

WEDNESDAY, MAY 24, 2000

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RESOLUTION DIRECTING THE COMMITTEE ON FOREIGN RELATIONS TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, INTO CROSS-BORDER TRAVELS OF FILIPINOS TO AND FROM SABAH WITH THE END IN VIEW OF DETERMINING APPROPRIATE GOVERNMENT POLICY ON THE ENTRY AND EXIT OF FILIPINOS FROM MALAYSIA AND OTHER NEIGHBORING COUNTRIES IN THE ASEAN, THEREBY AVOIDING NATIONAL EMBARRASSMENT WHICH MAY IMPAIR THE RELATIONSHIP OF THE PHILIPPINES WITH SUCH COUNTRIES

Introduced by Senator Ople

The President. Referred to the Committee on Foreign Relations.

The Majority Leader is recognized.

OFFICIAL VISIT OF BARANGAY OFFICIALS FROM CONSOLACION, CEBU AND SCHOOLTEACHERS OF BASAK ELEMENTARY SCHOOL, LAPU-LAPU, CEBU ACKNOWLEDGED

Senator Tatad. Mr. President, we would like to acknowledge the presence in the Hall this afternoon of barangay officials from Garing and Casilic in the Municipality of Consolacion, Cebu, and elementary school teachers of Basak Elementary School, Lapu-Lapu, Cebu.

They are here to listen to our senators, particularly those running for reelection.

The President. The Majority Leader may want to mention those who are running for reelection. *[Laughter]*

Senator Tatad. Those running for reelection are: the Senate President, Senators Serge Osmeña, Flavio, Magsaysay, Honasan, Enrile, and Miriam Defensor Santiago. I think I mentioned all.

The President. Thank you.

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 No. 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 interpellations. I ask that the distinguished sponsor of the measure, the chairman of the Committee on Trade and Commerce, Sen. Ramon B. Magsaysay Jr., be recognized, and to propose some questions, Sen. Serge R. Osmeña III.

The President. Sen. Ramon B. Magsaysay Jr. and Sen. Sergio R. Osmeña III are recognized.

Senator Tatad. Both are running for reelection.
[Laughter]

SUSPENSION OF SESSION

Senator Osmeña (S). I move that we suspend the session for one minute, Mr. President.

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

It was 4:06 p.m.

RESUMPTION OF SESSION

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

The President. The session is resumed.

Sen. Sergio R. Osmeña III is recognized.

Senator Osmeña (S). Mr. President, would the distinguished sponsor of Senate Bill No. 2033 yield for a few questions?

Senator Magsaysay. Certainly, Mr. President.

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

Mr. President, the purpose of this bill is to protect our local producers from import surges in the importation of products that might constitute a threat to domestic industries and farmers--domestic producers of agricultural products. May we know if the bill has considered including quantitative restrictions?

Senator Magsaysay. The bill, particularly Section 8, has a statement which will readily be interpreted that it includes without mentioning the term "quantitative restrictions" or QR.

Senator Osmeña (S). Would the sponsor like to read that particular provision?

Senator Magsaysay. Will I read the section?

Senator Osmeña (S). No, just the provision which implies the QRs or the quantitative restrictions, just the line.

Senator Magsaysay. Yes, Mr. President.

This is in Section 8, second paragraph. It states:

Such measures should take the form of tariff increases to be paid through cash bond unless that would not be sufficient to redress or prevent injury to the domestic industry.

Senator Osmeña (S). For purposes of interpretation later on, does this sentence imply that quantitative restrictions may be resorted to?

Senator Magsaysay. That is correct, Mr. President.

Senator Osmeña (S). Mr. President, in the United States Tariff and Customs Code of 1974, the United States uses the term "quantitative restriction," does it not?

Senator Magsaysay. That is correct, Mr. President. This was a law passed way before the WTO regime. This was passed in the United States in 1974 as the gentleman mentioned.

Senator Osmeña (S). The WTO was signed sometime in 1994?

Senator Magsaysay. That is correct, Mr. President.

Senator Osmeña (S). And in the last six years, although I know that the distinguished sponsor cannot be asked to read the minds of the policymakers in America or the members of Congress, it seems that in the last six years, they have not taken the steps to correct or to delete the term "quantitative restrictions" from their law.

Senator Magsaysay. It appears that way, Mr. President, although we have not deeply researched into the reason or reasons. It could be that they have prioritized other measures and have not thought it necessary to amend their tariff laws. However, the U. S. has never used QRs for a provisional measure despite allowing it to be still a part of the laws of the land.

Senator Osmeña (S). Tama po iyan, pero alam po ninyo, pag nasa batas po nila, magagamit nila in the future. In other words, because they are authorized to use QRs, just

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because they have not used it in the last six years does not mean they cannot use it in the future if they deem fit to use it to protect their farmers and to protect their domestic industries.

Mr. President, Uruguay also uses the term "quantitative restrictions" as a provisional remedy.

Senator Magsaysay. That is correct, Mr. President. I think the country of Uruguay passed that particular measure in 1995.

Senator Osmeña (S). After the WTO.

Senator Magsaysay. One year after the WTO. That is correct, Mr. President.

Senator Osmeña (S). Had there been any sanctions against Uruguay for passing a law that includes quantitative restrictions?

Senator Magsaysay. I understand from my staff that that country has not invoked any of these safeguard measures.

Senator Osmeña (S). Therefore, if that is the case, if America can use the term "quantitative restriction" in the law as a provisional remedy; if Uruguay can include it and nobody objects, why can the Filipinos not protect their farmers and domestic industries by also expressly using the term "quantitative restriction" although we may not use it?

Senator Magsaysay. As a matter of fact, this is one of the contentious issues that the technical working group--which includes the heavy hitters from both the Department of Agriculture and the Department of Trade and Industry--had finally resolved: accepting the so-called Australian model on the provision that without mentioning per se the "quantitative restriction" term, still it is embedded in that paragraph that I talked about earlier which, if the tariffication is not enough, the country can still go into other means, mainly QRs.

Senator Osmeña (S). Yes, we understand that, Mr. President.

Senator Magsaysay. Mr. President, may I ask my cosponsor to add to my statement.

The President. Senator Enrile is recognized, with the permission of the two gentlemen on the Floor.

Senator Enrile. With the permission of the two gentlemen. Mr. President, that remedy is provided in Section 12 of this measure, and may I read it.

Section 12. *Adoption of Definitive General Safeguard Measures.* - The Commission shall complete its investigation and submit its report to the Secretary within one hundred twenty (120) days from receipt of the referral by the Secretary.

Upon its positive final determination, the Commission shall recommend to the Secretary an appropriate general safeguard measure, in the form of either a tariff adjustment, increase in tariff quota rate and/or reduction in the market access commitments or a quantitative import restriction.

Senator Osmeña (S). That is in Section....

Senator Enrile. Section 12.

Senator Osmeña (S). Very good. Mr. President, I just wanted to bring up before the members of this Chamber the fact that owing to the very low-bound tariff rates that the Philippines committed on its various commodities--agriculture and nonagriculture--on the WTO, we must make compensating moves. As an example, if we are to export our sugar to the United States, we will have to pay a duty of US\$0.16 a pound. When world sugar comes into the Philippines at a world-market price of, let us say, US\$0.06 a pound, the importer has to pay only US\$0.03 or 50%. In other words, we fell flat on our faces in committing very low tariff rates to the WTO in 1994.

Sometime in 1994 and 1995 when we made our commitments to the WTO--and I am looking for a way to correct that mistake or mistakes by protecting in some other way our local producers--it is patently unfair that Japan, for example, is able to charge a 300% duty on sugar imported to Japan beyond its minimum access volume commitments, and on the other hand, the Philippines can only charge a 50% duty. Now, since this is a matter of policy here, may we know from the sponsor if his committee has been able to study this particular area, which has been causing our farmers and producers a lot of problems, and what other safeguards aside from this particular bill is the administration intending to implement in order to correct those imbalances in our commitments?

Senator Magsaysay. Well, Mr. President, the provision which I stated earlier does not remove that term--if it has to be the decision of the Secretary, the authorized entity

of agriculture for that matter--to go into quantitative restriction. We just want to be aligned with the rest of the other countries after 1994, except for Uruguay as we mentioned, that we are staying away from using that term but still having the use of that term, if need be, to prevent serious injury. I think even Thailand does not have quantitative restrictions (QRs) in its laws. I think Thailand would be the most similarly situated country as the Philippines. Venezuela does not have QR. We have a list here. Colombia does not have that either.

Senator Osmeña (S). May I know in what way is Thailand similar to the Philippines?

SUSPENSION OF SESSION

Senator Magsaysay. May I have a minute's suspension, Mr. President, while I gather my data?

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

It was 3:48 p.m.

RESUMPTION OF SESSION

At 4:40 p.m., the session was resumed.

The President. The session is resumed.

Senator Magsaysay. Mr. President, on the matter of provisional measures, the country of Thailand does not use QRs. Section 7 of the Provisional Safeguard Measures of the Thailand law does not mention any QRs. But on the matter of final definitive measures, of course, it is allowed under the WTO that QRs may be imposed.

Senator Osmeña (S). Mr. President, the reason I asked why Thailand is being used as a comparison to the Philippines is: Is it because Thailand's cost of production is one-half of that of the Philippines?

Senator Magsaysay. I do not know about that, Mr. President.

Senator Osmeña. That is why it is not proper to use Thailand as an example because Thailand, since 30 years ago, had a very focused agricultural program which is the reason why its cost of production in rice is one-half of ours; the cost of production in sugar is one-half of ours, and it probably has better mangoes, better patis, better fruits and vegetables, better lansones than Filipinos produce today when Thailand got all its technology from the Philippines. It would be very difficult to say that Thailand would be

something we should compare ourselves to, at this point in time, as far as agricultural development is concerned.

So, Mr. President, that is the reason why I will not use Thailand as a model for....

Senator Magsaysay. I do not mind if the gentleman from Cebu uses another country. I will welcome that, Mr. President.

Senator Osmeña (S). Maybe we can use Bangladesh, Mr. President. But in any case....

Senator Magsaysay. I would think that Bangladesh might be the ideal country. But as far as the population and the per capita are concerned, it is quite close to Thailand for that matter. Besides, the land area of Thailand in terms of agriculture is much more than that of the country since we are a fragmented archipelago.

But still, in terms of Thailand and the Philippines being both focused on agri-business, agriculture, I made mention of that. But if the gentleman wishes that Bangladesh is the country, I do not have any problem with that.

Senator Osmeña (S). Mr. President, the purpose of safeguards bills, which are being considered in all WTO-member countries, is to be able to fine-tune protection for domestic producers of both agriculture and nonagricultural products.

Now, some countries are more efficient than we are in some products and, maybe, we might be more efficient than other countries in other products. But it has become very clear that as far as--and I speak particularly of agricultural products--agriculture is concerned, we are one of the most inefficient as far as costs of production are concerned. Therefore, if we do not balance this off, at least in the short term, by bringing in provisions that will protect the farmers, I believe that we are in for some terrible social, political, and economic disasters.

Which is why, Mr. President, I seek to push the envelope on this particular provision to protect our farmers. The second point that I would like to make is--again I will go back--our commitments on the bound rates were too low. We have been stuck with them for sometime and it seems the process to revisit those bound rates that we committed to the WTO will take as long as three years, if I am not mistaken. We have the representatives from the Department of Trade and Industry and the Department of Agriculture with us here. So I am hoping that this Chamber will see fit to push the envelope as far as we can on this

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particular issue so that we may, at least, in the short term and medium term, protect our farmers until the safety nets that have long been promised by the government since 1994 when this Chamber acceded or ratified the country's accession to the WTO are put in place.

Mr. President, earlier, the distinguished Senator from Cagayan mentioned that Section 12 of the bill includes quantitative restrictions, in Subsection C. But this is not a provisional QR. This is a final QR. This is after an investigation has been made.

Now, let me give an example. The Philippines suddenly was faced with an import surge on chicken leg quarters recently. And the Department of Agriculture, rightly so, said, "Stop." We are not bringing in chicken leg quarters. Now, is that a quantitative restriction or not?

Senator Magsaysay. Well, it is not.

Senator Osmeña (S). It is not. What would it be called?

Senator Magsaysay. It should be a special safeguard measure, *de facto*.

Senator Osmeña (S). But quantitative in nature? It is not tariff.

Senator Magsaysay. Yes.

Senator Osmeña (S). Mr. President, the distinguished sponsor said that it is not a quantitative restriction. I maintain it is because it just locked out everybody regardless of tariffs.

Senator Magsaysay. This is a decision that was made by the Secretary without the law being in place. This is the measure that we are trying to put in. So he made a basis of a *de facto* decision seeing the serious injury being inflicted on our local poultry industry and of course the other meat industry.

Senator Osmeña (S). So therefore, Mr. President, if we pass this bill, we are taking away from the Secretary of Agriculture the power to immediately compensate imbalances and stop the import surge until it goes through a 10-month process by which time the chicken industry might have collapsed already?

Senator Magsaysay. Well, we have in the provision the provisional QR that gives him that....

Senator Osmeña (S). There is no provisional QR, Mr. President.

Senator Magsaysay. Again we go back to Section 8, Mr. President.

Senator Osmeña (S). I see. That is why, at the proper time, would the distinguished sponsor accept an amendment that will include the phrase "quantitative restriction"?

Senator Enrile. Mr. President.

Senator Magsaysay. I yield to the gentleman from Cagayan.

The President. Senator Enrile is recognized.

Senator Enrile. I think in the case of general safeguards, provisional remedies would not allow a quantitative import restriction. It only allows tariff increases. We cannot impose as a provisional safeguard measure quantitative import restrictions on any product if we apply the provisions of the general safeguards of the WTO. And in the case of the special safeguards that are applicable specifically to agricultural products, I think there is no provision for a provisional safeguard.

Senator Osmeña (S). Mr. President, in the bill, Section 8, this representation was able to elicit from the distinguished sponsor the fact that the phrase he used and I will quote:

Such measures should take the form of tariff increases to be paid through cash bond unless that would not be sufficient to redress or prevent injury to the domestic industry.

could also include or imply quantitative restrictions.

Senator Enrile. But, Mr. President, we cannot go beyond what we have committed when we adhered to the WTO. That is the misfortune that we have.

If we look at Article 6 of the Provisional Safeguard Measures--and I would like to read it into the Record--it says:

In critical circumstances where delay would cause damage which it 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 of the

provisional measure shall not exceed 200 days, during which period the pertinent requirements of Article 2 through 7 and 12 shall be met. Such measures should take the form of tariff increases to be promptly refunded if the subsequent investigation referred to in paragraph 2 of Article 4 does not determine that increased imports have caused or threatened to cause serious injury to a domestic industry. The duration of any such provisional measure shall be counted as a part of the initial period and any extension referred to in paragraphs 1, 2 and 3 of Article 7.

That is all that is authorized to a Member-country under the general safeguard provisions.

Senator Osmeña (S). All right. First, before that, Mr. President, I just have a follow-up question. If in Section 8, the distinguished sponsor says it may include QRs, does the cosponsor say it may not include QRs anymore because the sponsor and cosponsor have taken contradictory positions?

Senator Enrile. Mr. President.

The President. Senator Enrile may reply.

Senator Enrile. Mr. President, if we are going to include QRs in the safeguard measures, we might expose ourselves to a dispute-settlement issue with the WTO members because we will be violating, in effect, the provision of the World Trade Organization.

Senator Osmeña (S). Mr. President, as we mentioned earlier, Uruguay has QRs, the United States has QRs, and there has been no challenge made to any of their safeguard legislation. There has been none. So why can we not include it here just as a safety valve, an extra measure of security for our farmers? That is all I am asking. Mayroon rin po ang Uruguay niyan. Hindi naman na-challenge. Noong 1995 pa iyan.

Senator Enrile. For my part, Mr. President, I am willing to go along with the suggestion of the gentleman that we include it. But I think we should be made aware of the fact that if a member will challenge this and bring us to dispute-settlement problem with the World Trade Organization, then we must be aware of this possibility.

Senator Osmeña (S). Yes, Mr. President. We are aware of that possibility.

The President. There is a query from the Chair. Is Section 8 not broad enough to include QRs without the same being so specified?

Senator Magsaysay. Actually, Mr. President, that is what I have mentioned all along, because after three or four meetings of the TWG, both the Departments of Agriculture and Trade and Industry have finally decided to adopt and agree on using the so-called "Australian" model which is the embodiment of Section 8. Without mentioning the term QR, it is embedded in the way it is phrased. That is why we are pushing for this.

The President. Thank you.

Senator Osmeña (S). The Chair understands the....

Senator Magsaysay. Also, Mr. President, the Australian model has never met any objections from other countries. The WTO has not even made mention of that particular model, not even the U.S. and Uruguay have been challenged for their own safeguard legislation.

Senator Osmeña (S). That is why I am asking the sponsor to consider using the U.S. and the Uruguay models for the simple reason that they mention quantitative restrictions and have not been challenged.

Senator Magsaysay. These are laws--the U.S. is 1974 law and Uruguay was a year after the ratification--and I will go with my cosponsor, the Chairman of the Committee on Ways and Means, that we should not mention in black and white quantitative restrictions because this is the embodiment of the WTO, that this is the tariffication.

Senator Osmeña (S). But that is not what the gentleman's cosponsor just said.

Senator Enrile. I just want to call the attention of the Chamber. If we read Article 6, "Provisional Safeguard Measures," it says:

In critical circumstances where delay would cause damage which it would be difficult to repair, a Member may take a provisional safeguard measure.... Such measures should take the form of tariff increases to be promptly refunded if the subsequent investigation referred to in paragraph 2 of Article 4 does not determine that increased imports have caused or threatened to cause serious injury....

Article 5 of the same Treaty says:

Application of Safeguard Measures

1 A Member shall apply safeguard measures only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment.

This provision contemplates that there is already a determination of serious injury to industry and that a causal link between the import surge and that serious injury has been established. That can be established only after we apply Section 12 of the present bill after the Tariff Commission shall have finished its hearing and made a determination that there is an import surge and that this import surge is the cause of a serious injury to an industry producing identical, similar or like products produced in the country.

The President. May the Chair know from Senator Enrile if Section 8 would be violative of the GATT-WTO commitments, as presently worded?

Senator Enrile. I do not think so, Mr. President. But if we are going to spell out in detail a QR, I think we might be establishing a clear evidence of violation.

The President. But the QR would be included in the broad language of Section 8.

Senator Enrile. In the final determination.

Senator Osmeña (S). That is the whole point, Mr. President, and I cannot understand because on the one hand, the cosponsor had just said, "That is okay, I have no objection to including that as long as you realize that we may be questioned later on." And also, corollary to that, the distinguished sponsor had also said that, "Well, the United States law was passed in 1974 and Uruguay's was in 1995." So, Uruguay's law was passed after the WTO. Were they questioned? They were not questioned. So, what is wrong then with the Philippines putting in QR? If we are questioned, we can amend the law later and remove it if we need to. But I would like to send a signal to those guys at the WTO that the Philippines intends to correct the mistakes that it made, consciously or unconsciously, in making those bound-rate commitments in 1995. This is merely a signal.

Senator Magsaysay. This is fine, Mr. President, coming from the gentleman from Cebu who is the Chairman of the Committee on Agriculture and Food and also the Chairman of the Coco Farm Oversight Committee on the modernization of the agricultural sector.

We appreciate this. We are exactly in the same wavelength in the sense that we have decided to sponsor this

measure which was rushed because this is the last leg of the three-leg protective measures, the first being the anti-dumping, and then the countervailing, both ably sponsored by Sen. Juan Ponce Enrile. So this is the third leg to protect our industry from serious injury.

But there are certain other sectors which we have not even mentioned that would also want to be heard because this is now the world global liberalization. And, of course, the consumer, which is represented by the Department of Trade and Industry, has to be heard. That is why we had a TWG hearing, and we came up with an almost solomonic agreement between the two government agencies representing the farm sector, the industrial and consumer sector for them to accept Section 8, the so-called Australian model provision. And for us to go into stating clearly, as mentioned by the gentleman from Cagayan, that if we should mention QR, it might put us in trouble.

The Committee chairman stands that we support and defend Section 8, unless our colleagues will say otherwise, because it is the Plenary that will decide once and for all which model to use or which provision to use, whether to use QR or just have it embedded without stating so in interpreting that basically, QR will still be ultimately used, if it must be used.

So if the Senator from Cebu would like to make his amendment, we will welcome it and let us have the Body support one way or the other. I will welcome that.

Senator Osmeña (S). Thank you, Mr. President. Just a comment because the cosponsor has read Article 6 of the WTO Agreement on Safeguards. One of the sentences there which is probably the dispositive portion of this paragraph reads again as follows: "Such measures should take the form of tariff increases." The word "should" is used, instead of the word "shall" and some of our legal advisers maintain that the use of the word "should" is merely persuasive, and not mandatory. I am not a lawyer so perhaps the lawyers in this Chamber could enlighten us on that. Atty. Tatad is willing to clarify....

Senator Magsaysay. I think I agree with the gentleman, Mr. President. "Should" is persuasive and is like suggestive and is not mandatory.

Senator Osmeña (S). So it does not preclude quantitative restrictions. It just encourages the use of tariff increases instead.

Senator Magsaysay. It could be correct. It should be correct.

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

Senator Magsaysay. But the objective is still to focus more on tariffication which is the general idea of the WTO and less QR. And if and when necessary it must be used, it is still embedded in that Section 8.

Senator Osmeña (S). Yes, Mr. President. This issue to me is a matter of sending a signal. We have been negotiating. I do not know what is wrong with our government officials. When we negotiated the VFA with the Americans, we did not negotiate from strength but from weakness. Pabakla-bakla po tayo diyan. When we negotiated the WTO, it was the same thing. And the one who has to eat the mistakes are the farmers and I do not think we should allow that to happen any longer.

Now if our negotiators to the WTO are afraid, then why do they not resign? We can replace them with some people who have a little bit more courage and are willing to stand up for the Filipino farmer and the Filipino worker.

That is why, Mr. President, while I agree that the meaning of "QR" is embedded in Section 8, again, I want to send the signal by including the phrase "quantitative restrictions."

Mr. President, on another point....

Senator Magsaysay. The point of the gentleman is well-taken. However, I still believe that the decision of the committee to use the Australian model provision should be supported.

Senator Osmeña (S). So we will have to face this issue during the period of amendments.

Senator Magsaysay. That is correct, Mr. President.

Senator Osmeña (S). Mr. President, may I know then if quantitative restrictions in the gentleman's bill can only be used as a general safeguard measure and not a provisional safeguard measure. Whether it is silent, implied or explicit, can QRs be used as provisional measures?

SUSPENSION OF SESSION

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

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

It was 5:06 p.m.

RESUMPTION OF SESSION

At 5:09 p.m., the session was resumed.

The President. The session is resumed.

Senator Magsaysay is recognized.

Senator Magsaysay. Mr. President, the gentleman from Cebu asked whether QRs are allowed as a provisional measure. I believe that the method of protecting through tariffication must be exhausted. However, Section 8 will state that "other means," meaning even QR may be resorted to as a final measure to protect a threatened industry in the provisional measure.

Senator Osmeña (S). Mr. President, we had an import surge of chicken of 11 million kilograms in the first quarter of the year 2000. While for all of 1999, we had a total import of 24 million, almost 25 million kilograms. I think the Secretary of Agriculture made the right move when he said, "Stop!" Stop the importation of chicken leg quarters from the United States which is roughly P18 a kilo while our farmgate price here is at P53 a kilo.

If he did not impose this as a provisional safeguard, in three to six months' time we would have wiped out the broiler industry. Therefore, I want to make sure that if we pass this bill, we are not taking away that power from the Secretary of Agriculture.

Senator Magsaysay. I understand, Mr. President, because when Secretary of Agriculture Edgardo Angara, our former colleague, decided swiftly to protect the industry from serious injury, he did so in a *de facto* manner. That is why he asked his former colleagues here in the Senate to rush this measure because there are no laws or existing executive orders that could put the legal framework on his decision. That is why this bill has even been certified, I understand, by the President so that we can pass it as soon as possible.

The gentleman and I have the same objectives, Mr. President. We are just saying that since the Philippines is one of the 137 countries that signed and ratified the WTO agreements, we should support this in the manner of attaining the objectives of the WTO on tariffication rather than quantitative restrictions.

But the members of the two committees, the Committee on Ways and Means and the Committee on Trade and Commerce, accepted Section 8, the gentleman's objective and our

objective, and even the Secretary of Agriculture has accepted this particular provision.

I do not know why we have to paint on our chests that we are sending a strong message. Because the Australian model is very subtle, very well-formulated, grammatically correct, and the QR is embedded without putting it across in black and white.

Senator Osmena (S). May we know then, Mr. President, whether Section 8--because the gentleman posited earlier that the Secretary of Agriculture asked us to rush this particular measure--would add to or detract from the powers of the Secretary of Agriculture to impose the type of action he did when he chopped down on the imports of chicken leg quarters from the United States, and other similar action, I think, he did with respect to imports on Australian products?

Senator Magsaysay. Yes, Mr. President. I understand and believe that this provision, Section 8, will add to the power and authority of the respective department secretary, in this case Secretary Angara, and it gives him sufficient flexibility to impose provisional QRs.

Senator Osmeña (S). May we know under what law?

Senator Magsaysay. This is the law.

Senator Osmeña (S). May I be allowed to finish?

May I know under what existing law the Secretary exercised his power to stop the imports of chicken and certain agricultural products from Australia?

Senator Magsaysay. There is no existing law when he made such a decision. But there is no ban.

Senator Osmeña (S). Excuse me, I did not understand the answer.

Senator Magsaysay. There is no law at this time.

Senator Osmeña (S). There is no law that authorizes the Secretary of Agriculture to....

Senator Magsaysay. Yes, we are trying to pass the law.

Senator Osmeña (S). So what the Secretary of Agriculture did is illegal?

Senator Magsaysay. No, we are not saying that it is illegal. We are saying that....

Senator Osmeña (S). If there is no law, Mr. President, it must be illegal. We cannot exercise action without legal underpinning. So if there is no law, it must be illegal.

Senator Magsaysay. Not necessarily. There is no law to break.

Senator Osmeña (S). No, Mr. President, I am not satisfied with that answer. Since the staff of the DTI and the lawyers are all there, I am asking for a little bit more candor in the response.

Senator Magsaysay. As far as I know, Mr. President, No. 1, there is no existing law that is why we are passing this safeguard measure; and No. 2, there is no ban on the importation of chicken parts, except that we are pushing hard on the duty-free shops that seem to be the conduit for overloading the local market. That ban happened because most of these were brought in through the duty-free shops. The Secretary of Agriculture sent us a wrong signal by cutting down on this, using existing laws of the Customs and Tariff Code.

Senator Osmeña (S). So there is a law? First, there is no law, now there is a law.

SUSPENSION OF SESSION

Senator Magsaysay. I move that we suspend the session for one minute, Mr. President. Maybe my colleague can come here so he can be enlightened.

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

It was 5:17 p.m.

RESUMPTION OF SESSION

At 5:21 p.m., the session was resumed.

The President. The session is resumed.

Senator Magsaysay. Mr. President, I understand the concern of the gentleman from Cebu and I am with him. We have the same objectives. We can also say that, first, as far as the Secretary of the Department of Agriculture is concerned, there is no ban; and second, there has been an Administrative Order No. 16 which tightens quarantine rules based on phyto sanitary or sanitary issues, which requires import permits to be issued by the Secretary before the shipment of the product leaves the port of origin.

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Actually, AO No. 16 has desired to require license to import prior to opening of the letter of credit. However, what others are doing is just opening the letters of credit and forcing the department to issue the permit once the shipment comes in on the basis that it is already here. But the Secretary is very firm about this because he knows how the negative impact will be on our farmer population and it has effectively worked by stopping all these shipments into our shores of--maybe already very, very old in terms of months--chicken parts.

My point here, Mr. President, is that I can sympathize with the concerns of the gentleman from Cebu being the Chairman of the Committee on Agriculture and Food in championing the farmers. However, the executive branch headed by the Secretary has accepted Section 8, that it is strong enough, firm enough, and clear enough that there is the embedded ability to use QRs even if it is not expressly stated. He has accepted this and I think we should follow the Secretary who personally, like a mechanic, worked for this measure to be passed.

Senator Osmeña (S). I do not accept that, Mr. President. The Secretary is not a member of the Senate; he cannot vote.

Senator Magsaysay. I understand, Mr. President.

Senator Osmeña (S). The Senate decides what the law will be, and I do not think the Senate has to follow any secretary on any particular provision of law itself.

Mr. President, may this representation have a copy of Administrative Order No. 16.

Senator Magsaysay. We do not have AO No. 16 now, but we will certainly furnish this Body with a copy of it maybe tomorrow or the next time we meet with regard to this plenary session. It will be in the gentleman's possession tomorrow.

Senator Osmeña (S). Perhaps, we can leave this temporarily. I say "temporarily" because I intend to return to it at a later date.

Mr. President, let me just go to some little items on the list of definitions in Section 4. The word "compensation" is used. Why do we have to include "compensation" in our law?

Senator Magsaysay. Mr. President, "compensation" is part of the law because, in the WTO, this is part of the general safeguards.

May I quote on the General Safeguards: "Remedies include quantitative restrictions or increased duties. However, the remedy must be compensated for by selective liberalization in other products."

For example, if a general safeguard measure will be imposed on templates from, let us say, South Korea to the Philippines, Korea may request tariff reductions on cars as compensation. So there is a *quid pro quo*. We have included this so it will harmonize with the WTO.

Senator Osmeña (S). Mr. President, I do not think there is a need for us to include compensation. We should be silent on compensation. Although it does not prevent us from paying compensation, again, as a matter of positioning, I do not think we should include compensation in the law.

Senator Magsaysay. Mr. President, we are open to the gentleman's recommendation. If he wishes to have this deleted, my cosponsor and I will willingly accept his recommendation. For the so-called "strong message," we will accept.

Senator Osmeña (S). I thank the distinguished sponsor for that, Mr. President.

We also want to define the term "consumers." The bill includes the word "consumers". I was looking for a definition but it is not here. The sponsor may correct me if I am wrong. Is the term "consumer" defined in the bill?

Senator Magsaysay. Mr. President, as presently worded, we do not have the definition here. Again, if our distinguished colleague, for better effect, wants to define this, we do not mind to accept it.

Senator Osmeña (S). May I just narrow down then the definition.

Should we limit "consumers" to organized consumer groups? Because all 70 million Filipinos are consumers, and if anybody can come out and file a complaint, I do not think that that would be necessarily wise.

Senator Magsaysay. My cosponsor is asking in what section the word "consumer" appears.

Senator Osmeña (S). It is not defined. The definition does not appear, Mr. President.

Senator Magsaysay. It is not mentioned in any of the other provisions then.

Senator Osmeña (S). No. It is mentioned.

Senator Magsaysay. May we know from the gentleman in what section or article is it mentioned?

Senator Osmeña (S). This is not my bill, Mr. President. But I will look for it.

Senator Magsaysay. Mr. President, if the gentleman would like to define "consumer" as an individual or as a group collectively, we have no problem with that.

SUSPENSION OF SESSION

Senator Osmeña (S). I move that we suspend the session for one minute, Mr. President.

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

It was 5:29 p.m.

RESUMPTION OF SESSION

At 5:33 p.m., the session was resumed.

The President. The session is resumed.

Senator Magsaysay. Thank you, Mr. President.

Senator Tatad. The exchange that just took place was a conversation between two persons while the session was still suspended.

Senator Osmeña (S). So, Mr. President, I guess we will have to rewind and repeat.

Will the distinguished sponsor have any objection to narrowing down the definition of "consumers," as it will be used in this particular bill, to organized consumer groups?

Senator Magsaysay. We have no objection, Mr. President. We will accept the gentleman's amendment in due time.

Senator Enrile. Mr. President, with the permission of the distinguished gentlemen. The relevance of the word "consumer" has something to do with the interested parties to be notified in case a petition or application for safeguard has been filed. Now, I think the suggestion of the distinguished gentleman from Cebu is very valid. But in addition, we should consider the possibility of publication in order to notify the public so that anybody, any group or even a single consumer, who may have the capability of

litigating the issue, can come forward and participate in the hearing, not necessarily an organized consumer group.

But if the desire is to limit the participants to the proceedings to organized groups, I have no objection.

Senator Osmeña (S). This is something we wanted to explore, Mr. President. For example, somewhere down the line, in the implementing rules and regulations, the word "consumer" is just blindly used, without any definition. And he is given the power to file complaints. Sasabihin ng consumer, "Well, I want to import because it is cheaper for my pocketbook."

Senator Enrile. Mr. President, I think the application for safeguards cannot be filed by the consuming groups. But evidently, they are interested in maintaining the level of imports because that will benefit the consumers.

Senator Osmeña (S). Even increasing the level of imports.

Senator Enrile. Yes. That is why if we are going to limit the parties to be notified to organized consumer groups, then we will preclude such consumers like San Miguel Corporation and similar industries that might be affected by an application for certain safeguards against import surges on sugar, on corn or other inputs in industries. They are consumers in that respect.

That is why I was suggesting that in addition to the suggestion that we limit the word "consumers" to "organized groups" to be notified about the presence of an application for safeguards, we should equally provide a system of publication so that any interested consumer may come forward to participate in the proceeding.

Senator Osmeña (S). I have no objection to that.

Senator Tatad. Mr. President.

The President. The Majority Leader is recognized.

Senator Tatad. Just to be helpful on this point. I believe the word "consumer" comes in in trying to define the phrase "interested parties." But this word is modified by the words "relevant domestic producers, consumers." So the phrase "relevant domestic" would modify the word "consumer" as well, not just "producers." I think, attention should be called to that.

Senator Magsaysay. Mr. President, I think one of the reasons why the gentleman wants to narrow the definition of "consumer" to an entity or a group would be to avoid any

ordinary person, any so-called Tom, Dick or Harry--not Harry and Ping--to come in and just get involved in issues which are more addressed to local producers or processors.

So, we will not object to the input of the gentleman from Cagayan of a publication on any amendment to improve the measure coming from the gentleman from Cebu.

Senator Osmeña (S). I thank the gentleman for that, Mr. President.

I do not mean to exclude even the consuming public, but they must be organized. We used to have a group here that is practically dead now.

The DTI should know the name of that group. It was headed by a lady. She is Polly Cayetano of the Consumers' Union of the Philippines. But of course, it has become a one-woman show. If such a group like that develops, they would have some validity in coming up with issues that would affect the public interest. But that is what I mean, Mr. President, otherwise the Tariff Commission and the Secretary's Office would be swamped with individual petitions, and we want to save them from that trouble.

Mr. President, there are some numbers I would like to study including AO No. 16. May I ask that I be allowed to suspend my interpellations today and reserve my right to continue my interpellations at a later date. As I understand it, the Minority Leader also would like to take his turn in interpellating. I would like to thank the Minority Leader for giving me the first crack this afternoon.

SUSPENSION OF CONSIDERATION OF S. NO. 2033

Senator Tatad. Mr. President, with that manifestation, 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, Thursday, the 25th of May, year 2000.

The President. Is there any objection? [Silence]
There being none, the session is suspended until ten o'clock tomorrow morning, 25th of May, year 2000.

It was 5:41 p.m.