

RECORD OF THE SENATE

WEDNESDAY, DECEMBER 16, 1998

OPENING OF THE SESSION

At 3:33 p.m., the Senate President, Hon. Marcelo B. Fernan, called the session to order.

The President. The 47th session of the First Regular Session of the Eleventh Congress is hereby called to order.

Let us all stand for the opening prayer to be led by Sen. Teresa Aquino-Oreta.

Everybody rose for the opening prayer.

PRAYER

Senator Aquino-Oreta. At the start of work this day, let us thank You, Lord God, for blessing us with the strength, wisdom, knowledge and patience that help us accomplish our awesome tasks. Nothing is too great or too small that we cannot do, if offered in Your praise and glory.

Guide us to be able to craft relevant and purposeful legislation for our country and people. Guide us to always direct our actions to the uplift of the needy.

We owe everything to You, Lord, including our very own existence. Help us to repay You back through genuine and meaningful services to others, especially the poor, "for the kingdom of heaven belongs to them."

In the glorious season of Advent—a time for rejoicing and giving—let us find inspiration in the humble birth of our Lord. Show us the best way to share life's blessings with our distressed neighbors, most especially, women and little children.

Lord God, may all our work and actions be worthy of Your acceptance.

Amen.

The President. The Chair would like to thank Sen. Teresa Aquino-Oreta.

ROLL CALL

The Secretary will please call the roll.

The Secretary, reading:

Senator Teresa Aquino-Oreta	Present
Senator Robert Z. Barbers	Present
Senator Rodolfo G. Biazon	Present
Senator Renato L. Compañero Cayetano ...	Present
Senator Anna Dominique M. L. Coseteng ..	Present
Senator Franklin M. Drilon	Present
Senator Juan Ponce Enrile	Present
Senator Juan M. Flavies	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	Present*
Senator Sergio R. Osmeña III	Present*
Senator Aquilino Q. Pimentel Jr.	Present
Senator Ramon B. Revilla	Absent
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 16 senators present, there is a quorum.

THE JOURNAL

Senator Drilon. Mr. President.

The President. The Majority Leader is recognized.

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 motion is approved.

Senator Drilon. Mr. President, I move that we proceed to the Reference of Business.

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

The Secretary will read the Reference of Business.

REFERENCE OF BUSINESS

BILLS ON FIRST READING

* Arrived after the roll call

** On official mission

PERFORMANCE OF THE PHILIPPINE AEROSPACE DEVELOPMENT CORPORATION (PADC)

Introduced by Senator Biazon

The President. Referred to the Committee on National Defense and Security

The Secretary. Proposed Senate Resolution No. 325, entitled

RESOLUTION DIRECTING THE SENATE COMMITTEE ON SCIENCE AND TECHNOLOGY TO MAKE AN INQUIRY, LOOK INTO, AND INVESTIGATE, IN AID OF LEGISLATION, THE MANNER AND STATUS OF IMPLEMENTATION OF R.A. NO. 7459, OTHERWISE KNOWN AS THE "INVENTORS AND INVENTION INCENTIVES ACT OF THE PHILIPPINES," IN THE LIGHT OF THE REPORTED RAID CONDUCTED BY THE TEAM OF AGENTS OF THE ECONOMIC INTELLIGENCE AND INVESTIGATION BUREAU (EIIB) INSIDE THE PLANT OF BENSAN INDUSTRIES, INC. LOCATED AT 353 EDSA, CALOOCAN CITY, ALLEGEDLY IN SEARCH FOR EVIDENCE OF TAX EVASION WHILE SAID INDUSTRY IS SAID TO HAVE BEEN GRANTED TAX EXEMPTION UNDER THE PROVISIONS OF SAID R.A. 7459 AS INCENTIVE TO THE INVENTION OF ZERO WASTE OIL RECYCLING TECHNOLOGY

Introduced by Senator Sotto III

The President. Referred to the Committee on Science and Technology

COMMUNICATION

The Secretary. Letter from Director Aurora T. Aquino of the Office of the President of the Philippines, transmitting to the Senate a certified copy of Executive Order No. 43, entitled

PROVIDING FOR THE CREATION OF A PREPARATORY COMMISSION ON CONSTITUTIONAL REFORMS TO STUDY AND RECOMMEND PROPOSED AMENDMENTS AND/OR REVISIONS TO THE 1987 PHILIPPINE CONSTITUTION.

The President. Referred to the Committees on Constitutional Amendments, Revision of Codes and Laws; and Finance

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. We are now in the period of individual amendments. For this purpose, may I ask the Chair to recognize the principal sponsor, Sen. Juan Ponce Enrile.

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

Senator Enrile. Thank you, Mr. President.

Mr. President, pursuant to an understanding previously agreed upon during the interpellation of this representation by the senator from Iloilo, the honorable Sen. Miriam Defensor Santiago, that she would submit her proposed individual amendments in writing, I have with me a letter dated 16 December 1998 addressed to Atty. Jessica G. Reyes, Chief of Staff of Sen. Juan Ponce Enrile, indicating the proposed individual amendments of the lady senator. This letter is signed by Atty. Rissa Ofilada, Chief of Staff of Sen. Miriam Defensor Santiago.

With the permission of the Chair, without violating the Rules of the Senate, I would like now to read these proposed individual amendments. I would like to request the Secretariat to cause the insertion of these amendments in the appropriate paragraphs and clauses of Senate Bill No. 1330.

DEFENSOR SANTIAGO AMENDMENTS

Mr. President, on page 11, line 6, after the word "ARTICLE" and before the period (.), insert the phrase OR SUCH OTHER SCHEMES AND DEVICES WHICH MAY BE CONSIDERED AS SUBSIDIES AS DEFINED IN THIS ACT.

May I now ask for the ruling of the Chair.

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

Senator Enrile. On page 13, line 20, after the word "IMMEDIATELY", insert a comma (,) to be followed with this

phrase: *PROVIDED*, THAT NO INTEREST SHALL BE PAYABLE BY THE GOVERNMENT ON THE AMOUNT TO BE RETURNED.

The President. In line 20, page 13, after the word "IMMEDIATELY", add a comma (,) and then the words: *PROVIDED*, THAT NO INTEREST SHALL BE PAYABLE BY THE GOVERNMENT ON THE AMOUNT TO BE RETURNED.

What is the pleasure of the Body?

Senator Drilon. Is that acceptable to the sponsor?

Senator Enrile. Yes, Mr. President.

Senator Drilon. We therefore move to approve the same.

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

Senator Enrile. On page 14, lines 1 and 2, delete the phrase "UNLESS THE COURT OF TAX APPEALS ORDERS OTHERWISE."

May I ask the ruling of the Chair? The sponsor accepts the amendment.

The President. Is there any objection to the amendment?

Senator Guingona. Mr. President.

The President. The Minority Leader is recognized.

Senator Guingona. May I know the rationale for this, Mr. President?

Senator Enrile. In other words, the cash bond will not earn any interest.

Senator Guingona. Is that the only reason for the amendment?

Senator Enrile. I am sorry, Mr. President. This is with respect to the release of the cash bond. The paragraph reads as follows:

"IF THE RULING OF THE SECRETARY IN A PETITION FOR A COUNTERVAILING DUTY IS UNFAVORABLE TO THE PETITIONER, THE SECRETARY SHALL, AFTER THE LAPSE OF THE PERIOD FOR THE PETITIONER TO APPEAL TO THE COURT OF TAX APPEALS, ISSUE, THROUGH THE SECRETARY OF FINANCE, A DEPART-

MENT ORDER FOR THE IMMEDIATE RELEASE OF THE CASH BOND TO THE IMPORTER."

The last phrase "UNLESS THE COURT OF TAX APPEALS ORDERS OTHERWISE" is contradictory because the period to appeal has lapsed. Therefore, the Court of Tax Appeals has not acquired jurisdiction.

Senator Guingona. Thank you, Mr. President.

Senator Enrile. It is not really for the payment of interest but for that purpose, Mr. President.

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

Senator Enrile. On the same page 14, lines 14 and 15, delete the phrase "A REASONABLE PERIOD OF TIME", and in lieu thereof, insert the phrase AT LEAST SIX (6) MONTHS.

In other words, the phrase reads: *PROVIDED*, THAT AT LEAST SIX (6) MONTHS HAS ELAPSED SINCE THE IMPOSITION OF THE COUNTERVAILING DUTY, AND UPON SUBMISSION OF POSITIVE INFORMATION SUBSTANTIATING THE NEED FOR A REVIEW, INTERESTED PARTIES SHALL HAVE THE RIGHT TO REQUEST THE SECRETARY TO EXAMINE..."

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

Senator Enrile. On page 15, line 28, delete the word and figure "FIFTEEN (15)" and in lieu thereof, insert the word and figure THIRTY (30). All of these amendments are accepted by the sponsor, Mr. President.

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

Senator Enrile. There are no further individual amendments of the senator from Iloilo, Mr. President.

Senator Guingona. Mr. President.

The President. The Minority Leader is recognized.

GUINGONA AMENDMENTS

Senator Guingona. Thank you, Mr. President.

May I refer the distinguished sponsor to page 6, line 5. In line 5, after the first paragraph of Section (a), after the phrase "IMPORTED PRODUCT, COMMODITY OR ARTICLE", insert the following paragraph:

IN THE CASE WHERE THE EFFECT OF THE SUBSIDIZED IMPORT WILL MATERIALLY RETARD OR THREATEN TO MATERIALLY RETARD THE GROWTH OF A DOMESTIC INDUSTRY, INFORMATION ON NUMBER OF PERSONS EMPLOYED, TOTAL CAPITAL INVESTED IN AND THE PRODUCTION AND SALES VOLUME AND THE AGGREGATE PRODUCTION CAPACITY OF SAID DOMESTIC INDUSTRY CAN BE AUGMENTED OR SUBSTITUTED BY A SHOWING, IN THE FORM OF A FACTUAL STUDY REPORT OR OTHER DATA/INFORMATION WHICH SUPPORTS THE CLAIM THAT AN INDUSTRY WHICH HAS POTENTIAL TO GROW DOMESTICALLY IS ADVERSELY AFFECTED BY THE SUBSIDIZED IMPORT.

Senator Enrile. Mr. President, I am inclined to accept that proposed amendment, but I think, with due respect, I consider the placement not correct because this portion of the law defines what are to be stated in the petition.

Senator Guingona. Yes, Mr. President. I leave it to the distinguished sponsor to look for the proper place.

Senator Enrile. I would suggest that will be proper on page 12, Mr. President, as an insertion between lines 18 and 19. This is the area where determination of material injury is actually defined and I have the impression that the proposed amendment of the distinguished gentleman deals with proving the existence of material injury.

Senator Guingona. That is right.

Senator Enrile. If that is the understanding, I accept the proposed amendment, subject to style.

Senator Guingona. Yes, Mr. President.

The President. Is it accepted by the proponent?

Senator Guingona. Yes, Mr. President.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved, with the understanding that it will be moved from page 6 to page 12, between lines 18 and 19.

Senator Guingona. Mr. President, the next proposal would be on page 6, between lines 25 and 26, for the insertion of another paragraph which will read as follows:

FOR THIS PURPOSE, THE DEPARTMENT OF TRADE AND INDUSTRY FOR NONAGRICULTURAL PRODUCTS AND THE DEPARTMENT OF AGRICULTURE FOR

AGRICULTURAL PRODUCTS SHALL CONDUCT CONTINUING STUDIES TO IDENTIFY AND DETERMINE THE SPECIFIC INDUSTRY OR INDUSTRIES, WHETHER LOCALLY EXISTING OR NOT, WHICH HAVE THE POTENTIAL TO GROW OR BE ESTABLISHED DOMESTICALLY AND WHOSE GROWTH OR ESTABLISHMENT WILL BE RETARDED OR PREVENTED BY A SUBSIDIZED IMPORT.

Senator Enrile. Mr. President, I am inclined again to accept that proposed amendment, but I think page 6, between lines 25 and 26 would not be the proper place to put that. I would suggest that we add that as a second paragraph on page 12 after line 18 and after the first Guingona amendment.

Senator Guingona. Yes, Mr. President, we agree to the placement wherever the distinguished sponsor deems fit.

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

Senator Guingona. Thank you, Mr. President.

On page 11, Section G, line 10, between the words "INDUSTRY" and "BECAUSE", insert the following phrase: OR TO THE GROWTH OF A NASCENT ESTABLISHMENT THEREOF.

So that line 10 will read: INDUSTRY OR TO THE GROWTH OF A NASCENT ESTABLISHMENT THEREOF BECAUSE OF THE SUBSIDIZED IMPORTS.

Senator Enrile. Is it establishment or industry?

Senator Guingona. We put ESTABLISHMENT because "industry" is already there.

Senator Enrile. How about the setting up of an industry, Mr. President? The proposed amendment contemplates an industry already existing, but it is nascent.

Senator Guingona. We will be happy, Mr. President, if the distinguished sponsor will agree to a potential.

Senator Enrile. That is admitted in the treaty—the establishment or retardation of the growth of an existing industry.

Senator Guingona. So we will add the phrase "A NASCENT OR POTENTIAL"...

SUSPENSION OF SESSION

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

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

It was 4:03 p.m.

RESUMPTION OF SESSION

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

The President. The session is resumed.

Senator Enrile is recognized.

Senator Enrile. Mr. President, we will accept the amendment as proposed. I could not find the correct provision of the treaty, so subject to style.

Senator Guingona. Yes, Mr. President. May I just insert the phrase A NASCENT OR POTENTIAL ESTABLISHMENT. It is up to the distinguished sponsor to...

Senator Enrile. Maybe A NASCENT INDUSTRY is fairer because the words POTENTIAL INDUSTRY could mean anything.

Senator Guingona. Thank you, Mr. President.

The President. So, on page 11, line 10, between the words "INDUSTRY" and "BECAUSE", insert the words OR TO THE GROWTH OF A NASCENT ESTABLISHMENT.

Senator Enrile. Maybe NASCENT ENTERPRISE or INDUSTRY.

Senator Guingona. ENTERPRISE would be better, Mr. President.

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

Senator Guingona. On page 12, lines 18 and 19, there was an amendment introduced by the distinguished lady senator from Iloilo.

Senator Enrile. Page 12?

Senator Guingona. Page 12, between lines 18 and 19.

Senator Enrile. There is no amendment by the lady senator from Iloilo, Mr. President.

Senator Guingona. There is none?

Senator Enrile. None.

Senator Guingona. May I, therefore, propose between lines 18 and 19...

Senator Enrile. That is where we placed the distinguished gentleman's amendment, Mr. President.

The President. That is the second Guingona amendment.

Senator Guingona. I see.

Senator Enrile. The first and second Guingona amendments were placed between lines 18 and 19 of page 12.

Senator Guingona. Subject to the placement may I read the proposed additional amendment:

UPON DETERMINATION OF THE SUBSIDY AND THE MATERIAL INJURY, THE DEPARTMENT

Senator Enrile. What is that? UPON...

Senator Guingona. UPON DETERMINATION

Senator Enrile. DETERMINATION?

The President. OF THE SUBSIDY.

Senator Guingona. "UPON DETERMINATION OF THE SUBSIDY AND THE MATERIAL INJURY, THE DEPARTMENT OF TRADE AND INDUSTRY OR THE DEPARTMENT OF AGRICULTURE AS THE CASE MAY BE,"

Senator Enrile. Maybe, we can just put the word SECRETARY because we define that.

Senator Guingona. Subject to style. "THE SECRETARIES, IN COORDINATION WITH THE DEPARTMENT OF FOREIGN AFFAIRS, SHALL WITHIN FIVE DAYS' REPORT, MAKE REPRESENTATION OR SEEK REDRESS OR ARBITRATION FOR THE VIOLATIONS COMMITTED BY THE COUNTRIES OF ORIGIN WITH THE APPROPRIATE BODY OR ARBITRATION COMMITTEE OF THE WORLD TRADE ORGANIZATION."

Senator Enrile. Mr. President, I regret I may not be able to accept that amendment, because that will be contradictory to this particular measure. This measure contemplates the imposition of additional duties. Apart from that, the period to consult is provided in the treaty.

Senator Guingona. Is there no supplementary recourse to the WTO?

Senator Enrile. There is none, Mr. President. We have to go to the WTO for redress. We have only two recourses: to impose the countervailing duty or go to the WTO.

Senator Guingona. In view of that explanation, I withdraw this proposal, Mr. President.

The President. The proposal is withdrawn.

Senator Guingona. May I turn to page 16. Before introducing the proposal, Mr. President, may I ask the distinguished sponsor. As far as the repealing clause is concerned on line 20, will this repeal also apply to special economic zones, to EPZA areas?

Senator Enrile. No, Mr. President, because these are not ports of entry. The free ports are not ports of entry for goods to be marketed in our domestic economy.

Senator Guingona. Yes, but there are provisions pursuant to the establishment policy of allowing duty-free imports.

Senator Enrile. I do not think those laws will be repealed by this law, because precisely we allow the duty-free importation of those. Whether those goods are subsidized or not, it is immaterial because these are supposed to be used for the manufacture of products for export.

Senator Guingona. Yes, that is the intent. But many times, the goods manufactured there are allowed to be sold locally.

Senator Enrile. That is the conundrum that we have, Mr. President, but the repealing clause will not affect the laws bearing on special economic zones and the tax incentives that we have adopted. If there are goods that are subsidized and imported in a special economic zone as a raw material to manufacture a final product in that economic zone in competition with a like product domestically produced, then I would imagine that the countervailing duty would apply.

Senator Guingona. As long as that is made clear.

Senator Enrile. That is why I am stating it in the record so that proper interpretation will be made.

Senator Guingona. With that categorical statement from the distinguished sponsor, we will no longer present our proposal.

I would like to thank the gentleman, Mr. President.

Senator Enrile. I also would like to thank the gentleman, Mr. President.

The President. Thank you.

The Majority Leader is recognized.

Senator Drilon. There are no more individual amendments, Mr. President. I therefore move that we close the period of individual amendments.

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

APPROVAL OF S. NO. 1330 ON SECOND READING

Senator Drilon. Mr. President, I move that we vote on Second Reading on Senate Bill No. 1330, as amended.

The President. Is there any objection? *[Silence]* There being none, we shall now vote on Second Reading on Senate Bill No. 1330, as amended.

As many as are in favor of the bill, say *aye*.

Several Members. *Aye*.

The President. As many as are against the bill, say *no*. *[Silence]*

The President. The *ayes* have it; Senate Bill No. 1330, as amended, is approved on Second Reading.

SUSPENSION OF SESSION

Senator Drilon. I move 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 4:16 p.m.

RESUMPTION OF SESSION

At 4:29 p.m., the session was resumed.

The President. The session is resumed.

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

Senator Drilon. Mr. President, I move that we resume consideration of Senate Bill No. 1261 under Committee Report No. 9.

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