

## RECORD OF THE SENATE

TUESDAY, DECEMBER 15, 1998

### OPENING OF THE SESSION

At 3:15 p.m., the Senate President, Hon. Marcelo B. Fernan, called the session to order.

**The President.** The 46th session of the Senate in the First Regular Session of the Eleventh Congress is hereby called to order.

We shall be led in prayer by Sen. Robert Z. Barbers.

*Everybody rose for the prayer.*

### PRAYER

**Senator Barbers.**

Almighty Father, we thank You for this blessed day as we gather in this august Chamber to pursue our primordial duty to serve our nation and its people through the creation of laws beneficial to all.

Father, grant us peace to reflect on Your will and goodness for the welfare of those who look upon us to better their lives. Fill each of us with Your wisdom so that we may become effective public servants, sensitive to the needs of the people and the problems of the nation and at the same time, able to address them. May we have the heart to listen and share in the sacrifice of our needy brothers and sisters.

We have so many decisions to make—decisions that will spell the future of our country and people. We cannot face the challenge bravely and wisely without You, Dear Lord, and Your divine guidance.

Through Your intercession, may we be generous, understanding and humble enough to set aside conflicts so that we may work in harmony for the good of all. Grant us, oh Lord, the capacity to be receptive to criticism and the courage to admit our mistakes. And when we are right, provide us the fortitude to stand our ground.

Unite us, all-powerful God, for the sake of a nation facing a crippling economic crisis and other tormenting problems.

Loving Father, should the year ahead be another tough road to travel, grant us Your strength, love and

wisdom for us to be able to weather any storm that will come our way.

Forgive us for all our sins, Lord.

Amen.

**The President.** Thank you, Senator Barbers.

### ROLL CALL

**The President.** 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 Dominique M. L. Coseteng .....	Absent
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. "JAWO" Jaworski .....	**
Senator Loren B. Legarda-Leviste .....	Present
Senator Ramon B. Magsaysay Jr. ....	Present
Senator Blas F. Ople .....	**
Senator John H. 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 Francis S. Tatad .....	**
The President .....	Present

**The President.** With 16 senators present, there is a quorum.

### THE JOURNAL

**Senator Drilon.** Mr. President, I move that we dispense with the reading of the *Journal* of the previous session and consider it approved.

**The President.** Is there any objection? [*Silence*] There being none, the reading of the *Journal* of the previous session is dispensed with and same is considered approved.

The Secretary will please read the Reference of Business.

\* Arrived after the roll call

\*\* On official mission

ADDITIONAL REFERENCE OF BUSINESS

MESSAGE FROM THE HOUSE OF REPRESENTATIVES

The Secretary.

December 14, 1998

The Honorable

MARCELO B. FERNAN

President of the Senate

Financial Center

Pasay City 1308

Mr. President:

I have been directed to inform the Senate that the House of Representatives on December 14, 1998, request a conference to reconcile the disagreeing votes on House Bill No. 4240, entitled

AN ACT APPROPRIATING THE FUNDS FOR THE OPERATION OF THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES FROM JANUARY ONE TO DECEMBER THIRTY-ONE, NINETEEN HUNDRED AND NINETY-NINE AND FOR OTHER PURPOSES,

and accordingly has elected Representatives Gilberto M. Duavit, Leandro Verceles Jr., Enrique T. Garcia Jr., Arnulfo P. Fuentesbella, Amadeo Perez Jr., Marcial Punzalan, Roilo Golez, Vicente J. Andaya Jr., Lualhati R. Antonino, Jesli A. Lapuz, Julita Lorenzo-Villareal, Emily R. Lopez, Ma. Angela E. Cua, Ma. Victoria Locsin, Alfredo E. Abueg Jr., Eduardo Gullas, Daisy Fuentes, Manuel A. Roxas II, Neptali Gonzales II, Rodolfo Fariñas, Rodolfo Tuazon, Gilbert Teodoro, Douglas Ra. Cagas, Celso Lobregat, Eleandro Jesus Madrona, Ralph Recto, Feliciano R. Belmonte Jr., Sergio Antonio F. Apostol, Raul M. Gonzales, Michael T. Defensor, Ignacio R. Bunye, Prospero A. Pichay Jr. and Joker P. Arroyo as its conferees.

Very truly yours,

(Sgd.) ROBERT O. NAZARENO  
Secretary General

The President. Referred to the Committee on Rules

Senator Drilon. Mr. President.

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

Senator Drilon. May I ask the chairman to recognize the sponsor, Sen. Juan Ponce Enrile.

The President. Sen. Juan Ponce Enrile, the sponsor, is hereby recognized.

Senator Drilon. May I ask the Chair to recognize Sen. Ramon B. Revilla for the interpellation.

The President. Sen. Ramon B. Revilla is recognized for the interpellation.

Senator Revilla. Thank you, Mr. President.

First of all, I would like to commend the distinguished sponsor, the tax expert of this august Chamber, for a landmark legislative economic measure.

In relation to this, Mr. President, in my desire to understand and study the critical issues involved in this measure, I would like to ask some clarificatory questions. Will the kind gentleman from Cagayan, the former commissioner of the Bureau of Customs, who is my boss at the time I was working with the Bureau of Customs as a senior intelligence officer some 22 years ago, yield for some clarificatory questions?

Senator Enrile. *Ako po ay handang sumagot sa mga katanungan ng ating magiting na senador mula sa Cavite, ang "Agimat" ng Senado.*

Senator Revilla. *Maraming salamat po.*

Mr. President, as a matter of clarification, *gusto ko pong malaman ang diperensiya o relasyon, if any, between anti-dumping and countervailing.*

Senator Enrile. *Alam po ninyo, sa dalawang panukalang-batas na ito, ang isa ay ipinasa na natin sa Senado at ngayon ay sumunod itong tinatawag nating countervailing measure, ito ay kasama sa tatlong mga paraan upang mabigyan ng proteksiyon ang mga industriyang pang-lokal sa ating bansa*

*kung saka-sakaling sila ay nagkaroon ng problema sa mga importasyon ng mga produktong na naggagaling sa ibang bansa.*

These are three measures that are authorized under the Uruguay Round-WTO Treaty. *Kaya ito ngayon ay pinag-uusapan natin sapagkat kailangan ng ating industriya.* Whether it be agriculture or industrial operators, *ang tinatawag na safety nets.*

*Ngayon, ano po ba ang kaibahan nitong countervailing measure doon sa anti-dumping measure?*

*Doon po sa antidumping measure, kagaya ng ipinaliwanag ko na noong talakayin natin iyan dito sa Kamara, iyong produktong pumapasok sa ating bayan ay pinepresyuhan doon sa bayang pinanggalingan sa presyo nang mas mababa kaysa doon sa presyong ginagamit kung ipinagbibili iyong produkto doon sa bayang pinanggalingan or the country of origin.*

*Halimbawa, kung nag-import tayo ng Boston shoes mula sa Amerika at ang presyo ng nasabing sapatos sa domestic market ng Amerika ay \$100, ngunit ang presyo ng exporter sa Amerika doon sa produktong ini-export sa Pilipinas ay \$70, may diperensiya na \$30. Kung may prodyuser din ng ganiyang uri ng sapatos sa Pilipinas, maaaring gamitin ang antidumping duty. Sapagkat may competitive advantage iyong imported Boston shoes dahil pinipresyuhan lamang ng \$70, samantalang doon sa merkado o domestic market ng Amerika mismo, ang presyo ay \$100.*

*Kaya para maproteksyunan iyong mga gumagawa ng mga sapatos sa loob ng ating bansa—para naman hindi mawalan ng trabaho ang ating mga trabahador at hindi masayang iyong kapital ng ating mga kababayang naghahanapbuhay diyan—papatawan natin ng tinatawag na antidumping duty iyong pumasok na imported Boston shoes. Ang magiging halaga o laki ng ipapataw na buwis ay iyong difference between \$100 and \$70. Iyan ang antidumping.*

*Ngayon, kung iyong export price ng Boston shoes na iyon ay \$100, halimbawa, ngunit iyong State of New York na kung saan ginagawa iyong Boston shoes ay nagbibigay ng subsidy equivalent to \$30 per pair doon sa manufacturer at i-export ngayon iyan dito sa Pilipinas at \$100 per pair, ipagbibili dito ng less than \$100, magpapalugi sila, gagamitin natin ngayon ang countervailing duty para sa ganoon ay magkaroon ng proteksyon ang ating mga local people. Maaaring patawan natin ng \$30 countervailing duty ang magiging presyo nila dito, kahit na ibaba pa nila o palugi. Iyong \$30 ay ipapataw natin sa kanila.*

**Senator Revilla.** *Maraming salamat po sa magandang paliwanag ng ginoo.*

*Ginoong Pangulo, ano po bang mga produkto sa ating bansa ang dapat bigyan ng proteksyon ng ating pamahalaan against these subsidized products na naggagaling pa sa ibang bansa?*

**Senator Enrile.** *Lahat po ng produktong ginagawa natin dito, simula sa palito o toothpick hanggang sa ano mang uri produkto, maging industrial product or agricultural product. Sapagkat iyong ini-export sa ating mga produkto at ipinagbibili sa ating merkado at nakikipagkumpetensiya sa ating mga produkto ay may subsidy—lahat.*

**Senator Revilla.** *Ganoon po ba iyon?*

**Senator Enrile.** *Lahat po.*

**Senator Revilla.** *Mr. President, on page 9, lines 17 to 22, may heading na...*

**Senator Enrile.** *Sandali lamang po. Hindi ko na matandaan iyan dahil medyo nanlalabo na ang aking kaisipan.*

**Senator Revilla.** *Page 9, lines 17 to 22, Mr. President.*

**Senator Enrile.** *Lines 17 to 22? Baka iba po ang hawak na kopya ng Ginoo. Sapagkat dito sa akin, the heading in line 17 reads: "In the formal investigation..."*

**Senator Revilla.** *Iyon pong may heading na "Investigation by the Commission". It 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.*

*Ang tanong ko po, Ginoong Pangulo, ay ganito: How does the gentleman define the words "within a reasonable period of time"? Ganito kahaba itong "reasonable period of time"?*

**Senator Enrile.** *Depende po sa sitwasyon iyong "reasonable period of time."*

**Senator Revilla.** *Ilang linggo po iyon?*

**Senator Enrile.** *Kung ang kakausapin ay iyong hinihingan, yong importador, siguro iyong 10 araw ay masasabing reaso-*

nable time na. *Ngunit kung ang hihingan ng impormasyon ay ang exporter, perhaps 30 days would be a reasonable time. Nasa sitwasyon iyan.*

**Senator Revilla.** *Hindi po ba puwedeng isaad iyon sa bill?*

**Senator Enrile.** *Mahirap po.*

**Senator Revilla.** *Mahirap.*

**Senator Enrile.** *Hindi na natin mailalagay iyan. Kailangan nating bigyan ng flexibility iyong Tariff Commission sapagkat iyan ang mangangasiwa sa implementasyon nito.*

**Senator Revilla.** *Salamat po, Ginoong Pangulo.*

*Ano po ba ang magiging pakinabang ng ating bayan sa proposed measure na ito? In other words, do we have empirical data or estimated amount in peso terms kung magkano po ang magiging benepisyo ng Pilipinas dito sa ating panukalang-batas?*

**Senator Enrile.** *Ang unang benepisyo po ay ang proteksiyon ng ating mga industriya. Siguradong hindi masisira ang hanapbuhay ng ating mga manggagawa, ng ating mga gusali, ng mga gumagawa ng mga produkto sa ating bayan; pangalawa, ang buwis na kinokolekta ng ating bansa sa mga manufacturers at agricultural sector natin ay hindi mawawala; pangatlo, iyong buwis na ipapataw natin doon sa mga produkto, bukod pa sa mga ordinary duties and taxes na kinokolekta natin.*

**Senator Revilla.** *Salamat po, Ginoong Pangulo. Ito po bang panukalang-batas ay makakaapekto sa ating mga previous commitments sa GATT-WTO-Uruguay Round nating niratipika kamakailan lamang?*

**Senator Enrile.** *Hindi po makakaapekto. Ito ay sumasang-ayon nga doon sa ating nilagdaang WTO-Uruguay Round-GATT Agreement. Ini-implement lamang po natin ang probisyon ng WTO Agreement.*

**Senator Revilla.** *Ginoong Pangulo, tuwing sasapit ang Pasko ay itinatambak sa ating mga pamimilihan o palengke ang mga imported fruits, katulad ng mga ubas, Japan apples, American apples, oranges, peras, at iba pang imported fruits. Dahil dito ay nagreklamo ang ating mga local producer ng mga saging at mangga, dahil hindi na mabili ang kanilang mga produkto. Ano po ba ang ating magagawa para matulungan natin ang mga local producer ng mga prutas?*

**Senator Enrile.** *Kung ang dadagsang importasyon dito ay ubas, wala tayong magagawa sapagkat wala tayong ubas sa Pilipinas. Sinira natin iyong grape industry noong mga nakaraang panahon.*

*Ngayon, sa peras at mansanas man ay ganoon din dahil wala tayong peras at mansanas dito. Sa oranges naman, siguro ay maaaring gamitin natin ang panukalang-batas na ito sapagkat mayroon tayong dalandan, suha at iba't-ibang uri ng dalanghita dito sa Pilipinas.*

*Ngayon, kung may mag-e-export sa atin ng saging, halimbawa, at mayroon tayong mga sagingan dito, siguro ay magagamit natin ang panukalang-batas na ito.*

**Senator Revilla.** *Hanggang dito na lamang at maraming salamat, Ginoong Pangulo.*

**Senator Enrile.** *Salamat po sa inyong mga katanungan. Ako ay nagagalak at itinanong ninyo sa akin ang mga bagay na iyan.*

**The President.** *The Chair would like to thank Senator Revilla.*

*The Majority Leader is recognized.*

**Senator Drilon.** *May I ask the Chair to recognize Sen. Miriam Defensor Santiago.*

**The President.** *Sen. Miriam Defensor Santiago is recognized for interpellations.*

**Senator Santiago.** *Thank you, Mr. President. Mr. President, will the gentleman yield, please?*

**Senator Enrile.** *Gladly, Mr. President, to my inaanak.*

**Senator Santiago.** *Ninong, I will refer to the items by page and line numbers in chronological order.*

**Senator Enrile.** *Please.*

**Senator Santiago.** *And please, with the indulgence of distinguished gentleman, I would like to introduce the question because I feel that in some cases, I may have to lay down the premise.*

*I will refer, first of all, to page 4, lines 16 to 18.*

**Senator Enrile.** *Just a minute. I got another copy and now I will have to look for... Page...?*

**Senator Santiago.** *Page 4, lines 16 to 18.*

**Senator Enrile.** *Yes, Mr. President.*

**Senator Santiago.** *It is about specific subsidy, if we are using the same copy.*

Senator Enrile. What copy is the distinguished lady senator using?

Senator Santiago. I am using the copy stamped 98 Nov. 11 P4.57.

SUSPENSION OF SESSION

Senator Drilon. May we ask for 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 3:42 p.m.*

RESUMPTION OF SESSION

*At 3:43 p.m., the session was resumed.*

The President. The session is resumed.

Senator Santiago is recognized.

Senator Santiago. Thank you, Mr. President.

I am referring to page 4, lines 16 to 18, and I would like to introduce my question in this manner. The imposition of countervailing duties is intended to counter the effects of the grant of both direct and indirect subsidies by the country of origin or exportation of the goods. This is the reason for the clause directly or indirectly in line 16.

However, I note that the word "subsidy" in line 18 is qualified by the adjective "specific," thereby giving the impression that to warrant the imposition of countervailing duties, the subsidy must be specifically imposed on the production, manufacture or exportation of the product or good in question.

I think it can be argued, if this is the phraseology, the subsidies given to the entire agricultural sector, for example, would not constitute subsidies specific to an agricultural product in question.

And so, having laid down this premise, I am constrained to ask the question: What is the purpose of qualifying the word "subsidy" by the word "specific"? Is it the intention of the bill to restrict the nature and types of subsidies which could justify the imposition of countervailing duties?

I am raising this question because the word "specific" is not found in the present law. Moreover, qualifying subsidies

by the word "specific" may unduly restrict the nature and types of subsidies which could justify the imposition of countervailing duties.

My humble suggestion is that the word "specific" before the word "subsidy" in line 18 should be deleted so as not to unduly limit the interpretation of the scope and meaning of subsidy which, in the first place, is intended to include both direct and indirect subsidies.

May I return to the question since the explanation has been so lengthy: What is the purpose of qualifying the word "subsidy" by the word "specific"? Is it the intention of the bill to restrict the nature and types of subsidies which could justify the imposition of countervailing duties?

Senator Enrile. Mr. President, there is a special reason for using the adjective "specific" because these are the essential elements of what are known as "actionable subsidies" under the GATT-Uruguay Round Agreement.

Article I defines the subsidy contemplated to be covered. But the fact that there exist such subsidies would not automatically authorize the imposition of countervailing duty because there is a requirement that the producer of the product that enjoyed this subsidy must benefit out of the subsidy, and that the subsidy is specific to a particular enterprise or to a particular industry.

It says:

For the purpose of this Agreement, a subsidy shall be deemed to exist if xxx

Then, it gives the definition of subsidy.

And a benefit is thereby conferred.

Paragraph 1.2 says:

A subsidy as defined in paragraph 1 shall be subject to the provisions of part 2. Imposition of countervailing duty shall be subject to the provisions of part 3 or 5 only if such a subsidy is specific in accordance with the provision of Article II.

Article II defines what are the requirements to consider the specificity of a subsidy, and it says:

Paragraph 2.1. In order to determine whether a subsidy as defined in paragraph 1 of Article I is specific to an enterprise or industry or group of enterprises or industries referred to in this Agreement as certain enterprises within the jurisdiction of the granting authority, the following principles shall apply:

a) where the granting authority or the legislation pursuant to which the granting authority operates explicitly limits access to a subsidy to certain enterprises such subsidy shall be specific, et cetera.

It gives a listing of what it considers to be specific subsidies.

Senator Santiago. Thank you, I am enlightened.

I fully understand that there is what appears to be a good technical reason or objective that is sought to be achieved by this kind of phraseology.

But for the record, may I simply raise this question in order to avoid any future controversy: If a subsidy is given to the agricultural sector as a whole, would that still fall or be subsumed under the category of a specific subsidy sufficient to call into play countervailing duties contemplated by this bill.

Senator Enrile. It depends upon the manner by which the law is crafted and the law is implemented, Mr. President. Because even if the subsidy is general in nature, it applies to all agricultural products without any classification. If the usage is confined only to, let us say, sugar producers, corn producers, producers of *ampalaya*, *talong* or *singkamas*, then the other side of the country receiving the product could complain if there is a ground to indicate that there is specificity of this subsidy to a particular industry, although couched in general terms.

Senator Santiago. That answer is completely satisfactory, Mr. President. I feel that by that explanation, we would have adequately protected our manufacturers involved.

Please let me move on to page 10, line 15, paragraph (f).

Paragraph (f) provides that a subsidy exists if a public body "extends financial condition."

My question is: Does the clause "extends financial contribution" imply that the public body actually contributes money? If the gentleman's answer is in the affirmative, would he agree with me that a perusal of the "Forms of Subsidy" enumerated in paragraph (f) will show that some of them may not qualify under the description "extension of financial contribution"? For example, I am referring to Nos. 3 and 4.

Do the forms described in Nos. 3 and 4 indicate the existence of a subsidy considering that they do not qualify as an extension of financial contribution?

Senator Enrile. Mr. President, these are actually taken from the treaty itself. As much as possible, we adhered to the phraseology of the treaty.

Let me just go over the provisions if I could locate them.

SUSPENSION OF SESSION

May I request for 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 3:53 p.m.*

RESUMPTION OF SESSION

*At 3:54 p.m., the session was resumed.*

The President. The session is resumed.

Senator Enrile. Mr. President, under Article I, Part 1, General Provisions, Definition of Subsidy, it says:

For purposes of this Agreement, a subsidy shall be deemed to exist if:

(a) (1) If 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, that is where:

(i) A government practice involves a direct transfer of funds: for example, grants, loans and equity infusion, potential direct transfer of funds or liabilities, i.e. loan guarantees;

(ii) Government revenue that is otherwise due is foregone or not collected, for example, fiscal incentives such as tax credits;

(iii) Government provides goods or services other than general infrastructure or purchase of goods;

(iv) A government makes payment a funding mechanism or entrusts 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 the practices normally followed by the government.

So we just rephrase the text of this provision in order to put it in legal form.

**Senator Santiago.** Yes, Mr. President. I agree absolutely. Therefore, it would indicate that the clause "extends financial contribution" is not limited to actual contribution of money or cash.

**Senator Enrile.** It could be in actual cash, in credits, in loan guarantees; it could be in special infrastructure which otherwise would call for the expenditure of funds of the benefited industry or enterprise; it could be in the form of services that the government would extend like researches—there is no actual direct transfer of funds, but indirectly it benefits the enterprise or the industry; and it could be in the form of revenue foregone in tax incentives.

**Senator Santiago.** Yes, Mr. President, I agree. I am glad that we have been able to elicit this answer and enter it into the record.

Now, I will proceed to page 10, lines 23 to 26. The question is: Can the subsidy in the form described in No. 4 be justified as a form of subsidy independent of the purpose or the effect of such grant of goods or services other than general infrastructure on the manufacture, production or export of a particular good or product?

**Senator Enrile.** Mr. President, if, let us say, a manufacturer of computer is encouraged to set up a factory in Cavite, and the government puts up a road leading to that place and all the necessary infrastructure that is specific to that particular enterprise, the product could be considered subsidized.

**Senator Santiago.** I do not really oppose these particular lines.

**Senator Enrile.** In which case, the other side could impose upon us a countervailing duty. The same thing is true in the reverse.

**Senator Santiago.** That is right.

**Senator Enrile.** If, let us say, the same manufacturing establishment is established in Taiwan and given all the support by the government—harbor facilities, infrastructure specific to that industry in order to service the computer market of the Philippines in competition with our own computer industry—then in that case, we can spell out a government subsidy and we can apply a countervailing duty.

**Senator Santiago.** Yes, Mr. President. I was starting out to say that I am not really opposed to this subparagraph 4, because it might serve to strengthen the safety net in favor of Filipino manufacturers. However, since these provisions of the GATT are mutually applicable, these might be used against Filipino exporters if we define any good or service provided by

the government as a subsidy and did not make it coexistent with the purpose or the effect of that good or service. That is my concern.

**Senator Enrile.** Will the lady senator repeat that, Mr. President?

**Senator Santiago.** As I said, referring to page 10, lines 23 to 26, I do not really object to subparagraph 4, which defines as a subsidy any good or service other than general infrastructure provided by the government in the country of origin. Because if we obtain the benefit of subparagraph 4, it would strengthen the safety net in favor of Filipino manufacturers. Each time that a foreign government or an exporting country provides a good or service in favor of the foreign exporter, then we could impose a countervailing duty in our territory.

**Senator Enrile.** That is correct, Mr. President. Although there are economists who will argue that, "Well, why prevent that foreign government in benefiting your consumers?"

When we reach this point of the debate, it becomes an issue of policy choice—whether the government would want to protect its local industries in order to preserve the employment opportunities of its people, or not protect it and thereby benefit the consumers, but, at the same time, destroy the livelihood of its nationals who are working in this manufacturing establishment and, in effect, allow the foreign labor to benefit out of this policy of the government.

**Senator Santiago.** Yes, Mr. President, I agree. It could really boil down to a question of a choice of alternative policies. And if this has already been done in that perspective, then I have no more question.

I will now proceed to pages 10 to 11. These pages concern the determination of the existence of a subsidy. We are still on paragraph (f).

It appears from the text of paragraph (f) that a subsidy may exist only in any of the seven forms enumerated under paragraph (f). If I am correct in this impression, may I be permitted to raise the following questions: Does this listing of the forms that a subsidy may take not fail to consider the creativity of certain minds in devising ways and means of extending subsidies without resorting to these typical or classic modes of granting subsidy?

Would it not be better to add a catchall provision to cover all other similar schemes or devices which may be resorted to or adopted for purposes of achieving the same effect or result, as any of the seven modes of granting subsidy enumerated in paragraph (f)?

**Senator Enrile.** Mr. President, I appreciate very much the suggestion of the distinguished lady senator, and I am prepared to accept an amendment. The fault lies in our desire to be in line with the text of the WTO treaty. I see the wisdom of her suggestion, and I would go along with her in providing that. Indeed, there is a possibility that other types of subsidies still untested and unknown to us may arise in the future and it is better for us to have a general catchall phrase to cover these possible situations.

**Senator Santiago.** Thank you, Mr. President. I appreciate the distinguished gentleman's attitude and reception. I will certainly raise this as an amendment at the proper time.

I am now moving along to page 12, lines 27 and 30. The questions are:

How does the gentleman define the terms "de minimis" and "negligible"? The provisions direct that the term "de minimis" should be interpreted with reference to existing trade agreements.

Do we, in actual fact, already have a definition of the term "de minimis" in any of the trade agreements entered into by the Philippines and referred to in this provision?

**Senator Enrile.** Each agreement, each portion of the WTO Agreement dealing with dumping, dealing with countervailing has its own measurement of de minimis, Mr. President. I would like to find the definition that is applicable to countervailing. It is actually in the treaty.

#### SUSPENSION OF SESSION

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

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

*It was 4:05 p.m.*

#### RESUMPTION OF SESSION

*At 4:06 p.m., the session was resumed.*

**The President.** The session is resumed.

**Senator Enrile.** Mr. President, under Article II, more particularly paragraph 11.9—Article II, incidentally, is captioned "Initiation and Subsequent Investigation."—there is a provision on de minimis which states, and I quote:

An application under paragraph 1 shall be rejected and an investigation shall be terminated promptly as

soon as the authorities concerned are satisfied that there is not sufficient evidence of either subsidization or of injury to justify proceeding with the case. There shall be immediate termination in cases where the amount of the subsidy is de minimis or where the volume of subsidized imports are actual or potential or the injury is negligible. For purposes of this paragraph, the amount of the subsidy shall be considered de minimis if the subsidy is less than 1 percent ad valorem.

Mr. President, the term "negligible" is not defined in the treaty. I imagine that since the value or amount of subsidy is deemed de minimis if it is less than 1 percent ad valorem, maybe we can take some guidance on that particular provision and consider the negligible volume to be somewhere around that figure.

**Senator Santiago.** I would certainly agree on the basis of the historical background of these terms, and I am glad that we have succeeded in entering it into the *Record*. I would like to thank the gentleman and move on to page 13.

Paragraph (i) requires the Commission to inform all the interested parties of the essential facts under consideration which serve as basis for the decision to impose definitive measures. It further provides that the disclosure should take place at such a time as to give the parties the opportunity to defend their interest.

I would like to raise two points with respect to this paragraph (i). The first point: Is there a need for this procedure considering that at this point, the parties are presumed to have already exercised their right to present their respective sides? The importer under paragraph (c) is already given the opportunity to answer the allegations of the petitioner. Moreover, if either party disagrees with the decision, they still have the right to appeal judicially. Giving the parties the opportunity to defend themselves at this point might be superfluous and might result in further delay.

So I simply would like to raise the question: Is it necessary to lay out this procedure since apparently it is superfluous?

**Senator Enrile.** This is a requirement, Mr. President, of the treaty, the WTO Agreement. That is found in paragraph 12.a., Article 12, Paragraph 8 of the WTO Agreement provides:

The authority shall before a final determination is made inform all interested members and interested parties of the essential facts under consideration which form the basis for the decision whether to apply definitive measure. Such disclosure should take place in sufficient time for the parties to defend their interests.

I think these are inserted in the treaty to prevent surprises.

**Senator Santiago.** I would like to thank the gentleman, Mr. President. I now appreciate that this provision is necessary since it is apparently so provided by the WTO. So, let me just ask another question.

Since I now agree that this paragraph should be retained, may I just enter into the record what is the meaning of "sufficient time for the parties to defend their interests"?

**Senator Enrile.** I think we will have to leave that to the prudent and good judgment of the investigating body that we are designating here, which is the Tariff Commission. As I explained a while ago, the time factor will depend upon the persons to be notified.

In this particular case, when a decision is about to be issued by the Philippine government to impose countervailing duty, and under the treaty we are required to notify the exporting member-country about our decision, and maybe such other countries that may be affected by our decision, I think we should grant the leeway to the Tariff Commission or the concerned department to decide the time factor involved in order that we could not be considered as unfair to other governments that might be interested in the issue at hand.

In fact, I suppose that this phrasing was needed because it is possible that the country of origin of the imported product could very well ask for consultation to avoid the possibility of imposing a countervailing duty on its goods.

**Senator Santiago.** Yes, Mr. President. I agree that the discretion placed in the hands of the Tariff Commission would be satisfactory for that purpose.

I am still on page 13, but may I move to line 20. Should the bill not expressly provide that no interest shall be payable by the government on the amount to be returned?

**Senator Enrile.** I have no objection to that, Mr. President. If an amendment to that effect will be presented, I will gladly accept it, and I see the wisdom of not requiring the government to pay any interest. I was thinking that if the government will have a cash bond and deposit it in its normal depository and it earns interests, I think the government ought not to enrich itself at the expense of its nationals for the interests. But I see merit in imposing that condition—that no interest will be due on the cash bond.

**Senator Santiago.** Yes, Mr. President, I would like to thank the gentleman. This will make the life of the government less complicated.

I will move on to the next page, page 14, lines 1 to 2. It is provided that after the lapse of the period to appeal to the Court of Tax Appeals, a department order for the immediate release of the cash bond to the importer shall be issued "unless the CTA orders otherwise."

**Senator Enrile.** What line is that, Mr. President?

**Senator Defensor Santiago.** Lines 1 to 2 of page 14. The question is: Is this last clause necessary, "unless the CTA orders otherwise" considering that the CTA would not have any jurisdiction on the matter if no appeal has been filed before it, there being no automatic review of the Secretary's decision to impose or not to impose countervailing duties? In the absence of an appeal, in what instance and by what authority could CTA bar the release of the cash bond?

**Senator Enrile.** I agree with the distinguished lady senator wholeheartedly, Mr. President. This is an oversight.

**Senator Santiago.** I would like to thank my colleague, Mr. President. Together with the previous points, I shall raise them up during the period of amendments, unless the committee proposes...

**Senator Enrile.** I would like to thank the lady senator for refining this provision. Indeed, there is no need for that clause unless the Court of Tax Appeals orders otherwise.

**Senator Santiago.** Thank you, Mr. President.

I am still on page 14. I am going down to lines 14 to 15. The question is: What is considered reasonable period of time in this instance? Should the period of at least six months be sufficient?

**Senator Enrile.** Again, Mr. President, this time factor must be left to the good judgment of the implementing authorities because it could be that the injury would abate or subside after a few months because there would be no importation anymore; it could remain for a longer period of time for one reason or another.

I think it is better for us to leave the issue of reasonable period to the judgment of the implementing authority.

**Senator Santiago.** Yes, Mr. President. That thinking coincides with mine, but with respect to these particular lines, would it not be better to provide a minimum period instead of stating "reasonable period of time"?

**Senator Enrile.** I have no problem with putting a minimum period where the countervailing duty must remain without any review.

**Senator Santiago.** Thank you, Mr. President. I shall raise this point during the amendment period.

I will go to the next page, page 15, line 12. Again, I would like to seek permission to deliver a little prefatory explanation to the question.

Countervailing duties are imposed based on a finding that subsidies are, in fact, being extended to the manufacturer production or export of the goods in question and not on the basis of the likelihood that such subsidies will be granted or extended. Accordingly, any extension of the five-year limit on the duration of the imposition of countervailing duties should likewise be based on a determination that subsidies are, in fact, being continued to be given.

The question is: Is it proper that the extension of the imposition of countervailing duties beyond five years be made to rest upon a mere apprehension that subsidies will be reimplemented by the exporting country?

Does the gentleman not think that refusing to lift the imposition of countervailing duties merely on the basis of such apprehension implies that we are impugning bad faith on the part of the foreign country; or it betrays our lack of trust in the other country?

Would continuous collection of such countervailing duties not be justified if the grant of the questioned subsidies persisted and continues to the present?

**Senator Enrile.** Mr. President, this is actually a text taken also from the treaty and we simply placed this, reproduced, if I recall correctly, the provision of the treaty.

#### SUSPENSION OF SESSION

**Senator Enrile.** May I request for a one-minute suspension of the session for us to find the proper text, Mr. President.

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

*It was 4:19 p.m.*

#### RESUMPTION OF SESSION

*At 4:20 p.m., the session was resumed.*

**The President.** The session is resumed. The sponsor may proceed.

**Senator Enrile.** Mr. President, Article 21 of the Agreement on Subsidy, more precisely, paragraph 21.3 provides:

Notwithstanding the provisions of paragraph 1 and 2, any definitive countervailing duty shall be terminated on a date not later than five years from its imposition (or from the date of the most recent review under paragraph 2, if that review has covered both subsidization and injury, or under this paragraph), unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to continuation or recurrence of subsidization or injury. The duty may remain in force pending the outcome of such a review.

That is the wording, Mr. President.

**Senator Santiago.** If that is so, then I can see that we do not really have too much margin to play around with the language.

In that case, I will ask the last question. This will be on page 15, line 28. Appeals to the Court of Tax Appeals of the decision of the Secretary are required to be filed within the reglementary period of 30 days.

For uniformity with all the other cases appealable to the CTA, should the number of days to file a petition for review of the decision of the Secretary with the CTA not be increased to 30 days instead of the proposed 15 days?

**Senator Enrile.** I have no objection, Mr. President.

**Senator Santiago.** I would like to thank the distinguished gentleman. That concludes my interpellation. I wish only to request permission to be able to enter into the *Record* my observation that, once more, the distinguished sponsor has proved equal to his reputation on this particular subject.

**Senator Enrile.** Thank you very much, Mr. President.

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

**Senator Drilon.** Mr. President.

**The President.** The Majority Leader is recognized.

#### SUSPENSION OF SESSION

**Senator Drilon.** Mr. President, may I ask for a one-minute suspension of the session.

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

*It was 4:23 p.m.*

#### RESUMPTION OF SESSION

*At 4:28 p.m., the session was resumed.*

**The President.** The session is resumed.

The Majority Leader is recognized.

**Senator Drilon.** Mr. President, there are no more interpellations on Senate Bill No. 1330 under Committee Report No. 11. I, therefore, move that we close the period of interpellations.

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

**Senator Drilon.** As manifested by the chairman of the Committee on Ways and Means, Sen. Juan Ponce Enrile, there are no committee amendments. I, therefore, move that we close the period of committee amendments.

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

#### SUSPENSION OF CONSIDERATION OF S. NO. 1330

**Senator Drilon.** We will take up the individual amendments in tomorrow's session. I move that we suspend consideration of Senate Bill No. 1330.

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

**Senator Drilon.** We would reiterate our manifestation that individual amendments will be taken up on Senate Bill No. 1330 tomorrow. May I request our colleagues to review the bill and if there are individual amendments, the period of individual amendments will start tomorrow.

#### BILL ON SECOND READING S.No.1261 – PNP Modernization (Continuation)

Mr. President, I move that we resume consideration of Senate Bill No. 1261 as reported out under Committee Report No. 9.

**The President.** Is there any objection? *[Silence]* There being none, resumption of consideration of Senate Bill No. 1261 is now in order.

**Senator Drilon.** Mr. President, may we ask the Chair to recognize the principal sponsor, Sen. Aquilino Q. Pimentel Jr.

**The President.** The principal sponsor, Sen. Aquilino Q. Pimentel Jr., is recognized.

**Senator Drilon.** We are now in the period of individual amendments, Mr. President. May I ask the Chair to recognize the Minority Leader.

**The President.** The Minority Leader is recognized for the individual amendments.

**Senator Pimentel.** Mr. President, for the record, may we inform the Body that all senators have been furnished with a copy of the proposed committee amendments as of December 14, 1998, which I hope we can follow together so that there is less difficulty in seeing what amendments are being introduced. This new copy contains the proposed amendment, as well as the words or phrases that are proposed for deletion or substitution by the committee amendments, for the guidance of our colleagues.

#### SUSPENSION OF SESSION

**Senator Drilon.** May we ask for a one-minute suspension of the session to allow our colleagues to review this new draft. This is not actually a new draft but this is the same draft, except as manifested by the sponsor, the existing provisions of the existing law sought to be deleted are in brackets, which were not found in the draft yesterday.

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

*It was 4:32 p.m.*

#### RESUMPTION OF SESSION

*At 4:33 p.m., the session was resumed.*

**The President.** The session is resumed.

The gentleman may proceed.

**Senator Guingona.** Thank you, Mr. President. Will the distinguished sponsor yield for some questions?

**Senator Pimentel.** With pleasure, Mr. President.

**Senator Guingona.** I have both drafts—the one yesterday and the one that was given today. These are basically the same, only with the inclusion of the previous law intended to be