

RECORD OF THE SENATE

MONDAY, AUGUST 31, 1998

OPENING OF THE SESSION

At 3:07 p.m., the Senate President, Hon. Marcelo B. Fernan, called the session to order.

The President. The 16th session of the First Regular Session of the 11th Congress is hereby called to order.

Let us all stand for the opening prayer to be led by Sen. John Henry R. Osmeña.

After the prayer, the Asidor Family Choir will lead us in the singing of the national anthem and will also render a song, entitled *Bayan ay Pagpalain*.

Everybody rose for the prayer.

PRAYER

Senator J. Osmeña.

Lord, look upon this nation in crisis with mercy.
It is a crisis both material and spiritual.

There is a diminished sense of common good
Only selfishness and greed prevails.

Shame has lost its meaning,
Ceased to function as a social restraint.

The law has lost its force, broken with impunity.

Society has lost its bearing and its values,
And deals of the outgoing regime are quickly finding
sponsors in the new administration.

We ask, O Lord: What have we done to deserve these?
Lord, have mercy on us.

Amen.

The President. Thank you, Sen. J. Osmeña.

NATIONAL ANTHEM

Everybody remained standing for the singing of the national anthem.

The President. That is the Asidor Family led by Mr. Ulysses Moralde Asidor, his wife Helen, and children

Huly Ray, Winner, Blessie Grace, Wincer Love, Milcah, Jung-jung and Dodot.

SUSPENSION OF SESSION

The Chair would like to suspend the session to greet the Asidor family, if there is no objection. *[There was none.]*

It was 3:15 p.m.

RESUMPTION OF SESSION

At 3:17 p.m., the session was resumed.

The President. The session is resumed.

ROLL CALL

The Secretary will please call the roll.

The Secretary, reading:

Senator Teresa Aquino-Oreta	Present
Senator Robert Z. Barbers	Present
Senator Rodolfo G. Biazon	Present
Senator Renato L. <i>Compañero</i> Cayetano ..	Present
Senator Anna Dominique M.L. Coseteng ..	Present
Senator Franklin M. Drilon	Present
Senator Juan Ponce Enrile	Present
Senator Juan M. Flavier	Present
Senator Teofisto T. Guingona Jr.	Present
Senator Gregorio B. Honasan	Present
Senator Robert S. Jaworski	Present
Senator Loren B. Legarda-Leviste	Present
Senator Ramon B. Magsaysay Jr.	Present
Senator Blas F. Ople	*
Senator John R. Osmeña	Present
Senator Sergio R. Osmeña III	Present
Senator Aquilino Q. Pimentel Jr.	Present
Senator Ramon B. Revilla	Present
Senator Raul S. Roco	Present
Senator Miriam Defensor Santiago	Present
Senator Vicente C. Sotto III	Present
Senator Francisco S. Tatad	Present
The President	Present

The President. With 22 senators present, there is a quorum.

* On official mission

Luneta, and as the father of the extravagant independence centennial celebration which is now under investigation by the Senate Blue Ribbon Committee. Instead, Mr. Ramos will merely be remembered as the grandfather of the Amari land scam, and the father of the 1998 economic recession. Mr. Ramos, dream on.

If Mr. Ramos lied about the Charter change initiative, and if Mr. Ramos lied about the economy, then logic dictates that he lied about his alleged victory over me. In the ultimate analysis, it is for history to judge this issue, but it is not for Mr. Ramos to reinvent reality. *Falsus in uno, falsus in omnibus*. False in one thing, false in all things. For him to claim that I withdrew my protest is pusillanimous prevarication.

I understand that Mr. Ramos is threatening to run for the position of UN Secretary General, which would explain his current media offensive. I give that a big yawn, although at some cocktail party with foreign diplomats, I may have occasion to derive entertainment from this latest misbegotten brainchild of his.

But, here and now, I say to Mr. Ramos: Say no more false word about my election protest. One more false word--just one word—from him and I shall make sure that copies of this speech and the partial results of my protest against him shall be distributed to every ambassador in the UN General Assembly and the Security Council. I was muffled for six years under his administration, but now he is finished. His 15 minutes of media fame have elapsed and it is time to move on.

Thank you, Mr. President.

The President. Thank you, Senator Santiago.

The Majority Leader is recognized.

Senator Drilon. Mr. President, there are no reservations for interpellation. We thank our distinguished colleague for her privilege speech.

SUSPENSION OF SESSION

Senator Tatad. Mr. President, we are now supposed to resume consideration of the Anti-Dumping measure. May we ask for a one-minute suspension of the session.

The President. The session is suspended, if there is no objection. *[There was none.]*

It was 4:53 p.m.

RESUMPTION OF SESSION

At 4:56 p.m., the session was resumed.

The President. The session is resumed. The Majority Leader is recognized.

BILL ON SECOND READING S. No. 763--Anti-Dumping Law (Continuation)

Senator Drilon. Mr. President, with the consent of the Chamber, may we move that we resume consideration of Senate Bill No. 763 under Committee Report No. 1.

The parliamentary status is that we have reopened the period of interpellations upon the request of Senator Santiago. Therefore for this purpose, may we ask the Chair to recognize Sen. Juan Ponce Enrile, the main sponsor of the measure, and Sen. Miriam Defensor Santiago for the interpellation.

The President. Is there any objection? *[Silence]* There being none, resumption of consideration of Senate Bill No. 763 is now in order.

Sen. Juan Ponce Enrile is hereby recognized to be interpellated by Sen. Miriam Defensor Santiago.

Senator Santiago. Mr. President, I would like to begin by extending my gratitude to the distinguished sponsor and to the Majority Leader for their graciousness in allowing me to continue this interpellation.

I would like to beg the indulgence of the distinguished sponsor. These questions will tend to be extensive because I have to explain the background of the question being raised. And so, if he would indulge me, I would like to signal to him when my question is finished by saying "That is the question" or words to that effect.

I should now like, with his permission, to begin with page 16, lines 14 to 20, simply to make a general comment. Please allow me, Mr. President, to begin with a general comment.

Probably the most significant amendment which this proposed bill seeks to introduce is the transfer of the authority to determine whether there is a case of dumping and the authority to impose anti-dumping duties from the Secretary of Finance to the Secretary of Trade and Industry and the Secretary of Agriculture. I wish to probe the reason behind the proposal to transfer such authority from the Secretary of Finance. I would like to submit that there is a need to look into the wisdom

or justification for this transfer of authority considering that:

1. A substantial portion of the process of the determination whether or not there is a case of dumping is to be performed by the Tariff Commission, which is an agency independent of the Department of Trade and Industry or the Department of Agriculture, specifically, all investigations, data-gathering and evaluation, determination of material injury or threat thereof, determination whether there is a proper case for cumulative assessment or to be done by the Tariff Commission.

More importantly, pursuant to page 24, lines 18 to 24, paragraph 8, the Secretary of Trade and Industry or the Secretary of Agriculture only imposes anti-dumping duties by way of a department order upon the favorable report of the Tariff Commission. It even appears from this paragraph that the issuance of such department order is a mere ministerial duty on the part of the Secretary, if the Tariff Commission has given a favorable report for the imposition of anti-dumping duties. If such is the case, then it would not make a difference whether the department order is issued by the Secretary of Finance, or Secretary of Trade and Industry, or Secretary of Agriculture.

Any anti-dumping duties imposed by the Secretary and any provisional remedies taken, such as the imposition of a cash bond, are to be enforced or implemented by the Bureau of Customs, another agency under the Department of Finance. It does not appear from the proposed provisions that the Department of Agriculture and the Department of Trade and Industry or any of the agencies under them, would have any participation whatsoever in the proceedings relating to the imposition of anti-dumping duties. Neither do their respective secretaries of these departments have an involvement with the process.

In view of the involvement of two departments in the proceedings, there is now a need to coordinate between the two departments. Notices to the Commissioner of Customs from the Secretary of Trade and Industry or from the Secretary of Agriculture are to be coursed through the Secretary of Finance and vice versa. Administrative problems and inefficiency might arise in view of this setup.

Hence, my question is: Should we not retain authority with the Secretary of Finance? That is the first question.

Senator Enrile. Mr. President, this procedure that is now proposed in the bill that is before us was precisely to hasten the process of determining whether there is dumping of products in the country and that dumping materially injures any industry or threatens to materially injure an industry or retards the establishment of an industry, and whether there is a

causal link between the dumping and this injury. But, more than that, to determine the margin of dumping.

The margin of dumping, Mr. President, is a function of price. The one that has the ability or technical capacity to determine pricing of products domestically produced as well as those that are imported into the country would be the Secretary of the Department of Trade and Industry in the case of nonagricultural products or commodities; or on the other hand, the Secretary of the Department of Agriculture in the case of agricultural products.

While it is true that we are talking here of the imposition of dumping which may suggest to us that this ought to be handled by the Secretary of Finance, the Bureau of Customs being under the Department of Finance, nonetheless, we are constrained by the circumstance that indeed the problem is the question of pricing that affects our industries.

In the United States, Mr. President, it is not the Secretary of the Treasury who imposes the anti-dumping duty. Under current US law, anti-dumping cases are handled by two administrative agencies of the United States. A complaint must be simultaneously filed with the Commerce Department which is the equivalent of our Department of Trade and Industry, and the International Trade Commission. It is the Commerce Department that is responsible for determining whether dumping exists, whether there is a margin of dumping and the International Trade Commission is responsible for examining whether the dumping or dumped goods are causing material injury of the competing industry within the United States.

Unfortunately for us, we do not have an International Trade Commission similar to the United States. The best agency that we could think of is the Tariff Commission. They are quite familiar with the obligations of the Republic with respect to the GATT-WTO (Uruguay Round) Agreement as well as the levels of tariff imposable on certain goods. They have the technical capability, I suppose, to conduct the hearings and obtain the necessary materials in order to determine whether or not there is dumping; and whether or not the dumping materially injures or threatens to materially injure or retard the establishment of an industry in the Philippines.

Senator Santiago. Thank you. I will now refer to page 16, lines 1 to 23.

I am sure that both committees are fully aware that there is a substantial difference between the legal and economic definition of dumping. For example, Paul Krugman and Morris Obsfield, two international economists, define dumping as a pricing practice in which firms charge a lower price for export goods than they do for the same goods sold domestically.

This pricing practice comes about because of imperfect world market conditions and the different degrees of trade openness among countries. Thus, from an economic perspective, dumping can be considered a legitimate business strategy in the same way that the giving of discounts by airlines to students and senior citizens is considered a legitimate business practice.

Since there is a substantial difference between the legal and economic definitions of dumping, will it not be possible that this act we are discussing today might pave the way for the cynical abuse of law and the improper evaluation of what constitutes dumping and how much dumping duty to levy?

Senator Enrile. Mr. President, my answer is no. I do not think so. But I would like to explain that the equation involved in determining whether there is dumping technically speaking or legally speaking for that matter, even from the viewpoint of economic concept, is quite simple. It is just this: Home Market Price minus Export Sales Price is equal to Margin of Dumping.

If the difference between the home market price of the product involved is higher than the export market price and the difference is more than the *de minimis*, meaning, it does not reach 2 percent of the home market price, then there is dumping. But apart from the determination that there is dumping, that would not justify the conclusion that a dumping duty ought to be imposed immediately. Because the other element to impose the dumping duty requires an investigation to determine whether that dumping of goods, technically speaking, brings about actual material injury to a domestic industry or threatens a material injury to a local industry, or retards the establishment of a domestic industry producing like goods.

Mr. President, I am aware that in the business world, businessmen would sell goods at less than their home market price provided that the price at which they sell the goods in other markets, for instance like our market, would mean that they recover their total variable cost, plus a certain amount of profit. I have given an example the other day here.

For instance, a factory, let us say in Hong Kong, produces 1 million pairs of shoes annually at a cost of US\$16 per pair and sells that product at \$20 per pair in the Hong Kong market on a one-shift basis per day. This same company will now produce 2 million pairs by using two shifts and diverts the additional 1 million pairs to the Philippine market selling it not at \$20 per pair but at \$14 per pair. And it is proven by facts and figures that the variable cost of these companies does not exceed \$10. Its fixed cost is \$6. So, by selling at \$14 per pair this same pair of shoes to the Philippine market, it recovers its variable cost, plus a margin of \$4. It can do that.

In this case, we can very well see that from the viewpoint of both economic and legal disciplines, there is dumping.

Senator Santiago. Thank you.

Senator Enrile. So, we are justified in imposing an equalizer, so to speak, to level the playing field to protect our industries in the form of what we call a dumping duty. And the extent of the dumping duty we are authorized to impose is the margin of dumping, which in this case, ought to be the equivalent in pesos of \$6.

Senator Santiago. The bill defines "dumping" in terms of importation of goods at less than the normal value. Should the term "normal value" not be defined for completeness and the proper guidance of those who will be drafting the implementing rules and regulations?

Republic Act No. 7843 introduced the use of the term "normal value" to replace the term "fair value." In maintaining the use of "normal value," are we affirming that the shift from "fair value" to "normal value" is reasonable and justified? In the absence of a definition of "normal value," should this term be taken to have the same definition as provided by RA No. 7843? That is the question.

Senator Enrile. Mr. President, the term "normal value" is used in the GATT-Uruguay Round-WTO Agreement that we ratified, and this has an accepted meaning in international trade. It means the home market price for this product or like product based on *X* factory price. In fact, what they say is, it is the price at which this product is destined for consumption in the ordinary course of trade in wholesale quantities in the home market.

Senator Santiago. Still in the definition of "dumping," on page 16. It is not clear in this paragraph, at least, that normal value, as referred to here, is the normal value of the product in question in the country or countries of origin or export for completeness of the description when there is a case of dumping.

Senator Enrile. The lady senator is correct. I anticipated that question. There are some errors in typing here. The word "Philippines" should be amended correspondingly to mean the exporting country or the country of origin.

Senator Santiago. Then I withdraw my question.

I will proceed to the next page—page 17, line 19. It is required that the verified petition filed for purposes of initiating an anti-dumping investigation should, among others, state information on the evaluation of the volume of the alleged dumped imports; the effect of these imports on prices of like product in the domestic

market; and the consequent impact of the imports on the domestic industry.

Would it be sufficient to simply allege this in the verified petition? Should the law not require that these allegations be specifically supported by actual figures or computations? That is the question.

Senator Enrile. I would like to read the entire paragraph B:

B. Initiation of Action. - An anti-dumping investigation shall be initiated by any person whether natural or juridical upon filing a verified petition which shall be accompanied by documents containing information supporting the facts that are essential to establish the presence of the elements required for the imposition of an anti-dumping duty, and shall further state, among others: 1) the identity x x x

The opening paragraph incorporates almost *in toto* the provisions of the treaty on anti-dumping which requires certain allegations to be made.

Senator Santiago. Thank you. What is the effect of the failure to allege any of the four items? I am referring to the same page 17, lines 9 to 24.

Senator Enrile. I guess this will be addressed to the authorities. If they feel that there is a substantial compliance with the requirements of paragraph B, the State should not close the door to its industries to protect themselves simply because on a technical ground that they did not allege with specificity and legal precision the requirements of the law.

Senator Santiago. For purposes of clarity, would it be correct to say that the failure to allege one or more of the four items in this paragraph will not necessarily be fatal to the petition?

Senator Enrile. I suppose they have to identify the applicant. The applicant must identify itself—the business organization for which it acts, if it is acting for an organization that is covered by the paragraph found in lines 25 to 30 and beyond; description of the volume and value of domestic products or like products of the applicant which is being injured; then, a complete description of the alleged dumped product. I am sure that any industry worth its salt must know its competitors not only inside the country but outside of the country as well.

Then the names of the country or countries of origin or exports; the identity of its known exporter or foreign producer and a list of known persons supporting the product in question; information on the normal value of the product in

question in the country or countries of origin or export; the information on the evaluation of the volume of alleged dumped imports; the effect of these imports on prices of like product in the domestic market; and the consequent impact of the imports on the domestic industry.

Mr. President, these are material allegations. They are essential allegations. I guess lawyers who will have to handle this must know that one cannot make a case of dumping unless he states these things in his application. But should there be some lapses in the language used in the application, then it is up to the authorities to determine whether there is a substantial compliance. If there is none, they will then deny the application, and the applicant can reword his application and refile it, and the process will go all over again.

Senator Santiago. So the remedy would simply be to amend the petition.

Senator Enrile. Yes, Mr. President.

Senator Santiago. I would like to thank the distinguished gentleman, Mr. President.

Still on this page 17, I now go to lines 25 to 31.

THE APPLICATION SHALL BE CONSIDERED TO HAVE BEEN MADE "BY OR ON BEHALF OF THE DOMESTIC INDUSTRY" IF IT IS SUPPORTED BY THOSE DOMESTIC PRODUCERS WHOSE COLLECTIVE OUTPUT CONSTITUTES MORE THAN 50 PERCENT OF THE TOTAL PRODUCTION OF THE LIKE PRODUCT.

This presupposes that there are several producers who account for more than 50 percent of the total production of the like product.

Senator Enrile. That is correct, Mr. President. In fact, the other day, I gave the example of the beer industry. There are two producers in the country—San Miguel and Fortune. If it is San Miguel that files the application, there is no problem about it. It complies with both the industry volume requirement and the applicant volume requirement. On the other hand, if it is the other way around and it is Asia Brewery that files the application, then it must get the conformity of San Miguel.

Senator Santiago. Just for clarification. Would it be correct to say that if a single producer accounts for over 50 percent of the total production of the like product, a petition filed by this lone producer would constitute an application filed by or on behalf of the domestic industry?

Senator Enrile. Yes, Mr. President.

Senator Santiago. If so, would it be correct then to say that the only criterion in determining whether an application is considered to have been made by or on behalf of the domestic industry is not the number of producers behind the application but the percentage of total production that they account for.

Senator Enrile. That is correct, Mr. President. If it is not by and on behalf of an industry but to protect the interest of the applicant, then he must show that he has 25 percent of the production, or at least he is joined by a group making up about 25 percent of the entire production in the country.

Senator Santiago. I would like to thank the distinguished gentleman, Mr. President. That is very clear.

I am still on page 17, but then I will jump over to page 18.

In some industries, only two or three firms account for more than 50 percent of the total domestic production of a certain good. If so, will this bill not pave the way for the protection of just a few large firms in an industry?

I have asked this question because it has already happened in the United States where a few large firms that owned and operated cement plants used anti-dumping laws to push out competitors who used cheaper imported cement to make concrete. This, for me, is a clear example of the sinister use and cynical abuse of the law.

Does the distinguished senator not think that the use of output share or collective output as basis for the initiation of antidumping investigation might lead to the protection of only a few large firms with vested interest? That is the question.

Senator Enrile. There is much to be said about what has been raised by the distinguished lady senator from Iloilo. On the other hand, if there is a price differential between the home market value of the cement, as mentioned by the distinguished lady senator, and the export price to us, and that dumping would mean an injury even of these three producers in the Philippines—if there are only three producers—then I think they have a right to be protected under this law. That they are carteled business to manipulate their political strength in order to exact monopoly prices from the public is something else. That is another issue that we must handle through another legislation which is known as the antitrust law in other countries. But we are crafting a general law to protect our local industries.

Senator Santiago. Thank you, Mr. President. I agree with the point about the imperative need for an antitrust law.

I will now go on to page 19, line 18.

The importer is given only 10 days from the receipt of the notice of the petition within which to file his answer. Is this period not too short, considering that some data or information which will be required by the importer to adequately counter the allegations against him may need to be obtained from abroad, such as data to contradict the normal value of the product in the country of export which would have to be alleged by the petitioners in their petition? Would 15 days not be more reasonable? Those are the questions.

Senator Enrile. Mr. President, time is of the essence in these cases. We are lucky if there is an isolated importation. If there is dumping into the country, I can almost say with certitude that it will be a series of shipment that would come into the country, and we should see to it that the time is not delayed by legal maneuvers.

I would suggest that we should maintain this and leave the discretion to the administering authorities to determine on a case-to-case basis whether there is merit to any request for an extension of time to furnish documents. Otherwise, legal luminaries will take advantage of this and they could make life very difficult for our local industries.

Senator Santiago. That would be an excellent procedure.

I will now go to page 22, lines 13 to 31, and also deal with page 23, lines 1 to 16.

Page 22, lines 13 to 31. What are the benchmarks to be used in measuring the material injury to or the material retardation of a domestic industry? Are these benchmarks absolute or relative to an industry? If there are no clear economic and quantitative bases or benchmarks for the evaluation of material injury, my concern is that a degree of arbitrariness in the interpretation of the law might arise.

Those are the questions.

Senator Enrile. The provision alluded to is quite broad and specific in some ways. It says:

DETERMINATION OF MATERIAL INJURY OR THREAT THEREOF. - THE PRESENCE AND EXTENT OF MATERIAL INJURY OR THE PRESENCE AND DEGREE OF THE THREAT OF MATERIAL INJURY TO DOMESTIC INDUSTRY, AS A RESULT OF THE DUMPED IMPORTS SHALL BE DETERMINED BY THE COMMISSION ON THE BASIS OF POSITIVE EVIDENCE AND

SHALL REQUIRE AN OBJECTIVE EXAMINATION OF: (1) THE RATE AND AMOUNT OF IMPORTS, EITHER IN ABSOLUTE TERMS OR RELATIVE TO PRODUCTION OR CONSUMPTION IN THE DOMESTIC MARKET; (2) THE EFFECT OF THE DUMPED IMPORTS ON PRICES IN THE DOMESTIC MARKET FOR LIKE PRODUCT, COMMODITY OR ARTICLE, THAT IS, WHETHER THERE HAS BEEN A SIGNIFICANT PRICE UNDERCUTTING BY THE DUMPED IMPORTS AS COMPARED WITH THE PRICE OF LIKE PRODUCT, COMMODITY OR ARTICLE IN AND OR—

This will be amended later on, Mr. President.

—DOMESTIC MARKET, OR WHETHER THE EFFECTS OF SUCH IMPORTS IS OTHERWISE TO DEPRESS PRICES TO A SIGNIFICANT DEGREE OR PREVENT PRICE INCREASES, WHICH OTHERWISE WOULD HAVE OCCURRED, TO A SIGNIFICANT DEGREE; AND (3) THE RESULTING EFFECT OF THE DUMPED IMPORTS ON THE DOMESTIC PRODUCERS OR THE RESULTING RETARDATION OF THE ESTABLISHMENT OF A DOMESTIC INDUSTRY MANUFACTURING LIKE PRODUCT COMMODITY OR ARTICLE, INCLUDING AN EVALUATION OF ALL RELEVANT ECONOMIC FACTORS AND INDICES HAVING A BEARING ON THE STATE OF THE DOMESTIC INDUSTRY CONCERNED, SUCH AS, BUT NOT LIMITED TO ACTUAL OR POTENTIAL DECLINE IN OUTPUT SALES, MARKET SHARE, PROFITS, PRODUCTIVITY, RETURN ON INVESTMENT OR UTILIZATION OF CAPACITY, OTHER FACTORS AFFECTING DOMESTIC PRICES, THE MAGNITUDE OF THE DUMPING, ACTUAL AND POTENTIAL NEGATIVE EFFECTS ON CASH FLOW, INVENTORIES, EMPLOYMENT, WAGES, GROWTH AND ABILITY TO RAISE CAPITAL OR INVESTMENTS.

Senator Santiago. So would the distinguished sponsor say that these benchmarks are relative to the industry? Would they be absolute or relative benchmarks?

Senator Enrile. I guess, Mr. President, some of these are absolute benchmarks; some are relative. We have to consider other factors not only the presence of dumped goods but at the same time, if there is a recession, there is a change in the taste or style or consumption patterns of our people. These are things that must be taken into account.

Senator Santiago. Thank you. A related question. Although economists say that the effects of dumping are negative, there is a school of thought which posits that there is no good economic justification that dumping is harmful. In fact there are cases, it is said, when dumping may even lead to greater trade. This is what economists apparently call "reciprocal dumping" or when two countries reciprocally dump goods in each other's domestic market.

Is it not possible that dumped intermediate inputs and products which are obviously cheaper might even help domestic manufacturers to lower their cost of production and thus enable domestic industries to prosper and employment to grow?

Senator Enrile. This is really a center of debate in the economic world, Mr. President. Why should we prevent cheaper goods to come into our country that would benefit our consumers or our local industries?

When we talk of consumers, we are not just talking of the people who will eat beef and pork or chicken, but also those people who would be preparing hotdogs and potted meat for the market, using these materials as raw materials.

But the question is: How about the people working in our local industries producing like products? Are they not entitled to protection? This is a very difficult area to consider. We have to balance these various intertwined interests, interlocking interests, sometimes crisscrossing interests. I suppose that all we can do is to leave this matter to the judgment and good faith of our economic administrators who are going to be tasked to handle this very delicate problem.

Senator Santiago. I agree that that is an open-ended point. So I will proceed still on the same page 23, lines 17 to 32.

This paragraph provides for a way to avoid the imposition of provisional measures or anti-dumping duties through the execution of an undertaking under oath that it will revise or adjust its prices accordingly.

The bill, however, fails to provide the penalty or consequence for the exporter's breach of his undertaking. In case of breach of the undertaking which was executed, anti-dumping duties may be imposed upon observance of the necessary procedures. Furthermore, the anti-dumping duties must be assessed not only on current and future imports of such product, but also on all importations priced below the normal value of the product in violation of the undertaking which was executed. It would be retroactive to the date of violation of the undertaking. This retroactive imposition of the anti-dumping duty should sufficiently deter exporters from subsequently violating their undertaking.

Should we not impose a penalty of this nature? That is the question.

Senator Enrile. Mr. President, the purpose of an anti-dumping law is not really to punish, not to inflict punitive sanction on the importer but to promote fair trade practices by establishing an amount that would be added to the price at which the goods are imported into the Philippines or exported to the Philippines in order to equalize the playing field.

I think the local producers are more interested in the equalization of the playing field rather than the penalty that would be imposed on the importer of the goods or the exporter of the goods to the Philippines, because so what if somebody will go to jail. But if the practice of exporting cheap goods to the country will continue, it will ruin our local producers.

Senator Santiago. I take that explanation very well and I will concede the point. So now I will proceed to page 24, lines 1 to 11.

What volume will be considered as negligible? Should the law already not specify a threshold percentage of total import volume of such or similar product, for example, 5 percent, which will be considered as negligible? That is the question.

Senator Enrile. Mr. President, the treaty establishes less than 3 percent of the entire volume of imports of like products into the country to be *de minimis*. If we reach 3 percent, then we are already outside what we call "*de minimis* volume."

Senator Santiago. So we will simply refer to the treaty on this point.

Senator Enrile. Yes, Mr. President.

Senator Santiago. Still on page 24, lines 29 to 30. Should it not be specifically provided that the remainder which is to be returned to the importer shall not earn any interest? That is the only question.

Senator Enrile. I have no objection if we amend it.

Senator Santiago. Thank you. So I will raise this again during the amendment period.

Now, I will go to page 25, line 5. With respect to a case of dumping assessed cumulatively as provided on page 24, paragraph (J), how will the amount of anti-dumping duty be determined? Will each country be assessed a different anti-dumping duty in accordance with the formula provided under this paragraph one? That is the question.

Senator Enrile. What was the question?

Senator Santiago. Will each country be assessed a different anti-dumping duty?

Senator Enrile. Yes, Mr. President, because then it would depend upon the pricing in the home market of each exporting country to us. So it is quite likely that there will be differentiated dumping duties for like products

Senator Santiago. Still on page 25, lines 5 to 15. What is the normal value referred to in line 7? Is this the normal value of the product in the domestic market of the importing country or the normal value of the product in the domestic market of the exporting country? Does the normal value refer to the market price or the production cost? That is the question.

Senator Enrile. This is the value *X* factory price at which like goods are destined for consumption in the market of the producing country or if there are no sales in that country, then of the country where it is transshipped for export to the Philippines.

Senator Santiago. So basically, it would be the normal value of the product in the domestic market of the exporting country?

Senator Enrile. That is correct.

Senator Santiago. Still on the same point. Did both committees consider the so-called fair price approach to the determination of the anti-dumping duty? The fair price approach, we already know, uses the production cost and not the market price of the product in the exporting country as the basis for the anti-dumping duty.

Senator Enrile. Actually, the treaty itself, Mr. President, gives us the formula for adjustments to the normal value in order to arrive at the *X* factory price. Meaning, we have to remove the advertising cost, the local taxes, if any, the packaging, the warranties, the after-service cost, and so forth and so on.

So the intention being that the export price to the Philippines in our case, ought to be equal to the *X* factory price of the producing and exporting country. That is my understanding.

Senator Santiago. So in effect, does this bill use the fair price approach?

Senator Enrile. No, Mr. President. I think there is only one country that uses the fair price approach—that is the United States. Because its formula is less than fair market value, there is dumping already.

Senator Santiago. Thank you. I have another question on this same point.

What are the implications of the method of valuation followed for the determination of the dumping duty on existing trade agreements that the Philippines has already entered into?

Senator Enrile. We are complying actually with our commitments under the GATT-Uruguay Round-WTO Agreement.

Senator Santiago. Would there be any treaties of FCN, or Friendship Commerce Navigation, that the Philippines has entered into where the other party to the treaty might not be a member of the GATT-Uruguay Round-WTO Agreement?

Senator Enrile. I am not aware of that, Mr. President. I do not think we have any trade agreement with any nonmember. I am not aware of any trade arrangement of the Philippines with any nonmember of the GATT-Uruguay Round-WTO Treaty.

Senator Santiago. In that case, that disposes of the question.

Senator Enrile. Because otherwise, if we are going to give a different treatment and a better treatment to a nonmember country, then we will be violating the Most-Favored-Nation clause which is one of the most basic principles of the GATT-Uruguay Round-WTO Agreement.

Senator Santiago. Yes, that is correct.

I am still on page 35, but now I go to lines 16 to 28. Are the provisions on the duration and review of the antidumping duty in consonance with the action plans particularly those that concern tariffs, nontariff measures and competitive policy that we have committed to APEC and similar world trade bodies? This question would require a review of the legal procedures governing the notification of dumping activities, review of dumping practices and imposition of a dumping duty. That is the question.

Senator Enrile. This is, more or less, attuned to the provisions of the GATT-Uruguay Round-WTO Agreement.

Senator Santiago. So again, we would simply refer to the treaty.

Senator Enrile. Yes.

Senator Santiago. I will now proceed to page 27, line 1 and the following lines. With respect to judicial review, may all aspects of the decision or ruling be subject to the judicial review?

It appears that under the old provisions, the aggrieved party may only appeal the amount of dumping duty that is levied and collected. Is the amendment intended to expand the right of the aggrieved party to judicial review?

Senator Enrile. I think a review by the courts will mean a reopening not just the level of dumping duty, but the factual basis for the imposition of the dumping duty and the extent of material injury to our local industries.

In other words, everything must be reopened and reviewed by the court.

Senator Santiago. That is clear.

Senator Enrile. I guess the courts, given the very technical nature of this discipline—the business practices involved here—will probably have to defer to the judgment of the fact-finding body that we are trying to burden with the responsibility of gathering the facts.

Senator Santiago. So it would be correct to say that the appeals court would have a free hand in reviewing all aspects of the case?

Senator Enrile. Yes, Mr. President.

Senator Santiago. My final question refers to page 27, lines 21 to 26. I will have to make an extensive remark, subject to the general comment I made when I began this interpellation.

Senator Enrile. Lines 21 to 27?

Senator Santiago. Page 27, lines 21 to 26, on *Rules and Regulations*.

Senator Enrile. Yes, Mr. President.

Senator Santiago. I will have to recall to the gentleman the remarks I made when I began this interpellation about returning the power to the Secretary of Finance.

In stating that the Secretary of Trade and Industry in the case of nonagricultural products, and the Secretary of Agriculture in the case of agricultural products, shall issue all rules and regulations to implement the Act, it appears that there will be two sets of implementing rules and regulations for this Act depending on which type of product is involved.

Is this the intention?

Senator Enrile. Mr. President, I guess the two secretaries

will have to harmonize their rules and regulations because both must comply not only with the law that we are crafting, but with the requirements of the GATT-WTO-Uruguay Round Agreement.

The reason each department head must issue its own rules and regulations is that there are certain provisions of the treaty bearing on agricultural products that do not bear on industrial products.

I do not pretend to know the two areas well enough to take the chance of giving it to just one department head like the Secretary of Finance. In fact, at the present time, the practice and the current regime is that all nonagricultural products are under the jurisdiction of the Secretary of Trade and Industry and all agricultural products will have to be dealt with by the Secretary of Agriculture.

That is why while we were discussing sugar earlier, we were talking of the tariffication law which lifted the quantitative restrictions on certain agricultural products and these are actually addressed to the Secretary of Agriculture. In fact, the administrative order which was raised earlier in this Chamber was issued by the Secretary of Agriculture.

Senator Santiago. Mr. President, my understanding is that the existing law vests the authority to issue the implementing rules and regulations on the Secretary of Finance.

My point is: Should there not be a unified set of implementing rules for the Act issued by the Secretary of Finance, except that the implementing rules which will require the technical expertise of either the Secretary of Trade or the Secretary of Agriculture will have to be supplied by them respectively?

The issuance of the implementing rules for the Act, I think, should be the responsibility of the Secretary of Finance rather than the Secretary of Trade and Industry and the Secretary of Agriculture concurrently.

Senator Enrile. Mr. President, I think it would be rather awkward for the Secretary of Finance to be issuing the rules and regulations to implement this law when his role is simply that of a conduit in order that either the Secretary of Trade and Industry or the Secretary of Agriculture would reach the bureau that would actually collect the dumping duties and that is the Bureau of Customs. The Secretary of Finance has no other role here except that. So, I would suggest that the rules and regulations will have to be issued by the corresponding department heads for the products involved. If it is agricultural, let it be a function of the Secretary of Agriculture; if it is nonagricultural, let it be a function of the Secretary of Trade and Industry.

Senator Santiago. Thank you, Mr. President. I consider that the answers have been extraordinarily competent and I thank the gentleman again for his graciousness in allowing me to conduct interpellation.

Senator Enrile. Thank you, Mr. President.

The President. Thank you, Sen. Miriam Defensor Santiago.

The Majority Leader is recognized.

Senator Drilon. For the next interpellation, may we ask the Chair to recognize Senator Pimentel.

The President. Sen. Aquilino Q. Pimentel Jr. is recognized.

Senator Pimentel. Mr. President, will the gentleman respond to a few clarificatory questions?

Senator Enrile. With pleasure, Mr. President.

Senator Pimentel. Mr. President, the provisions that the gentleman is trying to propose are intended to protect any product, commodity or article of commerce which is already produced in the Philippines against the dumping of such products into the nation, or which threatens to materially retard the establishment of such an industry producing like products.

However, Mr. President, there is a requirement before an initiation of action under this provision can be supported that the application, according to the provision found on page 17, line 25, shall be considered to have been made by or on behalf of the domestic industry if it is supported by those domestic producers whose collective output constitutes more than 50 percent of the total production of the product that is produced here and which is threatened by the importation in effect.

And yet, going on to page 18, lines 1 to 6, it seems that no investigation shall be initiated when a domestic producer expressly supporting the application accounts for less than 25 percent of the total production of the like product produced by the domestic industry.

Senator Enrile. That is the wording of the treaty, Mr. President. We just reflected it here. I had a hard time trying to fathom the interrelation of these two sentences, and the only thing I could come up with is, if the allegation of the petition is that the petition is being filed by a domestic industry or on behalf of a domestic industry, then we have to comply with the 50-percent requirement.

On the other hand, if there is no such allegation and the

applicant alleges that he is in this business, that he is producing this product and that he is being injured, then he must be prepared to show that he represents at least 25 percent of the industry.

Now, if there are several applicants and they do not allege that they are filing the petition by and on behalf of a domestic industry but they are filing it collectively on their behalf, then they must show that they represent at least 25 percent of the local production.

Senator Pimentel. Yes. And we are talking here, Mr. President, of the domestic producer who is complaining against the dumping, is that correct?

Senator Enrile. Yes, that is correct.

Senator Pimentel. Now, if we are talking of protecting incipient industries, I find it difficult to see how at a given point when they are starting.....

Senator Enrile. It says retardation, meaning that the industry is just starting—

Senator Pimentel. Yes.

Senator Enrile. —and that they cannot move on because they are being killed by dumping. If this industry is producing 1,000 pairs of shoes or clothing material, let us say, per month or 12,000 per year. That is the total production, then...

Senator Pimentel. Then dumping duty will be allowed.

Senator Enrile. Then dumping duty will be allowed. Because then we are retarding the growth of this industry as against the producers of like goods abroad that are dumping their goods here. If there are several small businesses producing, let us say, 10 producers of 100 each, these are small atomized business houses, then they can. Let us say, about—what is 25 percent of 1,000, 200?—three of them could come together and file a petition that they want to be protected because the industry could not be established in the country because of this or that it is being retarded. The growth is being retarded, I think dumping duty would be justified.

Senator Pimentel. Mr. President, the gentleman's answer would be true despite the fact that on page 18, it is specifically stated that no investigation shall be initiated when the domestic producer expressly supporting the application accounts for less than 25-percent production of the like products.

Senator Enrile. Total production.

Senator Pimentel. Yes, Mr. President.

Senator Enrile. Yes, because even if we are producing, no matter how small the organization, we have a 100-percent production in the country. Now, if there is no production, then there is no product that will be injured.

Senator Pimentel. Yes, that is exactly what I wanted to clarify. Because the way this provision is worded, it is so obtuse that it is difficult to envision the protection that we want to accord to a local industry.

Senator Enrile. Mr. President, this is a product of negotiation, and even the economists agree that they made and intended these provisions to be vague because of certain give-and-take in the negotiation.

Senator Pimentel. In any event, if our understanding is that no matter how small an incipient producer of a product that is being threatened by the importation of like products from other countries, they are entitled to initiate an anti-dumping investigation.

Senator Enrile. Yes, Mr. President. That is correct as long as they comply with the requirements. If they produce, let us say, four bulldozers a year, one company that produces one bulldozer—if we want to push these to the streets—can go to the proper department and file an application for dumping.

Senator Pimentel. Thank you, Mr. President.

The President. Thank you, Senator Pimentel.

The Majority Leader is recognized.

Senator Drilon. Mr. President, Sen. Teresa Aquino-Oreta is the last senator who has manifested and reserved the right to interpellate. May I ask the Chair to recognize the senator from Navotas.

The President. Sen. Teresa Aquino-Oreta is recognized for interpellation.

Senator Aquino-Oreta. Thank you, Mr. President. May I ask some questions from the distinguished gentleman from Cagayan?

Senator Enrile. Gladly, Mr. President, to our very charming and able member of this Chamber.

Senator Aquino-Oreta. Mr. President, I have been listening all throughout the interpellation of our colleagues, and I was

just wondering since in Senate Bill No. 763—I was looking at the consumer groups—some consumers and consumer groups believe that anti-dumping measures restrict choices for quality products by favoring domestic products and limiting imports.

Mr. President, what provisions or mechanisms are there in Senate Bill No. 763 which protect Filipino consumers by making available low-cost and high-quality imported goods against high-cost local products?

Senator Enrile. Mr. President, we are in a regime of import liberalization. We do not limit imports of certain products. But what we are doing in this measure is to provide our domestic industries the wherewithal to protect themselves in the event that there is “dumping”; meaning, that goods are sent to the Philippines not according to their prices at which the same goods are marketed in their home countries of production but in different and lower prices in order to injure local industries. Although the intention may not be to injure local industries deliberately, the effect of the entry of such priced goods would bring about material injury to local industry or threaten them with material injury.

Sentor Aquino-Oreta. Yes, but will that not remove competition because we have better quality products from abroad at a lower price than our very own?

Senator Enrile. Well, in a sense, Mr. President, there is lessening of competition because we are stopping the entry of cheap goods. But I do not think our laws would allow cut-throat competition. What is allowed is a fair trade competition; a competition that is fair, without restraining trade inside our domain.

If on the other hand, if we are going to allow foreign interest to send products to the country at less than fair values, fair prices to the detriment of our local industries, *kawawa naman iyong mawawalan ng trabaho sa atin sapagkat* no businessman would continue producing products if it will lose money.

Sentor Aquino-Oreta. Precisely, Mr. President, with these products coming in now, does the gentleman not think this is making our local products suffer? Because in the market now, we see better products but the prices are lower.

Senator Enrile. If the prices are lower, Mr. President, and the prices of these goods, lower as they are, are equal if not more than the prices at which they are being marketed in their home country of production or export, we cannot use the tool of anti-dumping duty to prevent the entry of these goods. It is only when the prices at which these goods are exported to the Philippines would be less than the prices at which they are marketed in their home country of production or export that we can use the tool of anti-dumping.

But the mere fact that the goods are marketed in the Philippines for less than local prices would not mean dumping. The applicant for dumping must establish that the export price at which these goods were sent to the Philippines is less than the price at which these goods are destined for consumption in the local market or in the market of manufacture.

Sentor Aquino-Oreta. Then, Mr. President, what are the safeguards against capricious filing of dumping complaints by domestic industries?

Senator Enrile. This safeguard, Mr. President, is that the Secretary concerned must first establish the existence of a *prima facie* case before any action to thwart the importation would happen.

Sentor Aquino-Oreta. Yes, and I think our colleague already asked this, but will that not give more time for these import products to ... will this give more protection to our local product?

Senator Enrile. Which is this?

Sentor Aquino-Oreta. Mr. President, the gentleman said that they have to establish *prima facie* case and that will entail time.

Senator Enrile. The time is circumscribed and provided in the law that we are crafting, Mr. President. In fact, I must say that I cut it shorter in some ways than what is allowed.

Sentor Aquino-Oreta. Actually, Mr. President, I am more concerned with our local products so that somehow there will not come a time when they will be in competition with these high quality and low-priced imported products against our high-priced products.

Senator Enrile. Let us take the case of beer, Mr. President. There is a big importation of Carlsberg, Heineken, Budweiser and all kinds of high-priced beer. But no one has raised any issue of dumping, because I suppose San Miguel and Asia Brewery know that these beers are being priced according to their real price in their home markets. But if there should be an occasion where Heineken would be marketed or exported to the Philippines at a price lower than the price at which it is marketed in its own home country, or if the Heineken in Singapore is sent to the Philippines at less than its price in the domestic market of Singapore, then surely, we will consider dumping.

Sentor Aquino Oreta. I was thinking of corned beef, Mr. President, because the imported ones have better quality but cheaper in price than our local corned beef.

Senator Enrile. Madam, I am in the corned beef business.

Our local production is better than those that are being produced abroad. When they come here, they have very short, almost most grains of meat. I think we are just affected by our mental conditioning that imported is better. Anyway, that is neither here nor there.

Senator Aquino-Oreta. No, no, Mr. President. I was looking at the prices. The price of our local corned beef is higher than the price of the imported product that we have here.

Senator Enrile. We have a lower price than any of the imported products. I think one of these days, I will send the lady senator a sample.

Senator Aquino-Oreta. That is good. Anyway, I would like to thank the gentleman, Mr. President. As I said, the concern for local products here in our country weighs more than imported, high quality, and lower priced products or as against our quality and high-priced products.

Thank you, Mr. President.

The President. Thank you, Sen. Teresa Aquino-Oreta.

The Majority Leader is recognized.

Senator Drilon. There are no more senators wishing to interpellate.

Senator Biazon. Mr. President.

Senator Drilon. I withdraw the motion, Mr. President. Senator Biazon would like to raise a few questions.

The President. Senator Biazon is recognized.

Senator Biazon. Thank you, Mr. President. Just two or three questions.

Mr. President, we are looking at two conflicting sectors here—protection of our industries/producers as against the protection of our consumers, the latter, being raised by Sen. Teresa Aquino-Oreta. For our industries, does the protection come only in terms of volume being brought in or protection on the control of price in the form of exaction of tariff?

Senator Enrile. When we are protecting our local industries, we are talking primarily of the pricing because we are leveling the pricing by this law. The volume is part of the competition, Mr. President.

Senator Biazon. Unless a product is covered by the minimum access volume.

Senator Enrile. Yes, the product could be covered by the minimum access volume but we can bring in out-quota imports even if we have the minimum access volume. What a minimum access volume simply says is "Okay, this product has a minimum access volume of X-number of tons at this rate of duty."

But an importer in the Philippines can go beyond that minimum access volume and import at a higher duty rate, what we call the out-quota rate. We cannot do anything because we are a part of globalization, for as long as the pricing mechanism is fair. If it is not fair, we apply anti-dumping duty or countervailing duty, as the case may be.

Senator Biazon. Mr. President, that means there are two measures that protect our industries; One is the minimum access volume; and two, is the tariff. I think this would answer the concern of Senator Aquino-Oreta—the protection of both our industries and our consumers in the sense that there is still a competitive atmosphere offered by the importation. This may be explained by the gentleman's example about how to determine the tariff to be imposed which is to level the playing field as far as the pricing is concerned.

Senator Enrile. That is correct.

Senator Biazon. But it does not deal on the quality.

Senator Enrile. Quality-wise, that is a factor that has to be taken into account in determining the reasonableness of the price.

Senator Biazon. Meaning, Mr. President, the protection for our consumers is in terms of pricing but not on quality.

Senator Enrile. That is correct, Mr. President.

Senator Biazon. Thank you, Mr. President.

The President. Thank you, Senator Biazon. The Majority Leader is recognized.

Senator Drilon. Mr. President, I do not see any senator raising his hand to raise additional questions. Therefore, I once more move that we close the period of interpellations.

The President. Is there any objection? [*Silence*] There being none, the motion is approved.

Senator Drilon. We now come to the period of committee amendments.

COMMITTEE AMENDMENTS

Senator Enrile. We have a few committee amendments, Mr. President.

On page 16, line 10, replace the word "Philippines" with the phrase EXPORTING COUNTRY OR THE COUNTRY OF ORIGIN.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. On page 17, line 14, between the words "countries" and "origin", replace the word "or" with the preposition OF so that line will read "or countries OF origin or export."

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. On the same page, line 14, delete the words "IN QUESTION" after the word "export" before the comma(,).

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Enrile. Mr. President, on page 21, after line 20 and before the paragraph, starting with the word "IN" in line 21, insert the following as a paragraph:

THE COMMISSION IS HEREBY AUTHORIZED TO REQUIRE ANY INTERESTED PARTY TO ALLOW ACCESS TO, OR OTHERWISE PROVIDE, NECESSARY INFORMATION TO ENABLE THE COMMISSION TO EXPEDITE THE INVESTIGATION.

Another paragraph following that paragraph.

IN CASES IN WHICH ANY INTERESTED PARTY REFUSES ACCESS TO, OR OTHERWISE DOES NOT PROVIDE, NECESSARY INFORMATION WITHIN A REASONABLE PERIOD OF TIME OR SIGNIFICANTLY IMPEDES THE INVESTIGATION, PRELIMINARY AND FINAL DETERMINATIONS, AFFIRMATIVE OR NEGATIVE, MAY BE MADE ON THE BASIS OF THE FACTS AVAILABLE;

And then continue with the word "AND" (,).

Senator Guingona. Mr. President.

The President. The Minority Leader is recognized.

Senator Guingona. May we have that last portion of the proposed amendment, Mr. President.

The President. The last portion is requested by the Minority Leader, Senator Enrile.

Senator Enrile. The last portion of...

The President. The last portion of the proposed insertion.

At this juncture, the Majority Leader handed a copy of the committee report to the Minority Leader.

Senator Guingona. I have the committee report, Mr. President. Is there any time period within which ceases a reasonable period?

Senator Enrile. Mr. President, before the distinguished Minority Leader will proceed, I would like to amend what I said.

Instead of a semicolon (;) following the word "available", a period (.) will be inserted and delete the word "AND" and the comma (,). Replace the semicolon (;) with a period (.) and delete the rest of that line.

The President. Is there any objection to the proposed amendment by insertion? *[Silence]* There being none, the amendment is approved.

Senator Enrile. Mr. President, on page 24, between lines 17 and 18, before the present paragraph K, insert the following paragraph which I request to be identified as paragraph K.

K. THE COMMISSION SHALL, BEFORE A FINAL DETERMINATION IS MADE, INFORM ALL THE INTERESTED PARTIES OF THE ESSENTIAL FACTS UNDER CONSIDERATION WHICH FORM THE BASIS FOR THE DECISION TO APPLY DEFINITIVE MEASURES. SUCH DISCLOSURE SHOULD TAKE PLACE IN SUFFICIENT TIME FOR THE PARTIES TO DEFEND THEIR INTERESTS.

And change the letters that would identify the paragraphs thereafter.

The President. Is there any objection to the proposed changes?

Senator Guingona. Mr. President.

The President. The Minority Leader is recognized.

Senator Guingona. Just a query, if the distinguished sponsor will not mind.

Senator Enrile. Not at all, Mr. President.

Senator Guingona. Is this intended to allow the possible reduction of the prices?

Senator Enrile. Not necessarily, Mr. President. This one is required by the WTO Agreement.

Senator Guingona. What is the principal purpose for this?

Senator Enrile. To give the parties to know the basis of the measures that would be undertaken by the Philippine government.

I would like to indicate the initial amendments that we inserted here granting authority to the Tariff Commission to require the production of certain documents, failure of which would justify a decision by the commission on the basis of available facts. This was intended to pressure the importer and/or the exporter to produce the documents that would not be available to us but available to them. This was one of the issues raised in the hearing by the local domestic manufacturers.

Senator Guingona. In the meantime the importer can continue importing but with the same deposits.

Senator Enrile. Subject to a cash bond. But this is a very brief period because there are certain periods that must be met by the two secretaries in their decisional process.

Senator Guingona. In accordance with rules and regulations?

Senator Enrile. Yes, Mr. President.

Senator Guingona. Thank you, Mr. President.

Senator Pimentel. Mr. President.

The President. Senator Pimentel is recognized.

Senator Pimentel. Will the gentleman kindly clarify whether or not the grant of "sufficient time" will, in fact, go counter to his earlier manifestation that the 10-day period within which the investigation must commence, or something like that, had to be put in order to speed up the investigation?

Senator Enrile. Actually, at this point, the investigation is almost over.

Senator Pimentel. Yes, Mr. President.

Senator Enrile. The total number of days is 85 days completed. This is just some kind of a conference because of the possibility that the exporter could give a voluntary adjustment of prices.

Senator Pimentel. This is exactly what I am trying to drive at, Mr. President. That perhaps it would be best if we put a definite time frame for that action to be taken rather than leave it to the determination of the authority to say, "You have sufficient time to make a reply or produce the facts."

Would it not be better, Mr. President?

Senator Enrile. I have no objection to that, Mr. President, if the gentleman will suggest an amendment.

Senator Pimentel. Perhaps given a period of five days.

Senator Enrile. Subject to style, it is accepted, Mr. President.

Senator Pimentel. Thank you, Mr. President.

The President. Subject to style. Is there any objection to the proposed amendment? [*Silence*] There being none, the amendment is hereby approved.

Senator Enrile. I am through with the committee amendments, Mr. President.

Senator Aquino-Oreta. Mr. President.

The President. Senator Aquino-Oreta is recognized.

Senator Aquino-Oreta. Just a minor error, Mr. President. On page 26, line 14, I think instead of the word "not longer", grammatically...

Senator Enrile. This is going to be amended. There are individual amendments to handle this.

The President. Typographical. Thank you for the observation, Senator Aquino-Oreta.

Senator Drilon. We now close the period of committee amendments and now proceed with the individual amendments.

The President. Is there any objection? [*Silence*] There being none, the motion is approved.

Let us now proceed to the period of individual amendments.

Senator Drilon. We propose to go line by line, page by page, Mr. President.

Unless there are any amendments from pages 1 to 15, we now go to page 16 where the amendments are found.

So any individual amendments on page 16, Mr. President?
Page 17?

Senator Roco. Mr. President.

Senator Drilon. Mr. President, we ask that Senator Roco be recognized.

The President. Senator Roco is recognized.

Senator Roco. I was listening over the intercom earlier and I think most of the proposed amendments have been covered by the committee report. I am just going to ask the gentleman if the term "normal value" has been redefined.

Senator Enrile. No, it is not defined. I left that definition to the Tariff Commission because that is actually the term used in the treaty. In implementing this law, the two department heads and their investigating agency, the Tariff Commission, must consult the treaty itself.

Senator Roco. Under the WTO definition, Mr. President, I was under the impression that "normal value" was defined in this manner. Normal value is defined as:

- a. the comparable price of the like product destined for consumption in the exporting country;
- b. if the information about (a) is not available, the comparable price of the like product when exported to a third country; or
- c. if the information in (b) is not available, the price of the like imported product when first resold to an independent buyer.

Senator Enrile. In addition, there is a reconstructed value, Mr. President. That is why I did not bring that definition in this law because I would rather leave that in the treaty. After all the treaty would be deemed as a suppletory to this law.

Senator Roco. I realize that, Mr. President. But I thought if there is no objection to the concept, and it is really in the treaty in any event, even for the purpose of practitioners, it would be simpler if we articulate it already and then add the qualification of the reconstructed value so that we have flexibility.

Senator Enrile. It is very difficult to write that in this law because there are so many variables. For the sake of our law, I think it is better that we do not attempt to transport that into our legal system. We will have to await the interpretation of that term according to the treaty.

SUSPENSION OF SESSION

Senator Roco. Yes. May we have a one-minute suspension of the session, Mr. President.

The President. The session is suspended for one minute, if there is no objection. *[There was none.]*

It was 6:29 p.m.

RESUMPTION OF SESSION

At 6:30 p.m., the session was resumed.

The President. The session is resumed.

ROCO AMENDMENT

Senator Roco. Mr. President, after conferring with the gentleman, we suggest, as a final paragraph in this paragraph A, the following additional paragraph which reads:

FOR THE PURPOSE OF THIS LAW, NORMAL VALUE IS DEFINED AS (A) THE COMPARABLE PRICE OF THE LIKE PRODUCT DESTINED FOR CONSUMPTION IN THE EXPORTING COUNTRY; (B) IF THE INFORMATION ABOUT (A) IS NOT AVAILABLE THE COMPARABLE PRICE OF THE LIKE PRODUCT WHEN EXPORTED TO A THIRD COUNTRY; OR (C) IF THE INFORMATION IN (B) IS NOT AVAILABLE, THE PRICE OF THE LIKE IMPORTED PRODUCT WHEN FIRST RESOLD TO AN INDEPENDENT BUYER.

Senator Enrile. Where are we going to insert that, Mr. President?

Senator Roco. At the end of paragraph A. In fact, originally, I would have preferred for the purpose of this paragraph, "normal value" means this.

Senator Enrile. But maybe since we are using the words "normal value" in the entire proposed statute, it is better that we adopt that already as a definition of the term "normal value."

It is accepted, Mr. President.

Senator Roco. Wherever it may be appropriate, Mr. President.

The President. The same is accepted. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Roco. Thank you, Mr. President.

Senator Drilon. On page 17?

Senator Flavier. On page 17, Mr. President.

The President. Senator Flavier is recognized.

FLAVIER AMENDMENTS

Senator Flavier. On page 17, at the end of line 16, delete the word "supporting" and put the word IMPORTING.

Senator Enrile. It is accepted, Mr. President.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Flavier. On the same page, Mr. President, line 20, delete the word "EVALUATION" and replace it with the word EVOLUTION.

Senator Enrile. It is accepted, Mr. President.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Is there any further amendment?

Senator Drilon. There are no further amendments on page 17. We now go to page 18. I am sorry, the Minority Leader has an amendment on page 17.

The President. The Minority Leader is recognized.

SUSPENSION OF SESSION

Senator Drilon. Before we proceed, may I ask for a one-minute suspension of the session and ask the Maintenance people to fix the microphones.

The President. The session is suspended for one minute, if there is no objection. *[There was none.]*

It was 6:33 p.m.

RESUMPTION OF SESSION

After a few seconds, the session was resumed.

The President. The session is resumed.

GUINGONA AMENDMENT

Senator Guingona. On page 17, Mr. President, at the end of line 24, after the word "INDUSTRY," insert a new paragraph to read as follows:

TRADE OR FINANCE ATTACHÉS AND OTHER CONSULAR OFFICIALS OR ATTACHES ASSIGNED IN THE EXPORTING MEMBER COUNTRIES ABROAD ARE MANDATED TO ASSIST THE APPLICANT OBTAIN THE PERTINENT INFORMATION/DOCUMENTS TO SUPPORT HIS COMPLAINT.

Senator Enrile. I am willing to accept that amendment, Mr. President. But may I suggest that we place that amendment before paragraph C on page 18 in order not to break the continuity.

Senator Guingona. Where in paragraph C?

Senator Enrile. On page 18, that is the end of paragraph B, after line 14.

The President. Does the Minority Leader agree?

Senator Guingona. Yes, Mr. President.

Senator Enrile. It is accepted, Mr. President, subject to style.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Pimentel. Mr. President, just a clarification.

The President. Senator Pimentel is recognized.

Senator Pimentel. The mandate or the requirement that attachés, et cetera should give support presupposes that the complaint is valid.

In other words, what I am worried about is, supposing here is a petition against anti-dumping, but it is not, shall we say, meritorious, why should attachés now be made to support such a move, Mr. President? I just assume that all these things will be taken into account; otherwise, we are just saddling our attachés with additional work which might not be warranted at all under the circumstances.

Senator Guingona. Mr. President, it is to the national interest that a domestic producer finds support and succor from the trade attachés abroad. When he files his complaint, it is a sworn complaint. But many times, he cannot find the

necessary information and documents, especially if he is a fledgling businessman starting a new enterprise. Therefore, since this is for the national interest, I think the trade attachés abroad should help. Anyway in this age of modernized telecommunications, it is easy for the trade attachés to do that.

Senator Pimentel. This representation has no quarrel with the purpose. What I am trying to point out is probably the need for a requirement of at least a show of *prima facie* basis before we add to the burdens of our attachés abroad.

In other words, there has to be some showing that the petition is meritorious, let us say, at first blush. Otherwise, just the mere fact that a complaint has been made and immediately, the whole structure of our foreign service, particularly the attachés are brought into play might be a little too much.

Senator Enrile. Mr. President.

The President. Senator Enrile is recognized.

Senator Enrile. With the permission of the two gentlemen. I understand the concern of the distinguished gentleman from Cagayan de Oro. But I think the proposal is appropriate in view of the fact that before this proposed amendatory paragraph, the paragraph found in lines 7 to 14 says that: if, in special circumstances, the authorities concerned, meaning our Secretaries of Agriculture and/or Trade and Industry, decide to initiate an investigation without having received a written application by/or on behalf of domestic industry for the initiation of such investigation, they shall proceed only if they have sufficient evidence of dumping, injury and a causal link to justify the initiation of any investigation.

So, the assistance of our attachés abroad would be necessary in this respect.

The President. So with that clarification...

Senator Enrile. It is accepted, Mr. President.

The President. Is there any objection now with that clarification? [*Silence*] There being none, the amendment is approved.

Senator Guingona. From line 25 to page 17, Mr. President...

Senator Roco. Antecedent amendment, Mr. President.

The President. What page?

Senator Roco. Page 18, Mr. President.

Senator Drilon. No, we are still on page 17.

Senator Roco. No wonder I could not understand the distinguished gentleman.

Senator Enrile. We go back to page 17.

The President. Yes, please proceed.

Senator Guingona. Instead of that last paragraph, upon the filing of the petition by an applicant, the Department of Trade and Industry or Agriculture shall determine whether there exists express support from the appropriate domestic producers whose collective output is at least 25 percent as basis for an immediate conduct of a preliminary investigation.

Senator Enrile. I regret I cannot accept the proposed amendment, Mr. President, because this is an actual reproduction or a restatement of a treaty provision.

Senator Guingona. But the 25 percent will still be there. What we are trying to do is to make it easy for the applicant. Instead of the applicant going around getting the express support, it is the Secretary who will determine it. That is the only difference.

Senator Enrile. Mr. President, that is found on...

Senator Guingona. The treaty will still be complied with. Only the burden of determination will now be upon the public official concerned just to make things easier.

Senator Enrile. That is going to be treated on page 20, line 13, Mr. President. Upon determination by the Secretary of the existence of a *prima facie* case, he shall, without delay, require the applicant to secure a written support for the initiation of the formal anti-dumping investigation from the affected domestic industry producing 25 percent or more of like products.

Senator Guingona. In that case, there is no need for it.

Senator Enrile. The one on page 17 is simply a material allegation in the application, Mr. President.

Senator Guingona. He does not have to get a written consent?

Senator Enrile. Not yet.

Senator Guingona. It is the Secretary who will?

Senator Enrile. After the Secretary shall have determined the existence of a *prima facie* case when he is supposed to send the records to the Tariff Commission for inquiry or active inves-

tigation, he will require now the applicant to secure the written support of the industry.

Senator Guingona. So the applicant, as I understand it, need not get the express support...

Senator Enrile. When he files the application.

Senator Guingona. Yes. He makes an allegation.

Senator Enrile. Yes.

Senator Guingona. So the burden is left to the Secretary later on.

Senator Enrile. To tell him to get the support.

Senator Guingona. Who will get the support, the Secretary or the applicant?

Senator Enrile. Well, if the purpose of the amendment is to require the Secretary to secure the support of the industry, I have no quarrel with that, Mr. President.

Senator Guingona. That is the intent, Mr. President. We want to make things easier for the applicant.

Senator Enrile. Then the proper place to put that will be on page 20, Mr. President.

Senator Guingona. And that will include the 50 percent.

Senator Enrile. Yes, Mr. President.

Senator Guingona. Thank you, Mr. President.

The President. Let us proceed. What is the next page, Mr. Majority Leader?

Senator Drilon. We will now go to page 18, Mr. President. Senator Roco has an amendment.

The President. Senator Roco is recognized.

Senator Roco. Thank you, Mr. President. In line 22, may we just ask about "shall notify the Government of the exporting Member." Before I propose an amendment, was there any particular reason that I have missed why the notice is only to the government of the exporting member?

Senator Enrile. Because that is the requirement of the treaty, Mr. President. This is an exact wording of the treaty.

Senator Roco. All right. That is good enough reason.

May it be improved if we say that we do not only notify the government of the exporter, but even the exporter and, maybe, the public in general, so that everybody gets to know about the pending anti-dumping investigation?

Senator Enrile. Mr. President, that will be too cumbersome for our people because then the exporter will say they did not receive any notice. "Your law requires that you must notify me." We should limit the people to be notified.

The only reason we placed this in this proposal is that this is a requirement of the treaty that as a member of the treaty, we have to notify. It says here:

The authorities shall avoid, unless a decision has been made to initiate an investigation, any publicizing of the application for the initiation of an investigation. However, after receipt of a properly documented application and before proceeding to initiate an investigation, the authorities shall notify the government of the exporting Member concerned.

That is a requirement. That is also how we will be treated if an anti-dumping duty against our own goods exported to another country would be a subject of an anti-dumping action.

Senator Roco. Yes, I appreciate the reason, Mr. President. But may it not be better for transparency if we notify even the general public just by publication? Otherwise, there seems to be—if it is government to government, there is a tendency to keep it...

Senator Enrile. Mr. President, why should we expand the burden of our local industry and go beyond what the treaty requires of us? The treaty simply requires us to notify the government of the exporter. Why should we expand the notice requirement by notifying the public, notifying the exporter? When the importer of the product is already within our jurisdiction, let him notify his own principal abroad.

Senator Roco. No, no, I am not referring to the exporter, Mr. President. I am referring to the general public, because some small importer may just pick it up and may in fact have good evidence to support the anti-dumping case. And there is no additional burden if it is by publication.

Senator Enrile. There is a prohibition, Mr. President, of publicizing.

Senator Roco. No, that is before. The prohibition refers to "before receipt of properly documented applications." After receipt of a properly documented application, when we restrict

the notice only to the exporting member country, then somebody in Davao who may be helped—because of notice by publication, everybody who is interested may just pick up. I mean it does not become part of...but the publication here, Mr. President, refers to the second part, not for the initial.

Senator Enrile. How long a time would the gentleman need, Mr. President? This will prolong the period. Because time is of the essence here. We are cutting down the time requirement in order to protect our local industries.

Senator Roco. I understand, Mr. President. In fact, we have no difference; if it is just published with a short notice, that will be satisfactory. But notifying government only of the exporting member, the government of the exporting member will have a tendency to protect the exporter because that is their interest. They may try to protect their business, their home business, the host business or the origin of the exporting business.

But when we tell more people, then maybe, considering that there are already documented applications--because this is already after the documentation--then if we just publish something for the benefit of all importers or whatever those documents have been received by the government to support or what Senator Pimentel was saying as a *prima facie*, to support *prima facie* anti-dumping violation, then somebody in Davao or in Cagayan may say, "Let us go forward and help that anti-dumping case." Because when we just tell, let us say, Bangkok or Thailand that there is now a *prima facie* case, they will try to....

Senator Enrile. I have no objection, Mr. President, if the gentleman wants to do it that way, but please give me a rewording of this.

Senator Roco. The wording shall be something like this, and this will be subject to style: IT SHALL NOTIFY THE GOVERNMENT OF THE EXPORTING COUNTRY AND MEMBERS OF THE IMPORTING PUBLIC IN THE PHILIPPINES BY PUBLICATION IN A NEWSPAPER OF GENERAL CIRCULATION, ABOUT THE IMPENDING ANTI-DUMPING INVESTIGATION.

Senator Enrile. Are we going to notify the public as a necessary party?

Senator Roco. No, Mr. President. In fact, there is another problem. I initially suggested the word "exporter" because of the problem of due process. If the exporter is not notified, then, later on some lawyers will raise it as a deprivation of property without due process. But I can see that it makes it more difficult for us.

Senator Enrile. Mr. President, maybe we can say here, if

I may suggest: However, after receipt of a properly documented application and before proceeding to initiate an investigation, the authority, the Secretary in our case...

Senator Roco. Shall notify the government.

Senator Enrile. Where is that?

Senator Roco. Line 22 or line 21.

The President. On page 18, line 22.

Senator Enrile. Let me just see where that provision is in the law. Does the gentleman know the exact location of that provision?

Senator Roco. On page 18, lines 21 to 22.

Senator Enrile. HOWEVER, AFTER RECEIPT OF A PROPERLY DOCUMENTED APPLICATION AND BEFORE PROCEEDING TO INITIATE AN INVESTIGATION, THE SECRETARY SHALL NOTIFY THE GOVERNMENT OF THE EXPORTING MEMBER ABOUT THE IMPENDING ANTI-DUMPING INVESTIGATION AND CAUSE A NOTICE TO BE PUBLISHED IN A NEWSPAPER OF GENERAL CIRCULATION REGARDING THE FILING OF THE ANTI-DUMPING APPLICATION.

Subject to style, Mr. President.

Senator Roco. Subject to style, Mr. President. Because the point is to alert all those who may have an interest in the matter to come forward and help in the investigation of the anti-dumping case.

Senator Enrile. Subject to style, Mr. President. I hope the distinguished gentleman can craft the style.

Senator Roco. We will try to figure it out, Mr. President. Maybe, it should be a separate sentence altogether. THE SECRETARY WILL ALSO THEN CAUSE THE PUBLICATION.

Senator Enrile. Subject to style, it is accepted, Mr. President.

Senator Roco. Subject to style, Mr. President.

The President. Subject to style, the amendment is accepted. Is there any objection?

Senator Drilon. On what page and line, Mr. President?

Senator Enrile. On page 18, paragraph c), last sentence. To the last sentence we will add a new sentence: THE SECRETARY SHALL ALSO CAUSE THE PUBLICATION OF A NOTICE IN A NEWSPAPER OF GENERAL CIRCULATION REGARDING THE FILING OF THE ANTI-DUMPING APPLICATION.

Senator Roco. REGARDING THE IMPENDING ANTI-DUMPING INVESTIGATION.

Senator Enrile. Subject to style, Mr. President.

Senator Roco. Yes, Mr. President.

Senator Biazon. Mr. President.

The President. Senator Biazon is recognized.

Senator Biazon. Mr. President, will this not impose additional load or burden on the part of the Secretary? What if there is a failure? Will this not be formed as a defense on the part of the dumper?

Senator Enrile. It will be a defense. There is no notice to the public.

Senator Biazon. *Iyon lamang po.*

Senator Roco. But it is so easy to avoid. Notice to the public has the advantage, Mr. President, of making people who are importers and who might be affected, making them come forward to help prove the case. Since the way it is worded, it is just publication in a newspaper of general circulation and it says that there is an impending investigation constituting anti-dumping violation of barbershop chairs, in that example.

Senator Biazon. If we can find a way, it is not going to form as a defense for the dumper; the dumper is the foreigner. While here, we are protecting our industries and if we impose this additional obligation on the part of our protector, then failure to satisfy this new obligation could form part as the defense on the part of the dumper. That is my objection, Mr. President.

Senator Roco. Then maybe in the crafting of the words we will say that is not an essential element and cannot be used, because on the other hand, Mr. President, we lost the possibility.

There are two risks of just notifying government: One is the question of due process. In fact in my mind I have not resolved whether we should notify also the exporter because the Constitution prevents one from depriving people of property without due process, and without notice there is supposed to be no due

process. That is a procedural problem that I have not still solved. Under the World Trade Organization Agreement, notice to the exporting government is notice to the exporter. I would imagine that is the interpretation.

Senator Enrile. Notice to the importer is also notice to the exporter.

Senator Roco. Also, Mr. President. So that will satisfy. But because anti-dumping is a very difficult case to handle, we need people to help us. If we keep quiet and we give it only to the government of Thailand, nobody in Kota Kinabalu will know that there was a dumping of barbershop chairs—and I am using that particular case because nobody knew. The barbers did not realize that the barbershop chairs made in Pampanga or Tarlac were being beaten in the market because some guy who was about to go bankrupt in Bangkok just dumped the barbershop chairs.

So notifying is good for the case because we have more supporters although it is not made an essential element, but we just notify; otherwise, the guys affected cannot come forward.

Senator Enrile. Will the distinguished gentleman accept an amendment to his proposed amendment in the sense that, subject to style, while the Secretary concerned is also required to give notice of the pending application for dumping duty in a newspaper of general circulation, failure to do so would not prevent the application to proceed its due cause.

Senator Roco. That is correct, Mr. President. Or something to the effect that to involve as many of the consuming public as possible, the Secretary shall cause the publication of the impending...

Senator Enrile. But if we are going to involve the consuming public, Mr. President, the implication is that we are making the consuming public a necessary party to the anti-dumping.

Senator Roco. Yes, but I did not mean it that way, Mr. President. I mean that in the preparation of the case. Because it is really, believe me—I have had involvement in only two anti-dumping cases and it was very difficult. Unless we have people who will be coming forward, it dies in vain.

So that is the problem I am trying to solve. I do not want to get into the snare of the necessary party. No, that is not my intention.

Senator Enrile. Actually, Mr. President, the protection from dumping is a function of the government and the industry, and I am sure that they will be armed with sufficient

documentation. The only thing is, while I go along with the gentleman that the public should be notified, I would suggest that subject to style, failure of the Secretary to give notice should not be treated as an impediment to the successful prosecution of the dumping application.

Senator Roco. Yes, Mr. President, subject to style.

Senator Enrile. Subject to style.

The President. So the last suggestion will be the final amendment. Is there any objection? *[Silence]* There being none, the amendment is approved, subject to style.

Senator Roco. Thank you, Mr. President.

Senator Drilon. Let us move on to page 19, Mr. President. May we ask the Chair to recognize Senator Flavier.

The President. Senator Flavier is recognized.

FLAVIER AMENDMENTS

Senator Flavier. On page 19, Mr. President, lines 2, 3, 4 and 5.

In line 2, delete after the word "forthwith" the rest of the line; delete the whole of the line 3; delete the whole of line 4; and delete half of line 5 up to the word "to" before the word "gather".

So that the line will now read "COMMISSIONER OF CUSTOMS SHALL FORTHWITH GATHER", and so on.

Senator Enrile. It is accepted, Mr. President.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Flavier. On page 19, line 8, after the word "submit", insert the words A REPORT IMMEDIATELY.

So that it will read: "and to submit A REPORT IMMEDIATELY to the Secretary through the Secretary of Finance" and so on, Mr. President.

Senator Enrile. It is accepted, Mr. President.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Flavier. Finally, on page 19, line 23, after the word "personal" and before the word "delivery" is a comma (.). That should be deleted, Mr. President.

Senator Enrile. It is accepted, Mr. President.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Flavier. On page 20, line 13, after the word "delay", insert the phrase REQUIRE THE APPLICANT TO. So that it reads: "he shall without delay REQUIRE THE APPLICANT TO secure a written support", and so on.

Senator Enrile. Mr. President, in view of the proposal of the Minority Leader, I regret to say that I could not accept that proposed amendment.

Senator Flavier. If it will contravene the amendment of my Minority Leader, I shall withdraw my amendment and become Minority Leader instead. *[Laughter]*

Finally, Mr. President, on the same page, line 16, after the word "products", put a COMMA (,) and insert the words AND THEREAFTER.

Senator Enrile. It is accepted, Mr. President.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Drilon. May we ask the Chair to recognize the Minority Leader.

The President. The Minority Leader is recognized

Senator Guingona. After that amendment of Senator Flavier, perhaps we can place the proposed amendment, as follows:

Senator Drilon. In what line would that be, Mr. President?

The President. Is it line 16?

Senator Guingona. That would be line 16.

The President. "Like products, and thereafter transmit..."

Senator Guingona. No, no. Like products, before his amendment.

The President. Before his amendment, we are referring to page 20, line 16.

Senator Guingona. On page 20, line 16. With the indulgence of Senator Flavier, put a PERIOD (.) after the words "like products".

And then, IN THE COURSE OF THE INVESTIGATION, THE CONCERNED SECRETARY SHALL ALSO DETERMINE WHETHER THE APPLICATION IS SUPPORTED BY DOMESTIC PRODUCERS WHOSE COLLECTIVE OUTPUT CONSTITUTES MORE THAN 50% OF THE TOTAL PRODUCTION OF THE LIKE PRODUCT PRODUCED BY THAT PORTION OF THE DOMESTIC INDUSTRY.

Senator Enrile. Mr. President, I regret to decline accepting that proposal because that is only true when the application is by and on behalf of an industry. Anyway, that is already covered by the requirement that the Secretary without delay, secure a written support for the initiation of formal anti-dumping investigation from the affected domestic industry producing 25 percent or more.

Senator Guingona. As long as it is understood that the applicant need not personally labor to secure evidence that 50 percent or more support the application.

Senator Enrile. Yes, Mr. President. In fact, this law contemplates that even the Secretary concerned will initiate the investigation if there is dumping. If there is an application initiated by the private sector, we are now requiring him to see to it that the requirements of the treaty for 50 percent of the production in the country, if the application is by and on behalf of the industry, or at least 25 percent, if it is not by and on behalf of the industry that applies must be met.

Senator Guingona. With that clarification, Mr. President, I just would like to refer back to the last paragraph on page 17 because it gives the impression that it is the applicant who must secure.

Senator Enrile. He is making that allegation, Mr. President.

Senator Guingona. Yes, Mr. President.

Senator Enrile. He alleges that in the application.

Senator Guingona. That is correct, Mr. President.

Senator Enrile. Allegation and proof are two different things. We are talking now of proof or evidence here.

Senator Guingona. As long as that is made clear, I have no amendment to introduce.

The President. So, it has been clarified. There is no amendment. The Majority Leader will please proceed.

Senator Drilon. The Flavier amendment stands, Mr. President.

The President. Yes.

Senator Drilon. We are now on page 20. There are no more amendments on page 20. We proceed to page 21. There are no amendments. We proceed to page 22.

Senator Flavier. Mr. President.

The President. Senator Flavier is recognized.

FLAVIER AMENDMENT

Senator Flavier. On page 22, Mr. President, line 28, delete the word "and/or" and replace it with the article THE so that it will read, "As compared with the price of like product, commodity or article in THE domestic market" and so on.

Senator Enrile. It is accepted, Mr. President.

The President. Is there any objection? [*Silence*] There being none, the amendment is approved.

Senator Drilon. There are no more amendments on page 22. We proceed to page 23. There are no amendments on page 23. We proceed to page 24.

Senator Enrile. Re-paragraphing will begin on page 24, Mr. President.

The President. Yes, starting from letter K to L.

Senator Drilon. That was previously manifested. There are no more amendments on page 24. We proceed to page 25. There are no amendments on page 25. We proceed to page 26.

Senator Flavier. This is really the Oreta-Aquino amendment, Mr. President.

AQUINO-ORETA AMENDMENT

Senator Flavier. In line 14, we should delete the letter "t" on the word "not".

Senator Enrile. It is accepted, Mr. President.

The President. Is there any objection? [*Silence*] There being none, the amendment is approved.

Senator Flavier. On page 27, line 5...

Senator Enrile. Mr. President, may I request that on page 26, line 30, the numbers in bracket [5] be changed to 150.

Senator Flavier. It has been corrected already, Mr. President.

Senator Enrile. The copy that I have has not been corrected. Thank you.

FLAVIER AMENDMENTS

Senator Flavier. On page 27, lines 5 and 6, delete the last two words of line 5, "or by", and then delete the first two words of line 6, "registered mail", which is really the part that is bracketed. So that it will read, "EITHER BY PERSONAL DELIVERY A PETITION FOR THE REVIEW," and so on.

Senator Enrile. Mr. President, I would not accept that. I think what is contemplated here is to remove the brackets ([]) enclosing "OR BY REGISTERED MAIL". So that the filing of the appeal may be EITHER BY PERSONAL DELIVERY OR BY REGISTERED MAIL.

Senator Flavier. I accept that modification, Mr. President.

Senator Drilon. So the amendment will be the deletion of the brackets.

Senator Flavier. Just remove the brackets ([]) but retain the words.

Senator Enrile. Yes, Mr. President.

Senator Flavier. I accept the amendment, Mr. President.

The President. So only the brackets will be removed in the amendment. Is there any objection? [Silence] There being none, the amendment is approved.

Senator Drilon. So the bracket ([]) is before the word OR in line 5 and the bracket ([]) after the comma (,) in line 6.

Senator Enrile. Yes, Mr. President.

Senator Flavier. Finally, Mr. President, in lines 12 and 13, delete the last word "SAFEGUARD" in line 12 and the first word "MEASURE" in line 13 and replace them with the words ANTI-DUMPING DUTY.

Senator Enrile. It is accepted, Mr. President.

The President. Is there any objection? [Silence] There being none, the amendment is approved.

Senator Flavier. Thank you, Mr. President.

Senator Drilon. Mr. President, Senator Santiago has some amendments which she will submit for consideration tomorrow.

In the meantime, may we request the Secretary to prepare a clean draft of the bill for the consideration of the Chamber when we resume the consideration of this bill tomorrow, Mr. President.

The President. The Secretary is hereby directed.

SUSPENSION OF CONSIDERATION OF S. NO. 763

Senator Drilon. With that, Mr. President, I move to suspend consideration of Senate Bill No. 763 under Committee Report No. 1.

The President. Is there any objection? [Silence] There being none, the motion is approved.

Senator Drilon. Mr. President, before we adjourn, we wish to inform our colleagues that tomorrow, we shall continue with the period of amendments on Senate Bill No. 763 under Committee Report No. 1; likewise, in the period of amendments, Senate Bill No. 1136 under Committee Report No. 2; and for sponsorship, Senate Bill No. 1137 under Committee Report No. 3.

May we, therefore, request our colleagues to prepare their individual amendments, if there are any, on these two measures—Senate Bill Nos. 763 and 1136.

ADJOURNMENT OF SESSION

With that, Mr. President, I move to adjourn the session until three o'clock tomorrow afternoon, September 1, 1998.

The President. Is there any objection? [Silence] There being none, the session is adjourned until three o'clock tomorrow afternoon, September 1, 1998.

It was 7:13 p.m.