certain shipments on wool at that port city during the period August 10, 1970 to July 19, 1971. The bill seeks to compensate Day's for the retroactive assessment made against the company upon discovery of the error by the Customs Bureau.

A detailed description of the bill is provided in OMB's enrolled bill report at Tab A.

The Department of Justice recommends disapproval of the bill because:

- There are two cases now under litigation before the U.S. Customs Court in New York involving the same issues that are involved in this private relief bill.
- Approval of H.R. 4654 would constitute preferred treatment of one importer against others having similar claims against the Government.
- Private relief legislation is only appropriate after all avenues of administrative and legal recourse have been pursued.



OMB, Max Friedersdorf and I recommend disapproval of the enrolled bill. The Counsel's Office (Kilberg) has "no objection to disapproval".

DECISION

Sign H.R. 4654 at Tab B.

Veto H.R. 4654 and sign Memorandum of Disapproval at Tab C. which has been cleared by Doug Smith.





EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OCT 7 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 4654 - For the relief
of Day's Sportswear, Incorporated
Sponsor - Rep. Hicks (D) Washington

Last Day for Action

October 13, 1976 - Wednesday

Purpose

Authorizes the payment of \$23,077.01 to Day's Sportswear, Incorporated, in settlement of the firm's claim against the United States regarding a dispute over duties assessed on the firm's imports.

Agency Recommendations

| | |
|---------------------------------|--|
| Office of Management and Budget | Disapproval (Memorandum of Disapproval attached) |
| Department of Justice | Disapproval (Memorandum of Disapproval attached) |
| Department of the Treasury | No objection |
| Department of Commerce | Defers to Treasury |

Discussion

In October 1968, a new law became effective which amended certain tariff schedules of the United States. Included in the law was a new item stipulating that fabrics composed of over 50 percent wool by weight were to be assessed duty as though they were over 50 percent wool by value.

Prior to this law's enactment, Day's Sportswear had been importing a fabric for ski clothing containing more than 50 percent wool by weight but the wool constituted less than 50 percent of the fabric's value. Under existing tariff schedules,



this fabric was assessed at a substantially lower duty rate than fabrics containing more than 50 percent wool by value.

When the new law passed in 1968, it went unnoticed by Day's as well as by the U.S. Customs Bureau's specialists where the fabrics were entered and the Customs Information Exchange in New York. Day's continued to import these fabrics and duties continued to be erroneously assessed at the lower custom rates for about 2½ years after the passage of the 1968 law. When the mistake was discovered, Customs had not yet completed its final review of the documents pertaining to 18 consignments of these fabrics for which Day's had already paid estimated duties. Subsequently, the Customs Bureau reclassified these 18 consignments increasing the duty payable by Day's by \$23,077.01.

This enrolled bill would direct the repayment to Day's of the \$23,077.01 additional duty which was assessed against them after these 18 consignments were reclassified.

In its report on this bill, the House Judiciary Committee points out that, in addition to the error of both Day's and the Customs Bureau in allowing the entries of this fabric to be assessed the wrong duty, Day's incorporated these fabrics into its products or sold them on the basis of the cost of the fabric. The Committee reports that when the demand for additional payment was made, Day's had no opportunity to raise the prices for the finished products, and the company had to absorb the additional cost. The report further states that when Day's learned of the increased duty applicable to the fabric, they made arrangements with their supplier to reduce the wool content so that the fabric could continue to be imported at the lower duty rate.

In its enrolled bill letter, the Department of Justice recommends that you disapprove H.R. 4654. Justice's main concern is that there are two cases now under litigation before the United States Customs Court in New York involving the same issues that are involved in this private relief bill. The United States



is the defendant in these two cases, and Justice is concerned that your approval of this bill would prejudice the disposition of these cases. Justice also points out that approval of H.R. 4654 would constitute preferred treatment of one importer against others having similar claims against the Government. Informally, Justice has also expressed its contention that private legislation is only appropriate after all avenues of administrative and legal recourse have been pursued -- which is not the case with respect to Day's.

We support the position taken by Justice and also recommend disapproval. While the facts of Day's situation, and of their competitors, might merit your favorable consideration in a future private relief bill, we believe that approval of H.R. 4654 now would be premature. Accordingly, we are attaching, for your consideration, a Memorandum of Disapproval which includes many of the points suggested by Justice, but which does not speculate on the outcome of the related litigation.


Paul H. O'Neill
Acting Director



Enclosure



THE GENERAL COUNSEL OF THE TREASURY
WASHINGTON, D.C. 20220

OCT 5 1976

Director, Office of Management and Budget
Executive Office of the President
Washington, D. C. 20503

Attention: Assistant Director for Legislative
Reference

Sir:

Reference is made to your request for the views of this Department on the enrolled enactment of H.R. 4654, "For the relief of Day's Sportswear, Incorporated."

The enrolled enactment would authorize and direct the Secretary of the Treasury to pay to Day's Sportswear, Incorporated, a State of Washington Corporation, the sum of \$23,077.01. The payment of that sum is to be in full settlement of all claims of the corporation against the United States for credit or refund of customs duties arising out of the classification of certain imported textile fabrics in chief weight of wool entered by the corporation at the port of Tacoma, Washington, between August 10, 1970 and July 19, 1971, inclusive.

During the 93rd Congress, the Department submitted a report on a similar bill stating it did not favor enactment of the proposed legislation. In its report the Treasury recognized that the controversy arose because of a change in the law which made preceding practice concerning entries of this particular fabric incorrect. This change in law, which approximately doubled the duties on the fabric involved, was not immediately noted by the customs broker for the corporation or Customs officials. About two and one half years elapsed before reclassification was sought by Customs officials.

The Department did not favor passage of the proposed legislation for it stated, among other things, such would grant the importer more favorable treatment than that accorded to other importers, and would discriminate against the importers who were obligated to pay the correct amount of duties provided for in the new tariff schedules on similar imported articles.

In its report the House Committee on the Judiciary stated that the unusual fact situation provides a basis for legislative relief since the company had incorporated the fabric into its products or sold them on the basis of the cost of the fabric (including the lower duty) as it had previously done. The House report stated that when the demand for additional payment was made, there was no opportunity to change the amount charged for the finished product and the company had to absorb the additional cost of duties.



The Senate Committee on the Judiciary noted that it was a matter of mutual mistake that the corporation continued after the change in law to import the fabric involved under the old, lower duties. The report also noted that the corporation acted in good faith.

Since both Houses of Congress have determined that the fact situation presented provides a basis for legislative relief, the Department has no objection to a recommendation that the enrolled enactment be approved by the President.

Sincerely yours,



General Counsel
Richard E. Albrecht



Department of Justice
Washington, D.C. 20530

October 5, 1976

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D. C. 20503

Dear Mr. Lynn:

In compliance with your request, I have examined a facsimile of the enrolled bill H.R. 4654, "For the relief of Day's Sportswear, Incorporated."

H.R. 4654 would authorize and direct the Secretary of Treasury to pay, out of any money in the Treasury not otherwise appropriated, to Day's Sportswear, Incorporated, the sum of \$23,077.01. Such payment would be in full settlement of all claims of said corporation against the United States for credit or refund of customs duties arising out of the classification of certain textile fabrics in chief weight of wool entered by said corporation at the port of Tacoma, Washington between August 10, 1970 and July 19, 1971 inclusive.

For the reason stated in the attached veto message, the Department of Justice recommends against Executive approval of this bill.

Sincerely,



MICHAEL M. UHLMANN
Assistant Attorney General



TO THE HOUSE OF REPRESENTATIVES:

I return herewith, without my approval, H.R. 4654, 94th Congress, for the relief of Day's Sportswear, Incorporated."

H.R. 4654 appears to relate to the same claim as presented in B. A. McKenzie and Co., Inc. v. United States, United States Customs Court #74-6-01520. Another known similar claim on behalf of another importer is pending in the case of George S. Bush and Co., Inc. v. United States, United States Customs Court #73-9-02693.

A brief history of these two cases would indicate that Congress in P.L. 90-638, enacted a special provision in the Tariff Schedules of the United States to the effect that fabrics in the chief weight of wool but in chief value of other fibers should be assessed with duty as if they were in chief value of wool. For a time, the Customs officials in Seattle and Tacoma, Washington failed to heed the dictates of this provision. When this provision was called to their attention and they assessed the goods in issue in these two cases in accordance with the law, these two cases were filed.

The United States Government is presently defending these two cases and the United States Customs Court is expected to rule for the Government and against the importers very shortly. Since the issue involved is presently before the Customs Court and the Government has strongly advocated the lack of merit to such claims, it is submitted that the courts should be permitted to rule in this matter in due course. In addition, it should be pointed out that H.R. 4654 makes no mention of other cases which may be presently pending in regard to this same matter including the one previously mentioned above and the enactment of H.R. 4654 would constitute preferred treatment of one importer against others similarly having claims against the Government. I find an insufficient basis exists for the approval of this enrolled bill, which enactment would constitute an unwise precedent in a matter which the Government feels is without merit.

For these reasons, I return H.R. 4654 without my approval.

THE WHITE HOUSE

OCTOBER , 1976





**GENERAL COUNSEL OF THE
UNITED STATES DEPARTMENT OF COMMERCE**
Washington, D.C. 20230

OCT 6 1976

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D. C. 20503

Attention: Assistant Director for Legislative Reference

Dear Mr. Lynn:

This is in reply to your request for the views of this Department concerning H. R. 4654, an enrolled enactment

"For the relief of Day's Sportswear, Incorporated."

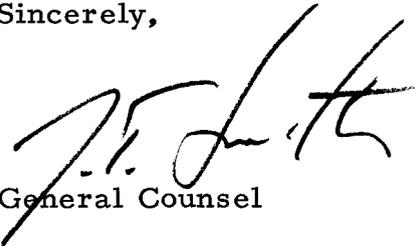
H. R. 4654 would authorize and direct the Secretary of the Treasury to pay the amount of \$23,077.01 to Day's Sportswear, Incorporated in full settlement of all claims of the corporation against the United States for credit or refund of customs duties arising out of a mutual mistake on the part of the corporation and the United States Customs Bureau in the classification of certain imported textile fabrics in chief weight of wool.

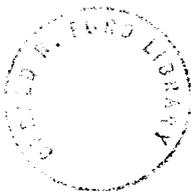
This Department was not previously requested to comment on this legislation by the Congress. We note, however, that the Department of the Treasury in its comments to the Chairman of the House Judiciary Committee opposed enactment of a similar bill in the 93rd Congress, largely on the grounds that enactment could discriminate against other importers who were obliged to pay the correct amount of duties on similar imported articles.

This Department concurs with the views of the Department of the Treasury as stated in its report, and we defer to that Department as to whether H. R. 4654 should be approved or vetoed by the President.

Enactment of this legislation will not involve the expenditure of any funds by this Department.

Sincerely,


General Counsel





EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OCT 7 1976

To -
J. Johnston
10-8-76
1:00 P.M.

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 4654 - For the relief
of Day's Sportswear, Incorporated
Sponsor - Rep. Hicks (D) Washington

Last Day for Action

October 13, 1976 - Wednesday

Purpose

Authorizes the payment of \$23,077.01 to Day's Sports-
wear, Incorporated, in settlement of the firm's
claim against the United States regarding a dispute
over duties assessed on the firm's imports.

Agency Recommendations

| | |
|---------------------------------|---|
| Office of Management and Budget | Disapproval (Memorandum of Disapproval attached) |
| Department of Justice | Disapproval (Memorandum of Disapproval attached) |
| Department of the Treasury | No objection |
| Department of Commerce | Defers to Treasury |

Discussion

In October 1968, a new law became effective which
amended certain tariff schedules of the United
States. Included in the law was a new item stipulat-
ing that fabrics composed of over 50 percent wool
by weight were to be assessed duty as though they
were over 50 percent wool by value.

Prior to this law's enactment, Day's Sportswear
had been importing a fabric for ski clothing
containing more than 50 percent wool by weight but
the wool constituted less than 50 percent of the
fabric's value. Under existing tariff schedules,



this fabric was assessed at a substantially lower duty rate than fabrics containing more than 50 percent wool by value.

When the new law passed in 1968, it went unnoticed by Day's as well as by the U.S. Customs Bureau's specialists where the fabrics were entered and the Customs Information Exchange in New York. Day's continued to import these fabrics and duties continued to be erroneously assessed at the lower custom rates for about 2½ years after the passage of the 1968 law. When the mistake was discovered, Customs had not yet completed its final review of the documents pertaining to 18 consignments of these fabrics for which Day's had already paid estimated duties. Subsequently, the Customs Bureau reclassified these 18 consignments increasing the duty payable by Day's by \$23,077.01.

This enrolled bill would direct the repayment to Day's of the \$23,077.01 additional duty which was assessed against them after these 18 consignments were reclassified.

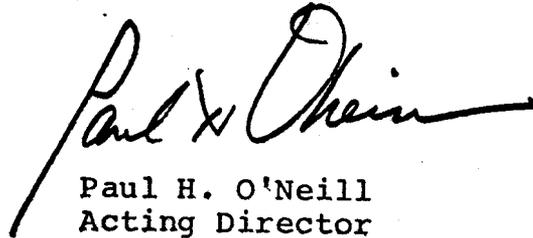
In its report on this bill, the House Judiciary Committee points out that, in addition to the error of both Day's and the Customs Bureau in allowing the entries of this fabric to be assessed the wrong duty, Day's incorporated these fabrics into its products or sold them on the basis of the cost of the fabric. The Committee reports that when the demand for additional payment was made, Day's had no opportunity to raise the prices for the finished products, and the company had to absorb the additional cost. The report further states that when Day's learned of the increased duty applicable to the fabric, they made arrangements with their supplier to reduce the wool content so that the fabric could continue to be imported at the lower duty rate.

In its enrolled bill letter, the Department of Justice recommends that you disapprove H.R. 4654. Justice's main concern is that there are two cases now under litigation before the United States Customs Court in New York involving the same issues that are involved in this private relief bill. The United States



is the defendant in these two cases, and Justice is concerned that your approval of this bill would prejudice the disposition of these cases. Justice also points out that approval of H.R. 4654 would constitute preferred treatment of one importer against others having similar claims against the Government. Informally, Justice has also expressed its contention that private legislation is only appropriate after all avenues of administrative and legal recourse have been pursued -- which is not the case with respect to Day's.

We support the position taken by Justice and also recommend disapproval. While the facts of Day's situation, and of their competitors, might merit your favorable consideration in a future private relief bill, we believe that approval of H.R. 4654 now would be premature. Accordingly, we are attaching, for your consideration, a Memorandum of Disapproval which includes many of the points suggested by Justice, but which does not speculate on the outcome of the related litigation.


Paul H. O'Neill
Acting Director

Enclosure



MEMORANDUM OF DISAPPROVAL

I am withholding my approval from H.R. 4654, a bill "For the relief of Day's Sportswear, Incorporated."

H.R. 4654 appears to relate to the same claim as presented in B. A. McKenzie and Co., Inc. v. United States, United States Customs Court #74-6-01520.

Another known similar claim on behalf of another importer is pending in the case of George S. Bush and Co., Inc. v United States, United States Customs Court #73-9-02693.

The United States Government is presently defending these two cases and the United States Customs Court is expected to rule. Briefly, the litigation involves the applicability of certain customs duties.

I believe that the courts should be permitted to rule in these cases in due course. I am also concerned that my approval of H.R. 4654 could inappropriately predispose the court's ruling. Further, H.R. 4654 would constitute preferred treatment of one importer against others having similar claims against the Government.

Finally, I believe that private relief legislation is appropriate only after all other avenues of available administrative and legal recourse have been pursued.

For these reasons, I am withholding my approval from H.R. 4654.

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: October 8

Time: 330pm

FOR ACTION: Dick Parsons *Velt*
Max Friedersdorf *rel* cc (for information):
Bobbie Kilberg
Robert Hattmann
~~Bill Scidman~~

Jack Marsh
Ed Schmults
Steve McConahey

FROM THE STAFF SECRETARY

DUE: Date: **October 11**

Time: **200pm**

SUBJECT:

H.R. 4654-Relief of Day's Sportswear, Inc.



ACTION REQUESTED:

- | | |
|---|---|
| <input type="checkbox"/> For Necessary Action | <input type="checkbox"/> For Your Recommendations |
| <input type="checkbox"/> Prepare Agenda and Brief | <input type="checkbox"/> Draft Reply |
| <input checked="" type="checkbox"/> For Your Comments | <input type="checkbox"/> Draft Remarks |

REMARKS:

please return to judy johnston, ground floor west wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: October 8

Time: 330pm

FOR ACTION: Dick Parsons
Max Friedersdorf
Bobbie Kilberg
Robert Hartmann

cc (for information):

Jack Marsh
Ed Schmults
Steve McConahey

FROM THE STAFF SECRETARY

DUE: Date: October 11

Time: 200pm

SUBJECT:

H.R. 4654-Relief of Day's Sportswear, Inc.

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS: I concur in the recommendation of disapproval
please return to judy johnston, ground floor west wing

AD



PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

THE WHITE HOUSE

10/8/76
4:15 p.m.
J

ADMINISTRATIVE MEMORANDUM

WASHINGTON, D.C.

LOG NO.:

Date: October 8

Time: 330pm

FOR ACTION: Dick Parsons
Max Friedersdorf
Bobbie Kilberg
Robert Hartmann

cc (for information):

Jack Marsh
Ed Schmults
Steve McConahey

FROM THE STAFF SECRETARY

DUE: Date: October 11

Time: 200pm

SUBJECT:

H.R. 4654-Relief of Day's Sportswear, Inc.

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

10/8 Copy sent to Research g.

10/8 Researched copy attached g.

Handwritten initials and signatures: "Veto!", "OK", and a large signature.



PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

20 DJS-76
10-8-5:10

(D.A. Com)

309

THE WHITE HOUSE
WASHINGTON

20 Research
10-8-76
4:28

(D.A. Com)

10/8/76
4:15 p.m.

LOG NO.:

ACTION MEMORANDUM

Date: October 8

Time: 330pm

M/GC

FOR ACTION: Dick Parsons
Max Friedersdorf
Bobbie Kilberg
Robert Hartmann

cc (for information):

Jack Marsh
Ed Schmults
Steve McConahey

FROM THE STAFF SECRETARY

DUE: Date: October 11

Time: 200pm

SUBJECT:

H.R. 4654-Relief of Day's Sportswear, Inc.

*Mc Clants
4-4710*

*Judy Johnston
x-4864
3230*

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

10/8 Copy sent to research g.



PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

MEMORANDUM OF DISAPPROVAL

*Bank - in
material
P. O'Neill.*

I am withholding my approval from H.R. 4654, a bill "For the relief of *DK* Day's Sportswear, Incorporated."

*Bank - up
draft letter
Dept of
Justice*

H.R. 4654 appears to relate to *DK* the same claim as presented in B. A. McKenzie and Co., Inc. v. United States, United States Customs Court #74-6-01520.

Another known similar claim on behalf of *DK* another importer is pending in the case of George S. Bush and Co., Inc. v. United States, United States Customs Court #73-9-02693. *DK*

The *DK* United States Government is presently defending these two cases and the United States Customs Court is expected to rule. Briefly, the litigation involves the applicability of certain customs duties.

I believe that the courts should be permitted to rule in these cases in due course. I am also concerned that my approval of H.R. 4654 could inappropriately predispose the court's ruling. Further, H.R. 4654 would constitute preferred treatment of one importer against others having similar claims against the Government. *DK*

Finally, I believe that private relief legislation is appropriate only after all other avenues of available administrative and legal recourse have been pursued.

For these *DK* reasons, I am withholding my approval from H.R. 4654.



THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: October 8

Time: 330pm

FOR ACTION: Dick Parsons
Max Friedersdorf
Bobbie Kilberg
Robert Hartmann

cc (for information):

Jack Marsh
Ed Schmults
Steve McConahey

FROM THE STAFF SECRETARY

DUE: Date: October 11

Time: 200pm

SUBJECT:

H.R. 4654-Relief of Day's Sportswear, Inc.

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

*no objection to disapproval
Kilberg 10/11/76*



PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

THE WHITE HOUSE

WASHINGTON

October 11, 1976

MEMORANDUM FOR:

Cannon
JIM CAVANAUGH

FROM:

MAX L. FRIEDERSDORF *M.L.F.*

SUBJECT:

H.R. 4654-Relief of Day's Sportswear, Inc.

The Office of Legislative Affairs concurs with the agencies
that the Relief of Day's Sportswear, Inc. should be ~~signed.~~

disapproved.

Attachments



MEMORANDUM OF DISAPPROVAL

I am withholding my approval from H.R. 4654, a bill "For the relief of Day's Sportswear, Incorporated."

H.R. 4654 appears to relate to the same claim as presented in B. A. McKenzie and Co., Inc. v. United States, United States Customs Court #74-6-01520. Another known similar claim on behalf of another importer is pending in the case of George S. Bush and Co., Inc. v United States, United States Customs Court #73-9-02693.

The United States Government is presently defending these two cases and the United States Customs Court is expected to rule. Briefly, the litigation involves the applicability of certain customs duties.

I believe that the courts should be permitted to rule in these cases in due course. I am also concerned that my approval of H.R. 4654 could inappropriately predispose the court's ruling. Further, H.R. 4654 would constitute preferred treatment of one importer against others having similar claims against the Government.



Finally, I believe that private relief legislation is appropriate only after all other avenues of available administrative and legal recourse have been pursued.

For these reasons, I am withholding my approval from H.R. 4654.

MEMORANDUM OF DISAPPROVAL

I am withholding my approval from H.R. 4654, a bill "For the relief of Day's Sportswear, Incorporated."

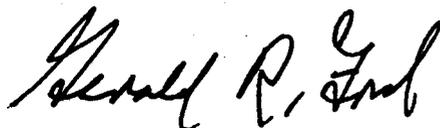
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Finally, I believe that private relief legislation is appropriate only after all other avenues of available administrative and legal recourse have been pursued.

For these reasons, I am withholding my approval from H.R. 4654.



THE WHITE HOUSE,

OCTOBER 14, 1976

Office of the White House Press Secretary

THE WHITE HOUSE

MEMORANDUM OF DISAPPROVAL

I have withheld my approval from H.R. 4654, a bill "For the relief of Day's Sportswear, Incorporated."

H.R. 4654 appears to relate to the same claim as presented in B. A. McKenzie and Co., Inc. v. United States United States Customs Court #74-6-01520. Another known similar claim on behalf of another importer is pending in the case of George S. Bush and Co., Inc. v. United States United States Customs Court #73-9-02693.

The United States Government is presently defending these two cases and the United States Customs Court is expected to rule. Briefly, the litigation involves the applicability of certain customs duties.

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Finally, I believe that private relief legislation is appropriate only after all other avenues of available administrative and legal recourse have been pursued.

For these reasons, I have withheld my approval from H.R. 4654.

GERALD R. FORD

THE WHITE HOUSE,
October 14, 1976

#

DAY'S SPORTSWEAR, INC.

OCTOBER 9, 1975.—Committed to the Committee of the Whole House and ordered to be printed

Mr. PATTISON of New York, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 4654]

The Committee on the Judiciary, to whom was referred the bill (H.R. 4654) for the relief of Day's Sportswear, Inc., having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to pay \$23,077.01 to Day's Sportswear, Inc., a corporation organized under the laws of the State of Washington, in full settlement of all claims of that corporation against the United States for credit or refund of customs duties arising out of the classification of certain imported textile fabrics in chief weight of wool entered by said corporation at the port of Tacoma, Wash., between August 10, 1970, and July 19, 1971, inclusive.

STATEMENT

The Department of the Treasury in its report on a similar bill in the 93d Congress indicated that it did not favor enactment.

The bills pending before the committee in the 93d Congress, H.R. 2530 and 2531, were the subjects of subcommittee hearings on July 26, 1973 and again on February 21, 1974. In the statements made at the hearings, it was explained that the entries involved fabrics made from a combination of wool and manmade fibers and were in chief value of manmade fibers even though they were over 50 percent by weight of wool. The amount stated in the bill is \$23,077.01 and the committee has been advised that this amount is the difference between the estimated duties which were deposited at the time entries were filed on certain imported fabrics and the total duties actually assessed.

The difficulty encountered by the importer resulted from the fact that a change in the law more than doubled the duties by providing



that fabrics with 17 percent wool content would be classified as "fabrics of wool" when they were over 50 percent by weight of wool when previously they were not so classified and had been classified as being of "manmade" fibers.

As is explained in the Treasury Department report, fabrics in chief value of manmade fibers which contain over 50 percent by weight of wool are, pursuant to Headnote 7, Schedule 3, Tariff Schedules of the United States (TSUS), classifiable as fabrics of wool. Headnote 7, enacted as part of Public Law 90-638, which was approved October 24, 1968, provides that with respect to fabrics provided for in Parts 3 and 4 of Schedule 3, TSUS, the provisions for fabrics in chief value of wool shall also apply to fabrics in chief weight of wool, whether or not they are in chief value of wool.

At the hearings the committee was informed that prior to the enactment of Headnote 7, the fabric imported by Day's Sportswear was classifiable under the provision for woven fabrics, of manmade fibers, containing over 17 percent of wool by weight, in item 338.15, TSUS, with duty at the rate of 18 cents per pound plus 18 percent ad valorem. When Headnote 7 became effective, that fabric became classifiable under the provision for woven wool fabrics, in item 336.60, TSUS, with duty at the rate of 37.5 cents per pound plus 38 percent ad valorem. However, the customs broker representing Day's Sportswear continued entering the fabric under item 338.15 TSUS.

At the hearing it was stated that the broker had handled the importation of Stretch Fabrics at Tacoma at least since 1966, and possibly prior to that date. These fabrics are a blend of wool and man made fibers. They contain more than 50 percent by weight of wool, but the wool constitutes less than 50 percent of the fabric's value. Conversely, the fabric contains less than 50 percent by weight of man made fiber, but more than 50 percent of value of manmade fiber.

The change in the law made preceding practice concerning entries of this particular fabric incorrect. After its effective date fabrics containing wool were to be considered in chief value of wool even if they were, in fact, not in chief value of wool provided the weight of the wool component was greater than the weight of each other textile component of the fabric. At the hearing the Customs broker stated that since the change in the headnote was not noted by the mof by the Bureau of Customs Commodity Specialists at the Port of Seattle, and the Port of Tacoma, and the Customs Information Exchange in New York, they continued to import the fabric without changing its wool content, and the Customs continued to accept and liquidate the entries under same item number. Finally, early in 1971, they were advised of the headnote change. The witness emphasized that the fabric had been imported on the same basis as before without clear notice of the change—alleging the wording was ambiguous and confusing.

At the hearing, it was pointed out that because of this particular history, and particularly the delay in correcting the situation, the company had incorporated the fabric into its products or sold them on the basis of the cost of the fabric as it had previously done. When the demand for additional payment was made, there was no opportunity to change the amount charged for the finished products and the company had to absorb the additional cost.

The committee feels that this unusual fact situation provides a basis for legislative relief, and recommends that the bill be considered favorably.

THE GENERAL COUNSEL OF THE TREASURY,
Washington, D.C.

PETER W. RODINO, JR.,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on H.R. 2531, "For the relief of Day's Sportswear, Incorporated."

The proposed legislation directs the liquidation or reliquidation of 18 entires of textile fabric in chief value of man-made fibers and in chief weight of wool under the tariff classification which would have applied if those entires had been made before the effective date of Public Law 90-638.

Headnote 7, Schedule 3, Tariff Schedules of the United States (TSUS), enacted as part of Public Law 90-638, which was approved October 24, 1968, provides that with respect to fabrics provided for in Parts 3 and 4 of Schedule 3, TSUS, the provisions for fabrics in chief value of wool shall also apply to fabrics in chief weight of wool, whether or not they are in chief value of wool. Accordingly, fabrics in chief value of manmade fibers which contain over 50 percent by weight of wool are, pursuant to Headnote 7, classifiable as fabrics of wool.

The Bureau published Public Law 90-638 in the weekly Customs Bulletin as Treasury Decision 68-277, dated November 6, 1968. One of the purposes for publication of the Customs Bulletin is to inform interested parties of changes in the law, regulations, and procedures pertaining to Customs matters.

Prior to the enactment of Headnote 7, the fabric imported by Day's Sportswear was classifiable under the provision for woven fabric, of manmade fibers, containing over 17 percent of wool by weight, in item 338.15, TSUS, with duty at the rate of 18 cents per pound plus 18 percent ad valorem. When Headnote 7 became effective, that fabric became classifiable under the provision for woven wool fabrics, in item 336.60, TSUS, with duty at the rate of 37.5 cents per pound plus 38 percent ad valorem. However, the customs broker representing Day's Sportswear continued entering the fabric under item 338.15, TSUS.

In January 1969, at Seattle, Washington, the responsibility for examination, classification, and appraisement of textile fabrics was transferred from one group of Customs officers to another. The new team, being unfamiliar with the line of merchandise, was not aware of the change effected by P.L. 90-638, and it was not until June 1971 that the error was discovered. All entries involving this type merchandise, the liquidation of which had not become final, were then reclassified in accordance with Headnote 7. The reclassification of 18 entries covering importations of merchandise resulted in Day's Sportswear being assessed \$23,077.01 in additional duties.

Section 16.10a of the Customs Regulations (19 CFR 16.10a) sets forth the proper procedure for obtaining a binding ruling on the tariff classification of a prospective import. The importer would have been

able to obtain the correct classification and rate of duty applicable to his merchandise had he or his broker applied to the Commissioner of Customs in accordance with that regulation. In addition, the custom-house broker through whom Day's Sportswear transacted business knew or should have known of this procedure for obtaining a binding ruling and that classification of merchandise in an individual entry under a particular tariff item number is not binding on the Bureau of Customs until 90 days after an entry pertaining to that merchandise has been liquidated by the appropriate Customs officers. The delay in properly classifying the merchandise could not operate to vest in the importer the right to a classification contrary to that required by law.

A protest with respect to these entries is presently before the Bureau of Customs for administrative review. In the event that the protest is denied, judicial review of that denial will be available to the importer before the United States Customs Court. The granting of legislative relief, therefore, would be premature. Further, it is believed that the passage of the proposed legislation would grant the importer more favorable treatment than that accorded to other importers, and would, in the Department's opinion, discriminate against other importers who were obligated to pay the correct amount of duties provided for in the tariff schedules on similar imported articles. For these reasons, the Department does not favor enactment of H.R. 2531.

The Department has been advised by the Office of Management and Budget that there is no objection from the standpoint of the Administration's programs to submission of this report to your Committee.

Sincerely yours,

EDWARD C. SCHMULTS,
General Counsel.

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Calendar No. 1183

94TH CONGRESS }
2d Session }

SENATE {

{ REPORT
No. 94-1248

DAY'S SPORTSWEAR, INC.

SEPTEMBER 16, 1976.—Ordered to be printed



Mr. HRUSKA, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany H.R. 4654]

The Committee on the Judiciary, to which was referred the bill (H.R. 4654), for the relief of Day's Sportswear, Inc., having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

PURPOSE

The purpose of this bill is to authorize and direct the Secretary of the Treasury to provide relief in the amount of \$23,077.01 to Day's Sportswear, Inc., a corporation organized under the laws of the State of Washington. The payment is in full settlement of all claims of the corporation against the United States for credit or refund of customs duties arising out of the classification of certain imported textile fabrics in chief weight of wool entered by the corporation at the port of Tacoma, Washington, between August 10, 1970, and July 19, 1971, inclusive.

STATEMENT

This bill arises out of the mutual mistake on the part of claimants, Day's Sportswear, Inc., and the U.S. Customs Office at Tacoma, Washington, in classifying certain shipments on wool at that port city during the period August 10, 1970, to July 19, 1971. The bill seeks to compensate Day's for the retroactive assessment made against the company upon discovery of the error by the Customs Bureau.

A brief summary of the facts has been presented to the Committee in a letter to the Chairman dated January 28, 1976, on behalf of this legislation, by Senators Henry M. Jackson and Warren G. Magnuson of Washington:

In October, 1968, Congress enacted Public Law 90-638, amending certain tariff schedules of the United States. The new law contained an amendment added by the Senate to prevent the importation of fabrics consisting of inexpensive reprocessed wool at lower tariff rates. The amendment provided that fabrics in 'chief weight of wool whether or not in chief value of wool' were to be considered to be "in chief value of wool" for tariff purposes.

Prior to enactment of the law, Day's had been importing a special "stretch" fabric for ski clothing containing more than 50 percent by weight of wool (high quality wool, at that) but whose value was less than 50 percent of wool. Under the old tariff schedules, such a fabric was considered a "man-made" fabric and was assessed at a lower tariff rate than fabric containing more than 50 percent "of value" in wool.

Public Law 90-638 did not make any changes in the old tariff classification. The old classification, which was preempted by P.L. 90-638, remains in the tariff schedules to this day. Moreover, the new law did not cross-reference from the old classification to the new classification to help notify shippers that a change had been made.

The confusing language of the amendment has been labeled by the Customs Bureau's Seattle District Director as "misleading to all concerned". Not only did the language go unnoticed by Day's but also the Bureau's commodity specialists in the Port of Tacoma, the Port of Seattle and even its Customs Information Exchange in New York failed to notice it.

The Committee notes the description of agency procedure of insuring correct tariffs are applied to shipments coming into Tacoma, given by Mr. James O'Neil, Chief of the Materials Classification Branch, at a hearing held on February 21, 1974, by the House Judiciary Claims Subcommittee.

At Tacoma, Washington, there is one import specialist, and he is responsible for the complete tariff scheduling, and the classification of all merchandise that comes into Tacoma . . .

In Seattle, which is the district that supervises this particular port, there is a group of specialists, and the work is divided among them, and they are supposed to supervise the Tacoma import specialist . . .

Whenever a new importation comes in, something that they are not familiar with, they send a form to New York where we have our national import specialists; and these national import specialists are devoted to a single line of merchandise. They are responsible for the classification of all the merchan-

dise in that line, and appraise him of all the merchandise in that line.

On two separate occasions the House Judiciary Claims Subcommittee (now Subcommittee on Administrative Law and Government Relations) considered a private relief bill introduced on behalf of claimants. In August of 1973 the Subcommittee held a brief informal hearing in the Capitol at which time Mr. Theodore Kennard, the customs broker for Day's Sportswear, presented Day's version of the facts. On February 21, 1974, the Subcommittee held a more formal hearing on the bill H.R. 4654 at which time Subcommittee members Danielson, Jordan and Butler were in attendance. Again, Mr. Kennard representing Day's, Inc. appeared before the Subcommittee along with three officials from the U.S. Customs Service including Mr. James O'Neil of the Materials Classification Branch. A reporter was in attendance and the proceedings have been transcribed.

It was a matter of mutual mistake then that Day's continued to import its ski clothing fabric under the old tariff with the concurrence of the customs office at the Port of Tacoma, and the Customs Exchange. The erroneous classification continued for about two and a half years and involved fifty separate shipments. At the time the mistake was discovered twenty entries had not been liquidated and the subsequent reclassification of those entries under the new law increased the duty payable by Day's to over \$20,000.

In their report to the House, the House Judiciary Committee noted that because of this history, and particularly the delay in correcting the situation, the company had incorporated the fabric into its products or sold them on the basis of the cost of the fabric as it had previously done. When the demand for additional payment was made, there was no opportunity to change the amount charged for the finished products and the company had to absorb the additional cost. The House Judiciary Committee felt that this unusual fact situation provides a basis for legislative relief and recommended the bill be considered favorably.

After viewing these facts this Committee believes there is merit in Day's claim. The Committee notes the statement by Senators Jackson and Magnuson in their letter that claimants acted in good faith. They did not attempt to reap windfall profits during the period in question, nor did they benefit economically from the mistake. The retail price of the finished ski pants remained comparatively the same before and after passage of P.L. 90-638. Furthermore, after the error was brought to the Day's attention, only a minor adjustment in the relative weights of wool and man-made fabric was required to bring the wool content of the ski fabric below the 50 percent requisite—from 52 percent to 49 percent—the way it is today, within the new tariff law.

It should be noted that the Department of the Treasury in its report on a similar bill in the 93rd Congress indicated it did not favor enactment of relief for Day's. Its objection centers on the fact that claimants may press their claim in the U.S. Customs Court and therefore the granting of relief would be premature. However, the Committee agrees with Senators Jackson and Magnuson that in light of the fact that counsel has advised claimants that legal fees would consume about

50 percent of any judgment secured by the court, a legal remedy would be impractical. Therefore it is proper that Day's should seek equitable relief from the Congress.

The agency objects to passage of this bill also because it would grant the claimant more favorable treatment than that accorded to other importers. The Committee believes that this argument is unsatisfactory, going more to the merits of private relief legislation in general than to the merits of this bill.

The Committee therefore favors enactment of H.R. 4654 and recommends that the bill be considered favorably by the Senate.

Attached and made a part of this report are the letter to the Chairman from Senators Henry M. Jackson and Warren G. Magnuson on the merits of H.R. 4654, and the report from the Department of the Treasury on H.R. 2531, a bill similar to H.R. 4654.

JANUARY 23, 1976.

HON. JAMES O. EASTLAND,
Chairman, Senate Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR SENATOR EASTLAND: We have introduced a private bill for the relief of Day's Sportswear, Inc., of Tacoma, Washington. We feel very strongly about the merits of Day's case and would appreciate your according this bill expeditious consideration.

The bill authorizes the Secretary of the Treasury to make a modest payment—too small to warrant litigation—to Day's which would be in full settlement of all claims of Day's against the United States for credit or refund of Customs duties arising out of the classification of ceratin imported textile fabrics, in chief weight of wool, entered by Day's at the Port of Tacoma, Washington, between August 10, 1970 and July 19, 1971.

We will briefly summarize Day's case. In October, 1968, Congress enacted Public Law 90-638, amending certain tariff schedules of the United States. The new law contained an amendment added by the Senate to prevent the importation of fabrics consisting of inexpensive reprocessed wool at lower tariff rates. The amendment provided that fabrics in "chief weight of wool whether or not in chief value of wool" were to be considered to be "in chief value of wool" for tariff purposes.

Prior to enactment of the law, Day's had been importing a special "stretch" fabric for ski clothing containing more than 50 percent by weight of wool (high quality wool, at that) but whose value was less than 50 percent of wool. Under the old tariff schedules, such a fabric was considered a "man-made" fabric and was assessed at a lower tariff rate than fabric containing more than 50 percent "of value" in wool.

Public Law 90-638 did not make any changes in the old tariff classification. The old classification, which was pre-empted by P.L. 90-638, remains in the tariff schedules to this day. Moreover, the new law did not cross-reference from the old classification to the new classification to help notify shippers that a change had been made.

The confusing language of the amendment has been labeled by the Customs Bureau's Seattle District Director as "misleading to all con-

cerned". Not only did the language go unnoticed by Day's but also the Bureau's commodity specialists in the Port of Tacoma, the Port of Seattle and even its Customs Information Exchange in New York failed to notice it.

It was a matter of mutual mistake then that Day's continued to import its ski clothing fabric under the old tariff and the Customs Office at the Port of Tacoma, with the concurrence of the Customs Exchange, continued for about two and one-half years and involved fifty separate shipments. At the time the mistake was discovered, twenty entries had not been liquidated and the subsequent reclassification of those entries under the new law increased the duty payable by Day's by \$20,000.

After having examined the correspondence on this issue and the record of hearings conducted by the Subcommittee on Administrative Law and Governmental Relations of the House Judiciary Committee, we are satisfied that Day's acted in good faith. They did not attempt to reap windfall profits during the period in question, nor did they benefit economically from the mistake. The retail price of the finished ski pants remained comparatively the same before and after passage of P.L. 90-638. Furthermore, after the error was brought to the Day's attention, only a minor adjustment in the relative weights of wool and man-made fabric was required to bring the wool content of the ski fabric below the 50 percent requisite—from 52 percent to 49 percent—the way it is today, within the new tariff law.

The final outcome of the mistake in classification is that Day's had to pay Customs an additional \$20,000. Day's could take its claim to the U.S. Court of Customs Claims, but counsel has advised the company that legal fees would consume about 50 percent of any judgment secured for the court, and that considering the small size of the claim, pursuing a legal remedy would be impractical. Therefore, Day's is seeking equitable relief from the Congress.

The House has agreed that Day's should not have to suffer because Customs failed to stay up to speed on tariff laws. The argument that Day's should bear the burden of knowing the law does not appeal to our sense of fairness either. It is our earnest hope that the Senate will agree and grant Day's the relief it seeks and deserves.

Thank you for your courtesy, Mr. Chairman.

Sincerely,

HENRY M. JACKSON.
WARREN G. MAGNUSON.

THE GENERAL COUNSEL OF THE TREASURY,
Washington, D.C.

PETER W. RODINO, JR.,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on H.R. 2531, "For the relief of Day's Sportswear, Incorporated."

The proposed legislation directs the liquidation or reliquidation of 18 entries of textile fabric in chief value of man-made fibers and in

chief weight of wool under the tariff classification which would have applied if those entries had been made before the effective date of Public Law 90-638.

Headnote 7, Schedule 3, Tariff Schedules of the United States (TSUS), enacted as part of Public Law 90-638, which was approved October 24, 1968, provides that with respect to fabrics provided for in Parts 3 and 4 of Schedule 3, TSUS, the provisions for fabrics in chief value of wool shall also apply to fabrics in chief weight of wool, whether or not they are in chief value of wool. Accordingly, fabrics in chief value of manmade fibers which contain over 50 percent by weight of wool are, pursuant to Headnote 7, classifiable as fabrics of wool.

The Bureau published Public Law 90-638 in the weekly Customs Bulletin as Treasury Decision 68-277, dated November 6, 1968. One of the purposes for publication of the Customs Bulletin is to inform interested parties of changes in the law, regulations, and procedures pertaining to Customs matters.

Prior to the enactment of Headnote 7, the fabric imported by Day's sportswear was classifiable under the provision for woven fabric, of manmade fibers, containing over 17 percent of wool by weight, in item 338.15, TSUS, with duty at the rate of 18 cents per pound plus 18 percent ad valorem. When Headnote 7 became effective, that fabric became classifiable under the provision for woven wool fabrics, in item 336.60, TSUS, with duty at the rate of 37.5 cents per pound plus 38 percent ad valorem. However, the customhouse broker representing Day's Sportswear continued entering the fabric under item 338.15, TSUS.

In January 1969, at Seattle, Washington, the responsibility for examination, classification, and appraisal of textile fabrics was transferred from one group of Customs officers to another. The new team, being unfamiliar with the line of merchandise, was not aware of the change effected by P.L. 90-638, and it was not until June 1971 that the error was discovered. All entries involving this type merchandise, the liquidation of which had not become final, were then reclassified in accordance with Headnote 7. The reclassification of 18 entries covering importations of merchandise resulted in Day's Sportswear being assessed \$23,077.01 in additional duties.

Section 16.10a of the Customs Regulations (19 CFR 16.10a) sets forth the proper procedure for obtaining a binding ruling on the tariff classification of a prospective import. The importer would have been able to obtain the correct classification and rate of duty applicable to his merchandise had he or his broker applied to the Commissioner of Customs in accordance with that regulation. In addition, the customhouse broker through whom Day's Sportswear transacted business knew or should have known of this procedure for obtaining a binding ruling and that classification of merchandise in an individual entry under a particular tariff item number is not binding on the Bureau of Customs until 90 days after an entry pertaining to that merchandise has been liquidated by the appropriate Customs officers. The delay in properly classifying the merchandise could not operate to vest in the importer the right to a classification contrary to that required by law.

A protest with respect to these entries is presently before the Bureau

of Customs for administrative review. In the event that the protest is denied, judicial review of that denial will be available to the importer before the United State Customs Court. The granting of legislative relief, therefore, would be premature. Further, it is believed that the passage of the proposed legislation would grant the importer more favorable treatment than that accorded to other importers, and would, in the Department's opinion, discriminate against other importers who were obligated to pay the correct amount of duties provided for in the tariff schedules on similar imported articles. For these reasons, the Department does not favor enactment of H.R. 2531.

The Department has been advised by the Office of Management and Budget that there is no objection from the standpoint of the Administration's programs to submission of this report to your Committee.

Sincerely yours,

EDWARD C. SCHMULTS,
General Counsel.

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Ninety-fourth Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the nineteenth day of January,
one thousand nine hundred and seventy-six*

An Act

For the relief of Day's Sportswear, Incorporated.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Day's Sportswear, Incorporated, a corporation organized under the laws of the State of Washington, the sum of \$23,077.01. The payment of such sum shall be in full settlement of all claims of said corporation against the United States for credit or refund of customs duties arising out of the classification of certain imported textile fabrics in chief weight of wool entered by said corporation at the port of Tacoma, Washington, between August 10, 1970, and July 19, 1971, inclusive.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*