

TUESDAY, JUNE 6, 2000 P.M.

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Senator Osmena (J). Mr. President, with the permission of everybody on the Floor. I have just been told by the staff that the final task in preparing a clean copy could be sent through the e-mail. I know the e-mail of Sen. Serge Osmena; I do not know the e-mail of the Minority Leader. But if we will all provide the Secretariat with our e-mails, then it can be e-mailed maybe tonight at about one o'clock in the morning and when we wake up we just download it.

The President. In any case, as we have previously mentioned, the Secretariat has informed us, that the copy now with us, which states "version as of June 6, 2000" already contains the committee amendments except that starting with Section 35. So that, Section 35, et cetera, will be delivered at eight o'clock tomorrow morning.

BILL ON SECOND READING

S. No. 2033 - Safeguard Measures Act of 2000
(Continuation)

Senator Tatad. Mr. President, I move that we resume consideration of Senate Bill 2033 as reported out under Committee Report No. 230.

The President. Is there any objection? [Silence] There being none, resumption of consideration of Senate Bill No. 2033 is now in order.

Senator Tatad. Mr. President, we are still in the period of amendments. I ask that the distinguished Chairman, the honorable Sen. Juan Ponce Enrile be recognized.

The President. Sen. Juan Ponce Enrile is recognized.

Senator Enrile. I am ready, Mr. President, but the proponent of the amendment has, I think, a 'liquidity problem'.

Senator Tatad. The main proponent is out of the room right now.

SUSPENSION OF SESSION

Senator Enrile. 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 6:39 p.m.

RESUMPTION OF SESSION

At 6:42 p.m., the session was resumed.

The President. The session is resumed.

Sen. Juan Ponce Enrile and Sen. Sergio Osmena are recognized.

Senator Enrile. I am ready, Mr. President.

Senator Osmena (J). Mr. President, would the kind sponsor yield again?

Senator Enrile. Of course, always, Mr. President.

OSMENA (S) AMENDMENTS

Senator Osmena (S). Mr. President, we left off in the definition of the term "consumers". On the third line after the first "recipients", may we add a semicolon (;)

Senator Enrile. It is accepted, Mr. President.

Senator Osmena (S). Thank you, Mr. President.

Then, another definition for the term "Critical circumstances". CRITICAL CIRCUMSTANCES SHALL MEAN CIRCUMSTANCES WHERE THERE IS CLEAR EVIDENCE THAT INCREASED IMPORTS WHETHER ACTUAL OR RELATIVE TO DOMESTIC PRODUCTION ARE CAUSING OR MAY CAUSE SERIOUS INJURY TO A DOMESTIC PRODUCER AND WHEN DELAY IN TAKING ACTION UNDER THIS ACT WOULD CAUSE DAMAGE TO THE INDUSTRY THAT WOULD BE DIFFICULT TO REPAIR.

ENRILE-OSMENA (S) AMENDMENT

Senator Enrile. Mr. President, I have no objection to this definition but may I suggest, if it is possible, that instead of the word "clear" we use the words PRIMA FACIE

Senator Osmena (S). It is accepted, Mr. President.

Senator Enrile. And instead of the word "actual", we use the word ABSOLUTE. That is the terminology of the treaty.

I would just suggest if that is...

Senator Osmena (S). It is accepted, Mr. President

Senator Enrile. So, this will mean " ...THERE IS PRIMA FACIE EVIDENCE THAT INCREASED IMPORTS WHETHER ABSOLUTE OR RELATIVE TO DOMESTIC PRODUCTION ARE CAUSING...."

Senator Osmena (S). It is accepted, Mr. President.

Senator Enrile. I accept the proposed amendments, Mr. President.

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

Senator Osmena (S). On Subsection (g) defining "Domestic industry" on the second line, may we just delete the word "the".

The President. Can the gentleman just tell us the page, please?

Senator Osmena (S). We are still on page 2, line 18. The second word "the" is bracketed.

The President. All right.

Senator Enrile. Is it line 18, Mr. President?

Senator Osmena (S). It is on page 2, line 18 of the gentleman's copy.

Senator Enrile. I think it is better if we just use the gentleman's copy.

Senator Osmeña (S). My technicolor copy?

Senator Enrile. Yes, the gentleman's technicolor copy.

Senator Osmeña (S). Does the Senate President have that?

Senator Enrile. I do not know.

The President. There is one copy that is official which we are looking at.

Senator Osmeña (S). That is not the technicolored copy. Is it colored? Is it color-coded?

The President. There is no color coding. This is the official Senate copy.

Senator Enrile. Well, we can use the official copy.

Senator Osmeña (S). On page 2, line 18, just as a matter of style, delete the second word "the". So it will read:

Senator Enrile. Line 18--" of the."

Senator Osmeña (S). So it will read: "Domestic producers, as a whole, of like and directly competitive products...."

Senator Enrile. I accept it, Mr. President.

The President. Excuse me, the Chair cannot follow. We are on page 2...

Senator Enrile. Line 18, after the word "of" there is an article "the". There is a proposal to delete that and this representation accepted it.

The President. How will it read now? "Domestic industry shall refer to domestic producers, as a whole...."

Senator Enrile. ...of like or directly competitive...."

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

Senator Osmeña (S). On line 24, Subsection E, delete the entire subsection on "GENERAL SAFEGUARDS COMMITTEE". That is on page 2, line 24, all the way to line 5 of page 3.

Senator Enrile. I accept it, Mr. President.

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

SUSPENSION OF SESSION

Senator Osmeña (S). 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 6:47 p.m.

RESUMPTION OF SESSION

At 6:47 p.m., the session was resumed.

The President. The session is resumed.

Senator Osmeña may proceed.

Senator Enrile. Just a minute, Mr. President. On line E: "GENERAL SAFEGUARDS COMMITTEE" SHALL REFER TO A CABINET LEVEL COMMITTEE...." Is that it, Mr. President?

Senator Osmeña (S). That is it, Mr. President.

Senator Enrile. Yes. I accept it. I will accept the deletion.

The President. The amendment is approved in the absence of any objection.

Senator Osmeña (S). On line 6, page 3, after the word "mean", retain the words "an emergency"; bracket [] the word "trade measure" and add the word ACTION.

Senator Enrile. So this will mean--"General safeguard measure shall mean"

Senator Osmeña (S). "...An emergency ACTION" --

Senator Enrile. --an emergency ACTION" --

Senator Osmeña (S). --"provided for...." And those are the exact words.

Senator Enrile. And then bracket [] the words "trade measure". I accept, Mr. President.

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

Senator Osmeña (S). Just by way of explanation Emergency action is the way "general safeguards measure" is defined in Article XIX of the GATT and WTO Agreement on Agriculture.

On page 3, line 10...

Senator Enrile. Just a minute, Mr. President. All right, page 3, line 10.

Senator Osmeña (S). Retain the word "consumers".

Senator Enrile. In other words, we remove the bracket?

Senator Osmeña (S). But we keep the brackets [] on "other users". Yes, Mr. President.

Senator Enrile. We remove the bracket before the word "consumer" and put a bracket...

Senator Osmeña (S). ...before the word "AND".

Senator Enrile. Retain the bracket after the comma (,) before the word "importers".

Senator Osmeña (S). Retain the bracket after the word "users" --the word "importers" remains....

Senator Enrile. Open.

Senator Osmeña (S). Yes, that was never bracketed.

Senator Enrile. And then the comma (,) is bracketed.

Senator Osmeña (S). That is correct. And then after the word "exporters", we bracket [] "foreign producers and governments of the countries exporting the product under consideration".

The President. That is presently bracketed.

Senator Enrile. It is accepted, Mr. President.

Senator Osmeña (S). And instead, include the phrase OF THE PRODUCT UNDER CONSIDERATION.

So it shall now read, Mr. President:

"Interested parties shall include relevant domestic producers, consumers, importers and exporters of the product under consideration".

Senator Enrile. It is accepted, Mr. President.

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

Senator Tatad. Mr. President.

The President. The Majority Leader is recognized.

Senator Tatad. May I just go back to "H".

Senator Osmeña (S). Can we have the page and line, Mr. President?

Senator Tatad. I am sorry. I am using the Osmeña technicolor copy.

Senator Osmeña (S). New "H" or old "H"?

Senator Enrile. That was "F" that was...

Senator Osmeña (S). How does it start, "Like product"?

Senator Enrile. "General safeguard", Mr. President.

Senator Osmeña (S). That is "F".

TATAD AMENDMENT

Senator Tatad. This is "F", now "H", line 7, page 3. Between the words "the" and "WTO", I propose to insert ARTICLE II just to be specific.

Senator Enrile. Article Roman numeral II?

Senator Tatad. Yes.

Senator Enrile. Or arabic 2?

Senator Tatad. It does not matter.

Senator Osmena (S). No, we have to use Roman numeral because, as stated earlier, Article XIX of GATT is in Roman numeral.

Senator Tatad. All right.

Senator Osmena (S). And perhaps, the amendment should be inserted before the article "the" and not after "the". So it will read...

Senator Tatad. Yes, between the words "and" and "the".

Senator Osmena (S). Between "and" and "the".

Senator Tatad. "ARTICLE II OF THE WTO Agreement on Safeguards".

Senator Enrile. Let me see. "...provided for under Article XIX of GATT 1994 and ARTICLE II..."

Senator Tatad. "Of the WTO Agreement on Safeguards".

Senator Enrile. So ARTICLE II OF shall be inserted.

Senator Tatad. Yes; Mr. President.

Senator Enrile. It is accepted, Mr. President.

Senator Tatad. Thank you.

Senator Enrile. Thank you, it is accepted, Mr. President.

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

Senator Osmena (S). At the bottom of the page, after the last...

Senator Flavier. Mr. President.

The President. Senator Flavier is recognized.

FLAVIER AMENDMENT

Senator Flavier. Mr. President, anterior amendment on the same page, line 18--

Senator Enrile. Line 18, "Market access opportunity" ?

Senator Flavier. --yes, Mr. President, between the words "percentage" and "total", insert the words OF THE. So that it will read "Market access opportunity shall mean the percentage OF THE total annual volume...."

Senator Enrile. It is accepted, Mr. President

Senator Flavier. Thank you, Mr. President.

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

OSMENA (S) AMENDMENT

Senator Osmena (S). Mr. President, on page 3, after the last line on line 29, include a new section which will define the phrase POSITIVE ADJUSTMENT TO IMPORT COMPETITION.

" POSITIVE ADJUSTMENT TO IMPORT COMPETITION" SHALL REFER TO THE ABILITY OF THE DOMESTIC INDUSTRY TO COMPETE SUCCESSFULLY WITH THE IMPORTS AFTER DETERMINATION OF ANY SAFEGUARD MEASURE OR TO THE ORDERLY TRANSFER OF RESOURCES TO OTHER PRODUCTIVE PURSUITS AND TO THE ORDERLY TRANSITION OF DISLOCATED WORKERS IN THE INDUSTRY TO OTHER PRODUCTIVE PURSUITS.

Senator Enrile. It is accepted, Mr. President.

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

Senator Enrile. Page 4.

Senator Osmena (S). On page 4, line 3, may we retain the definition of the word "Product".

Senator Tatad. Mr. President.

The President. The Majority Leader is recognized.

TATAD AMENDMENT

Senator Tatad. On line 1, between the words "obtained" and "subtracting", I propose to replace...

Senator Enrile. What page is this?

Senator Tatad. Page 4.

Senator Enrile. Yes.

Senator Tatad. Line 1, between the words "obtained" and "subtracting", I propose to replace the word "by" with the word AFTER.

Senator Enrile. "Price difference is the amount obtained AFTER...."

Senator Tatad. "Subtracting" .

Senator Enrile. Bracket [] "by" and insert AFTER

Senator Tatad. Delete "by" .

Senator Enrile. It is accepted, Mr. President.

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

Senator Osmena (S). Mr. President.

The President. Sen. Serge Osmena is recognized.

OSMENA (S) AMENDMENT

Senator Osmena (S). On line 3, Mr. President, may we retain the definition of "Product" .

Senator Enrile. With the suggestion, Mr. President, if it is acceptable to the gentleman, that we use the plural terms here, "refers to articles, commodities or goods" .

Senator Osmeña (S). It is accepted, Mr. President.

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

Senator Osmeña (S). On page 4, line 11, after "domestic industry", remove the semicolon (;) and add the following phrase: AFTER EVALUATION BY COMPETENT AUTHORITIES OF ALL RELEVANT FACTORS OF AN OBJECTIVE AND QUANTIFIABLE NATURE HAVING A BEARING ON THE SITUATION OF THE INDUSTRY CONCERNED, IN PARTICULAR THE RATE AND AMOUNT OF THE INCREASE IN IMPORTS OF THE PRODUCT CONCERNED IN ABSOLUTE AND RELATIVE TERMS, THE SHARE OF THE DOMESTIC MARKET TAKEN BY INCREASED IMPORTS CHANGES IN LEVEL OF SALES PRODUCTION, PRODUCTIVITY, CAPACITY, UTILIZATION, PROFIT AND LOSSES AND EMPLOYMENT;.

Senator Enrile. It is accepted, Mr. President.

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

Senator Osmeña (S). Also on page 4, line 13, after the phrase "WTO Agreement on Agriculture", remove the semicolon (;). I am sorry. This is an entirely new section.

Senator Enrile. We retain that subsection.

Senator Osmeña (S). We retain that subsection. I am sorry, Mr. President.

Senator Enrile. Yes. And then insert a new subsection.

Senator Osmeña (S). Insert a new subsection which will define SUBSTANTIAL COST. SUBSTANTIAL COST SHALL INCLUDE CONSIDERATION OF THE RATE AND AMOUNT OF THE INCREASE IN IMPORTS OF THE PRODUCTS CONCERNED IN ABSOLUTE AND RELATIVE TERMS. THE SHARE OF THE DOMESTIC MARKET TAKEN BY THE IMPORTS AND THE EXTENT TO WHICH THE PHILIPPINE MARKET IS THE FOCAL POINT FOR THE DIVERSION OF EXPORTS OF SUCH AN ARTICLE OF THE EXPORTING COUNTRY TO THIRD COUNTRY MARKETS.

Senator Enrile. It is accepted, Mr. President.

Senator Osmeña (S). Thank you, Mr. President.

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

Senator Osmeña (S). On page 4, line 14, after the word "shall", insert the phrase BE UNDERSTOOD TO. So it shall now read: "Threat of serious injury shall BE UNDERSTOOD TO mean".

Senator Enrile. It is accepted, Mr. President.

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

Senator Osmeña (S). On the same page, same line, after the word "mean", place in brackets [] "the factual existence of a clear and imminent...."

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

Senator Osmeña (S). It is on the same page 4, same line 15, we bracket [] "the factual existence of a clear and imminent."

Senator Enrile. So it will read: "shall BE UNDERSTOOD TO mean [factual existence of a clear and imminent]".

Senator Osmeña (S). And then after the word "injury",

Senator Enrile. Just a minute, Mr. President. Then this will read: "Threat of serious injury shall...."

Senator Osmeña (S). I am not through yet, Mr. President. I have something at the end. So after the word "injury", insert the phrase: THAT IS CLEARLY IMMINENT. So it shall now read....

Senator Enrile. Bracket [] the semicolon [;] and then add....

Senator Osmeña (S). THAT IS CLEARLY IMMINENT.

Senator Enrile. THAT IS CLEARLY IMMINENT. It is accepted, Mr. President.

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

Senator Osmeña (S). Omnibus amendment to reletter or renumber all the subsections, Mr. President.

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

Senator Enrile. Section 5, Mr. President. Is there any amendment of the gentleman?

Senator Osmeña (S). Yes, Mr. President, on line 23, Section 5.

Senator Enrile. On line 23.

Senator Osmeña (S). I am sorry. On line 22, after the word "product", bracket [] also the comma [,].

Senator Enrile. After the word "product", bracket [] the comma [,].

Senator Osmeña (S). That is all on that line.

Senator Enrile. So it shall now read: "Whenever any product is being imported".

Senator Osmeña (S). That is correct.

Senator Enrile. And then....

Senator Osmeña (S). And then on line 27, after the word "OR", insert the article THE. So it shall read: "THE THREAT THEREOF".

Senator Enrile. "THE THREAT". It is accepted, Mr. President..

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

Senator Guingona. Mr. President.

The President. The Minority Leader is recognized.

Senator Guingona. Mr. President, I was wondering whether the distinguished sponsor will accept a slight change in Section 5, "CONDITIONS FOR THE Application of General Safeguard Measures" to read as follows: A SAFEGUARD MEASURE SHALL BE APPLIED TO A PRODUCT AFTER IT HAS BEEN DETERMINED,...

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

Senator Guingona. Beginning with line 22. "A SAFEGUARD MEASURE SHALL BE APPLIED TO A PRODUCT AFTER IT HAS BEEN DETERMINED, PURSUANT TO THE PROVISIONS OF THIS ACT, THAT SUCH PRODUCT is being imported into the country in SUCH increased quantities, whether absolute or relative to the domestic production, AND UNDER SUCH CONDITIONS AS TO CAUSE OR THREATEN TO CAUSE serious injury TO THE DOMESTIC INDUSTRY THAT PRODUCES LIKE OR DIRECTLY COMPETITIVE PRODUCTS, AND AFTER IT HAS BEEN ESTABLISHED THAT THE APPLICATION OF SUCH SAFEGUARD MEASURE WOULD BE IN THE PUBLIC INTEREST."

Senator Enrile. Mr. President, this is the language of the Treaty, and I am a little reluctant to change it. These are accepted formulations around the world. I think, with the permission of the Minority Leader, I would like to consider his proposal but perhaps, if I may suggest, we adhere as closely as possible to the wording of the WTO.

Senator Guingona. The proposed text we read, Mr. President, originated in paragraph (1), Article 2 of the Agreement on Safeguards, and it contains phrases such as, "to be a substantial cause of injury by" which came from the U.S. Trade Act of 1974. But the U.S. Trade Act, although it took place before the WTO, had accompanying safeguards on anti-trust, et cetera. We have inserted the public-interest clause here because it is part and parcel to mean that the measure is not intended to just isolate the importation of a product but to serve the national interest.

Senator Enrile. May I get a restatement of the gentleman's proposed amendment.

Senator Guingona. "A SAFEGUARD MEASURE SHALL BE APPLIED TO A PRODUCT, AFTER IT HAS BEEN DETERMINED, PURSUANT TO THE PROVISIONS OF THIS ACT, THAT SUCH PRODUCT is being imported into the country IN SUCH increased quantities,

whether absolute or relative to the domestic production, AND UNDER SUCH CONDITIONS AS TO CAUSE OR THREATEN TO CAUSE serious injury TO THE DOMESTIC INDUSTRY THAT PRODUCES LIKE OR DIRECTLY COMPETITIVE PRODUCTS, AND AFTER IT HAS BEEN ESTABLISHED THAT THE APPLICATION OF SUCH SAFEGUARD MEASURE WOULD BE IN THE PUBLIC INTEREST.»

Senator Enrile. Who will determine the serious injury in that case, Mr. President?

Senator Guingona. The Secretary, in the case of provisional remedy and the investigation and determination of the injury as provided for in Section 7.

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

Senator Osmeña (S). Mr. President, are we amending Section 5?

Senator Enrile. Yes.

Senator Guingona. That is why we ask permission.

Senator Osmeña (S). Mr. President, since there are several important items here, may we have a copy?

SUSPENSION OF SESSION

Senator Tatad. 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 7:05 p.m.

RESUMPTION OF SESSION

At 7:07 p.m., the session was resumed.

The President. The session is resumed.

Senator Tatad. Perhaps, Mr. President; we can revisit Section 5 later after the Minority Leader and Senator Osmeña shall have conferred on the appropriate version.

The President. All right. Shall we proceed to...

Senator Osmeña (S). Anterior amendment, Mr. President. On page 4, line 12, after the word « emergency », bracket [] « trade measure » and insert the word ACTION. So it shall now read: « shall mean an emergency ACTION » . And on line 13, after the word « provided », insert the word FOR.

Senator Enrile. It is accepted, Mr. President.

Senator Osmeña (S). Thank you, Mr. President.

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

SUSPENSION OF SESSION

Senator Osmeña (S). 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 7:08 p.m.

RESUMPTION OF SESSION

At 7:08 p.m., the session was resumed.

The President. The session is resumed.

Senator Osmeña (S). Mr. President, on page 5, line 6, may we retain Section 6, which defines "Initiation of Action Involving General Safeguard Measure."

Senator Enrile. Does the gentleman mean the bracketed portion, Mr. President?

Senator Osmeña (S). That is correct. The entire bracketed portion, Mr. President.

Senator Enrile. There are two Sections 6 here--one is bracketed, the other one...

Senator Osmeña (S). The one on line 6.

Senator Enrile. Line 6.

Senator Osmeña (S). Yes.

Senator Guingona. Mr. President.

The President. The Minority Leader is recognized.

Senator Guingona. If the two distinguished sponsors will not mind, may I give copies of our proposal so that they can consider the same to save time, Mr. President.

Senator Enrile. May I suggest that the text be given to the sponsor of the individual amendment.

At this juncture, the Senate President relinquished the Chair to Sen. Juan M. Flavie.

May I know the pleasure of the distinguished gentleman?

Senator Osmeña (S). Yes, Mr. President. I was going to ask that on page 5, line 6, remove the brackets for the entire section all the way down to line 25.

Senator Enrile. It is accepted, Mr. President.

Senator Osmeña (S). Thank you, Mr. President. Then after line 21...

Senator Enrile. We bracket [] Section 6.

Senator Osmeña (S). We remove the bracket from the old Section 6 on line 6. I am not talking about the new Section 6 on line 26.

Senator Enrile. It is accepted, Mr. President.

The Presiding Officer [Sen. Flavie]. Is there any objection? [Silence] There being none, the amendment is approved.

Senator Osmeña (S). May we add between lines 21 and 22 of the same page a paragraph that states:

THE SECRETARY MAY ALSO INITIATE ACTION UPON THE REQUEST OF THE PRESIDENT; OR A RESOLUTION OF THE HOUSE OR SENATE COMMITTEE ON AGRICULTURE, OR THE HOUSE OR SENATE COMMITTEE ON TRADE AND COMMERCE.

Senator Enrile. Is that all?

Senator Osmeña (S). That is all for that particular paragraph.

Senator Enrile. It is accepted, Mr. President.

The Presiding Officer [Sen. Flavie]. Is there any objection? [Silence] There being none, the amendment is approved:

Senator Tatad. Mr. President.

Senator Enrile. With the permission of the Majority Leader. In my copy of the working draft, on line 26 there is a Section 6. May I suggest that we bracket [] this if we are going to retain the originally bracketed Section 6.

Senator Tatad. Mr. President.

The Presiding Officer [Sen. Flavier]. The Majority Leader is recognized.

Senator Tatad. With the permission of the distinguished sponsor. May I go back to Section 6, as amended by Senator Serge Osmeña, and may I refer to the technicolor copy. [Pause]

After consulting with the sponsor, may I first move that we re-bracket [] line 26 all the way to line 22 on page 6.

Senator Osmeña (S). Mr. President, I have not gotten that far yet, and I still have an insertion between line 25 and line 26. I thought that the amendment of the Majority Leader is on line 9.

Senator Tatad. I was going to line 9, but I was requested by the sponsor. In that event, I withdraw that motion.

TATAD AMENDMENTS

May I now go back to line 9 on page 5. I simply would like to propose the deletion of the words "sustained by" between the words "injury" and "or". I do not believe the sentence suffers by that deletion.

Senator Enrile. May I have the proposed amendment again, Mr. President?

Senator Tatad. On line 9, page 5, between the words "injury" and "or", I propose to delete the words "sustained by".

Senator Enrile. Just a minute. Line 9, page 5, reads: "taken to remedy the serious injury sustained by, or prevent the threat thereof to...."

Senator Tatad. I would like to simply delete the words "sustained by", and after the word "to", eliminate the comma (,).

Senator Enrile. So that line will read: "taken to remedy the serious injury or prevent the threat thereof to the domestic industry...."

The amendment is accepted, Mr. President.

The Presiding Officer [Sen. Flavier]. Is there any objection? [Silence] There being none, the amendment is approved.

Senator Osmena (S). Mr. President, on page 5, between lines 25 and 26, I propose to add a new paragraph which would still be part of Section 6. It reads:

THE SECRETARY MAY EXTEND LEGAL, TECHNICAL AND OTHER ASSISTANCE TO THE CONCERNED DOMESTIC PRODUCERS AND THEIR ORGANIZATIONS AT ALL STAGES OF THE SAFEGUARDS ACTION.

Senator Enrile. The amendment is accepted, Mr. President.

The Presiding Officer [Sen. Flavio]. Is there any objection? [Silence] There being none, the amendment is approved.

Senator Osmena (S). On page 5, line 26, I propose to bracket [] the entire Section 6, all the way up to page 6, line 22.

Senator Enrile. The amendment is accepted, Mr. President.

The Presiding Officer [Sen. Flavio]. Is there any objection? [Silence] There being none, the amendment is approved.

Senator Osmena (S). On page 6, line 23, remove the open bracket ([) from "SEC. 7", and the close bracket (]) on page 7, line 10.

Senator Enrile. The amendment is accepted, Mr. President.

The Presiding Officer [Sen. Flavio]. Is there any objection? [Silence] There being none, the amendment is approved.

Senator Enrile. What is the pleasure of the distinguished gentleman with respect to line 11?

Senator Osmena (S). On line 23, page 6, Mr. President.

Senator Enrile. Line 11, page 7, Mr. President.

Senator Osmena (S). I am still on page 6 after we removed the bracket. On line 23, page 6, delete or bracket [] "sixty (60)" and insert FIFTEEN (15). So it shall now read: "Not later than FIFTEEN (15) days from receipt of the petition or a *motu proprio* initiation of preliminary safeguards investigation".

Senator Enrile. The amendment is accepted, Mr. President.

The Presiding Officer [Sen. Flavier]. Is there any objection? [Silence] There being none, the amendment is approved.

We are now on page 7.

Senator Osmena (S). On page 7, line 11, bracket [] the entire SEC. 7, all the way to page 10, line 13. This is three or four pages.

Senator Tatad. Mr. President, I think we have to unbracket line 10, page 7.

Senator Enrile. Just a minute. Up to page 11, Mr. President.

Senator Osmena (S). Up to page 10.

Senator Tatad. Before that, we unbracketed line 23. The close bracket appears on line 10, page 7. We have to unbracket line 10.

Senator Enrile. Where are we now? Page 7, line what?

Senator Tatad. Line 10. We just want to remove the bracket [] because it is still there.

Senator Osmeña (S). That was already unbracketed.

Senator Enrile. That was already stated in the *Record*, Mr. President, and accepted.

Senator Tatad. All right.

Senator Enrile. So we will now....

Senator Osmeña (S). Bracket [] "SEC. 7" which begins on page 7, line 11, and ends on page 10, line 13.

Senator Enrile. It is accepted, Mr. President.

The Presiding Officer [Sen. Flavier]. Is there any objection? [Silence] There being none, the amendment is approved.

Senator Osmeña (S). On page 10, line 14, we bracket [] "SEC. 8. INSPECTION OF EVIDENCE" all the way up to page 11, line 3.

Senator Enrile. It is accepted, Mr. President.

The Presiding Officer [Sen. Flavier]. Is there any objection? [Silence] There being none, the amendment is approved.

My amendment will be on page 11, line 14, if that will be allowed.

The distinguished sponsor will recall that I had an amendment on page 3, but the sponsor requested that it be placed under these provisional measures, and I would like to read it.

On page 11, line 14, after the word "industry," put a semicolon (;)....

Senator Tatad. Mr. President.

The Presiding Officer [Sen. Flavier]. Does the Majority Leader have an anterior amendment?

Senator Tatad. Anterior amendment, Mr. President.

The Presiding Officer [Sen. Flavier]. Please proceed.

TATAD AMENDMENTS

Senator Tatad. On line 12, after the word "SPECIFIC," I propose to insert the words OR BOTH.

The Presiding Officer [Sen. Flavier]. What does the sponsor say?

Senator Enrile. We cannot apply ad valorem and specific simultaneously, Mr. President. It is either ad valorem or specific.

Senator Tatad. In the case of safeguards, Mr. President, it is being done. And given a little time, I could produce the specific instances in other countries.

Senator Enrile. I will have no objection to that, Mr. President. I will accept the amendment.

The Presiding Officer [Sen. Flavier]. Is there any objection? [Silence] There being none, the amendment is approved.

Senator Tatad. On the same line 12, I propose to place a period (.) after the word "bond" and to delete the rest of the sentence up to line 14 ending with the word "industry".

The reason for this, Mr. President, is that under Article VI of the Agreement on Safeguards, the only provisional safeguard contemplated would take the form of a tariff measure. While I support the adoption of QRs as general safeguards, under the Agreement on Safeguards,

provisional safeguard measures are limited to tariff measures precisely because a provisional safeguard measure act is issued only after a preliminary investigation. Even without notification to the parties, in a critical situation the competent authority may impose a provisional safeguard measure but the final investigation could produce exactly different findings such as to compel the competent authority to refund the additional tariff that has been imposed.

Now, in case a quantitative measure is imposed as a provisional safeguard measure act, then there is no way of restituting the laws in case the final investigation produces a different result. This is the philosophy and this is the reason why Article VI is very clear on this.

Senator Osmeña (S). Mr. President, I object to that interpretation.

We have gone through this debate with the original sponsor of this bill, and we maintain that Article VI does not prohibit quantitative restriction. As a matter of fact, the word that was utilized is the word SHOULD rather than "shall".

I would like to read it for the third time on this debate on safeguards. Article VI of the WTO Agreement on Safeguards provides:

In critical circumstances where delay would cause damage which would be difficult to repair, a member may take a provisional safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury. The duration shall not exceed 200 days....

The next line says:

Such measures should take the form of tariff increases to be promptly refunded....

Now, Mr. President, ...

Senator Tatad. Let us complete the provision, Mr. President.

Senator Osmeña (S). I will complete it then.

Such measures should take the form of tariff increases to be promptly refunded if the subsequent investigation referred to in paragraph 2 of Article IV does not determine that

increased imports have caused or threatened to cause serious injury to a domestic industry.

The duration of any such provisional measures shall be counted as part of the initial period and any extension referred to in paragraphs 1, 2, and 3 of Article VII.

Senator Tatad. Mr. President, as I have said, I am not against the imposition of quantitative restrictions as a general safeguard. If I may be allowed to just clarify this point, because our colleague is correct. The word is *SHOULD*, not *shall*, and there are many ways of interpreting this. But we have to go to the rationale, the *raison d'être* of this statement.

In case the final investigation returns a finding that there was no serious injury to the product, to the like or directly competitive product, that the injury to this product may be caused by things other than the increased importation of this product from foreign sources, how does the country or the government that has imposed quantitative restriction now retribute?

In the case of tariffs, it is a refund. The money is there; it can be refunded. But in case of quantitative restriction, we have importations that would have been foregone as a result of the quantitative restriction during the time that the provisional measure is in place.

Now, this provisional measure is to last for 200 days. During these 200 days, the government should have completed its final investigation.

If the final investigation confirms the preliminary finding that prompted the provisional measure, well and good. But if it does not and it says that there is no basis to the provisional measure, what then?

Senator Enrile. Mr. President, my understanding of the application of all these escape clauses is that, these were allowed and given as a response to possible injuries to importing countries, and every doubt must be resolved by the importing country in favor of safeguarding its own industries. That is one.

Having said that, with respect to the question of the distinguished gentleman, in the case of tariff increase, we can refund the money. We can remedy a quantitative restriction in the form of increasing the offtake once we pass the 200 days. So, actually, there is a remedy.

I am submitting the proposition that whatever remedies the importing country can adopt after a finding of serious

injury, it can also use it as a provisional measure. That is the reason why the word "should" was used rather than a mandatory "must".

Senator Tatad. Mr. President, I will not insist on this point. I am prepared to state that I rely on the wisdom of our wiser colleagues. Of course, we are very well aware of the fact that under Article XII of the Agreement on Safeguards, we are to notify promptly the Committee on Safeguards under the Council of Trade and Goods of the WTO of whatever laws, regulations or administrative procedures we enact relating to safeguard measures.

Senator Enrile. That is correct, Mr. President.

Senator Tatad. I simply want to put this on the *Record*.

Thank you very much, Mr. President.

The Presiding Officer [Sen. Flavier]. Thank you, Mr. Minority Leader, because my amendment has an antecedent on this provision.

Senator Tatad. In view of this very firm position of the sponsor on this particular issue, I will withdraw my proposal having spread into the *Record* my misgivings about it.

Senator Enrile. I would like to thank the Majority Leader.

The Presiding Officer [Sen. Flavier]. Thank you very much, Mr. Majority Leader. I am glad because my amendment has an antecedent and it is the part that we are about to delete. So may I continue.

My amendment is on line 14. After the words "domestic industry," we put a colon (:) and add the following: *PROVIDED, THAT THIS QUANTITATIVE RESTRICTION SHALL NOT BE USED FOR IMPORTED NON-AGRICULTURAL AND AGRICULTURAL RAW MATERIALS NOT PRODUCED LOCALLY, OR IF PRODUCED LOCALLY BUT NOT IN SUFFICIENT QUANTITIES TO MEET LOCAL DEMANDS.*

Senator Enrile. The amendment is accepted, Mr. President.

The Presiding Officer [Sen. Flavier]. I would like to thank the sponsor.

Senator Osmena (S). Mr. President, may I just ask some clarificatory questions of the presiding officer and the proponent of this amendment.

First, could we just go over again the amendments on line 3? Do we bracket [] the words "quantitative restriction" on line 3?

Senator Enrile. No, Mr. President.

Senator Osmena (S). So this is a new type of amendment?

Senator Enrile. Yes, Mr. President. It is an insertion between...

Senator Osmena (S). Insertion after the words "domestic industry"?

Senator Enrile. Before the word "THE".

Senator Osmena (S). I see. May I just kindly request the proponent to restate his amendment.

The Presiding Officer [Sen. Flavio]. *PROVIDED, THAT THIS QUANTITATIVE RESTRICTION SHALL NOT BE USED FOR IMPORTED NONAGRICULTURAL AND AGRICULTURAL RAW MATERIALS NOT PRODUCED LOCALLY, OR IF PRODUCED LOCALLY BUT NOT IN SUFFICIENT QUANTITIES TO MEET LOCAL DEMANDS.*

Senator Enrile. In other words, Mr. President, in simple terms, what the amendment suggests is that we must be very, very benign in the handling of raw material imports. We will not use quantitative restrictions unless there is enough raw material production in the country to meet the demand.

Senator Osmena (S). Mr. President, my first question would be in this manner: For agricultural products, these are all raw materials. I mean, practically every agricultural product that we import into this country are considered almost raw like rice, sugar, washed sugar, refined sugar. Are we not going to use this for sugar and coffee beans? Is that the intent?

Senator Enrile. No, Mr. President, we will.

Senator Osmena (S). From my reading, Mr. President, the amendment states that QR shall not be used for imported raw materials.

Senator Enrile. Nonagricultural imported raw materials. That was...

Senator Osmena (S). It is just nonagricultural now. It does not affect agriculture.

Senator Enrile. But the Chair included agricultural.

Senator Osmena (S). I must object also. Let me give an example to the presiding officer. There are substitutable products. Now, for example, the base for our livestock feed in this country is yellow corn. That is what we produce locally. But we can import feed wheat, soya beans, barley which would take the place of yellow corn. So, if we use the phrase "not produced locally", we might think that it is not in competition with the producer or the yellow corn farmer but it actually is.

The Presiding Officer [Sen. Flavier]. Do I hear the gentleman say that if I agree to the removal of the word "agricultural", he would accept the amendment?

Senator Osmena (S). Well, I will not accept the amendment unless the word "raw material" is also removed. And again, I will tell my colleagues why. I know where this proposed amendment emanated from. Now, they are the downstream producers of, say, steel industry. So, they want to make sure that there will be no quantitative restrictions on the raw material for steel. I agree. But why should there be now a quantitative restriction on the processed products? Because there are more processors down the value chain.

So, if we are going to remove quantitative restriction, let us remove it for everything in the nonagricultural sector, but not protect the processors and only run after the raw material type. Remember, Mr. President, in the future, industries tend to change. And to put something by limiting and just favoring one sector as against another subsector may not be a wise move on our part.

Senator Guingona. Mr. President.

The Presiding Officer [Sen. Flavier]. The Minority Leader is recognized.

Senator Guingona. May we offer a compromise, Mr. President, which will state something like this: "Provided, however, in case of agricultural products where the tariff increase may not be sufficient to redress or prevent serious injury to the domestic industry, a quantitative restriction may be set."

Senator Osmena (S). Mr. President, that is exactly my proposed amendment--word for word.

Senator Guingona. Thank you.

The Presiding Officer [Sen. Flavier]. However, my concern is the nonagricultural.

Senator Osmena (S). Which is why we are removing... we had to bracket [] on line 13, Mr. President, "AND/OR A QUANTITATIVE RESTRICTION."

Senator Guingona. Mr. President, I have the Floor, so I might as well say that as far as Section 5 is concerned, we have agreed to the amendment of Sen. Serge Osmena. And to save time, I am furnishing copies of our proposal as regards Sections 6, 7 and 9 to both sponsors for their consideration.

The Presiding Officer [Sen. Flavie]. If the distinguished gentleman is ready with the copies, that will be most welcome because it will hasten our process.

Senator Enrile. We are ready, Mr. President.

The Presiding Officer [Sen. Flavie]. Yes, we did not suspend. The sponsor may proceed.

Senator Enrile. Mr. President, in view of the position of the distinguished proponent of this amendment, this representation would not have any objection if we will use the word "raw materials".

The Presiding Officer [Sen. Flavie]. So, it will read, "imported nonagricultural and agricultural" If we remove "raw materials," what does it indicate then? Could the gentleman help us?

Senator Osmena (S). My suggestion is to remove the words "raw materials".

The Presiding Officer [Sen. Flavie]. Yes, my question is: How does it read then?

Senator Osmena (S). May I just read the entire thing as suggested by Senator Guingona because we have exactly the same amendment.

OSMENA-GUINGONA-FLAVIER AMENDMENT

Such measures SHALL take the form of A tariff increase EITHER AD VALOREM OR SPECIFIC to be paid through cash bond. Bracket [] the phrase "unless that would not be AND/OR A QUANTITATIVE RESTRICTION." I am sorry, no period (.) after the words "cash bond." Then continue: "to be paid through A cash bond SET AT A LEVEL sufficient to redress or prevent injury to the domestic industry. PROVIDED, HOWEVER, IN THE CASE OF AGRICULTURAL PRODUCTS WHERE THE TARIFF INCREASE MAY NOT BE SUFFICIENT TO REDRESS OR PREVENT SERIOUS INJURY TO THE DOMESTIC INDUSTRY, A QUANTITATIVE RESTRICTION MAY BE SET."

So, there is no mention of "raw material." It covers all agricultural products, and it does not cover any non-agricultural product.

Senator Enrile. If the proponent of the amendment will accept that amendment to his proposed amendment, this representation will accept the amendment.

The Presiding Officer [Sen. Flavio]. How about the nonagricultural? Will it be entirely out of the picture?

Senator Osmena (S). It will not be protected by a quantitative restriction.

Senator Enrile. There will be no quantitative restrictions, all tariffication.

The Presiding Officer [Sen. Flavio]. If the sponsor is comfortable with that, I will have no objection.

Senator Enrile. I will accept the amendment of the Chair, as amended by the distinguished Senator from Cebu, so that I will read this then.

On page 11, line 11 will read:

"Such measures SHALL take the form of A tariff increase EITHER AD VALOREM OR SPECIFIC OR BOTH" --that was the amendment of the distinguished Senator from Catanduanes" "to be paid through cash bond, et cetera."

Can the gentleman please restate the additional wordings after that

Senator Osmena (S). Yes, Mr. President.

"Such measures SHALL take the form of A tariff increase EITHER AD VALOREM OR SPECIFIC OR BOTH to be paid through cash bond SET AT A LEVEL sufficient to redress or prevent injury to the domestic industry. PROVIDED, HOWEVER, THAT IN THE CASE OF AGRICULTURAL PRODUCTS WHERE THE TARIFF INCREASE MAY NOT BE SUFFICIENT TO REDRESS OR TO PREVENT SERIOUS INJURY TO THE DOMESTIC INDUSTRY, A QUANTITATIVE RESTRICTION MAY BE SET."

Senator Enrile. It is accepted, Mr. President.

The Presiding Officer [Sen. Flavio]. Is there any objection? [Silence] There being none, the amendment is approved.

OSMENA (S) AMENDMENTS

Senator Osmena (S). Still on page 11, line 22. May I add an additional paragraph that goes as follows:

WHEN THE PROVISIONAL SAFEGUARD MEASURE IS IN THE FORM OF A TARIFF INCREASE, SUCH INCREASE SHALL NOT BE SUBJECT TO THE MAXIMUM LEVEL OF 100% OF THE EXISTING TARIFF RATE AS SET FORTH IN SECTION 401 (A) OF THE TARIFF AND CUSTOMS CODE OF THE PHILIPPINES.

Senator Enrile. It is accepted, Mr. President.

In other words, we are not applying the limitation on the flexible tariff clause power of the President.

Senator Osmena (S). Yes, Mr. President.

The Presiding Officer [Sen. Flavio]. Is there any objection? [Silence] There being none, the amendment is approved.

Senator Osmena (S). May I add the Section 9, Mr. President, regarding Formal Investigation?

The Presiding Officer [Sen. Flavio]. What page would that be?

Senator Osmena (S). Because Section 9 is bracketed on page 11, line 23. So, may I introduce a new Section 9.

Senator Enrile. Go ahead, please.

Senator Osmena (S). *FORMAL INVESTIGATION.* WITHIN FIVE WORKING DAYS FROM RECEIPT OF THE REQUEST FROM THE SECRETARY, THE COMMISSION SHALL PUBLISH A NOTICE OF THE COMMENCEMENT OF THE INVESTIGATION AND PUBLIC HEARINGS WHICH SHALL AFFORD INTERESTED PARTIES OF CONSUMERS AN OPPORTUNITY TO BE PRESENT OR TO PRESENT EVIDENCE OR TO RESPOND THE PRESENTATION OF OTHER PARTIES AND CONSUMERS AND OTHERWISE BE HEARD. EVIDENCE AND POSITIONS WITH RESPECT TO THE IMPORTATION OF THE SUBJECT ARTICLES SHALL BE SUBMITTED TO THE COMMISSION WITHIN FIFTEEN (15) DAYS AFTER THE INVESTIGATION. THE COMMISSION SHALL COMPLETE---scratch that---THIRTY (30) DAYS....

Senator Enrile. What is to be scratched? The Commission?

Senator Osmena (S). No, Mr. President, forget the scratch. This is the next line. The next line shall read: THE COMMISSION SHALL COMPLETE ITS INVESTIGATION AND SUBMIT ITS REPORT TO THE SECRETARY WITHIN THIRTY (30) DAYS FROM RECEIPT OF THE REFERRAL FROM THE SECRETARY.

Senator Enrile. Thirty days.

Senator Osmena (S). Thirty (30) days instead of 120 days, Mr. President.

Senator Enrile. It is accepted, Mr. President.

The Presiding Officer [Sen. Flavio]. Is there any objection? [Silence] There being none, the amendment is approved.

Senator Osmena (S). May we introduce a new Section 10 on Inspection of Evidence?

The Presiding Officer [Sen. Flavio]. Please proceed.

Senator Osmena (S). *INSPECTION OF EVIDENCE. - THE COMMISSION SHALL MAKE AVAILABLE FOR INSPECTION BY INTERESTED PARTIES COPIES OF ALL EVIDENCE SUBMITTED ON OR BEFORE THE RELEVANT DUE DATE. PROVIDED, HOWEVER, THAT ANY INFORMATION WHICH IS BY NATURE CONFIDENTIAL OR WHICH IS PROVIDED ON A CONFIDENTIAL BASIS SHALL, UPON CAUSE BEING SHOWN, BE TREATED AS SUCH BY THE COMMISSION. SUCH INFORMATION SHALL NOT BE DISCLOSED WITHOUT PERMISSION OF THE PARTIES SUBMITTING IT. PARTIES PROVIDING CONFIDENTIAL INFORMATION MAY BE REQUESTED TO FURNISH NONCONFIDENTIAL SUMMARIES THEREOF OR IF SUCH PARTIES INDICATE THAT SUCH INFORMATION CANNOT BE SUMMARIZED, THE REASONS WHY A SUMMARY CANNOT BE PROVIDED. PROVIDED, FURTHER, THAT IF THE COMMISSION FINDS THAT A REQUEST FOR CONFIDENTIALITY IS NOT WARRANTED, AND IF THAT PARTY CONCERNED IS EITHER UNWILLING TO MAKE THE INFORMATION PUBLIC OR TO AUTHORIZE ITS DISCLOSURE IN GENERALIZED OR SUMMARY FORM, THE COMMISSION MAY DISREGARD SUCH INFORMATION UNLESS IT CAN BE DEMONSTRATED TO THEIR SATISFACTION FROM APPROPRIATE SOURCES THAT THE INFORMATION IS CORRECT.*

Senator Enrile. It is accepted, Mr. President.

Senator Tatad. Mr. President.

The Presiding Officer [Sen. Flavio]. The Majority Leader is recognized.

Senator Tatad. I wonder if the distinguished sponsor of the amendment would accept a proposed amendment on lines 16 and 17 of his proposed amendment. Would he consent to the deletion after the word "SHOWN," the deletion of the words "BE TREATED AS SUCH BY THE COMMISSION. SUCH INFORMATION SHALL" so that we immediately connect the two sentences, and it will read: *PROVIDED, HOWEVER, THAT ANY INFORMATION WHICH IS BY NATURE CONFIDENTIAL OR WHICH IS PROVIDED ON A CONFIDENTIAL BASIS SHALL, UPON CAUSE BEING*

SHOWN, NOT BE DISCLOSED WITHOUT PERMISSION OF THE PARTIES SUBMITTING IT.

Senator Osmena (S). So we do not include the word " SHOWN" as bracketed?

Senator Tatad. The bracket begins after the word " SHOWN" , and the close bracket....

Senator Osmena (S). I have no objection, Mr. President.

Senator Enrile. May we get a restatement of the amendment again, Mr. President?

Senator Tatad. The proposed amendment, we are looking at the Sen. Serge Osmena paper now.

Senator Enrile. Yes.

Senator Tatad. On lines 16 and 17, after the word " SHOWN,"

The Presiding Officer [Sen. Flavio]. Lines 16 and 17, on what page, please?

Senator Tatad. On page 13, line 16 of the Osmena paper. On line 16, we open bracket ([) " (B)" and close bracket (]) SHALL so that after the deletion, the sentence will read:

Senator Enrile. I have no objection to that, Mr. President. I will accept the proposed amendment as amended by the Majority Leader.

The Presiding Officer [Sen. Flavio]. Is there any objection? [Silence] There being none, the amendment is approved.

Please proceed.

Senator Osmena (S). On page 12, line 24, may I insert a new section.

Senator Enrile. Mr. President, shall I bracket [] Section 10 beginning on line 8 ending on line 23 of the working draft?

Senator Osmena (S). No, Mr. President, it is retained.

Senator Enrile. It is retained--the Adjustment Plan..

Senator Osmena (S). The Adjustment Plan.

Senator Enrile. All right.

Senator Osmena (S). And then in the gentleman's copy, Section 11 is bracketed. May I introduce a new Section 11 covering the same topic.

Senator Enrile. Yes.

Senator Osmena (S). It is entitled: *DETERMINATION OF SERIOUS INJURY OR THREAT THEREOF*. * IN REACHING A POSITIVE DETERMINATION THAT THE INCREASE IN THE IMPORTATION OF THE PRODUCT UNDER CONSIDERATION IS CAUSING SERIOUS INJURY OR THREAT THEREOF TO A DOMESTIC INDUSTRY PRODUCING LIKE PRODUCTS OR DIRECTLY COMPETITIVE PRODUCTS, ALL RELEVANT FACTORS HAVING A BEARING ON THE SITUATION OF THE DOMESTIC INDUSTRY SHALL BE EVALUATED. THESE SHALL INCLUDE IN PARTICULAR, THE RATE AND AMOUNT OF THE INCREASE IN IMPORTS OR THE PRODUCTS CONCERNED IN ABSOLUTE AND RELATIVE TERMS, THE SHARE OF THE DOMESTIC MARKET TAKEN BY THE INCREASED IMPORTS, AND CHANGES IN THE LEVEL OF SALES, PRODUCTION, PRODUCTIVITY, CAPACITY UTILIZATION, PROFITS AND LOSSES, AND EMPLOYMENT.

SUCH POSITIVE DETERMINATION SHALL NOT BE MADE UNLESS THE INVESTIGATION DEMONSTRATES, ON THE BASIS OF OBJECTIVE EVIDENCE THE EXISTENCE OF THE CAUSAL LINK BETWEEN THE INCREASED IMPORTS OF THE PRODUCT UNDER CONSIDERATION AND SERIOUS INJURY TO THE DOMESTIC INDUSTRY. WHEN FACTORS OTHER THAN INCREASED IMPORTS ARE CAUSING INJURY, SUCH INJURY SHALL NOT BE ATTRIBUTED TO INCREASED IMPORTS.

End of the amendment.

Senator Enrile. It is accepted, Mr. President.

The Presiding Officer [Sen. Flavio]. Is there any objection? [Silence] There being none, the amendment is approved.

Senator Enrile. That is Section 12, Mr. President.

Senator Osmena (S). Well, Mr. President, I leave it up to the Secretariat to renumber the sections. I am already lost.

Senator Enrile. Section 10, which appears on page 12 beginning from line 8 up to line 23, is now considered Section 11 and that the just accepted amendment of the distinguished Senator from Cebu will constitute Section 12.

The Presiding Officer [Sen. Flavio]. I take it that there will be a proper renumbering.

Senator Enrile. Yes.

The Presiding Officer [Sen. Flavier]. Please proceed.

Senator Osmena (S). On page 13--

Senator Enrile. No, page 10, Mr. President, of the working draft.

Senator Osmena (S). We are going back?

Senator Enrile. Recommendation of the Commission. Is the gentleman proposing Section 13?

Senator Osmena (S). No, it is on page 13.

Senator Enrile. Is it page 13 of the working draft?

Senator Osmena (S). Yes, page 13 of the gentleman's draft. On line 11, bracket [] all of Section 11 all the way up to page 14, line 11 also.

Senator Enrile. Page 14, line 11. All right.

Senator Osmena (S). And an additional Section numbered--I forgot it--dealing with Adoption of Definitive General Safeguard Measures.

Senator Enrile. Section 13.

The Presiding Officer [Sen. Flavier]. Can we act on the bracketing please? This is my impression. We are bracketing page 13, line 11.

Senator Enrile. Line 8, all the way to line 11.

The Presiding Officer [Sen. Flavier]. On line 11 on page 14?

Senator Enrile. Yes, Mr. President.

The Presiding Officer [Sen. Flavier]. And that is accepted by the sponsor? Is there any objection? [Silence] There being none, the amendment is approved.

Senator Osmena (S). May we introduce a new section which deals with the ADOPTION OF DEFINITIVE MEASURES. It will read as follows: UPON ITS POSITIVE FINAL DETERMINATION, THE COMMISSION SHALL RECOMMEND TO THE SECRETARY AN APPRECIATIVE DEFINITIVE MEASURE IN THE FORM OF:

- A) AN INCREASE IN, OR IMPOSITION OF, ANY DUTY ON THE IMPORTED ARTICLE;

- B) A DECREASE IN THE TARIFF-RATE QUOTA ON THE ARTICLE;
- C) A MODIFICATION OR IMPOSITION OF ANY QUANTITATIVE RESTRICTION ON THE IMPORTATION OF THE ARTICLE INTO THE PHILIPPINES;
- D) ONE OR MORE APPROPRIATE ADJUSTMENT MEASURES, INCLUDING THE PROVISION OF TRADE ADJUSTMENT ASSISTANCE;
- E) ANY COMBINATION OF ACTIONS DESCRIBED IN SUB-PARAGRAPHS (A) TO (D).

THE COMMISSION MAY ALSO RECOMMEND THE INITIATION OF INTERNATIONAL NEGOTIATIONS TO ADDRESS THE UNDERLYING CAUSE IN THE INCREASE OF IMPORTS OF THE ARTICLE OR OTHERWISE TO ALLEVIATE THE INJURY OR THREAT; OR IMPLEMENT ANY OTHER ACTION AUTHORIZED UNDER THE LAW THAT IS LIKELY TO FACILITATE POSITIVE ADJUSTMENT TO IMPORT COMPETITION.

THE GENERAL SAFEGUARD MEASURE SHALL BE LIMITED TO THE EXTENT OF REDRESSING OR PREVENTING THE INJURY AND TO FACILITATE ADJUSTMENT BY THE DOMESTIC INDUSTRY FROM THE ADVERSE EFFECTS DIRECTLY ATTRIBUTED TO THE INCREASED IMPORTS. *PROVIDED*, HOWEVER, THAT WHEN A QUANTITATIVE IMPORT RESTRICTION IS USED, SUCH A MEASURE SHALL NOT REDUCE THE QUANTITY OF IMPORTS BELOW THE AVERAGE IMPORTS FOR THE THREE (3) PRECEDING REPRESENTATIVE YEARS. THE APPLICATION OF THE GENERAL SAFEGUARD MEASURES SHALL BE GOVERNED BY THE PROVISIONS OF ARTICLE XIX OF GATT 1974 AND THE WTO AGREEMENT ON SAFEGUARDS.

A GENERAL SAFEGUARD MEASURE SHALL NOT BE APPLIED TO A PRODUCT ORIGINATING FROM A DEVELOPING COUNTRY IF ITS SHARE OF TOTAL IMPORTS OF THE PRODUCT IS LESS THAN THREE PERCENT (3%). *PROVIDED*, HOWEVER, THAT DEVELOPING COUNTRIES WITH LESS THAN THREE PERCENT (3%) SHARE COLLECTIVELY FOR NOT MORE THAN NINE PERCENT (9%) OF TOTAL IMPORTS.

THE DECISION IMPOSING A GENERAL SAFEGUARD MEASURE, THE DURATION OF WHICH IS MORE THAN ONE (1) YEAR, SHALL INCLUDE A SCHEDULE SPECIFYING THE GRADUAL LIBERALIZATION OF THE SAID MEASURE AT REGULAR INTERVALS WITHIN THE ALLOWABLE TIME FRAME AS SPECIFIED IN THIS ACT FOR PROVISIONAL, DEFINITIVE, AND EXTENDED GENERAL SAFEGUARD MEASURES, AS WELL AS PROCEDURE FOR INTERMEDIATE REVIEW. THE INDUSTRY BENEFITING FROM THE APPLICATION OF A GENERAL SAFEGUARD MEASURE SHALL BE REQUIRED TO SHOW POSITIVE ADJUSTMENT WITHIN THE ALLOWABLE PERIOD. A GENERAL SAFEGUARD MEASURE SHALL BE TERMINATED WHEN THE BENEFITING INDUSTRY FAILS TO SHOW ANY IMPROVEMENT, AS MAY BE DETERMINED BY THE SECRETARY.

THE SECRETARY SHALL DETERMINE WITHIN FIFTEEN (15) DAYS FROM RECEIPT OF THE REPORTS, EITHER BY VIRTUE OF HIS OFFICE OR IN CONSULTATION WITH AN APPROPRIATE CABINET COMMITTEE, THE MECHANISM FOR THE IMPLEMENTATION OF THE DEFINITIVE GENERAL SAFEGUARD MEASURE THAT SHALL BE ADOPTED.

FOR THIS PURPOSE, THE APPROPRIATE CABINET COMMITTEE SHALL BE COMPOSED OF THE SECRETARIES OF TRADE AND INDUSTRY, AGRICULTURE, FINANCE, SOCIO-ECONOMIC PLANNING, AND THE CHAIRMAN OF THE TARIFF COMMISSION. ACCORDINGLY, THE SECRETARY SHALL ISSUE A WRITTEN INSTRUCTION TO THE HEADS OF THE CONCERNED GOVERNMENT AGENCIES TO IMPLEMENT THE APPROPRIATE GENERAL SAFEGUARD MEASURE AS DETERMINED.

IN THE EVENT OF A NEGATIVE FINAL DETERMINATION, OR IF THE CASH BOND IS IN EXCESS OF THE DEFINITIVE SAFEGUARDS DUTY ASSESSED, THE SECRETARY SHALL IMMEDIATELY ISSUE, THROUGH THE SECRETARY OF FINANCE, A WRITTEN INSTRUCTION TO THE COMMISSIONER OF CUSTOMS, AUTHORIZING THE RETURN OF THE CASH BOND, OR THE REMAINDER THEREOF, AS THE CASE MAY BE, PREVIOUSLY COLLECTED AS PROVISIONAL GENERAL SAFEGUARD MEASURE WITHIN TEN (10) DAYS FROM THE DATE A FINAL DECISION HAS BEEN MADE. PROVIDED, THAT THE GOVERNMENT SHALL NOT BE LIABLE FOR ANY INTEREST ON THE AMOUNT TO BE RETURNED. THE SECRETARY SHALL NOT ACCEPT FOR CONSIDERATION ANOTHER PETITION FROM THE SAME INDUSTRY, WITH RESPECT TO THE SAME IMPORTS OF THE PRODUCT UNDER CONSIDERATION WITHIN ONE (1) YEAR AFTER THE DATE OF RENDERING SUCH A DECISION.

WHEN THE DEFINITIVE SAFEGUARD MEASURE IS IN THE FORM OF A TARIFF INCREASE, SUCH INCREASE SHALL NOT BE SUBJECT TO THE MAXIMUM LEVEL OF ONE HUNDRED PERCENT (100%) OF THE EXISTING TARIFF RATE AS SET FORTH IN SECTION 401 (A) OF THE TARIFF AND CUSTOMS CODE OF THE PHILIPPINES.

Thank you, Mr. President.

Senator Tatad. Mr. President, before the sponsor accepts, may I ask a few questions.

The Presiding Officer [Sen. Flavio]. With the permission of the two gentlemen, please proceed.

Senator Tatad. Mr. President, on the issue of raising tariffs, this authority is usually vested in Congress, sometimes in the President. In the particular proposal, is it sought to be vested in the Secretary?

Senator Osmena (S). Yes, Mr. President.

Senator Enrile. That is right.

Senator Osmeña (S). Yes, Mr. President. Can the Secretary...

Senator Enrile. Under Section 401 of the Tariff Code, Mr. President, when Congress is not in session, the President is authorized to increase or decrease tariff levels within a certain range.

Senator Tatad. Yes.

Senator Osmeña (S). But remember that in the beginning, the first line says, "That the Commission shall recommend to the Secretary..."

Senator Enrile. Yes. And this provision now, and I agree with it, suggests that we should delegate this power considering that it is an emergency power to the concerned Secretary and bring it out of the limitations of the flexible tariff clause known as Section 401 of the Tariff and Customs Code. This means that the Secretary concerned will then exercise the power to increase or decrease the tariff without having to come to Congress even while Congress is in session or not.

Senator Tatad. I simply wanted that spread into the *Record* because, first, it is a curious point which my layman's mind is sufficiently excited about.

The second point I would like to pose to the distinguished sponsor, the proponent of the proposed amendment has to do with the proposal to include a schedule, specifying the gradual liberalization of a particular safeguard measure if that measure runs beyond one year. The usual practice--I think some provisions of the multilateral trade agreements sustained this--is for the country or the government imposing the safeguard measure or applying the safeguard measure to undertake a review at regular intervals. The purpose is to liberalize the safeguard measure. But for us to put in a schedule of liberalization is probably to weaken our position, it telegraphs our position at once.

So this is a question of whether this is a wise thing to do or not--whether we should put this in the law so that we are obliged to put a schedule of liberalization whatever happens. Because as we are all aware, safeguard measure which may last for four years may be extended for another four years if the causes continue.

Senator Enrile. Plus two years in the case of developing countries.

Senator Tatad. And in the case of developing countries, there is a further extension of two years which means, the general limit is eight years. But if it is a developing country, it can go all the way up to 10 years.

But if we put in the law this schedule of liberalization, perhaps, we are weakening our case.

This is my only concern, Mr. President. I hope the distinguished proponent of the amendment will consider this.

The Presiding Officer [Sen. Flavien]. What does Senator Osmeña say?

Senator Osmeña (S). Mr. President, I am glad that the Majority Leader changed his mind. First, he wanted to remove quantitative restriction which would strengthen the agricultural sector, and now he wants to remove the weakness by saying, "Let us remove the liberalization." But unfortunately...

Senator Tatad. No, no, I am trying to adhere to the text of the international agreements to which we have adhered.

Senator Osmeña (S). Yes. The thing is

Senator Tatad. It is not a matter of my mind changing from one minute to the other.

Senator Osmeña (S). Well, it is our interpretation of the international agreement, is it not?

Senator Tatad. And that is an unparliamentary remark which I would like stricken out of the *Record*.

Senator Osmeña (S). Well, there was no offense meant, and if offense was taken, I assure the member involved that we did not mean to cause offense. But in any case, as far as the staff of the Department of Agriculture is concerned... It says, No. 4 under the WTO Agreement of Article VII, "in order to facilitate adjustment in a situation, over one year, the member applying measures shall progressively liberalize it at regular intervals". So we are just putting that in the law.

Senator Enrile. Actually, Mr. President, if I may intervene, this schedule here could take into account the periods provided in the Treaty and it could state that every two years, there will be a periodic review of the safeguard measures adopted by the importing country or whatever time frame may be used.

Senator Tatad. Mr. President, I believe this is a very important issue which we should sleep on. I move that we suspend consideration of Senate Bill No. 2033.

The Presiding Officer [Sen. Flavio]. There is a motion to suspend consideration of Senate Bill No. 2033. Is there any objection?

Senator Osmena (S). I just want to put into the *Record*, Mr. President, that we could finish this tonight because this was the only long section and we will revisit this section alone tomorrow.

Senator Tatad. But aside from this particular issue, Senator Roco made a reservation to propose certain amendments and he is not here now.

Senator Osmena (S). Yes, but Mr. President, since this representation is here and the staff has been here the whole day, may I just suggest that we finish with the amendments and then tomorrow we give the time to Senator Roco to propose his amendments and to discuss this particular...

SUSPENSION OF SESSION

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

The Presiding Officer [Sen. Flavio]. Is there any objection? [Silence] There being none, the session is suspended.

It was 8:07 p.m.

RESUMPTION OF SESSION

At 8:12 p.m., the session was resumed with the Senate President, Hon. Franklin M. Drilon, presiding.

The President. The session is resumed.

Senator Tatad. Mr. President.

The President. The Majority Leader is recognized.

MOTION OF SENATOR TATAD

(To Insert All the Proposed Osmena (S) Amendments Into S. No. 2033)

Senator Tatad. Mr. President, before we suspended our session, there was a proposed long amendment which in our view would need a little more time to study. But following the procedure we have adopted on the Power bill and with the consent of the distinguished sponsor and the Minority Leader, may we be allowed to insert all the proposed Osmeña (S) amendments into this bill, consider them read so that tomorrow morning, we would have a clean copy of the same, and we would have the opportunity to revisit and allow also

the other senators to introduce their own proposed amendments.

Senator Enrile. Mr. President.

The President. Senator Enrile is recognized.

Senator Enrile. Mr. President, the sponsor has no objection to that procedure, provided the Chair will instruct the legislative staff to prepare a clean copy inserting the Osmena amendments, including the other amendments already made, in their proper places for the production of a clean copy with appropriate renumbering and reparagraphing of the entire text of the bill.

Senator Guingona. Mr. President.

The President. The Minority Leader is recognized.

Senator Guingona. I would just like to inquire if the amendment on page 7, line 19, for the Secretary to make a preliminary determination has been reduced to 15 days with the request that he consider a more reasonable period, perhaps 30 days, and the Tariff Commission on page 13, line 8, is required to complete its investigation and submit its report to the Secretary within 30 days from receipt of the referral by the Secretary because we are guided by the reasonable period.

Senator Osmeña (S). May I just react, Mr. President.

The President. Sen. Serge Osmeña is recognized.

Senator Osmeña (S). Mr. President, sometimes, 15 days can make a great deal of difference. That can make a difference between 200,000 metric tons of sugar coming into our ports or 150 containers of chicken leg quarters. In other words, these are emergency actions and for us to put in the law or to tie the hands of the Secretary from acting in a speedier manner may just defeat the purpose of the provisional action.

May I suggest that we trust the Secretary to know enough facts. Because these are facts--and we are talking mainly about agriculture here--that are constantly being monitored by the Department of Agriculture staffers and they know, more or less, when to start moving on any particular issue. So, why do we not trust the Secretary of Agriculture to use utmost discretion in being fair to everybody involved?

Senator Guingona. I understand the sentiments of the sponsor. My only request is for him to consider the fact that sometimes some of the parties may not be notified

because they are out, or something like that. At any rate, we leave that to the discretion of the sponsor.

Senator Osmeña (S). Just trusting the Secretary and I think the Secretary will not....

The President. There is a motion to consider as read into the *Record* the remaining amendments of Sen. Sergio R. Osmeña III, which amendments are contained in a document now in the possession of the Secretary.

With the consent of the Chamber, we will proceed in that manner and the Secretariat is directed to prepare a revised version of Senate Bill No. 2033 which will now be the basis for the continuation of the period of interpellations.

The Chair, however, notes that all the previous amendments, other than the last amendment proposed by Sen. Sergio Osmeña, which were already accepted and approved by the Chamber, will stand and only that long amendment will be the subject....

Senator Enrile. No, the rest of the amendments outside of those that have already been approved by the Chamber will now be, with the permission of the Chair, transposed into a revised version as if these amendments were taken up today in this Chamber and read into the *Record*.

The President. But not yet adopted.

Senator Enrile. But not yet adopted.

The President. With that understanding, the motion is approved, if there is no objection. *[There was none.]*

SUSPENSION OF CONSIDERATION OF S. NO. 2033

Senator Tatad. Mr. President, I move that we suspend consideration of Senate Bill No. 2033.

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

SUSPENSION OF SESSION

Senator Tatad. Mr. President, I move that we suspend the session until ten o'clock tomorrow morning.

The President. Is there any objection? *[Silence]* There being none, the session is suspended until ten o'clock tomorrow morning, June 7, 2000.