

RECORD OF THE SENATE

MONDAY, DECEMBER 14, 1998

OPENING OF THE SESSION

At 3:41 p.m., the Senate President, Hon. Marcelo B. Fernan, called the session to order.

The President. The 45th session of the First Regular Session of the Eleventh Congress is hereby called to order.

Let us all stand for the prayer to be led by Sen. Vicente C. Sotto III.

After the prayer, the Pamantasan ng Lungsod ng Maynila Student Chorale Society will lead us in the singing of the national anthem and, thereafter, will render another song entitled, "*Lupang Hinirang*."

Everybody rose for the opening prayer.

PRAYER

Senator Sotto.

O God of our Fathers
Acknowledging the great need we have
Of Your Divine Wisdom
We come before You today to beg this grace of You
With all possible earnestness and the greatest humility.

Send us, O Lord, this Wisdom which sits by Your throne
To strengthen our weakness, To enlighten our minds
To inflame our hearts, To speak and to act
To work and suffer in union with You
To direct our footsteps and to fill our souls
With the virtues of Jesus Christ
And the gifts of the Holy Spirit
For only wisdom can bring us these gifts.

O Father of mercy, God of all consolation,
We ask You this infinite treasure of Your Divine Wisdom.

Hear and grant our prayers.

Amen.

NATIONAL ANTHEM

Everybody remained standing for the singing of the national anthem.

SUSPENSION OF SESSION

The President. We would like to greet and thank the members of the choir of the Pamantasan ng Lungsod ng Maynila. The session is suspended for one minute, if there is no objection. *[There was none.]*

It was 3:48 p.m.

RESUMPTION OF SESSION

At 3:49 p.m., the session was resumed.

The President. The session is resumed. The Secretary will please call the roll.

ROLL CALL

The Secretary, reading:

Senator Teresa Aquino-Oreta	Present
Senator Robert Z. Barbers	Present
Senator Rodolfo G. Biazon	Present
Senator Renato L. Compañero Cayetano ...	Present
Senator Anna Dominique M. L. Coseteng ..	Present
Senator Franklin M. Drilon	Present
Senator Juan Ponce Enrile	Present
Senator Juan M. Flavio	Present
Senator Teofisto T. Guingona Jr.	Present
Senator Gregorio B. Honasan	Present
Senator Robert S. Jaworski	**
Senator Loren B. Legarda-Leviste	Present
Senator Ramon B. Magsaysay Jr.	Present
Senator Blas F. Ople	**
Senator John Henry R. Osmeña	*
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	**
Senator Vicente C. Sotto III	Present
Senator Francisco S. Tatad	**
The President	Present

The President. With 18 senators present, there is a quorum.

The Majority Leader is recognized.

* Arrived after the roll call
** On official mission

SEC. 10. *Effectivity Clause.* - This Act shall take effect fifteen (15) days from its publication in at least two (2) newspapers of general circulation.

Approved,

SUSPENSION OF CONSIDERATION OF S. NO. 1261

Senator Drilon. May we now move that we suspend the consideration of Senate Bill No. 1261.

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

SUSPENSION OF SESSION

Senator Drilon. Mr. President, I move that we suspend the session for one minute.

The President. Is there any objection? *[Silence]* There being none, the session is suspended for one minute.

It was 4:26 p.m.

RESUMPTION OF SESSION

At 4:42 p.m., the session was resumed with the Honorable Senator Ramon B. Magsaysay Jr. presiding.

The Presiding Officer [Sen. Magsaysay]. The session is resumed.

The Majority Leader is recognized.

BILL ON SECOND READING

S. No. 1330 – Imposition of Countervailing Duties (Continuation)

Senator Drilon. Mr. President, I move that we resume consideration of Senate Bill No. 1330 as reported out under Committee Report No. 11.

The Presiding Officer [Sen. Magsaysay]. Is there any objection? *[Silence]* There being none, resumption of consideration of Senate Bill No. 1330 is now in order.

Senator Drilon. This is the bill providing the rules for the imposition of countervailing duties on the importation of subsidized products, commodities or articles of commerce.

May we first ask the Chair to recognize the principal sponsor, Senator Enrile.

The Presiding Officer [Sen. Magsaysay]. Senator Enrile is recognized.

Senator Enrile. Thank you, Mr. President.

Senator Drilon. We are now in the period of interpellations. May we ask the Chair to recognize the Minority Leader, Senator Guingona.

The Presiding Officer [Sen. Magsaysay]. The Senate Minority Leader, Senator Guingona, is recognized.

Senator Guingona. Thank you, Mr. President.

Will the distinguished senator from Cagayan and lawyer of Imelda Marcos...

Senator Enrile. Mr. President, correction. I am not the lawyer of Imelda Marcos. It is Pecabar that is the lawyer. There is a distinction between the individual member of the firm and the partnership.

Senator Guingona. May I stand corrected. Therefore, the head of the Pecabar Law Office.

Senator Enrile. I am on leave, Mr. President.

Senator Guingona. I stand corrected again, Mr. President. Therefore, I would like to ask the good the gentleman whether he is willing to answer a few questions.

Senator Enrile. Mr. President, I am about to say "no" to the distinguished Minority Leader, but to make this session a little livelier, I am willing to accommodate him.

Senator Guingona. I understand that this countervailing bill has already been proposed and almost approved in the last session when we were not here, authored by the same distinguished gentleman.

Senator Enrile. That was correct, and that is still correct, Mr. President.

Senator Guingona. If therefore there are any questions that we ask that is repetitive, I ask for his indulgence for we were not here.

May I know, first of all, what is the meaning of "subsidy" under the proposed measure?

Senator Enrile. Mr. President, I did not invent the definition of "subsidy" in the proposed measure that we are discussing. It is found, actually, in the treaty to which we adhere to, namely: the General Agreement on Tariff and Trade (GATT) of 1994 and the

WTO Agreement-Uruguay Round Treaty. This particular issue of subsidy is found in the agreement on subsidies and countervailing measures.

I would like to read the pertinent portion of the agreement which states: Part One - General Provisions; Article I - Definition of Subsidy, which says:

1.1. For the purpose of this Agreement, a subsidy shall be deemed to exist if:

(a)(1) There is a financial contribution by a government or any public body within the territory of a member referred to in this Agreement as government, i.e., where: (i) a government practice involves a direct transfer of funds (for example, grants, loans, and equity infusion), potential direct transfers of funds or liabilities (e.g., loan guarantees); (ii) government revenue that is otherwise due is forgone or not collected (e.g., fiscal incentives, such as tax credits); (iii) a government provides goods or services other than general infrastructure, or purchases goods; (iv) a government makes payment to a funding mechanism, or in trust or directs a private body to carry out one or more of the type of functions illustrated in (i) to (iii) above which would normally be vested in the government and the practice, in no real sense, differs from practices normally followed by government; and

(a)(2) There is any form of income or price support in the sense of Article XVI of GATT 1994; and

(b) A benefit is thereby conferred.

That is the definition of subsidy that is covered by this measure, Mr. President.

Senator Guingona. Thank you, Mr. President.

I would like to thank the distinguished gentleman for that.

The United States government extends price support to many of its agricultural products. Could this be considered under that definition as a subsidy?

Senator Enrile. Yes, Mr. President. That will definitely be covered, unless it is excepted under the agreement on agricultural products.

Senator Guingona. The United States government has been giving that subsidy or extending that subsidy to its farmers for many years even long before GATT. Under the GATT Agreement, can it continue to give these subsidies to the farm products?

Senator Enrile. It may, Mr. President, if it wants to. But nothing will prevent us from imposing the countervailing duty on those products, if they enter our domestic commerce, our borders, if there is material injury to industries producing like products in the country.

Senator Guingona. The United States and other developed countries not only give price supports but they also give sustained research and technological assistance to their farmers. Is this subsidy under that definition?

Senator Enrile. Mr. President, there are types of subsidy. Those are subsidies, but some are not actionable subsidies. What we are discussing here are what we call "actionable subsidies." And again, there is a definition of actionable and nonactionable subsidies. Nonactionable subsidies would include assistance for research activities.

Senator Guingona. So research would not be a subsidy.

Senator Enrile. It depends upon the particular situation. Research, assistance for research activities conducted by firms or by higher education, or research establishment on a contract basis with firms, if the assistance covers not more than 75% of the cost of industrial research or 50 percent of the cost of preemptive, precompetitive development activity, and provided that such assistance is limited exclusively to cost of personnel, cost of instruments, cost of consultancy and equivalent services, additional overhead cost incurred directly as a result of the research activity, other running costs, such as materials, supplies and the like incurred directly as a result of the research activity and so forth and so on.

Senator Guingona. I would like to thank the gentleman for that.

Are we considered a developing nation under the GATT agreement?

Senator Enrile. I do not know whether we are considered as a developing nation. I do not remember having read any portion of this Agreement where we are categorized as such.

Senator Guingona. No, because under the GATT Agreement, we have, I think, eight or ten years within which to be competitive. If that is so, then it is time to have a review of what products—agricultural and industrial, or commercial—that can have comparative advantage, and where we can really concentrate on to sustain our exports. I think that is a time-given so that we can enter the international ring with some gloves and some measure of competitiveness; otherwise, how can our farmers compete with the farmers of developed nations?

So, my question is: Does the distinguished sponsor believe that we have ten years, until the year 2005, within which to improve our comparative advantage over certain products?

Senator Enrile. I do not know whether we are included in that. But the fact remains that whatever may be the additional benefit that is given to us under the treaty, this measure will assist in protecting our domestic industries.

Senator Guingona. That is correct. But the developed countries have already extended subsidies to their products for many years. How do we equalize that? As I understand it, we are given sufficient length of time.

Senator Enrile. We are not talking of foreign markets in this measure, Mr. President. We are talking of our local market. I think the thrust of the question is competition in the world market. We are not in that arena in discussing the measure before us.

Senator Guingona. No. I thought that this was to protect our local products that we export.

Senator Enrile. No. Not our products that we export but our local industries in our local market.

Senator Guingona. Precisely, which comprises local products for export.

Senator Enrile. No, Mr. President.

Senator Guingona. May I be clarified on that.

Senator Enrile. We are imposing a tariff on all kinds of products, be it agricultural or industrial products, entering into our domestic economy and being sold inside our domestic market in competition with like products in our domestic market.

Senator Guingona. Let us take an agricultural product—corn. If corn is subsidized by the foreign government and the foreign exporters of corn import corn into the country, can we invoke this countervailing duty proposal of the distinguished sponsor?

Senator Enrile. How is that again, Mr. President? The US subsidizes its corn. Then it exports corn into the Philippines. We can impose the countervailing duty.

Senator Guingona. That is precisely what I was asking.

Senator Enrile. To protect our corn producers here in competing with that imported corn in our own market inside the country. So exportation has nothing to do with this one.

Senator Guingona. We certainly would like to encourage not only self-sufficiency but also, if possible, to export. There is nothing in GATT, I presume, that would prohibit us from exporting.

Senator Enrile. That is correct, Mr. President. But there is nothing in this law that would cover a countervailing duty for exportable products of the Philippines.

Senator Guingona. Yes, Mr. President. What I mean to say is, we are a developing country where the GATT is already enforced. I was asking the distinguished sponsor whether we have a term within which we can be, more or less, competitive and prepare for the time when we have to lower our tariffs from zero to 5%. The distinguished sponsor said that he really does not know. If that is the case, then what does the distinguished sponsor think we should do to protect our products, now that we are still in this stage? To invoke the countervailing duty is one; research, perhaps.

Senator Enrile. Anti-Dumping Law, Mr. President. Then we have the next measure that we will present here—the safeguards which will deal with situations where there is an inordinate importation of products, both agricultural and industrial, which may not be covered by Anti-Dumping or countervailing duties because these products are not subsidized, neither are they exported at a price lower than the price at which they are being sold in the home market but, nevertheless, they are injuring our local industries because of the volume of the products being imported by us.

Senator Guingona. The distinguished sponsor stated earlier that there is such a thing as a prohibited subsidy.

Senator Enrile. That is correct, Mr. President.

Senator Guingona. What subsidies are we prohibited to give to our farmers and to our businessmen?

Senator Enrile. If I may read:

Except as provided in the agreement on Agriculture, the following subsidies within the meaning of Article I shall be prohibited:

A. Subsidies contingent in law and in fact whether solely or as one of several other conditions upon export performance, including those illustrated in Annex 1.

Let me find Annex 1, Mr. President, and I will read into the *Record* some of these: For instance:

Annex 1. Illustrative List of Export Subsidies.

a. The provision by governments of direct subsidies to a firm or an industry contingent upon export performance;

b. Currency retention schemes or any similar practices which involve a bonus on exports;

c. Internal transport and freight charges on export shipments provided or mandated by governments on terms more favorable than for domestic shipments;

d. The provision by governments or their agencies, either directly or indirectly through government mandated schemes, of imported or domestic products or services for use in the production of exported goods on terms or conditions more favorable than for provisions of like or directly competitive products or services for use in the production of goods for domestic consumption. If, in the case of products, such terms or conditions are more favorable than those commercially available on world markets to the exporters;

e. The full or partial exemption, remission or deferral specifically related to exports of direct taxes or social welfare charges, paid or payable by industrial or commercial enterprises; and finally

f. The allowance of special deductions directly related to exports or export performance over and above those granted in respect to production for domestic consumption in the calculation of the base on which direct taxes are charged.

Those are examples of prohibited subsidies. Then letter

B. Subsidies contingent whether solely or one of several other conditions upon the use of domestic over imported goods.

Those are the prohibited subsidies, Mr. President.

Senator Guingona: I would like to thank the distinguished sponsor, Mr. President.

Since they are prohibited, does this mean that these subsidies should no longer be extended by the countries concerned that are doing them?

Senator Enrile. When they are contingent upon export performance, Mr. President, but subsidies are recognized by the signatories to the GATT-Uruguay Round-WTO Agreement as an instrument of economic policy within the country or may be an instrument of political policy.

Therefore, the member countries are not prohibited to give those subsidies, provided those subsidized goods are not exported.

Now, if they are exported, then the countries to which they are exported may exercise their right of response. That is one of the responses, and the primary response is the countervailing duty.

Senator Guingona. The Philippines is exporting pineapple, banana and mangoes. Are we prohibited now to extend subsidies?

Senator Enrile. Yes, Mr. President. This is for export.

Senator Guingona. In spite of the fact that we are a developing nation?

Senator Enrile. As I said, I do not know whether we are categorized as a developing nation under the WTO commitments. I have not found an answer to that question. Maybe the gentleman could tell me what provisions of the treaty are involved.

Senator Guingona. Because if we are prohibited now that we are disadvantaged, I think it would be unfair if we cannot improve what little exports we have by research, higher standards, or existing facilities. We may pass this measure which is very commendable, but we would, in effect, be stifling our own growth because we are also invoking prohibited subsidies for our own products when we have very little to share.

Senator Enrile. Mr. President, we can subsidize our agricultural products. There is no law which prohibits it, not even the agreement. But that will not prevent other countries from imposing a countervailing duty on those products.

Senator Guingona. The prohibited subsidies is a prohibition that can be violated.

Senator Enrile. If we are going to say, "Well, I am entitled to this subsidy if you export so much." If it is contingent in law and in fact on exports, then that is prohibited.

Senator Guingona. I see no logic therefore, Mr. President. I am sorry that I cannot agree with the distinguished sponsor that we should rush this countervailing duty. Of course, this is a good measure.

Senator Enrile. Mr. President, I am not rushing this. It was the Majority Leader who requested that this be called, and I am responding to that call. But I think there is a need for it because there are many subsidized goods now that are entering the country.

What I am saying is, I do not know whether we are classified as underdeveloped or developing economy under this treaty.

Senator Guingona. The subsidy should be a direct subsidy.

Senator Enrile. That is correct, Mr. President. There must be a benefit to the subsidized industry.

Senator Guingona. As the gentleman has already said, there are allowable subsidies.

Senator Enrile. Yes, Mr. President. There are allowable subsidies.

Senator Guingona. In order to establish the countervailing duty, one must not only show subsidy of the imported product but also injury. Is that correct?

Senator Enrile. That is correct, Mr. President. There must be a material injury to a producer of like products which is subsidized by the government of the country of origin.

Senator Guingona. May we know, if not by strict definition, by illustration, what "material injury" is?

Senator Enrile. I do not have to give my own definition. I will read the pertinent provision of the treaty so that there will be no doubt about it. Just let me go over the materialized.

This is Article 15 of the "Agreement on Subsidization," and I quote:

15.1 A determination of injury for purposes of Article VI of GATT 1994 shall be based on positive evidence and involve an objective examination of both (a) the volume of the subsidized imports and the effect of the subsidized imports on prices in the domestic market for like products and (b) the consequent impact of these imports on the domestic producers of such products.

15.2 With regard to the volume of the subsidized imports, the investigating authorities shall consider whether there has been a significant increase in subsidized imports, either in absolute terms or relative to production or consumption in the importing Member. With regard to the effect of the subsidized imports on prices, the investigating authorities shall consider whether there has been a significant price undercutting by the subsidized imports as compared with the price of a like product of the importing Member, or whether the effect of such import is otherwise to depress prices to a significant degree or to prevent price increases, which otherwise would have occurred, to a significant degree. No one or several of these factors can necessarily give decisive guidance.

15.3 Where imports of a product from more than one country are simultaneously subject to countervailing duty investigations, the investigating authorities may cumulatively assess the effects of such imports only if they determine that (a) the amount of subsidization established in relation to the imports from each country is more than de minimis as defined in paragraph 9 of Article 11 and the volume of imports from each country is not negligible and (b) a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between the imported products and the conditions of competition between the imported products and the like domestic product.

15.4 The examination of the impact of the subsidized imports on the domestic industry shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in output, sales, market share, profits, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments and, in the case of agriculture, whether there has been an increased burden on government support programmes. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.

15.5: It must be demonstrated that the subsidized imports are, through the effects of subsidies, causing injury within the meaning of this Agreement. The demonstration of a causal relationship between the subsidized imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the authorities. The authorities shall also examine any known factors other than the subsidized imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the subsidized imports. Factors which may be relevant in this respect include, *inter alia*, the volumes and prices of non-subsidized imports of the product in question, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry. xxx

There are other provisions here, Mr. President, but I think, by and large, I have indicated more or less.

Senator Guingona. I would like to thank the distinguished gentleman for that.

So under that definition, we cannot invoke countervailing duty for sugar, for example, because this does not fall under those?

Senator Enrile. It will, Mr. President. We can.

Senator Guingona. But our cost of production is very high.

Senator Enrile. That is a matter of evidence, Mr. President. Cost of production alone is not the only criterion.

Senator Guingona. Our other factor is the cost of the prices of sugar which is way above the world market prices, as I understand it.

If there are imports of sugar, can we avail of this countervailing duty?

Senator Enrile. Yes, Mr. President, why not? If the subsidy of those imported sugar would amount to more than what is needed to protect the local industries, why not?

Senator Guingona. Yes, but can they not say where is the injury? The injury is because of the inefficient production of sugar.

Senator Enrile. Mr. President, that will be a matter of evidence. I am just crafting a law here and it is up to the technicians of government to make a finding based on empirical evidence.

Senator Guingona. Are we going by the distinguished gentleman's definition or by the material injury?

Senator Enrile. It is not my definition. It is the definition of the agreement, Mr. President.

Senator Guingona. Definition of the agreement. But the complainant must show material injury?

Senator Enrile. That is correct.

Senator Guingona. Considering the realities, can we show material injury as far as sugar is concerned?

Senator Enrile. If the complainant has a good lawyer like the Minority Leader, why not, Mr. President? If he has a stupid lawyer, maybe not.

Senator Guingona. I would like to thank the distinguished gentleman for that.

Would that be true also in the case of meat?

Senator Enrile. Yes, Mr. President. It is true for all products.

Senator Guingona. Yes, but our cattle industry has not been developed. For several reasons, the cattle industry is way below and it is very much cheaper to import even without subsidies from other nations.

Senator Enrile. If the distinguished gentleman was present in the hearings on this, I do not think he would be that courageous to make a certitude.

Senator Guingona. I am sorry, I was not present during the hearings. May we be enlightened on this.

Senator Enrile. According to them, they could produce beef locally at a cheap price, and so are hogs and chicken.

Senator Guingona. I am glad to hear that, I hope we can. We do not need to import carabeef.

Senator Enrile. Mr. President, carabeef is not subsidized. It is a question of price. It is a cheap meat. It is imported because it is cheap as a raw material for making hotdogs. But if the cheapness is because of subsidy, then the countervailing duty will become a material weapon.

Senator Guingona. If the end product which is imported comes from, let us say, three, four or five nations, where will the complaint be lodged, against whom?

Senator Enrile. And they are subsidized, Mr. President?

Senator Guingona. Yes, Mr. President.

Senator Enrile. It will be lodged with our government, with the secretary concerned, either the secretary of Agriculture or secretary of Trade and Industry, and the investigation will be conducted by the Tariff Commission.

If the Tariff Commission will make a determination whether the cumulative imports from all of these countries would be more than *de minimis* in which case, if that is transcended, then the case is proper to be heard. It is up to the hearing authorities to determine the amount of subsidy and that will be the measure of the countervailing duty that will be imposed.

Senator Guingona. I thank the gentleman for that.

Before we leave sugar, I understand that the Sugar Millers Association wrote the distinguished gentleman a letter which arrived after the passage of the countervailing duty measure. Is he aware of that?

Senator Enrile. No, Mr. President, I do not remember any more if I received that letter or not. My recollection is not that sharp any longer.

Senator Guingona. I see. At any rate, if there are several countries therefore, the complaint is lodged with the proper government official and the investigation for a *prima facie* case will then proceed against...

Senator Enrile. Yes, Mr. President, there will be notice to those countries and there will be notice to all importers and all interested parties.

Senator Guingona. The complaint will be made on behalf of the industry or the agricultural producers.

Senator Enrile. It may be done, Mr. President, *motu proprio* by the secretary concerned if they have enough evidence or it may be done by a single enterprise, but there are requirements or it may be done for and in behalf of an industry in which case, it has a volume requirement.

Senator Guingona. Supposing that the investigator would require investigation in the premises of the country of origin. Could he conduct investigation in the country of origin?

Senator Enrile. Yes, Mr. President, under the treaty that is provided.

Senator Guingona. Supposing the producers or manufacturers of the product or parts of the product components refuse to give pertinent information—the theory that it would reveal trade secrets—we cannot compel them to produce these documents.

Senator Enrile. That is correct, Mr. President, we could not compel them; but we have provided in the proposed measure that in that event, refusal to provide the necessary information would result in our local authorities availing of any possible documents that they could lay their hands on to establish the subsidy, in which case then these documents could not be contested.

Senator Guingona. But they refuse to submit these documents, Mr. President.

Senator Enrile. There is a provision in the measure that we have proposed that failure to provide the documents would result in the use of such documents that may be available to the authorities doing the investigation.

Senator Guingona. The investigators demand the documents but they are refused on grounds that they would reveal trade secrets.

Senator Enrile. Even then, Mr. President, whatever their reason. If they refuse, the provision that we placed here will apply.

SUSPENSION OF SESSION

May I ask for a one-minute suspension of the session, Mr. President.

The Presiding Officer [Sen. Magsaysay]. The session is suspended for one minute, if there is no objection. *[There was none.]*

It was 5:27 p.m.

RESUMPTION OF SESSION

At 5:29 p.m., the session was resumed.

The Presiding Officer [Sen. Magsaysay]. The session is resumed.

Senator Enrile is recognized.

Senator Enrile. Mr. President, we provided on page 9, beginning from line 11 all the way to line 16, a provision which says:

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.

Senator Guingona. Very good. I thank the gentleman for that, Mr. President.

But if the documents would prove the material damage, is there a process under the bill to avail of this in spite of the refusal?

Senator Enrile. The proof of material damage will be available to the local industries here.

Senator Guingona. Let us say that the document is material in proving the case and the foreign producer or importer does not cooperate...

Senator Enrile. Mr. President, I doubt whether there is any problem about this because many of these subsidies are found in the laws of the countries of origin. They are matters of statutes or government issuances.

Senator Guingona. So are we limited to issuances and statutes?

Senator Pimentel. I think that is my understanding of what the treaty says, Mr. President, because most of these subsidies must be by law. They involve the use of public money.

Senator Guingona. The information required in the investigation would be more or less limited to the laws, statutes...

Senator Enrile. As far as subsidy is concerned, this is a matter of law under the system of the country of origin, unless of course, we are dealing with a very centralized secretive government, which I doubt. But in the ordinary run of things, these are provided in government issuances.

The volume of exported product, we get this from our own records. The identity of importers, the identity of exporters, we get these from our import bills, bills of lading.

Senator Guingona. What is the amount of injury, Mr. President, that would entitle one to countervailing duty under this bill?

Senator Enrile. I guess, Mr. President, that has to be addressed to the investigators—the quantum of injury to a given industry, how much profit has been lost, how much sales has been lost, how much production has been lost, how much unemployment has been caused, how much revenues has been eaten up, how much of the market for like products produced domestically has been eroded, and so forth and so on. We cannot put a quantification of these things in the law.

Now, the amount of subsidy is easy to determine because it is a matter of law.

Senator Guingona. But if it were, for example, a private research institute that gives them technological help and these technological help and research contributions are considered confidential, that is the thing that this representation would like to...

Senator Enrile. Maybe in those cases, there is some degree of difficulty in getting the information. I guess the people who are affected will probably have their own agents or investigators abroad to get the data to protect themselves locally and they will present that to the government. The government can then ask for the production of the official records. If they do not agree, they do not submit, then whatever is the finding of the researchers of the local industries will be a material evidence based on the provision that I have just cited, a provision inserted in this proposed measure.

Senator Guingona. The injury is not limited to actual but to potential threats also.

Senator Enrile. Maybe actual injury, Mr. President. The fact of retarding the growth or establishment of any industry must be objective fact. As the treaty says, the evidence must be based on objective evidence.

Senator Guingona. Let us assume that there is a local production of a component for the exportation of computers. And there are only three or four companies that do this, in competition with the firms in the Silicon Valley. Because of the high-tech assistance of the United States—not to speak of the high standards that they pay, their engineers, et cetera—the local manufacturers of the components find it very difficult even if the local materials, the silica, are here, even if they know how to do it but they are having a hard time, they feel that there is not only an injury but also a causal relation of the injury to the benefit of the product.

My question is: Do they have to prove the entire gamut of subsidies and the actual and potential damage or injury to their local industry?

Senator Enrile. Mr. President, this law contemplates the exportation to us of subsidized products. But that alone is not enough to trigger the application of this law. There must be a second stage to be established—establish the subsidy, establish an injury to the local industry because of the exportation of these subsidized products, and we must establish the causal connection between that subsidy and the injury. Without this, the law will not apply.

Senator Guingona. May I know the meaning of "domestic industry" under this proposed measure, Mr. President?

Senator Enrile. Mr. President, domestic industry is the industry established in the Philippines producing like product. For instance, beer. We have Asia Brewery and San Miguel. If we talk of gin, we have La Tondena, Tanduay and Distileria Limtuaco, the producer of Andy Player and so forth and so on. If we talk of corn, then we have the corn producers—that is the industry. If we talk of potato, we have the potato growers. If we talk of onion, we have the onion growers. If we talk of *talong*, we have the *talong* growers.

At this juncture, the Presiding Officer, Sen. Ramon B. Magsaysay Jr., relinquished the Chair to Sen. Aquilino Q. Pimentel Jr.

Senator Guingona. If the end product is computer, and the components are imported from several nations...

Senator Enrile. If these are subsidized, Mr. President.
Senator Guingona. Yes, some of the components are subsidized.

Senator Enrile. Then those who are producing like products, Mr. President, component products may invoke the countervailing duty if they can show that there is subsidy and that these are materially injured.

Senator Guingona. But the components are made by the developed nation where...

Senator Enrile. It does not matter, Mr. President, whether it is developed or underdeveloped nation, as long as they bear subsidies. In the case of underdeveloped nations, there are certain provisions of the GATT.

Senator Guingona. That is what we were asking earlier, Mr. President. I am worried about the disparity and the disadvantaged position we are in for our products, especially for those who are attempting to build local components for exports. These components are subsidized abroad by the very exporters of these finished products.

Senator Enrile. Mr. President, I refer the gentleman to Article 27, which states:

Members recognize that subsidies may play an important role in the economic development programs of developing country members.

The prohibition of paragraph 1-A of Article 3—prohibited subsidies shall not apply to developing country member referred to in Annex 7... Mr. President, let me see what is Annex 7.

SUSPENSION OF SESSION

Mr. President. I move that we suspend the session for a few minutes.

The Presiding Officer [Sen. Pimentel]. Is there any objection? [Silence] There being none, the session is suspended for a few minutes.

It was 5:43 p.m.

RESUMPTION OF SESSION
At 5:47 p.m., the session was resumed.

The Presiding Officer [Sen. Pimentel]. The session is resumed.

Senator Enrile. Mr. President, just to answer the distinguished gentleman from Mindanao.

As I said, there are provisions applicable to developing countries. I have now located Annex 7, and the Philippines is included in this category.

Article VII says: Each of the following developing countries which are members of WTO shall be subject to the provisions which are applicable to other developing country members, according to paragraph 2B of Article XXVII—which I have just referred to a while ago—when GNP capita has reached \$1,000 per annum. Bolivia, Cameroon, Congo, Cote d'Ivoire, Dominican Republic, Egypt, Ghana, Guatemala, Guyana, India, Indonesia, Kenya, Morocco, Nicaragua, Nigeria, Pakistan, Philippines, Senegal, Sri Lanka, and Zimbabwe.

Now, if the distinguished gentleman from Mindanao is interested in the provision with respect to developing countries, I refer him to Article XXVII, part 8, dealing with developing country members.

All the rules on excepted subsidies are provided in that part of the treaty. I need not repeat it here. It can be read by anybody.

Senator Guingona. I thank the gentleman for that.

A developing country, therefore, to reach export competitiveness, must have produced the equivalent of \$1,000 per annum. Is that the...?

Senator Enrile. When they reach a per capita income of \$1,000, Mr. President, they come under the category of developing countries, as compared to least developed countries.

Senator Guingona. My only problem is the fact that, as it is now...

Senator Enrile. May I read this provision, Mr. President, so that we will have a point of reference.

Article XXVII - Special and Differential Treatment of Developing Country Members.

27.1. Members recognized that subsidies may play an important role in economic development programs of developing country members.

27.2. The prohibition of paragraph 1.a of Art. III shall not apply to developing country members referred to in Annex 7, Philippines included;

1.b. Other developing country members, for a period of eight years from the date of entry into force of the WTO Agreement, subject to compliance with the provisions in Par. 4;

27.3. The prohibition of par. 1.b of Art. III shall not apply to developing country members for a period of five years and shall not apply to least developed country members for a period of eight years from the date of entry into force of the WTO Agreement.

27.4. Any developing country member referred to in par. 2.b shall phase out its export subsidies within the eight-year period, preferably in a progressive manner. However, a developing country member shall not increase the level of its export subsidies and shall eliminate them within a period shorter than that provided for in this paragraph when the use of such export subsidies is inconsistent with its development needs. x x x

Mr. President, this has nothing to do with the countervailing duty, except to the extent that these goods subsidized by other countries would be imported by or exported to the Philippines.

At this juncture, the Presiding Officer, Sen. Aquilino Q. Pimentel Jr., relinquished the Chair to the Senate President.

Senator Guingona. I thank the distinguished senator for that. My problem, Mr. President, is that reality tells us that our main exports, like computers, are manufactured or packaged here in the Philippines, but the components come from developed countries, as well. And when a local manufacturer tries to replace or provide the component—for example, a reflector of a computer—how will the countervailing duty be imposed when the end product exporter state is itself subsidizing the local components?

The computer is made up of several components and in Silicon Valley, it is a reality that the local components are, in effect, subsidized. There are potentials where our local manufacturers can produce the local components.

Senator Enrile. Are we importing computer parts from Silicon Valley, Mr. President?

Senator Guingona. Yes, Mr. President.

Senator Enrile. Like what, Mr. President?

Senator Guingona. Reflectors—different parts. As a matter of fact, the distinguished sponsor and chairman of the Committee on Trade, I think, admitted that about 80% to 90% of our export of US\$5 billion of this particular product was imported.

Senator Enrile. Who said that?

Senator Guingona. I think it was Senator Magsaysay.

Senator Enrile. Well, I cannot really visualize where the problem is. Is the gentleman saying that we should not protect

the local manufacturers of parts of exported products simply because the end product will be exported?

Senator Magsaysay. Mr. President.

The President. Senator Magsaysay is recognized.

Senator Magsaysay. With the permission of the two gentlemen. May I clarify the statement made by the Minority Leader.

I think I mentioned that the local value-added on a representative finished computer going overseas for export is roughly about 25% up to 30% and not 10%. This is a value-added business.

Senator Guingona. Yes. I would like to thank the gentleman for that. I am only trying to find out from the distinguished sponsor that we can now help the local manufacturer who seeks to produce the local contents—75% to 80% of whatever parts of the finished product—when he is competing with the very manufacturer here who exports the finished product.

Senator Enrile. Will the gentleman give me an example of what is in his mind about this?

Does the gentleman mean that “A” company is producing parts locally?

Senator Guingona. Yes, Mr. President.

Senator Enrile. Then “B” company in Silicon Valley exports to the Philippines the same parts at subsidized product?

Senator Guingona. Yes, Mr. President.

Senator Enrile. Then this countervailing measure is the protection.

Senator Guingona. Yes, that would be logical. But what I am saying is that the end product, the exported product, the finished product is exported domestically by a foreign firm whose components compete with the local component.

Senator Enrile. I cannot get the problem, Mr. President. I must be dense.

As I said, we have a market. The market of the local product is “C” company; “C” is equally the market of “B” company and it is also the market of “A” company. “C” and “A” are both local companies.

Senator Guingona. No. "C" is a foreign company supplying to "A". Let us vary the nomenclature.

Senator Enrile. Who is producing the finished product, Mr. President? Is it "C" company?

Senator Guingona. If the gentleman says it is "C", all right. Let us say, "C" is exporting the finished product.

Senator Enrile. Let us say, "C" produces Compaq computers in the Philippines.

Senator Guingona. Yes, Mr. President.

Senator Enrile. Then "A" company is producing a certain component of the Compaq computer. And "B" company is also producing the same component and exporting it to the Philippines to be used as a component of Compaq computer. But the "B" product is subsidized. Then, the answer to that situation is this measure.

Senator Guingona. Yes, in theory, it is.

Senator Enrile. Not in theory. In actuality, Mr. President. If there is a good lawyer who can establish the subsidy and the injury, ergo, countervailing duty; ergo, protection for "A" company.

Senator Guingona. The same government that subsidizes the local component abroad...

Senator Enrile. Which local component, Mr. President?

Senator Guingona. The local component to the Compaq.

Senator Enrile. No. The imported component.

Senator Guingona. Yes, the imported component is the one that subsidizes and which, in turn receives the domestic exports from our end to the foreign country.

Senator Enrile. Then what is the question, Mr. President?

Senator Guingona. The question is, under those conditions, how will our officials under this bill investigate when the foreign firm is the one which provides for the finished product? Is there no...

Senator Enrile. But the foreign firm is doing business in the Philippines. It becomes a resident foreign corporation, Mr. President. Therefore, it exports the finished product—the Compaq computer in our example. That is already a nonissue as far as I am concerned because the issue is between "A" company and "B" company which is exporting to the Philippines a subsidized product in competition and to the material injury of "A" company.

So the one that we will use to safeguard the interest of "A" is countervailing duty.

Senator Guingona. That is correct. But assuming that there is a subsidiary of "A" company, which is "D" company, that would do the same manufacture of the local component here in competition with "B" Company.

Senator Enrile. With "B" Company?

Senator Guingona. The local company.

Senator Enrile. "A" is the local company.

Senator Guingona. The one that produces the end product is "A" company.

Senator Enrile. No, Mr. President. The end product is produced by "C" company—Compaq computers.

Senator Guingona. "C" has a subsidiary that competes with "A".

Senator Enrile. But no subsidy, *okay lang*. "C"'s subsidiary may probably join "A" in raising the issue of countervailing duty.

Senator Guingona. Against who?

Senator Enrile. Against "B" company.

Senator Guingona. Considering that they have the advantage economically and the technological advancement, what chance does "B" have?

Senator Enrile. If it has no chance, better for us.

Senator Guingona. What I mean is the local...

Senator Enrile. I think the example...

Senator Guingona. "C" company is the Compaq producer of the finished product.

Senator Enrile. That is right, Mr. President.

Senator Guingona. "B" is the one trying to have the local component manufactured here.

Senator Enrile. The distinguished gentleman is varying the situation. Does the distinguished gentleman want to tell me that "B" now wants to establish a local subsidiary to produce the component in the Philippines in competition with the product of "A". Is that it?

Senator Guingona: No, Mr. President. "C" is the producer of the finished product.

Senator Enrile: That is correct, Mr. President. Compaq.

Senator Guingona: "A" is the local Filipino manufacturer trying to provide the local component.

Senator Enrile: "A" is a provider of a component, and it is a domestic corporation.

Senator Guingona: "B" is the foreign supplier...

Senator Enrile: Of the same component to "C"; but that product is subsidized. All right. So what is the problem, Mr. President?

Senator Guingona: Then "C"...

Senator Enrile: Organizes his subsidiary; also producing the same component.

Senator Guingona: Yes, here, Mr. President.

Senator Enrile: Yes. Then what is the problem, Mr. President?

Senator Guingona: The problem is, how then can the Filipino manufacturer of the component show injury?

Senator Enrile: How can it show injury?

Senator Guingona: Yes, Mr. President.

Senator Enrile: Well, to the extent that so much of the market is being eaten up by "B". Therefore, the profit of "A" is eroded because of the increasing volume of the exportation of "B" of that component and the competitive advantage of "B" in the local market, which is "C", because of the subsidy that is embedded in the price of the product of "B".

Senator Guingona: Would conspiracy in restraint of trade be an element?

Senator Enrile: No, Mr. President.

Senator Guingona: It would not.

Senator Enrile: The only objective fact of having a subsidy is that there is a material injury to a local industry.

Senator Guingona: Could we not insert it into the material injury, Mr. President?

Senator Enrile: That will be extraneous to this measure, Mr. President. That will become a rider; not germane to it.

Senator Guingona: Not germane to it, but this is a worldwide, borderless agreement that we must...

Senator Enrile: We are dealing with countervailing duty, Mr. President. That is the title of the bill.

Senator Guingona: Yes, Mr. President.

Senator Enrile: We should not introduce a matter that is extraneous to the title of the bill which is to cover an anti-trust problem.

Senator Guingona: It does not, but it can show under the special and differential treatment of developing countries the injury that is done to a local manufacturer. Can it not?

Senator Enrile: The concession to developing countries will not apply to "B", Mr. President. In the example of the distinguished gentleman, America is so developed and that provision will not apply to "B".

Senator Guingona: May I have a clarification of that, Mr. President.

Senator Enrile: Mr. President, the concession to developing countries under Article XXVII was given to allow them to export products with subsidy because they are developing countries, but that concession is not granted to industrialized countries. America, in the example of the distinguished gentleman, in the case of "B", is not a developing country. It is the most developed country in the world.

Senator Guingona: Yes; but as we pointed out earlier, Mr. President, it has already granted and is continuing to grant the subsidies in many forms.

Senator Enrile: That is why we can impose a countervailing duty on them, Mr. President. Even in the case of developing countries, the subsidy is subject to a countervailing duty if the subsidy exceed a certain level. If the overall level of subsidy granted upon the product in question does not exceed 2% of its value calculated on a periodic basis or the volume of the subsidized imports from a developing country represents less than 4% of the total import supply products in the importing member unless the imports from developing country members whose individual share of total imports represent less than 4% collectively account for more than 9% of the total imports of like products in the member countries, the countervailing duty will still apply even if the subsidized product comes from a developing country if it exceeds a certain level of subsidy.

Senator Guingona: In the article on determination of injuries.

Senator Enrile: Article in the treaty, Mr. President?

Senator Guingona: In the treaty, Article XV, I think.

It says in Article XV.5 in the middle of the paragraph:

The Authority shall also examine unknown factors other than the subsidized imports which at the same time are injuring the domestic industries and the injuries caused by these other factors must not be attributed to the subsidized imports.

Senator Enrile. That is correct, Mr. President.

Senator Guingona. So what I am saying is that in the decision to impose countervailing duties, we must seek ways and means to defend the local industries rather than allow the domestic industry, which is really foreign, to bring in the components and not allow the linkages of local component manufacturers here in the industries.

Senator Enrile. I cannot fathom, Mr. President.

Senator Guingona. The distinguished gentleman says it is alien. It is no longer relevant to the countervailing duty to look into these other factors.

What I am saying is that in the investigation of whether to impose countervailing duties or not, other factors must come in.

Senator Enrile. I venture the opinion that maybe if apart from being subsidized, the product of "B" is exported to the Philippines for less than what it sells in the market of the United States or California, then it can apply both dumping and countervailing duties.

Senator Guingona. I am glad to hear that, Mr. President. But everything must be taken into account.

Senator Enrile. I think the gentleman is implying a transfer price system. I am already saying that if that happens, in which case the price is not fair, then we can apply the Anti-Dumping Law as well.

Senator Guingona. Yes, I am glad to hear that, Mr. President, because if we limit it to the fact that one must prove the subsidy, the interest, and the causal relationship alone, we may be putting our own local Filipino manufacturers at a disadvantage.

Anyway, that is all that I have to ask of the distinguished sponsor. I would like to thank him, Mr. President.

Senator Enrile. I thank the gentleman very much, Mr. President, for his incisive questioning.

The President. The Chair thanks the Minority Leader and Senator Enrile.

The Majority Leader is recognized.

SUSPENSION OF CONSIDERATION OF S. NO. 1330

Senator Drilon. Mr. President, there are two of our colleagues who have reserved the right to raise questions to the sponsor for some clarification. Since they are not available at this point, we therefore move that we suspend consideration of Senate Bill No. 1330 under Committee Report No. 11.

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

THE JOURNAL

Senator Drilon. Mr. President, may I move that we consider for approval the *Journal* of Session No. 44.

I move that we dispense with the reading of the *Journal* of Session No. 44 and consider the same as approved.

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

Senator Drilon. Before we adjourn, Mr. President, may I remind our colleagues that for the session tomorrow, December 15, 1998, we will again consider on Second Reading under the period of committee and individual amendments, Senate Bill No. 1261 under Committee Report No. 9, the bill restructuring the PNP and empowering the local government units for the maintenance of peace and order.

The proposed committee amendments are distributed at the Session Hall. We urge our colleagues to review the same and prepare for their individual amendments, which, if we have time, we will take up tomorrow.

Likewise, we shall continue our period of interpellations on Senate Bill No. 1330 under Committee Report No. 11 on the Countervailing Duties. On line to interpellate will be Sen. Miriam Defensor Santiago and Sen. Ramon B. Revilla.

ADJOURNMENT OF SESSION

With that, we move to adjourn our session until December 15, 1998 at three o'clock in the afternoon.

The President. The session is adjourned until three o'clock tomorrow afternoon, December 15, 1998, if there is no objection. *[There was none.]*

It was 6:18 p.m.