

The President Pro Tempore. Referred to the Committees on Local Government; and Constitutional Amendments, Revision of Codes and Laws

COMMITTEE REPORT

The Secretary. Committee Report No. 11 prepared and submitted jointly by the Committees on Ways and Means, Trade and Commerce and Constitutional Amendments, Revision of Codes and Laws on Senate Bill No. 1330 with Senators Flavio and Enrile as authors thereof, entitled

AN ACT TO PROVIDE THE RULES FOR THE IMPOSITION OF COUNTERVAILING DUTIES ON THE IMPORTATION OF SUBSIDIZED PRODUCTS, COMMODITIES OR ARTICLES OF COMMERCE, AMENDING FOR THE PURPOSE SECTION 302 OF THE TARIFF AND CUSTOMS CODES, AS AMENDED, AND FOR OTHER PURPOSES,

recommending its approval in substitution of Senate Bill Nos. 87 and 765.

Sponsors: Senators Enrile, Magsaysay Jr. and Roco

The President Pro Tempore. To the Calendar for Ordinary Business

BILL ON SECOND READING
S. No. 1220 -- The Securities Act of 1998
(Continuation)

Senator Drilon. Mr. President, I move that we resume consideration of Senate Bill No. 1220, as reported out under Committee Report No. 6.

The President Pro Tempore. Is there any objection? [Silence] There being none, resumption of consideration of Senate Bill No. 1220 is now in order.

Who is the sponsor?

Senator Drilon. Senator Roco, Mr. President. After we resume consideration, we will call on Senator Roco.

The President Pro Tempore. Senator Roco is recognized.

Senator Drilon. We are now in the period of individual amendments. May I ask the Chair to recognize the Minority Leader, Sen. Teofisto T. Guingona Jr., for the individual amendments. But before that, Mr. President, there was a new version distributed to the senators. This is the version dated

November 12 which already includes the committee amendments approved by the Chamber. We therefore ask our colleagues that for purposes of the debate on the individual amendments, this version be used as basis.

Senator Guingona. Mr. President.

The President Pro Tempore. My version here is dated November 11, Mr. President.

SUSPENSION OF SESSION

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

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

Please provide the Minority Leader with an updated version.

It was 3:26 p.m.

RESUMPTION OF SESSION

At 3:27 p.m., the session was resumed.

The President Pro Tempore. The session is resumed. Senator Guingona is recognized.

Senator Guingona. May I refer the distinguished sponsor to page 2.

Senator Roco. Mr. President.

The President Pro Tempore. Senator Roco is recognized.

Senator Roco. Before the distinguished Minority Leader commences, may I just mention why the date became November 12. Last Thursday, although it was technically a continuation of the November 11 session, we did approve the last committee amendments. So the staff could not theoretically put it as November 11 because it, in fact, happened on November 12. That was the time there was a briefing on national security. It is reflected in the *Journal*. So, it is now called the draft of November 12. Should there be any departure, we will just refer to the one that was dated November 11 but this is now as duly approved and cleaned up by the staff.

I will now proceed to page 2.

The President Pro Tempore. May the Chair know if Senator Guingona is now provided with the latest version as of November 12?

RECORD OF THE SENATE

TUESDAY, DECEMBER 1, 1998

ROLLCALL

OPENING OF THE SESSION

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

The President. The 40th session of the First Regular Session of the Eleventh Congress is hereby called to order.

Let us all stand for the opening prayer to be led by Sen. Sergio R. Osmeña III.

Everybody rose for the prayer.

PRAYER

Senator Osmeña III. Almighty Father,

Look down upon us this day. You are our guide and our protector as we stumble through the dark towards an uncertain future.

O Lord, how swiftly have the days passed us by. A few months ago, we commenced the work of this Congress, full of hopes of what we could accomplish for our country and our people. Now, as the year end approaches, much of our work remains undone.

Light as many fires in our hearts as are needed to make us realize the irreplaceable value of every hour, every minute.

Lord, beyond these halls are millions who suffer from hunger and deprivation; children with no future, and victims who cry out for justice. They all look to us for succor, help and deliverance. Fill us, Lord, with a greater sense of the urgency, so that we may face the challenges before us with greater boldness and audacity.

Father, even as we confront the stark realities of this troubled world, let all the things to which our hearts go out be beautified by Your love.

Give us the light to see Your will, the courage to accept it, and the strength to do it.

We ask You this in the name of Christ our Lord.

Amen.

The President. Thank you, Senator Osmeña.

The Secretary will please call the roll.

The Secretary, reading:

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

The President. With 15 senators present, there is a quorum.

THE JOURNAL

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

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

The Secretary will read the Reference of Business.

REFERENCE OF BUSINESS

MESSAGE OF THE PRESIDENT OF THE PHILIPPINES

* Arrived after the roll call

** On official mission

*** On official mission but arrived after the roll call

The President. Referred to the Committees on Local Government; and National Defense and Security

The Secretary. Resolution No. 98-59, current series, of the *Sangguniang Bayan* of Odiongan, Romblon, supporting the approval of House Bill No. 3265 which seeks to convert the Romblon State College (RSC) to Romblon State University (RSU).

The President. Referred to the Committee on Education, Arts and Culture

The Majority Leader is recognized.

RESOLUTION ON SECOND READING
S. Jt. Res. No. 7 - Increasing Daily Subsistence Allowance of all Uniformed Personnel
(Continuation)

Senator Drilon. Mr. President, I move that we resume consideration of the debates on Senate Joint Resolution No. 7 as reported out under Committee Report No. 10. This is the proposed joint resolution expressing the sense of Congress to increase the daily subsistence allowance of all officers, enlisted personnel, et cetera.

The President. Is there any objection? *[Silence]* There being none, resumption of consideration of Senate Joint Resolution No. 7 is now in order.

Senator Drilon. May we ask the Chair to recognize Sen. Rodolfo Biazon, the author of the resolution.

The President. Senator Biazon, the author, is recognized.

Senator Drilon. We are now in the period of committee amendments. May we know from the principal author if there are committee amendments.

Senator Biazon. Mr. President, the committee does not offer any committee amendments.

Senator Drilon. We therefore move to close the period of committee amendments.

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

Senator Drilon. We are now in the period of individual amendments. Our colleagues have not indicated any proposed individual amendments. May we therefore move that we close the period of individual amendments.

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

APPROVAL OF S. JT. RES. NO. 7 ON SECOND READING

Senator Drilon. Mr. President, I move that we vote on Second Reading on Senate Joint Resolution No. 7.

The President. Is there any objection? *[Silence]* There being none, we shall now vote on Second Reading on Senate Joint Resolution No. 7.

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

Several Members. *Aye*.

The President. As many as are against the resolution, say *nay*. *[Silence]*

Senate Joint Resolution No. 7 is approved on Second Reading.

Senator Biazon. Thank you, Mr. President.

SPECIAL ORDERS

Senator Drilon. Mr. President, I move that we transfer from the Calendar for Ordinary Business to the Calendar for Special Orders Committee Report No. 11 on Senate Bill No. 1330, entitled

AN ACT TO PROVIDE THE RULES FOR THE IMPOSITION OF COUNTERVAILING DUTIES ON THE IMPORTATION OF SUBSIDIZED PRODUCTS, COMMODITIES OR ARTICLES OF COMMERCE AMENDING FOR THE PURPOSE SECTION 302 OF THE TARIFF AND CUSTOMS CODE, AS AMENDED, AND FOR OTHER PURPOSES.

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

SUSPENSION OF SESSION

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

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

It was 3:28 p.m.

RESUMPTION OF SESSION

At 3:30 p.m., the session was resumed.

The President. The session is resumed. The Majority Leader is recognized.

BILL ON SECOND READING

S. No. 1330 - Imposition of Countervailing Duties

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

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

With the permission of the Body, the Secretary will read only the title of the bill without prejudice to inserting in the *Record* the full text thereof.

The Secretary. Senate Bill No. 1330, entitled

AN ACT TO PROVIDE THE RULES FOR THE IMPOSITION OF COUNTERVAILING DUTIES ON THE IMPORTATION OF SUBSIDIZED PRODUCTS, COMMODITIES OR ARTICLES OF COMMERCE, AMENDING FOR THE PURPOSE SECTION 302 OF THE TARIFF AND CUSTOMS CODE, AS AMENDED, AND FOR OTHER PURPOSES

The following is the full text of the bill:

Senate Bill No. 1330

AN ACT TO PROVIDE THE RULES FOR THE IMPOSITION OF COUNTERVAILING DUTIES ON THE IMPORTATION OF SUBSIDIZED PRODUCTS, COMMODITIES OR ARTICLES OF COMMERCE, AMENDING FOR THE PURPOSE SECTION 302 OF THE TARIFF AND CUSTOMS CODE, AS AMENDED, AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Section 302 of the Tariff and Customs Code as amended is hereby further amended as follows:

"Section 302. Countervailing Duty

"[a. Whenever any article is directly or indirectly granted any bounty, subsidy or subvention upon its production, manufacture or exportation in the country of origin and/or exportation and the importation of which has been determined by the Secretary, after investigation and report of the Commission, is likely to injure an established industry in the Philippines, there shall be levied a countervailing duty equal to the ascertained or estimated amount of such bounty, subsidy or subvention: *Provided*, That the injury criterion to a domestic industry shall be applied only in the case of imports from countries which adhere to the GATT Code on Subsidies and Countervailing Duties: *Provided, further*, That the exemption of any exported article from duty or tax imposed on like articles when destined for consumption in the country of origin and/or exportation or the refunding of such duty or tax, shall not be deemed to constitute a grant of a bounty, subsidy or subvention within the meaning of this subsection: *Provided, furthermore*, That should an article be allowed drawback by the country of origin and/or exportation, only the ascertained or estimated excess of the amount of the drawback over the total amount of duties and/or internal taxes, if any, shall constitute a bounty, subsidy or subvention: *Provided, finally*, That petitions for imposition of countervailing duty shall be filed with the Secretary of Finance. Upon finding of a *prima facie* case of bounty, subsidy or subvention enjoyed by the imported article and injury to, or likelihood of injury to a domestic industry, the Secretary shall refer the case to the Tariff Commission for investigation and shall instruct the Commissioner of Customs to require the filing of countervailing bonds for importation entered during the pendency of countervailing proceedings;]

"[b. The Secretary shall after receipt of the reports of the Commission, decide whether the article in question is granted any bounty, subsidy or subvention and if so fix the countervailing duty equal to the ascertained or estimated bounty, subsidy or subvention. He shall give due notice of his decision and shall direct the Commissioner of Customs to cause the countervailing duty to be levied, collected and paid addition to any ordinary duties, taxes

and charges imposed by law on such articles and on articles of the same specific kind of class subsequently imported under similar circumstances;]

"[c. Pending investigation and final decision of the case, the article in question shall be released from customs custody to the owner upon the filing of a bond equal to the ascertained or estimated amount of bounty, subsidy or subvention as provisionally determined by the Secretary and the Commission;]

"[d. The article, if not previously released under bond as provided for in this Section, shall be released after payment by the party concerned of the corresponding countervailing duty in addition to any ordinary duties, taxes and charges, if any, or re-exported upon the filing of a bond in an amount equal to the estimated dutiable values of the article or an amount not to exceed the amount of bounty, subsidy or subvention, conditioned upon the presentation of a landing certificate issued by a consular officer of the Philippines at the country of destination. If the article has been previously released under bond, the party concerned shall be required to pay the corresponding countervailing duty in addition to ordinary duties, taxes and other charges if any;]

"[e. Whenever the Commission, on its own motion or upon application of any interested party, finds that the conditions which necessitated the imposition of the countervailing duty has ceased to exist, it shall submit the necessary recommendation to the Secretary for the discontinuance of the imposition of that duty. Any order under this Section by the secretary shall be published in the Official Gazette and/or in a newspaper of general circulation;]

"[f. Any countervailing decision promulgated by the secretary shall be effective for a period of five (5) years from the time of its promulgation except upon the representation of the interested party of the necessity to continue the implementation of said decision, in which case the Secretary shall advise the Commission to conduct an investigation to

determine whether the conditions in subsection 'a' still exist. The action for extension shall be brought before the Secretary at least six (6) months before the expiration of the period.]

"[The findings of the Commission shall be submitted to the Secretary at least three (3) months before the expiration of the period.]

"WHENEVER ANY PRODUCT, COMMODITY, OR ARTICLE OF COMMERCE IS GRANTED, DIRECTLY OR INDIRECTLY, BY THE GOVERNMENT IN THE COUNTRY OF ORIGIN OR EXPORTATION, ANY KIND OR FORM OF SPECIFIC SUBSIDY UPON THE PRODUCTION, MANUFACTURE, OR EXPORTATION OF SUCH PRODUCT, COMMODITY OR ARTICLE, AND THE IMPORTATION OF SUCH SUBSIDIZED PRODUCT, COMMODITY OR ARTICLE HAS BEEN DETERMINED BY THE SECRETARY OF TRADE AND INDUSTRY, IN THE CASE OF NON-AGRICULTURAL PRODUCT, COMMODITY OR ARTICLE, OR BY THE SECRETARY OF AGRICULTURE, IN THE CASE OF AGRICULTURAL PRODUCT, COMMODITY OR ARTICLE (BOTH OF WHOM ARE HEREINAFTER SIMPLY REFERRED TO AS "THE SECRETARY, AS THE CASE MAY BE) AFTER FORMAL INVESTIGATION AND AFFIRMATIVE FINDINGS BY THE TARIFF COMMISSION (HEREINAFTER REFERRED TO AS "THE COMMISSION"), TO HAVE CAUSED OR THEREATENT TO CAUSE MATERIAL INJURY TO A DOMESTIC INDUSTRY, OR TO MATERIALLY RETARD OR THREATEN TO MATERIALLY RETARD THE GROWTH OR THE ESTABLISHMENT OF A DOMESTIC INDUSTRY, A COUNTERVAILING DUTY EQUAL TO THE ASCERTAINED AMOUNT OF THE SUBSIDY SHALL BE LEVIED AND COLLECTED ON SUCH PRODUCT, COMMODITY OR ARTICLE AND ON IDENTICAL OR LIKE PRODUCT, COMMODITY OR ARTICLE THEREAFTER IMPORTED TO THE PHILIPPINES UNDER LIKE CIRCUMSTANCE, IN ADDITION TO ANY ORDINARY DUTIES, TAXES AND CHARGES IMPOSED BY LAW ON THE IMPORTED PRODUCT, COMMODITY OR ARTICLE.

"A. INITIATION OF ACTION. - ANY PERSON WHETHER NATURAL OR JURIDICAL WHO HAS AN INTEREST TO PROTECT SHALL FILE A VERIFIED PETITION WITH THE SECRETARY, WHICH PETITION SHALL BE ACCOMPANIED BY DOCUMENTS IF ANY, WHICH ARE REASONABLY AVAILABLE TO THE PETITIONER AND WHICH CONTAIN INFORMATION SUPPORTING THE FACTS THAT ARE ESSENTIAL TO ESTABLISH THE PRESENCE OF THE ELEMENTS REQUIRED TO BE PRESENT FOR THE IMPOSITION OF A COUNTERVAILING DUTY, AND SHALL FURTHER STATE, AMONG OTHERS; (1) THE DOMESTIC INDUSTRY TO WHICH THE PETITIONER BELONGS AND THE PARTICULAR DOMESTIC PRODUCT, COMMODITY OR ARTICLE OR CLASS OF DOMESTIC PRODUCT, COMMODITY OR ARTICLE BEING PREJUDICED; (2) THE NUMBER OF PERSONS EMPLOYED, THE TOTAL CAPITAL INVESTED IN AND THE PRODUCTION AND SALES VOLUME AND THE AGGREGATE PRODUCTION CAPACITY OF THE DOMESTIC INDUSTRY THAT HAS BEEN MATERIALLY INJURED OR THREATENED TO BE MATERIALLY INJURED OR WHOSE GROWTH OR THREATENED TO BE MATERIALLY RETARDED; (3) THE NAME AND ADDRESS OF THE IMPORTER (OR THE NAMES AND ADDRESSES OF THE IMPORTERS, IF THERE ARE SEVERAL), THE ESTIMATED AGGREGATE OR CUMULATIVE QUANTITY, THE PORT OR PORTS AND THE DATE OR DATES OF ARRIVAL, THE IMPORT ENTRY DECLARATIONS, THE VALUE PER IMPORT ENTRY DECLARATION OF THE IMPORTED PRODUCT, COMMODITY OR ARTICLE AND THE ESTIMATED AMOUNT OF THE SUBSIDY THEREON; AND (4) SUCH OTHER PARTICULARS, FACTS OR ALLEGATIONS AS ARE NECESSARY TO JUSTIFY THE IMPOSITION OF COUNTERVAILING DUTY ON THE IMPORTED PRODUCT, COMMODITY OR ARTICLE.

THE APPLICATION SHALL BE CONSIDERED TO HAVE BEEN MADE BY OR ON BEHALF OF THE DOMESTIC INDUSTRY IF IT IS SUPPORTED BY THOSE DOMESTIC

PRODUCERS WHOSE COLLECTIVE OUTPUT CONSTITUTES MORE THAN FIFTY (50%) PERCENT OF THE TOTAL PRODUCTION OF THE LIKE PRODUCT PRODUCED BY THAT PORTION OF THE DOMESTIC INDUSTRY EXPRESSING EITHER SUPPORT FOR OR OPPOSITION TO THE APPLICATION. HOWEVER, NO INVESTIGATION SHALL BE INITIATED WHEN DOMESTIC PRODUCERS EXPRESSLY SUPPORTING THE APPLICATION ACCOUNT FOR LESS THAN TWENTY-FIVE (25%) PERCENT OF TOTAL PRODUCTION OF THE LIKE PRODUCT PRODUCED BY THE DOMESTIC INDUSTRY.

IN SPECIAL CIRCUMSTANCES, THE AUTHORITIES CONCERNED ARE HEREBY AUTHORIZED TO INITIATE AN INVESTIGATION WITHOUT HAVING RECEIVED A WRITTEN APPLICATION BY OR ON BEHALF OF A DOMESTIC INDUSTRY FOR THE INITIATION OF SUCH INVESTIGATION IN THE EVENT AND ONLY IF THEY HAVE SUFFICIENT EVIDENCE OF THE EXISTENCE OF A SUBSIDY, INJURY AND CAUSAL LINK, TO JUSTIFY THE INITIATION OF AN INVESTIGATION.

"B. NOTICE TO THE SECRETARY OF FINANCE. - UPON HIS RECEIPT OF THE PETITION, THE SECRETARY SHALL, WITHOUT DELAY, FURNISH THE SECRETARY OF FINANCE WITH A COMPLETE COPY OF THE PETITION, INCLUDING ITS ANNEXES, IF ANY, AND REQUEST THE LATTER TO IMMEDIATELY INFORM THE COMMISSIONER OF CUSTOMS REGARDING THE FILING AND PENDING OF THE PETITION FOR THE IMPOSITION OF COUNTERVAILING DUTY AND TO INSTRUCT HIM TO GATHER, HOLD AND SECURE ALL IMPORT ENTRIES COVERING SUCH ALLEGEDLY SUBSIDIZED PRODUCT, COMMODITY OR ARTICLE WITHOUT LIQUIDATION, AND TO WITHHOLD THE RELEASE OF ANY OF SUCH PRODUCT, COMMODITY OR ARTICLE UNLESS SO INSTRUCTED OTHERWISE IN WRITING BY THE SECRETARY, AND TO SUBMIT TO THE SECRETARY, THROUGH THE SECRETARY OF FINANCE, A COMPLETE REPORT ON THE NUMBER,

VOLUME, AND VALUE OF THE IMPORTATION OF THE ALLEGEDLY SUBSIDIZED PRODUCT, COMMODITY OR ARTICLE WITHIN TEN (10) DAYS FROM RECEIPT BY THE COMMISSIONER OF CUSTOMS OF THE INSTRUCTION OF THE SECRETARY OF FINANCE, AND TO MAKE SUCH SIMILAR ADDITIONAL REPORTS EVERY TEN (10) DAYS THEREAFTER.

"C. NOTICE TO AND ANSWER OF THE IMPORTER. - WITHIN FIVE (5) DAYS FROM HIS RECEIPT OF THE PETITION, THE SECRETARY SHALL NOTIFY THE IMPORTER AND SHALL FURNISH HIM WITH A COPY OF THE PETITION AND ITS ANNEXES, IF ANY, EITHER BY PERSONAL DELIVERY OR BY REGISTERED MAIL, WHICHEVER IS MORE CONVENIENT AND EXPEDITIOUS.

"THE IMPORTER SHALL, NOT LATER THAN TEN (10) DAYS FROM HIS RECEIPT OF THE NOTICE, SUBMIT HIS ANSWER, INCLUDING SUCH RELEVANT EVIDENCE OR INFORMATION AS ARE REASONABLY AVAILABLE TO HIM TO CONTROVERT THE ALLEGATIONS OF THE PETITION, EITHER BY PERSONAL DELIVERY OR BY REGISTERED MAIL. IF THE IMPORTER FAILS TO SUBMIT HIS ANSWER, HE SHALL BE DECLARED IN DEFAULT, IN WHICH CASE, THE SECRETARY SHALL MAKE SUCH PRELIMINARY DETERMINATION OF THE CASE ON THE BASIS OF THE FACTS ALLEGED IN THE PETITION AND THE SUPPORTING INFORMATION AND DOCUMENTS SUPPLIED BY THE PETITIONER.

"D. PRELIMINARY DETERMINATION. - NOT LATER THAN TEN (10) DAYS FROM HIS RECEIPT OF THE ANSWER OF THE RESPONDENT IMPORTER, THE SECRETARY SHALL, ON THE BASIS OF THE PETITION OF THE AGGRIEVED PARTY AND THE ANSWER OF THE RESPONDENT IMPORTER AND THEIR RESPECTIVE SUPPORTING DOCUMENTS OR INFORMATION, MAKE A PRELIMINARY DETERMINATION WHETHER OR NOT A *PRIMA FACIE* CASE EXISTS FOR THE IMPOSITION OF A

COUNTERVAILING DUTY ON THE ALLEGEDLY SUBSIDIZED IMPORTED PRODUCT, COMMODITY OR ARTICLE.

"UPON DETERMINATION BY THE SECRETARY OF THE EXISTENCE OF A *PRIMA FACIE* CASE, HE SHALL, WITHOUT DELAY, TRANSMIT THE RECORDS OF THE CASE CONSISTING OF THE PETITION AND THE ANSWER, INCLUDING ALL THE RELEVANT DOCUMENTS, INFORMATION AND THE PERIODIC REPORTS OF THE COMMISSIONER OF CUSTOMS, TO THE COMMISSION FOR ITS IMMEDIATE FORMAL INVESTIGATION OF THE CASE. THE SECRETARY SHALL, IN ADDITION, IMMEDIATELY ISSUE, THROUGH THE SECRETARY OF FINANCE, A WRITTEN INSTRUCTION TO THE COMMISSIONER OF CUSTOMS AUTHORIZING THE RELEASE OF THE ALLEGEDLY SUBSIDIZED IMPORTED PRODUCT, COMMODITY OR ARTICLE UPON THE PAYMENT OF THE CORRESPONDING ORDINARY DUTIES, TAXES AND OTHER CHARGES IMPOSED BY LAW ON SUCH PRODUCT, COMMODITY OR ARTICLE AND UPON THE DEPOSIT WITH THE BUREAU OF CUSTOMS OF A CASH BOND EQUAL TO THE ESTIMATED COUNTERVAILING DUTY THAT MAY BE IMPOSED UPON SUCH ALLEGEDLY SUBSIDIZED IMPORTED PRODUCT, COMMODITY OR ARTICLE. THE CASH BOND SHALL BE DEPOSITED WITH A GOVERNMENT DEPOSITORY BANK AND SHALL BE HELD IN TRUST FOR THE RESPONDENT IMPORTER.

"IF NO *PRIMA FACIE* CASE EXISTS, THE SECRETARY SHALL DISMISS THE PETITION WITH COST TO THE PETITIONER AND SHALL PROPERLY NOTIFY ALL THE PARTIES CONCERNED, INCLUDING THE COMMISSIONER OF CUSTOMS THROUGH THE SECRETARY OF FINANCE, REGARDING SUCH DISMISSAL.

"E. INVESTIGATION BY THE COMMISSION. - IMMEDIATELY UPON ITS RECEIPT OF THE RECORDS OF THE CASE FROM THE SECRETARY, THE COMMISSION SHALL FORTHWITH SET THE CASE FOR

FORMAL INVESTIGATION AND SHALL ACCORDINGLY NOTIFY IN WRITING THE AGGRIEVED PARTY AND THE RESPONDENT IMPORTER AND, IN ADDITION, GIVE PUBLIC NOTICE TO THE EXACT INITIAL DATE, TIME AND PLACE OF THE FORMAL INVESTIGATION THROUGH THE PUBLICATION OF SUCH PARTICULARS AND A CONCISE SUMMARY OF THE PETITION IN TWO (2) NEWSPAPERS OF GENERAL CIRCULATION.

THE COMMISSION IS HEREBY AUTHORIZED TO REQUIRE ANY INTERESTED PARTY ALLOW ACCESS TO, OR OTHERWISE PROVIDE, NECESSARY INFORMATION TO ENABLE THE COMMISSION TO EXPEDITE THE INVESTIGATION.

IN CASES IN WHICH ANY INTERESTED PARTY REFUSES ACCESS TO, OR OTHERWISE DOES NOT PROVIDE, NECESSARY INFORMATION WITHIN A REASONABLE PERIOD OF TIME OR SIGNIFICANTLY IMPEDES THE INVESTIGATION, PRELIMINARY AND FINAL DETERMINATIONS, AFFIRMATIVE OR NEGATIVE, MAY BE MADE ON THE BASIS OF THE FACTS AVAILABLE.

"IN THE FORMAL INVESTIGATION, THE COMMISSION SHALL ESSENTIALLY DETERMINE: (1) THE NATURE AND AMOUNT OF THE SUBSIDY BEING ENJOYED BY THE IMPORTED PRODUCT, COMMODITY OR ARTICLE IN QUESTION; (2) THE PRESENCE AND EXTENT OF THE MATERIAL INJURY SUFFERED BY OR THE PRESENCE AND DEGREE OF THE THREAT OF MATERIAL INJURY TO THE AFFECTED DOMESTIC INDUSTRY; AND (3) THE EXISTENCE OF A CAUSAL RELATIONSHIP BETWEEN THE ALLEGEDLY SUBSIDIZED IMPORTED PRODUCT, COMMODITY OR ARTICLE AND THE MATERIAL INJURY OR THREAT OF MATERIAL INJURY TO THE AFFECTED DOMESTIC INDUSTRY.

"THE FORMAL INVESTIGATIONS SHALL BE CONDUCTED IN A SUMMARY MANNER. NO DILATORY TACTICS NOR UNNECES-

SARY OR UNJUSTIFIED DELAYS SHALL BE ALLOWED, AND THE TECHNICAL RULES OF EVIDENCE SHALL NOT BE APPLIED STRICTLY.

"THE COMMISSION SHALL COMPLETE THE FORMAL INVESTIGATION AND SUBMIT ITS REPORT TO THE SECRETARY NOT LATER THAN SIXTY (60) DAYS FROM THE DATE OF ITS RECEIPT OF THE RECORDS OF THE CASE FROM THE SECRETARY.

"F. DETERMINATION OF THE EXISTENCE OF SUBSIDY. - A SUBSIDY IS DEEMED TO EXIST WHEN THE GOVERNMENT OR ANY PUBLIC BODY IN THE COUNTRY OF ORIGIN OR EXPORTATION OF THE IMPORTED PRODUCT, COMMODITY OR ARTICLE EXTENDS FINANCIAL CONTRIBUTION TO THE PRODUCER, A MANUFACTURER OR EXPORTER OF SUCH PRODUCT, COMMODITY OR ARTICLE IN THE FORMS OF (1) DIRECT TRANSFER OF FUNDS SUCH AS GRANTS, LOANS OR EQUITY INFUSION, OR (2) POTENTIAL DIRECT TRANSFER OF FUNDS SUCH AS LOAN GUARANTEES, OR (3) FORGONE OR UNCOLLECTED GOVERNMENT REVENUE THAT IS OTHERWISE DUE FROM THE PRODUCER, MANUFACTURER OR EXPORTER OF THE PRODUCT, COMMODITY OR ARTICLE, OR (4) GOODS OR SERVICES OTHER THAN GENERAL INFRASTRUCTURE PROVIDED BY THE GOVERNMENT IN THE COUNTRY OF ORIGIN OR EXPORTATION TO THE PRODUCER, MANUFACTURER OR EXPORTER, OR (5) PURCHASES OF GOODS FROM THE PRODUCER, MANUFACTURER OR EXPORTER BY THE GOVERNMENT OF THE COUNTRY OF ORIGIN OR EXPORTATION IN ORDER TO STRENGTHEN THE COMPETITIVE ECONOMIC AND FINANCIAL CAPACITY OF SUCH PRODUCER, MANUFACTURER OR EXPORTER, OR (6) WHEN THE GOVERNMENT IN THE COUNTRY OF ORIGIN OR EXPORTATION MAKES PAYMENTS TO A FUNDING MECHANISM, OR ENTRUSTS OR DIRECTS A PRIVATE BODY TO CARRY OUT ONE OR MORE OF THE ACTIVITIES MENTIONED IN THE PRECEDING

NUMBERS, OR (7) WHEN THERE IS ANY FORM OF INCOME OR PRICE SUPPORT GIVEN DIRECTLY OR INDIRECTLY BY THE GOVERNMENT OR ANY PUBLIC BODY IN THE COUNTRY OF ORIGIN OR EXPORTATION TO THE PRODUCER, MANUFACTURER OR EXPORTER OF THE IMPORTED PRODUCT, COMMODITY OR ARTICLE.

"G. DETERMINATION OF MATERIAL INJURY. - THE PRESENCE AND EXTENT OF MATERIAL INJURY OR THE PRESENCE AND DEGREE OF THE THREAT OF MATERIAL INJURY TO DOMESTIC INDUSTRY BECAUSE OF THE SUBSIDIZED IMPORTS, SHALL BE DETERMINED BY THE COMMISSION ON THE BASIS OF POSITIVE EVIDENCE AND SHALL REQUIRE AN OBJECTIVE EXAMINATION OF (1) THE VOLUME OF THE SUBSIDIZED IMPORTS, THAT IS, WHETHER THERE HAS BEEN A SIGNIFICANT INCREASE IN SUBSIDIZED IMPORTS, EITHER IN ABSOLUTE TERMS OR RELATIVE TO PRODUCTION OR CONSUMPTION IN THE DOMESTIC MARKET; (2) THE EFFECT OF THE SUBSIDIZED IMPORTS ON PRICES IN THE DOMESTIC MARKET FOR LIKE PRODUCT, COMMODITY OR ARTICLE, THAT IS, WHETHER THERE HAS BEEN A SIGNIFICANT PRICE UNDERCUTTING BY THE SUBSIDIZED IMPORTS AS COMPARED WITH THE PRICE OF A LIKE PRODUCT, COMMODITY OR ARTICLE IN THE DOMESTIC MARKET, OR WHETHER THE EFFECT OF SUCH IMPORTS IS OTHERWISE TO DEPRESS PRICES TO A SIGNIFICANT DEGREE OR TO PREVENT PRICE INCREASES, WHICH OTHERWISE WOULD HAVE OCCURRED, TO A SIGNIFICANT DEGREE; AND (3) THE RESULTING EFFECT OF THE SUBSIDIZED IMPORTS ON THE DOMESTIC PRODUCERS OR MANUFACTURERS OF LIKE PRODUCT, COMMODITY OR ARTICLE, INCLUDING AN EVALUATION OF ALL RELEVANT ECONOMIC FACTORS AND INDICES HAVING A BEARING ON THE STATE OF THE DOMESTIC INDUSTRY CONCERNED, SUCH AS, BUT NOT LIMITED TO, ACTUAL AND POTENTIAL DECLINE IN OUTPUT, SALES, MARKET SHARE,

PROFITS, PRODUCTIVITY, RETURN ON INVESTMENTS, OR UTILIZATION OF CAPACITY; OTHER FACTORS AFFECTING DOMESTIC PRICES; THE ACTUAL OR POTENTIAL NEGATIVE EFFECTS OF SUCH SUBSIDIZED IMPORTS ON THE CASHFLOW, INVENTORIES, EMPLOYMENT, WAGES, GROWTH, ABILITY TO RAISE CAPITAL OR INVESTMENT IN THE AFFECTED DOMESTIC INDUSTRY; THE VOLUMES AND PRICES OF NON-SUBSIDIZED IMPORTS OF THE PRODUCT, COMMODITY OR ARTICLE IN QUESTION; CONTRACTION IN DOMESTIC DEMAND OR CHANGES IN THE PATTERNS OF DOMESTIC CONSUMPTION; TRADE RESTRICTIVE PRACTICES OF AND COMPETITION BETWEEN THE FOREIGN AND DOMESTIC PRODUCERS OR MANUFACTURERS; DEVELOPMENT OF TECHNOLOGY AND THE PRODUCTIVITY OF THE DOMESTIC INDUSTRY; ANY KNOWN FACTORS OTHER THAN THE SUBSIDIZED IMPORTS WHICH AT THE SAME TIME ARE INJURING THE DOMESTIC INDUSTRY; AND, IN THE CASE OF AGRICULTURE, WHETHER THERE HAS BEEN AN INCREASED BURDEN ON THE SUPPORT PROGRAMS OF THE NATIONAL GOVERNMENT.

"H. CUMULATION OF IMPORTS. - WHEN IMPORTS OF PRODUCTS, COMMODITIES OR ARTICLES FROM MORE THAN ONE COUNTRY ARE SIMULTANEOUSLY THE SUBJECT OF AN INVESTIGATION FOR THE IMPOSITION OF COUNTERVAILING DUTY, THE COMMISSION MAY CUMULATIVELY ASSESS THE EFFECTS OF SUCH IMPORTS ONLY IF THE COMMISSION IS CONVINCED THAT (1) THE AMOUNT OF SUBSIDIZATION ESTABLISHED IN RELATION TO THE IMPORTS FROM EACH COUNTRY IS MORE THAN *DE MINIMIS* AS DEFINED IN EXISTING INTERNATIONAL TRADE AGREEMENTS OF WHICH THE REPUBLIC OF THE PHILIPPINES IS A PARTY; (2) THE VOLUME OF SUCH IMPORTS FROM EACH COUNTRY IS NOT NEGLIGIBLE; AND (3) A CUMULATIVE ASSESSMENT OF THE EFFECTS OF SUCH IMPORTS IS WARRANTED IN THE LIGHT OF THE

CONDITIONS OF COMPETITION BETWEEN THE IMPORTED PRODUCTS, COMMODITIES OR ARTICLES AND THE CONDITIONS OF COMPETITION BETWEEN THE IMPORTED PRODUCTS, COMMODITIES OR ARTICLES AND THE LIKE DOMESTIC PRODUCTS, COMMODITIES OR ARTICLES.

"I. THE COMMISSION SHALL, BEFORE A FINAL DETERMINATION IS MADE, INFORM ALL THE INTERESTED PARTIES OF THE ESSENTIAL FACTS UNDER CONSIDERATION WHICH FORM THE BASIS FOR THE DECISION TO APPLY DEFINITIVE MEASURES. SUCH DISCLOSURE SHOULD TAKE PLACE IN SUFFICIENT TIME FOR THE PARTIES TO DEFEND THEIR INTERESTS.

"J. IMPOSITION OF COUNTERVAILING DUTY. - THE SECRETARY SHALL, WITHIN TEN (10) DAYS FROM HIS RECEIPT OF THE FAVORABLE REPORT OF THE COMMISSION, ISSUE A DEPARTMENT ORDER IMPOSING THE COUNTERVAILING DUTY ON THE SUBSIDIZED IMPORTED PRODUCT, COMMODITY OR ARTICLE.

"IN CASE OF A FAVORABLE REPORT OF THE COMMISSION, THE CASH BOND SHALL BE APPLIED TO THE COUNTERVAILING DUTY ASSESSED. IF THE CASH BOND IS IN EXCESS OF THE COUNTERVAILING DUTY ASSESSED, THE REMAINDER SHALL BE RETURNED TO THE IMPORTER IMMEDIATELY. IF THE CASH BOND IS NOT ENOUGH TO COVER THE COUNTERVAILING DUTY ASSESSED, THE RESPONDENT IMPORTER SHALL BE IMMEDIATELY ASSESSED FOR THE DEFICIENCY AND SHALL PAY THE SAME WITHIN FIFTEEN (15) DAYS FROM HIS RECEIPT OF THE DEFICIENCY ASSESSMENT.

"IF THE RULING OF THE SECRETARY IN A PETITION FOR A COUNTERVAILING DUTY IS UNFAVORABLE TO THE PETITIONER, THE SECRETARY SHALL, AFTER THE LAPSE OF THE PERIOD FOR THE PETITIONER TO APPEAL TO THE

COURT OF TAX APPEALS, ISSUE, THROUGH THE SECRETARY OF FINANCE, A DEPARTMENT ORDER FOR THE IMMEDIATE RELEASE OF THE CASH BOND TO THE IMPORTER UNLESS THE COURT OF TAX APPEALS ORDERS OTHERWISE.

"K. DURATION AND REVIEW OF COUNTERVAILING DUTY. - AS A GENERAL RULE, ANY IMPOSITION OF COUNTERVAILING DUTY SHALL REMAIN IN FORCE ONLY AS LONG AS AND TO THE EXTENT NECESSARY TO COUNTERACT A SUBSIDIZATION WHICH IS CAUSING OR THREATENING TO CAUSE MATERIAL INJURY.

"HOWEVER, THE NEED FOR THE CONTINUED IMPOSITION OF THE COUNTERVAILING DUTY MAY BE REVIEWED BY THE COMMISSION, WHEN WARRANTED, UPON DIRECTION OF THE SECRETARY.

"ANY INTERESTED PARTY MAY ALSO PETITION THE SECRETARY FOR A REVIEW OF THE CONTINUED IMPOSITION OF THE COUNTERVAILING DUTY: *PROVIDED*, THAT A REASONABLE PERIOD OF TIME HAS ELAPSED SINCE THE IMPOSITION OF THE COUNTERVAILING DUTY, AND UPON SUBMISSION OF POSITIVE INFORMATION SUBSTANTIATING THE NEED FOR A REVIEW. INTERESTED PARTIES SHALL HAVE THE RIGHT TO REQUEST THE SECRETARY TO EXAMINE (1) WHETHER THE CONTINUED IMPOSITION OF THE COUNTERVAILING DUTY IS NECESSARY TO OFFSET THE SUBSIDIZATION; AND (2) WHETHER THE INJURY WOULD LIKELY CONTINUE OR RECUR IF THE COUNTERVAILING DUTY WERE REMOVED OR MODIFIED, OR BOTH.

"IF AS A RESULT OF THE REVIEW BY THE COMMISSION, THE SECRETARY DETERMINES THAT THE COUNTERVAILING DUTY IS NO LONGER NECESSARY OR WARRANTED, THE IMPOSITION OF THE COUNTERVAILING DUTY SHALL BE TERMINATED IMMEDIATELY AND ALL PARTIES CONCERNED SHALL BE NOTIFIED

ACCORDINGLY OF SUCH TERMINATION, INCLUDING AND ESPECIALLY THE COMMISSIONER OF CUSTOMS THROUGH THE SECRETARY OF FINANCE.

"NOTWITHSTANDING THE PROVISIONS OF THE PRECEDING PARAGRAPHS OF THIS SECTION, ANY COUNTERVAILING DUTY SHALL BE TERMINATED ON A DATE NOT LATER THAN FIVE (5) YEARS FROM THE DATE OF ITS IMPOSITION (OR FROM THE DATE OF THE MOST RECENT REVIEW IF THAT REVIEW HAS COVERED BOTH SUBSIDIZATION AND MATERIAL INJURY), UNLESS THE COMMISSION HAS DETERMINED, IN A REVIEW INITIATED AT LEAST SIX (6) MONTHS PRIOR TO THE TERMINATION DATE UPON THE DIRECTION OF THE SECRETARY OR UPON A DULY SUBSTANTIATED REQUEST MADE BY OR ON BEHALF OF THE AFFECTED DOMESTIC INDUSTRY, THAT THE TERMINATION OF THE COUNTERVAILING DUTY WOULD LIKELY LEAD TO THE CONTINUATION OR RECURRENCE OF THE SUBSIDIZATION AND MATERIAL INJURY.

"THE PROCEDURE AND EVIDENCE GOVERNING THE DISPOSITION OF THE PETITION FOR THE IMPOSITION OF COUNTERVAILING DUTY SHALL APPLY WITH THE EQUAL MEASURE TO ANY REVIEW CARRIED OUT UNDER THIS SECTION, AND ANY SUCH REVIEW SHALL BE CARRIED OUT EXPEDITIOUSLY AND SHALL BE CONCLUDED NOT LATER THAN ONE HUNDRED FIFTY (150) DAYS FROM THE DATE OF THE INITIATION OF SUCH A REVIEW.

"L. JUDICIAL REVIEW. - ANY INTERESTED PARTY WHO IS ADVERSELY AFFECTED BY A FINAL RULING OF THE SECRETARY IN CONNECTION WITH THE IMPOSITION OF COUNTERVAILING DUTY MAY FILE WITH THE COURT OF TAX APPEALS, EITHER BY PERSONAL DELIVERY OR BY REGISTERED MAIL, A PETITION FOR THE REVIEW OF SUCH RULING WITHIN FIFTEEN (15) DAYS FROM HIS RECEIPT OF NOTICE OF THE FINAL RULING OF THE SECRETARY: *PROVIDED, HOWEVER, THAT*

THE FILING OF SUCH PETITION FOR REVIEW SHALL NOT IN ANY WAY STOP, SUSPEND OR OTHERWISE TOLL THE IMPOSITION AND COLLECTION OF THE COUNTERVAILING DUTY ON THE IMPORTED PRODUCT, COMMODITY OR ARTICLE.

"THE PETITION FOR REVIEW SHALL COMPLY WITH THE SAME REQUIREMENTS AND SHALL FOLLOW THE SAME RULES OF PROCEDURE AND SHALL BE SUBJECT TO THE SAME DISPOSITION AS APPEALS IN CONNECTION WITH ADVERSE RULINGS ON TAX MATTERS TO THE COURT OF TAX APPEALS.

"M. COSTS OF SUIT. - THE COSTS OF THE PROCEEDINGS, INCLUDING THE FORMAL INVESTIGATION BY THE COMMISSION, SHALL BE BORNE BY THE LOSING PARTY."

SECTION 2. Rules and Regulations. - The Secretary of Trade and Industry in the case of non-agricultural product, commodity or article and the Secretary of Agriculture in the case of agricultural product, commodity or article shall issue all rules and regulations, that may be necessary for the effective and proper implementation of this Act.

SECTION 3. Separability Clause. - If any of the provisions of this Act is declared invalid by a competent court, the remainder of this Act or any provision not affected by such declaration of invalidity shall remain in force and effect.

SECTION 4. Repealing Clause. - All laws, decrees, ordinances, rules and regulations, executive or administrative orders, and such other presidential issuances as are inconsistent with any of the provisions of this Act are hereby repealed, amended or otherwise modified accordingly.

SECTION 5. Effectivity Clause. - This Act shall take effect after fifteen (15) days following its publication in at least two (2) newspapers of general circulation.

Approved ,

Senator Drilon. Mr. President, may I request the Chair to recognize the gentleman from Cagayan, Sen. Juan Ponce Enrile, for

The President. Sen. Juan Ponce Enrile is recognized for his sponsorship speech.

SPONSORSHIP SPEECH OF SENATOR ENRILE

Senator Enrile. Thank you, Mr. President, and the distinguished members of this Chamber.

Mr. President, today, the terms deregulations, liberalization, globalization, and market capitalism are concepts that are common to us. They had become household words to many people of this country because we have become a member of the international trading community by virtue of our adherence as a member of the World Trade Organization and the GATT agreement of 1994.

Because of this membership which, as a nation, we voluntarily accepted, we have become a part of a global market such that there is now a freer flow of goods not only from our country to other countries of the world, but more importantly from other member countries of the WTO international family into our economy.

Common sense will tell us—and I think there is no need for an elaborate explanation—that because of this condition, one may very well expect that the flow of foreign-made goods, whether industrial or agricultural, into our economy, would probably cause some degree of discomfort, if not injury, to domestic producers of like goods or products.

Realizing this, Mr. President, the signatories to the WTO agreement have seen fit to authorize member governments to take certain responsive measures to protect their local/domestic industries. I can mention at least three of such authorization under the WTO agreement that may be used by a country like ours to protect itself and its industries from the onrush of goods that would unfairly compete with like goods produced in our country.

In fact, Mr. President, we have debated in this Chamber one such measure—I refer to the anti-dumping bill—that this humble representation sponsored on the floor of the Senate not quite long ago.

Today, Mr. President, I am presenting to the Chamber for its consideration another measure, also authorized under the WTO Agreement, treating on another facet of international trade that could cause material injury to our local industries if not addressed.

I refer to those imported goods, be they agricultural or industrial, that are not only coming into our country under highly competitive pricing arrangement but actually being deliberately exported to us under the encouragement and sponsorship of the government of the exporting country through subsidization.

The bill that would deal with this, Mr. President, is now Senate Bill No. 1330, entitled

AN ACT TO PROVIDE THE RULES FOR THE IMPOSITION OF COUNTERVAILING DUTIES ON THE IMPORTATION OF SUBSIDIZED PRODUCTS, COMMODITIES OR ARTICLES OF COMMERCE, AMENDING FOR THE PURPOSE SECTION 302 OF THE TARIFF AND CUSTOMS CODE, AS AMENDED, AND FOR OTHER PURPOSES.

Mr. President, this is the second of a series of three measures that we ought to adopt or ought to have adopted a long time ago in order to protect our local industries. As I said, we have already adopted the anti-dumping duty bill. Now, we are going to deal with the countervailing duty bill.

This bill that I mentioned exacts or imposes a countervailing duty on subsidized products exported to our country by other countries. The extent and limit of the duty that we are authorized to impose in order to give some degree of protection to our local producers of like products is the level of subsidization done by the government of the exporting country.

Having said that, Mr. President, I would like to hasten the information that under the treaty, in order for a nation to be permitted to respond to subsidize imports by imposing a countervailing duty, that nation, such as ours, must show that the subsidized imports are causing material injury to domestic industries of like products.

I would like, at this point, to state that as we have already discussed this extensively in the course of our deliberation on the anti-dumping duty, the rules regarding the injury that must be established to justify the imposition of the countervailing duty on imported goods into our country are virtually the same as those for the anti-dumping bill that we have recommended for approval by Congress. I would like to put into the record, Mr. President, that in the international trading arena, distinction is made between export subsidies which are deliberately imposed or provided by a foreign government to promote the export of its particular product in world markets and domestic production of certain types of commodities for the domestic market, not necessarily for the export market.

Primarily, the measure that we are presenting today will deal with subsidization of products for export. But this does not prevent the application of the duty that we are proposing in Senate Bill No. 1330. In the event that subsidies intended for domestic market of the exporting country find their way into the Philippines, into our country, such subsidization will be reflected in the price of the goods that are marketed within our economy.

There is some degree of sensitivity in dealing with countervailing duty, Mr. President, because in contrast with the importation or exportation to us of dumped goods, subsidization of exports always—and I do not think of any exception—involves a government action of another country.

In the exportation to us of goods for dumping purposes, the actor is primarily a private enterprise. But in the exportation to us of subsidized goods, the actors are the private enterprise—that is the beneficiary of the subsidy—and it is government that grants the subsidy. This is the complicating factor added to this particular problem.

Issues of subsidies and countervailing duties are oftentimes more significantly visible because they involve higher levels of government-to-government diplomacy, unlike in the case of the dumping of goods where governments are not actually and directly involved.

In crafting this measure, we have taken care that we adhered quite closely to our commitments under the GATT treaty of 1994 and the WTO-Uruguay Round because it can certainly be expected that the foreign sovereign that imposed the subsidy or granted the subsidy will be displeased to have its action questioned by another sovereign.

And so, Mr. President, we have included in the draft of the bill as much as possible all those elements that are required by the WTO Agreement-Uruguay-Round to establish what is called "actionable subsidy." Meaning, that there must be a subsidy contingent upon export performance and a benefit granted to the specific industry or enterprise, which is the grantee of the subsidy; that the subsidy must be specific to that industry or enterprise; and, finally, that there must be a causal link between the subsidy and the injury to local industries in order to justify the imposition of the countervailing duty.

What are the subsidies that are actually proscribed under the treaty which are also proscribed under the measure that we are presenting and which would trigger a reason for the imposition of the countervailing duty? We have listed them in the measure, Mr. President.

For instance:

1. Direct transfer of funds from the government to the grantee of the subsidy such as grants-in-aid, loans or equity infusion;

2. Potential direct transfer of funds such as loan guarantees granted to a particular beneficiary enterprise;

3. Forgone or uncollected government revenue that is otherwise due from the producer, manufacturer or exporter. These are exemptions, et cetera;

4. Goods or services other than general infrastructures provided by the government in the country of origin or exportation to the producer, manufacturer or exporter;

5. Purchases of goods from the producer, manufacturer, or exporter by the government of the country of origin or exportation in order to strengthen the competitive economic and financial capacity of such producer, manufacturer or exporter;

6. When the government in the country of origin of exportation makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the activities mentioned in the preceding numbers; and finally

7. When there is any form of income or price support given directly or indirectly by the government or any public body in the country of origin or exportation to the producer, manufacturer or exporter of the imported product, commodity or article.

Mr. President, we have outlined the procedure in order to give every party a chance to be heard before countervailing duty is imposed. I need not repeat this. We have discussed this in the course of our discussion of the Anti-Dumping Law. There is a close affinity, linkage and connection between the anti-dumping measure that we have passed and this particular measure.

With that, Mr. President, I would recommend that we adopt this as a counterpart measure of the anti-dumping bill in order that we can protect our industries. Soon, we will be drafting and presenting to the Body the third component of these legal safety nets and these are the safeguard measures which will deal with another facet of our international trade and that is the case of inordinate surge of imports of the country without any dumping activity or without any subsidy which is also authorized to be controlled under the WTO Agreement.

Thank you, Mr. President.

The President. Thank you, Sen. Juan Ponce Enrile.

Senator Drilon. Mr. President.

The President. The Majority Leader is recognized.

Senator Drilon. Mr. President, we would like to thank the gentleman from Cagayan and the chairman of our Committee on Ways and Means for the time and effort devoted by the committee in crafting this very technical and complicated but necessary piece of legislation.

SUSPENSION OF CONSIDERATION OF S. NO. 1330

To enable our colleagues to prepare for the period of interpellations, we move that we suspend consideration of Senate Bill No. 1330 under Committee Report No. 11.

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

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

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

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

Senator Drilon. Mr. President, may we ask the Chair to recognize Sen. Aquilino Q. Pimentel Jr., the principal sponsor, and Sen. Gregorio B. Honasan to interpellate Senator Pimentel.

The President. Sen. Aquilino Q. Pimentel Jr. is recognized as the sponsor, and Sen. Gregorio B. Honasan is also recognized for the interpellation.

Senator Honasan. Thank you, Mr. President. Will the distinguished sponsor yield for just one clarificatory question?

Senator Pimentel. With pleasure, Mr. President.

Senator Honasan. Mr. President, I refer to Section 4 which states that Section 13 of Republic Act No. 8551 is hereby amended to read as follows:

SEC. 13. *Authority of the Commission to reorganize the PNP.*

Senator Pimentel. Yes, Mr. President.

Senator Honasan. Mr. President, has the Philippine National Police organization been governed by an approved table of organization and equipment in the past that would define not only the present organization but the future organization by law?

Senator Pimentel. Mr. President, the table of reorganization has not yet been done. It is being done.

Senator Honasan. Thank you, Mr. President. My only point is, we would like to take advantage of the proposed bill to allow

once and for all the Philippine National Police to propose an organization that will allow it to accomplish its mission.

It has been our sad experience, Mr. President, even as far as the Armed Forces of the Philippines Modernization Act is concerned, even to this date after we approved it, the Armed Forces of the Philippines does not have an approved table of organization and equipment.

Now if we draw a parallel, it has also been our sad experience during the budget hearings that the chain of command of the Philippine National Police has informed us—the Senate—that it is the Department of Budget and Management that arbitrarily determines its staffing pattern. And we are not yet even considering the aspect of equipment.

I feel strongly that this must be a requirement. It cuts through issues like the budget, promotions and the organization itself that we seek to modernize, improve and decentralize.

May we request the distinguished sponsor to make a comment on this, please?

Senator Pimentel. Mr. President, the question of the gentleman is really very fundamental. Nonetheless, the proposed approval of this bill will in no way preclude the police from establishing a structure of organization for as long as they fall within the provisions of the proposed law.

But I can see the gentleman's point. Indeed, the Department of Budget and Management is practically exercising a veto power over the requirements of personnel—for example, in the gentleman's position—for the reason that they can, in effect, lay the guidelines for the staffing pattern of the police.

Considering everything, I think we can craft this law so that we forestall any such attempt by any other body to dominate the establishment of the organizational structure of the police.

Probably, hopefully, we will also be able to place certain guidelines that will be, in effect, protective of the right of the police to determine for itself the kind of organization that it really wants.

Senator Biazon. Mr. President.

The President. Senator Biazon is recognized.

Senator Biazon. With the permission of the two gentlemen.

With Senator Pimentel as the lead author of the bill, and this representation as a coauthor, may I ask some clarification from the question of Senator Honasan on what he has in mind in terms of what table of organization we are referring to.

RECORD OF THE SENATE

MONDAY, DECEMBER 14, 1998

OPENING OF THE SESSION

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

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

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

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

Everybody rose for the opening prayer.

PRAYER

Senator Sotto.

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

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

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

Hear and grant our prayers.

Amen.

NATIONAL ANTHEM

Everybody remained standing for the singing of the national anthem.

SUSPENSION OF SESSION

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

It was 3:48 p.m.

RESUMPTION OF SESSION

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

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

ROLL CALL

The Secretary, reading:

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

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

The Majority Leader is recognized.

* Arrived after the roll call

** On official mission

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

Approved,

SUSPENSION OF CONSIDERATION OF S. NO. 1261

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

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

SUSPENSION OF SESSION

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

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

It was 4:26 p.m.

RESUMPTION OF SESSION

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

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

The Majority Leader is recognized.

BILL ON SECOND READING

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

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

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

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

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

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

Senator Enrile. Thank you, Mr. President.

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

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

Senator Guingona. Thank you, Mr. President.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) A benefit is thereby conferred.

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

Senator Guingona. Thank you, Mr. President.

I would like to thank the distinguished gentleman for that.

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

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

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

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

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

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

Senator Guingona. So research would not be a subsidy.

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

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

Are we considered a developing nation under the GATT agreement?

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

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

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

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

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

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

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

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

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

Senator Enrile. No, Mr. President.

Senator Guingona. May I be clarified on that.

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

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

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

Senator Guingona. That is precisely what I was asking.

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

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

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

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

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

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

Senator Enrile. That is correct, Mr. President.

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

Senator Enrile. If I may read:

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

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

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

Annex 1. Illustrative List of Export Subsidies.

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

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

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

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

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

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

Those are examples of prohibited subsidies. Then letter

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

Those are the prohibited subsidies, Mr. President.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Senator Guingona. The subsidy should be a direct subsidy.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Senator Enrile. That is correct.

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

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

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

Would that be true also in the case of meat?

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

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

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

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

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

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

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

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

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

Senator Guingona. Yes, Mr. President.

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

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

Senator Guingona. I thank the gentleman for that.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SUSPENSION OF SESSION

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

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

It was 5:27 p.m.

RESUMPTION OF SESSION

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

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

Senator Enrile is recognized.

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

In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period of time or significantly impedes the investigation, preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SUSPENSION OF SESSION

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

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

It was 5:43 p.m.

RESUMPTION OF SESSION

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

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

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

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

Article VII says:

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

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

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

Senator Guingona: I thank the gentleman for that.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Senator Guingona. Yes, Mr. President.

Senator Enrile. Like what, Mr. President?

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

Senator Enrile. Who said that?

Senator Guingona. I think it was Senator Magsaysay.

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

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

Senator Magsaysay. Mr. President.

The President. Senator Magsaysay is recognized.

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

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

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

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

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

Senator Guingona. Yes, Mr. President.

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

Senator Guingona. Yes, Mr. President.

Senator Enrile. Then this countervailing measure is the protection.

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

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

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

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

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

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

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

Senator Guingona. Yes, Mr. President.

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

Senator Guingona. Yes, in theory, it is.

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

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

Senator Enrile. Which local component, Mr. President?

Senator Guingona. The local component to the Compaq.

Senator Enrile. No. The imported component.

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

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

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

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

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

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

Senator Enrile. With "B" Company?

Senator Guingona. The local company.

Senator Enrile. "A" is the local company.

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

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

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

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

Senator Guingona. Against who?

Senator Enrile. Against "B" company.

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

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

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

Senator Enrile. I think the example...

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

Senator Enrile. That is right, Mr. President.

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

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

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

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

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

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

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

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

Senator Guingona: Then "C"...

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

Senator Guingona: Yes, here, Mr. President.

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

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

Senator Enrile: How can it show injury?

Senator Guingona: Yes, Mr. President.

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

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

Senator Enrile: No, Mr. President.

Senator Guingona: It would not.

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

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

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

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

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

Senator Guingona: Yes, Mr. President.

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

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

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

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

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

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

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

Senator Guingona: In the article on determination of injuries.

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

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

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

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

Senator Enrile. That is correct, Mr. President.

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

Senator Enrile. I cannot fathom, Mr. President.

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

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

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

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

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

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

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

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

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

The Majority Leader is recognized.

SUSPENSION OF CONSIDERATION OF S. NO. 1330

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

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

THE JOURNAL

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

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

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

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

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

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

ADJOURNMENT OF SESSION

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

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

It was 6:18 p.m.

RECORD OF THE SENATE

TUESDAY, DECEMBER 15, 1998

OPENING OF THE SESSION

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

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

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

Everybody rose for the prayer.

PRAYER

Senator Barbers.

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

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

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

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

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

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

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

Forgive us for all our sins, Lord.

Amen.

The President. Thank you, Senator Barbers.

ROLL CALL

The President. The Secretary will please call the roll.

The Secretary, reading:

Senator Teresa Aquino-Oreta	Present
Senator Robert Z. Barbers	Present
Senator Rodolfo G. Biazon	Present
Senator Renato L. <i>Compañero</i> Cayetano ...	Present
Senator Dominique M. L. Coseteng	Absent
Senator Franklin M. Drilon	Present
Senator Juan Ponce Enrile	Present
Senator Juan M. Flavier	Present
Senator Teofisto T. Guingona Jr.	Present
Senator Gregorio B. Honasan	Present
Senator Robert S. "JAWO" Jaworski	**
Senator Loren B. Legarda-Leviste	Present
Senator Ramon B. Magsaysay Jr.	Present
Senator Blas F. Ople	**
Senator John H. Osmeña	Present*
Senator Sergio R. Osmeña III	Present*
Senator Aquilino Q. Pimentel Jr.	Present
Senator Ramon B. Revilla	Present
Senator Raul S. Roco	Present
Senator Miriam Defensor Santiago	Present
Senator Vicente C. Sotto III	Present*
Senator Francis S. Tatad	**
The President	Present

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

THE JOURNAL

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

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

The Secretary will please read the Reference of Business.

* Arrived after the roll call
** On official mission

ADDITIONAL REFERENCE OF BUSINESS

MESSAGE FROM THE HOUSE OF REPRESENTATIVES

The Secretary.

December 14, 1998

The Honorable

MARCELO B. FERNAN

President of the Senate

Financial Center

Pasay City 1308

Mr. President:

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

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

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

Very truly yours,

(Sgd.) ROBERTO P. NAZARENO
Secretary General

The President. Referred to the Committee on Rules

Senator Drilon. Mr. President.

The President. The Majority Leader is recognized.

BILL ON SECOND READING

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

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

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

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

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

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

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

Senator Revilla. Thank you, Mr. President.

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

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

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

Senator Revilla. *Maraming salamat po.*

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

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

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

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

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

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

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

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

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

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

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

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

Senator Revilla. *Ganoon po ba iyon?*

Senator Enrile. *Lahat po.*

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

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

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

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

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

In cases in which any interested party refuses access to, or otherwise does not provide necessary information within a reasonable period of time or significantly impedes the investigation, preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available.

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

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

Senator Revilla. *Ilang linggo po iyon?*

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

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

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

Senator Enrile. *Mahirap po.*

Senator Revilla. *Mahirap.*

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

Senator Revilla. *Salamat po, Ginoong Pangulo.*

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

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

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

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

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

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

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

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

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

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

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

The Majority Leader is recognized.

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

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

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

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

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

Senator Enrile. *Please.*

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

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

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

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

Senator Enrile. *Yes, Mr. President.*

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

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

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

SUSPENSION OF SESSION

Senator Drilon. May we ask for a one-minute suspension of the session, Mr. President.

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

It was 3:42 p.m.

RESUMPTION OF SESSION

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

The President. The session is resumed.

Senator Santiago is recognized.

Senator Santiago. Thank you, Mr. President.

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

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

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

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

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

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

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

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

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

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

It says:

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

Then, it gives the definition of subsidy.

And a benefit is thereby conferred.

Paragraph 1.2 says:

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

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

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

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

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

Senator Santiago. Thank you, I am enlightened.

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

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

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

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

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

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

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

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

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

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

SUSPENSION OF SESSION

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

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

It was 3:53 p.m.

RESUMPTION OF SESSION

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

The President. The session is resumed.

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

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

(a) (1) If there is a financial contribution by a government or any public body within the territory of a member referred to in this Agreement as government, that is where:

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

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

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

(iv) A government makes payment a funding mechanism or entrusts or directs a private body to carry out one or more of the type of functions illustrated in (i) to (iii) above which would normally be vested in the government and the practice in no real sense differs from the practices normally followed by the government.

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

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

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

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

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

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

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

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

Senator Santiago. That is right.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SUSPENSION OF SESSION

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

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

It was 4:05 p.m.

RESUMPTION OF SESSION

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

The President. The session is resumed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Senator Santiago. Thank you, Mr. President.

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

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

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

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

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

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

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

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

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

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

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

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

SUSPENSION OF SESSION

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

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

It was 4:19 p.m.

RESUMPTION OF SESSION

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

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

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

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

That is the wording, Mr. President.

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

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

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

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

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

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

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

Senator Drilon. Mr. President.

The President. The Majority Leader is recognized.

SUSPENSION OF SESSION

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

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

It was 4:23 p.m.

RESUMPTION OF SESSION

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

The President. The session is resumed.

The Majority Leader is recognized.

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

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

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

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

SUSPENSION OF CONSIDERATION OF S. NO. 1330

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

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

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

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

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

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

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

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

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

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

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

SUSPENSION OF SESSION

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

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

It was 4:32 p.m.

RESUMPTION OF SESSION

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

The President. The session is resumed.

The gentleman may proceed.

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

Senator Pimentel. With pleasure, Mr. President.

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

RECORD OF THE SENATE

WEDNESDAY, DECEMBER 16, 1998

OPENING OF THE SESSION

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

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

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

Everybody rose for the opening prayer.

PRAYER

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

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

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

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

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

Amen.

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

ROLL CALL

The Secretary will please call the roll.

The Secretary, reading:

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

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

THE JOURNAL

Senator Drilon. Mr. President.

The President. The Majority Leader is recognized.

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

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

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

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

The Secretary will read the Reference of Business.

REFERENCE OF BUSINESS

BILLS ON FIRST READING

* Arrived after the roll call

** On official mission

PERFORMANCE OF THE PHILIPPINE AEROSPACE DEVELOPMENT CORPORATION (PADC)

Introduced by Senator Biazon

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

The Secretary. Proposed Senate Resolution No. 325, entitled

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

Introduced by Senator Sotto III

The President. Referred to the Committee on Science and Technology

COMMUNICATION

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

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

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

The Majority Leader is recognized.

BILL ON SECOND READING S. No. 1330 - Imposition of Countervailing Duties (Continuation)

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

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

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

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

Senator Enrile. Thank you, Mr. President.

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

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

DEFENSOR SANTIAGO AMENDMENTS

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

May I now ask for the ruling of the Chair.

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

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

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

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

What is the pleasure of the Body?

Senator Drilon. Is that acceptable to the sponsor?

Senator Enrile. Yes, Mr. President.

Senator Drilon. We therefore move to approve the same.

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

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

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

The President. Is there any objection to the amendment?

Senator Guingona. Mr. President.

The President. The Minority Leader is recognized.

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

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

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

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

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

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

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

Senator Guingona. Thank you, Mr. President.

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

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

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

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

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

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

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

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

Senator Guingona. Mr. President.

The President. The Minority Leader is recognized.

GUINGONA AMENDMENTS

Senator Guingona. Thank you, Mr. President.

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

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

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

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

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

Senator Guingona. That is right.

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

Senator Guingona. Yes, Mr. President.

The President. Is it accepted by the proponent?

Senator Guingona. Yes, Mr. President.

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

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

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

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

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

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

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

Senator Guingona. Thank you, Mr. President.

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

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

Senator Enrile. Is it establishment or industry?

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

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

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

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

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

SUSPENSION OF SESSION

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

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

It was 4:03 p.m.

RESUMPTION OF SESSION

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

The President. The session is resumed.

Senator Enrile is recognized.

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

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

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

Senator Guingona. Thank you, Mr. President.

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

Senator Enrile. Maybe NASCENT ENTERPRISE or INDUSTRY.

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

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

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

Senator Enrile. Page 12?

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

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

Senator Guingona. There is none?

Senator Enrile. None.

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

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

The President. That is the second Guingona amendment.

Senator Guingona. I see.

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

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

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

Senator Enrile. What is that? UPON...

Senator Guingona. UPON DETERMINATION

Senator Enrile. DETERMINATION?

The President. OF THE SUBSIDY.

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

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

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

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

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

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

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

The President. The proposal is withdrawn.

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

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

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

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

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

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

Senator Guingona. As long as that is made clear.

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

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

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

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

The President. Thank you.

The Majority Leader is recognized.

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

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

APPROVAL OF S. NO. 1330 ON SECOND READING

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

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

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

Several Members. *Aye*.

The President. As many as are against the bill, say *noy*. *[Silence]*

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

SUSPENSION OF SESSION

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

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

It was 4:16 p.m.

RESUMPTION OF SESSION

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

The President. The session is resumed.

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

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

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

RECORD OF THE SENATE

MONDAY, DECEMBER 21, 1998

OPENING OF THE SESSION

At 3:22 p.m., the Senate President, Hon. Marcelo B. Fernan, called the session to order.

The President. The 48th session of the Senate in the First Regular Session of the Eleventh Congress is hereby called to order.

Let us stand for the opening prayer to be led by Sen. Rodolfo G. Biazon.

After the prayer, the Senate Choir will lead us in the singing of the national anthem and thereafter will render a song, entitled *Tapestry of Carols*.

Everybody rose for the prayer.

PRAYER

Senator Biazon.

Makapangyarihang Ama sa langit
Nagpapasalamat kami sa araw na ito
Isang araw na nagbibigay ng pagkakataon
Upang kami ay makapagsilbi sa tao at sa bayan.

Panalangin namin na sa araw na ito at sa mga araw na darating
Bigyan Mo kami ng kaalaman
Biyayaan Mo kami ng kaunawaan
Pagtibayin Mo ang aming karangalan
At higit sa lahat, pairalin Mo ang kapayapaan.

Sa pagkakataong ito, iniaalay namin ang aming mga gawain
Upang pagkalooban Mo ang aming bansa
Ng kapayapaan, katarungan at kaunlaran.

Ang lahat ng ito ay inilalapit namin sa Iyo.

Amen.

NATIONAL ANTHEM

Everybody remained standing for the singing of the national anthem.

ROLL CALL

The President. The Secretary will please call the roll.

The Secretary, reading:

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

The President. With 20 senators present, there is a quorum.

The Majority Leader is recognized.

MANIFESTATION OF SENATOR DRILON (Notice of Absence of Senator Osmeña III for being Sick)

Senator Drilon. Mr. President, for the record, may I manifest that Sen. Sergio Osmeña III has notified our office that he is sick. Therefore, may we request the Secretary to so reflect that on the *Record*.

The President. Let the same be noted on the *Record*.

THE JOURNAL

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

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

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

* Arrived after the roll call

** On official mission

The Secretary. Proclamation No. 51, entitled

AUTHORIZING THE GINTONG SAKLAY FOUNDATION, INC. TO CONDUCT A NATIONAL FUND CAMPAIGN FOR A PERIOD OF ONE (1) YEAR

The President. Referred to the Committee on Social Justice, Welfare and Rural Development

The Secretary. Proclamation No. 52, entitled

DECLARING THE PERIOD FROM NOVEMBER 9 TO 15, 1998 AS "CIVIL ENGINEERING WEEK"

The President. To the Archives

ADDITIONAL REFERENCE OF BUSINESS

MESSAGE FROM THE HOUSE OF REPRESENTATIVES

The Secretary.

December 14, 1998

The Honorable MARCELO B. FERNAN President of the Senate Financial Center Pasay City 1308

Mr. President:

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

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

and accordingly has elected Representatives Gilberto M. Duavit, Leandro Verceles Jr., Enrique T. Garcia Jr., Arnulfo P. Fuentesbella, Amadeo Perez Jr., Marcial Punzalan Jr., Dante V. Liban, Florencio B. Abad, Erico B. Aumentado, Roilo Golez, Vicente J. Andaya Jr., Lualhati R. Antonino, Jesli A. Lapuz, Julita Lorenzo-Villareal, Emily R. Lopez, Ma. Angela E. Cua, Ma. Victoria Locsin, Alfredo E. Abueg Jr., Eduardo Gullas, Daisy Fuentes, Manuel A. Roxas II, Neptali Gonzales II, Rodolfo

Fariñas, Rodolfo Tuazon, Gilbert Teodoro, Douglas Ra. Cagas, Celso Lobregat, Eleandro Jesus Madrona, Ralph Recto, Feliciano R. Belmonte Jr., Sergio Antonio F. Apostol, Raul M. Gonzalez, Michael T. Defensor, Ignacio R. Bunye, Prospero A. Pichay Jr. and Joker P. Arroyo as its conferees.

Very truly yours,

(Sgd.) ROBERT O. NAZARENO Secretary General

The President. Referred to the Committee on Rules

The Majority Leader is recognized.

Senator Drilon. Mr. President, Senator Santiago has reserved the Privilege Hour for this afternoon.

BILL ON THIRD READING

S. No. 1330—Imposition of Countervailing Duties

But before that, with the permission of the Chamber, may I move that we vote on Third Reading on Senate Bill No. 1330. Copies of the bill were distributed to the members on December 17, 1998.

The President. Is there any objection? [Silence] There being none, voting on Third Reading on Senate Bill No. 1330 is in order.

The Secretary will please read only the title of the bill.

The Secretary. Senate Bill No. 1330, entitled

AN ACT TO PROVIDE THE RULES FOR THE IMPOSITION OF COUNTERVAILING DUTIES ON THE IMPORTATION OF SUBSIDIZED PRODUCTS, COMMODITIES OR ARTICLES OF COMMERCE, AMENDING FOR THE PURPOSE SECTION 302 OF THE TARIFF AND CUSTOMS CODE, AS AMENDED, AND FOR OTHER PURPOSES

The President. We shall now vote on the bill and the Secretary will call the roll.

The Secretary. Senators

- Aquino-Oreta
- Barbers Yes
- Biazon
- Cayetano Yes
- Coseteng Yes

Drilon	Yes
Enrile	Yes
Flavier	Yes
Guingona	Yes
Honasan	Yes
Jaworski	Yes
Legarda-Leviste	Yes
Magsaysay Jr.	Yes
Ople	Yes
Osmeña (J.)	
Osmeña III	
Pimentel Jr.	Yes
Revilla	Yes
Roco	Yes
Santiago	Yes
Sotto III	Yes
Tatad	Yes
The President	Yes

APPROVAL OF S. NO. 1330 ON THIRD READING

The President. With 19 affirmative votes, no negative vote and no abstention, Senate Bill No. 1330 is approved on Third Reading.

Senator Drilon. Mr. President, for the Privilege Hour, may I ask the Chair to recognize Sen. Miriam Defensor Santiago.

The President. Senator Santiago is recognized for the Privilege Hour.

Senator Santiago. Thank you, Mr. President.

**PRIVILEGE SPEECH OF SENATOR DEFENSOR SANTIAGO
(Limitations on the Senate Power
to Conduct Inquiries)**

Senator Santiago. Thank you, Mr. President.

The title of the speech is "Limitations on the Senate Power to Conduct Inquiries."

The issuance of a subpoena to Imelda Marcos to appear and testify before the Senate Blue Ribbon Committee raises questions on the proper interpretation of the Senate power to conduct inquiries in aid of legislation.

On the other hand, the Constitution provides in Article VI, The Legislative Department:

Sec. 21. The Senate or any of its respective committees may conduct inquiries in aid of legislation

in accordance with its duly published rules and procedure. The rights of persons appearing in or affected by such inquiries shall be respected.

On the other hand, the Constitution also provides in Article III, The Bill of Rights:

Sec. 17. No person shall be compelled to be a witness against himself.

Thus, the Constitution gives to the Senate the power to conduct inquiries in aid of legislation, but prohibits the same Senate from compelling any person to be a witness against herself. How do we draw the line between state power and individual right?

This line has already been drawn by the Supreme Court in the case of *Bengzon v. Senate Blue Ribbon Committee*, 203 SCRA 767, decided in 1991. In that case, the Supreme Court voted 10-3 to issue a writ of prohibition, enjoining the Senate Blue Ribbon Committee from requiring the petitioners to testify and produce evidence at its inquiry. In that case, the subject of the Senate inquiry was the alleged sale of the equity of Benjamin Romualdez to the Lopa Group in 36 or 39 corporations.

Please allow me to emphasize that in *Bengzon*, the Supreme Court was at pains to issue the following warning: "The power of both houses of Congress to conduct inquiries in aid of legislation is not therefore, absolute or unlimited."

So determined was the court to underscore the limitations on our Senate power to conduct inquiries that the court reached back to the American case of *Watkins v. US*, 354 US 178, decided in 1957. Stressing the limitations on the congressional power of inquiry, the US Supreme Court, as quoted and applied by the Philippine Supreme Court, explained as follows:

But broad as is this power of inquiry, it is not unlimited. There is no general authority to expose the private affairs of individuals without justification in terms of the functions of Congress. This was freely conceded by the Solicitor General in his argument in this case. Nor is the Congress a law enforcement or trial agency. These are functions of the executive and judicial departments of government. No inquiry is an end in itself: it must be related to and in furtherance of a legitimate task of Congress. Investigations conducted solely for the personal aggrandizement of the investigators or to "punish" those investigated are indefensible.

The case squarely raised the issue of what are the limitations on the power of a Senate committee, conducting an inquiry

THURSDAY, MAY 6, 1999

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one minute, Mr. President..

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

It was 12:30 p.m.

RESUMPTION OF SESSION

At 12:39 p.m., the session was resumed.

The President. The session is resumed.

Senator Guingona. Mr. President, for lack of material time, I already manifested to the distinguished Majority Leader that I intended to terminate my interpellation this morning. However, because of several incidents that took up time, I have not finished. In order to give opportunities to others to interpellate, I would like to manifest that I am suspending my interpellation in favor of others, with the reservation however that after the other senators shall have finished their interpellation, this humble representation be allowed to resume, especially on that note of "activities" and "who is to approve?"

Senator Drilon. Mr. President, we take note of the manifestation of the Minority Leader. Of course, the matter of whether or not the sponsor will continuously yield to the interpellation of the Minority Leader is a matter for the sponsors to decide. The Minority Leader has manifested his intention to continue with his interpellation after the other senators have taken the Floor. That is a matter that we will leave to the Chair of the Committee on Foreign Relations to decide.

SUSPENSION OF CONSIDERATION OF P.S. RES. NO. 443

Mr. President, with that, I move that we suspend consideration of Proposed Senate Resolution No. 443.

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

CONFERENCE COMMITTEE ON S. NO. 1330/H. NO. 7063 (Imposition of Countervailing Duties)

Senator Drilon. Mr. President, a few more matters before we adjourn. May I move that the Chamber send its contingent to the Bicameral Conference Committee to discuss the disagreeing provisions on Senate Bill No. 1330 under Committee Report No. 11. This is the bill on countervailing measures.

May I nominate the members of the Senate panel as follows: As Chairman, Sen. Juan Ponce Enrile; and as members: Sen. Gregorio B. Honasan, Sen. Robert Z. Barbers, Sen. Juan M. Flaviera and Sen. Renato L. *Compañero* Cayetano.

We so move that these senators be sent as members of the Senate panel.

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

QUESTION OF PRIVILEGE OF SENATOR DRILON
(Noncommitment of the Senate to Postpone the ARMM Elections)

Senator Drilon. With the permission of the Chair, we wish to take the Floor on a point of personal privilege.

Mr. President, today's issue of the *Philippine Star*, on page 14, carries an article regarding the holding of the ARMM elections. The news article reports what allegedly transpired during the LEDAC Task Force meeting last May 3, 1999. It reads in part:

Zamora (referring to the Executive Secretary) said the decision to postpone the ARMM elections anew was reached during the meeting of the Legislative/Executive Development Advisory Council Task Force which he heads on Monday night at Malacañang. The meeting was attended by congressmen for 14 provinces and 10 cities proposed to be included in the expanded ARMM as well as the congressmen from the four ARMM provinces, Senate Majority Leader Franklin Drilon and Sen. Rodolfo Biazon, who chairs the Senate Committee on National Defense.

Mr. President, I would like to make it clear that we did not agree to any postponement. We did not commit the Chamber to postpone the ARMM elections. There was no agreement reached on this point. In fact, there were a number of questions raised by the members of the House of Representatives, who are from Mindanao, on policy and on the constitutional ground as to whether or not we should postpone the ARMM elections. We manifested for the record that we view this bill as a bill of local application and therefore should be first enacted by the House of Representatives before we even debate on the same in this Chamber. What we committed, as Majority Leader, was that we will calendar this bill for debate once it reaches us. But we never committed the Chamber. We never committed that the Chamber will approve the postponement of the ARMM elections. We want to place that on record to clarify matters, Mr. President.

The President. The point has been sufficiently clarified.

Senator J. Osmeña. Mr. President.

The President. Sen. John H.R. Osmeña is recognized.

Senator Osmeña (J). Mr. President, will the distinguished Majority Leader yield for just one question?

MONDAY, MAY 10, 1999

OPENING OF THE SESSION

At 3:30 p.m., the Senate President, Hon. Marcelo B. Fernan, called the session to order.

The President. The 89th session of the First Regular Session of the Eleventh Congress is hereby called to order.

Let us all stand for the opening prayer to be led by Sen. Miriam Defensor-Santiago.

After the prayer, the Philippine Sports Commission Choir will lead us in the singing of the national anthem. The Choir will also render another song, entitled *Sampaguita*.

Everybody rose for the prayer.

PRAYER

Senator Santiago. This prayer was written by Samuel Johnson who lived from 1709 to 1784.

O Lord, my maker and protector, who has graciously sent me into this world, to work out my salvation, enable me to drive from me all such unquiet and perplexing thoughts as may mislead or hinder me in the practice of those duties which Thou has required.

When I behold the works of Thy hands and consider the course of Thy providence, give me grace always to remember that Thy thoughts are not my thoughts, nor Thy ways my ways. And while it shall please Thee to continue me in this world where much is to be done and little is to be known, teach me by Thy Holy Spirit to withdraw my mind from unprofitable and dangerous enquiries, from difficulties vainly curious and doubts impossible to be solved.

Let me rejoice in the light which Thou has imparted, let me serve Thee with active zeal and humble confidence, and wait with patient expectation for the time in which my soul which Thou receivest shall be satisfied with knowledge. Grant this, O Lord, for Jesus Christ's sake.

Amen.

Senate Administrative Order No. 61 re REITERATING THE PROVISIONS OF ADMINISTRATIVE ORDER NO. 1-A DATED JANUARY 6, 1954, AND ADMINISTRATIVE ORDER NO. 1 DATED DECEMBER 30, 1965, PROHIBITING PUBLIC OFFICERS AND EMPLOYEES FROM ENTERING INTO CERTAIN KINDS OF OFFICIAL TRANSACTIONS WITH REAL OR IMAGINED RELATIVES OF THE PRESIDENT

The President. Referred to the Committee on Accountability of Public Officers and Investigations.

MOTION OF SENATOR DRILON
(Senator Jaworski Instead of Senator Barbers as
Member of Conference Committee on S. No. 1320)

Senator Drilon. Mr. President, before we proceed with the business of the day, may I make a correction on the motion that we made during the previous session. This is on the matter of the Senate contingent to the Bicameral Conference Committee on the disagreeing provisions of Senate Bill No. 1330, the bill regarding the imposition of countervailing duties.

In the previous session, we nominated Sen. Robert Z. Barbers as among the members of the Senate contingent. We made a mistake, Mr. President. Instead of Sen. Robert Z. Barbers, it should be Sen. Robert S. Jaworski. Thus, we move to withdraw the previous nomination of Sen. Robert Barbers and in his place, we nominate Sen. Robert S. Jaworski as a member of the Senate contingent.

The two Minority members nominated by Senator Guingona were Sen. Renato L. *Compañero* Cayetano and Sen. Juan M. Flavier.

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

Senator Drilon. Mr. President, there are a number of privilege speeches which two of our colleagues have manifested they will deliver during the Privilege Hour. But before that, may I ask the Chair to recognize the Minority Leader, Sen. Teofisto T. Guingona Jr., for a point of personal privilege.

The President. Senator Guingona is recognized.

QUESTION OF PRIVILEGE OF SENATOR GUINGONA
(On His Alleged Monopoly of the Floor Debates on VFA)

Senator Guingona. Mr. President, I rise on a point of personal and collective privilege on behalf of those who have reservations or who dissent against the VFA.

Last Friday, the distinguished main sponsor, Sen. Blas F. Ople, extended the debates to his personal column in the *Manila*

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SUSPENSION OF SESSION

Senator Drilon. 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 4:42 p.m.

RESUMPTION OF SESSION

At 4:44 p.m., the session was resumed with the Hon. Aquilino G. Pimentel Jr. presiding.

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

The Majority Leader is recognized.

CONFERENCE COMMITTEE REPORT ON S. NO. 1330/H. NO. 7036
(Imposition of Countervailing Duty)

Senator Drilon. Mr. President, before the Privilege Hour, and with the permission of the Chamber, I move that we consider the Conference Committee Report of the Senate and the House of Representatives on the disagreeing provisions of House Bill No. 7036 and Senate Bill No. 1330.

The Joint Explanatory Statement of the Conference Committee was filed this morning. And so, we move that we consider this Bicameral Conference Committee Report, Mr. President.

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

Senator Drilon. Mr. President, may I ask the Chair to recognize the principal sponsor, Sen. Juan Ponce Enrile, to submit the report.

The Presiding Officer [Sen. Pimentel]. Sen. Juan Ponce Enrile who delivered the best speech on the VFA debates is hereby recognized.

Senator Enrile. This is not VFA, Mr. President.

The Presiding Officer [Sen. Pimentel]. I am sorry.

Senator Enrile. This is countervailing duty.

REPORT OF SENATOR ENRILE

Mr. President, the Conference Committee on the disagreeing provisions of House Bill No. 7036, entitled

AN ACT STRENGTHENING THE MECHANISMS FOR THE IMPOSITION OF COUNTERVAILING DUTIES ON IMPORTED SUBSIDIZED PRODUCTS, COMMODITIES OR ARTICLES OF COMMERCE IN ORDER TO PROTECT DOMESTIC INDUSTRIES FROM UNFAIR TRADE COMPETITION, AMENDING FOR THE PURPOSE SECTION 302, PART 2, TITLE II, BOOK I OF PRESIDENTIAL DECREE NO. 1464, OTHERWISE KNOWN AS THE TARIFF AND CUSTOMS CODE OF THE PHILIPPINES, AS AMENDED

and Senate Bill No. 1330, entitled

AN ACT TO PROVIDE THE RULES FOR THE IMPOSITION OF COUNTERVAILING DUTIES ON THE IMPORTATION OF SUBSIDIZED PRODUCTS, COMMODITIES OR ARTICLES OF COMMERCE, AMENDING FOR THE PURPOSE SECTION 302 OF THE TARIFF AND CUSTOMS CODE, AS AMENDED, AND FOR OTHER PURPOSES

have met last May 26 in the morning, and after full and free conference, agreed to recommend and do recommend to their respective houses that House Bill No. 7036, in consolidation with Senate Bill No. 1330, be approved in accordance with the attached copy of the bill as reconciled and approved by the conferees.

Mr. President, the Conference Committee of the Senate and the House of Representatives on the disagreeing provisions of these two bills submits the following joint statement to both Houses in explanation of the amendments agreed upon by the conferees and recommended in the accompanying Conference Committee Report:

1. The conferees agreed to adopt the House version as the working draft;
2. Imported products, commodities or articles shall be released pending a countervailing investigation;
3. The Secretary shall, within ten (10) days from receipt of the petition for the imposition of a countervailing duty, determine whether there is sufficient basis to justify the initiation of a countervailing investigation;
4. The Secretary shall, within five (5) days from finding of the basis to initiate an investigation, notify all interested parties and give them thirty (30) days from receipt thereof to file their answer;
5. The Secretary shall make a preliminary determination within twenty (20) days from receipt of the answer of all interested parties;
6. The cash bond shall be imposed not earlier than sixty (60) days from the date of initiation of the investigation;

7. The importer will no longer be required to pay the deficiency in case the cash bond is less than the definitive countervailing duty imposed;

8. The Tariff Commission is given one hundred twenty (120) days instead of sixty (60) days under the Senate version and one hundred fifty (150) days under the House version to complete its formal investigation and submit its findings to the Secretary;

9. The House provision on voluntary undertaking was retained; and

10. The provision of the Senate version that the cost of the proceedings will be borne by the losing party was not adopted.

There is another further part of this, Mr. President.

11. The title of the House version was adopted to read as follows, and I quote:

AN ACT STRENGTHENING THE MECHANISMS FOR THE IMPOSITION OF COUNTERVAILING DUTIES ON IMPORTED SUBSIDIZED PRODUCTS, COMMODITIES OR ARTICLES OF COMMERCE IN ORDER TO PROTECT DOMESTIC INDUSTRIES FROM UNFAIR TRADE COMPETITION, AMENDING FOR THE PURPOSE SECTION 302, PART 2, TITLE II, BOOK I OF PRESIDENTIAL DECREE NO. 1464, OTHERWISE KNOWN AS THE TARIFF AND CUSTOMS CODE OF THE PHILIPPINES, AS AMENDED.

In case of conflict between the statements or amendments stated in this Joint Explanatory Statement and the provisions of the consolidated bill in the accompanying Conference Committee Report, the provisions of the latter shall prevail.

I so recommend, Mr. President.

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

Senator Drilon. Mr. President, the Minority Leader requests that he be recognized to raise some questions if Senator Enrile will yield.

Senator Enrile. Gladly, Mr. President.

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

Senator Guingona. Thank you.

Mr. President, will the distinguished sponsor please clarify whether the imported products in the original bill should be

released under Item No. 2 of the Report?

Senator Enrile. Yes, Mr. President. We are complying with the requirements of the WTO. We cannot impede the liquidation of the import entries and the release of the goods during the pendency of the countervailing duty investigation.

Senator Guingona. How about future imports pending investigation?

Senator Enrile. They will also be released, subject to the imposition of a cash bond.

Senator Guingona. It says here that the importer will no longer be required to pay deficiency in case the cash bond is less than....

Senator Enrile. That is also a provision of the WTO Treaty. We opted to adopt a cash bond rather than a surety bond because, as we know, there are many stale surety bonds in the custody of the Bureau of Customs running to billions of pesos in amounts and they remain uncollectible. But I think there is hardly any possibility of a cash bond being less than the amount of the countervailing duty because the preliminary findings of the Secretary will probably show that the subsidy would equal the cash bond.

Senator Guingona. In view of this provision that the cost will no longer be borne by the losing party, who will shoulder the cost then?

Senator Enrile. Both parties will shoulder the cost, Mr. President.

Senator Guingona. Thank you, Mr. President.

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

APPROVAL OF CONFERENCE COMMITTEE REPORT
ON S. NO. 1330/H. NO. 7036

Senator Drilon. Mr. President, I now move that we approve the Conference Committee Report of this Chamber and the House of Representatives on the disagreeing provisions of House Bill No. 7036 and Senate Bill No. 1330.

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

The following is the whole text of the Conference Committee Report:

(INSERT)
