

# **RA NO. 8752**

**(HBN 7612/SBN 763)**

## **“Anti-Dumping Duty Act”**

**11th CONGRESS**

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CONVINCED THAT: (1) THE MARGIN OF DUMPING 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) TO THE VOLUME OF SUCH IMPORTS FROM EACH COUNTRY IS NOT NEGLIGIBLE;"... or not *de minimis* as also so defined.

#### SUSPENSION OF THE SESSION

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

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

*It was 3:25 p.m.*

#### RESUMPTION OF SESSION

*At 3:26 p.m., the session was resumed.*

**The President.** The session is resumed. Senator Enrile is recognized.

**Senator Enrile.** Actually, Mr. President, the provision of the treaty on *de minimis* margin of dumping and volume reads as follows. This is page 152 of the Uruguay-Round Final Act, Marrakesh, 15 April 1993, published by PhilExport, which states:

An application under paragraph 1 shall be rejected and investigation shall be terminated promptly as soon as the authorities concerned are satisfied that there is not sufficient evidence of either dumping or of injury to justify proceeding with the case. There shall be immediate termination in cases where the authorities determine that the margin of dumping is *de minimis*, or that the volume of dumped imports, actual or potential, or the injury is negligible. The margin of dumping shall be considered to be *de minimis* if this margin is less than 2 percent, expressed as a percentage of the export price. The volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from particular country is found to account for less than 3 percent of imports of the like product in the importing Member, unless countries which individually account for less than 3 percent of the imports of the like product in the importing Member collectively account for more than 7 percent of imports of like product in the importing Member.

in which case, we transcend the *de minimis* level.

#### SANTIAGO AMENDMENTS

**Senator Santiago.** That is a technical definition and I definitely have no problem with it. I would like to propose simply that this definition from the international trade paper should be incorporated in the law, so that the reader and the user will be aided in defining the term without reference to another document because not everyone who will get hold of this bill will be able to access at the same time the GATT itself. Maybe we would add it as an additional paragraph to paragraph J.

**Senator Enrile.** I have no objection to that, Mr. President. We can probably reproduce paragraph 5.8 with some rewording of the first sentence between lines 17 and 17a of page 24.

**Senator Santiago.** Yes, that was precisely my intention.

I would suggest, Mr. President, that what we should reproduce would be the third sentence of paragraph 5.8 of Article 5 of Part I of the Agreement on the Implementation of Article VI of the General Agreement on Tariff and Trade of 1994, which reads as follows:

THE MARGIN OF DUMPING SHALL BE CONSIDERED TO BE *DE MINIMIS* IF THIS MARGIN IS LESS THAN 2 PERCENT EXPRESSED AS A PERCENTAGE OF THE EXPORT PRICE. THE VOLUME OF DUMPED IMPORTS SHALL NORMALLY BE REGARDED AS NEGLIGIBLE IF THE VOLUME OF DUMPED IMPORTS FROM A PARTICULAR COUNTRY IS FOUND TO ACCOUNT FOR LESS THAN 3 PERCENT OF IMPORTS OF THE LIKE PRODUCT IN THE IMPORTING MEMBER, UNLESS COUNTRIES WHICH INDIVIDUALLY ACCOUNT FOR LESS THAN 3 PERCENT OF THE IMPORTS OF THE LIKE PRODUCT IN THE IMPORTING MEMBER COLLECTIVELY ACCOUNT FOR MORE THAN 7 PERCENT OF IMPORTS OF THE LIKE PRODUCT IN THE IMPORTING MEMBER.

I suggest that the inserted between lines 17 and 17a of page 24 of the most recent version of the measure, Mr. President.

**Senator Santiago.** That would be perfect, Mr. President.

**The President.** With that modification, perhaps there is no more objection on the part of the author.

Is there any objection to the motion? This is based on the third sentence of paragraph 5.8 of Article 5 of Part I of the Agreement on the Implementation of Article VI of the General

Agreement on Tariff and Trade? *[Silence]* There being none, the amendment is hereby approved.

**Senator Santiago.** I go now to page 24a, line 30 of this revised version.

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

**Senator Santiago.** "The remainder shall be returned to the importer immediately." I propose to insert the sentence: THE REMAINDER WHICH IS TO BE RETURNED TO THE IMPORTER SHALL NOT EARN ANY INTEREST.

**Senator Enrile.** It is accepted, Mr. President.

**Senator Santiago.** That is all, Mr. President.

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

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

**Senator Drilon.** Since there are no further amendments, Mr. President, I move that we close the period of individual amendments.

**The President.** Is there any objection to the closure of the period of individual amendments?

**Senator Pimentel.** Mr. President.

**The President.** Senator Pimentel is recognized.

**Senator Pimentel.** I really do not have any specific objection to any particular section in the proposed amendments by Senator Enrile. What I would like to suggest, however, is that the English should be a little more understandable. It is not the gentleman's fault, Mr. President, I know that. But the way the sentences are constructed, they are so kilomeric that we have to try to remember which is the beginning and which is the end.

Mr. President, in all honesty, I hope that we can make the laws coming out of the Senate a little more understandable even to the ordinary man on the street.

**Senator Enrile.** Mr. President, I am no English major but I tried my best to make it as clear as possible. Unfortunately, it is very difficult to express economic concepts in short sentences.

**Senator Pimentel.** Mr. President, just a suggestion. We probably should have a style committee.

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

**Senator Pimentel.** The "styling" of the bills should now be done by the Secretariat. Because as I said, otherwise it will be a law that probably nobody will understand.

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

**Senator Pimentel.** Subject to style, Mr. President.

**Senator Enrile.** Subject to style.

**The President.** There are no more individual amendments. What is the pleasure of the Majority Leader?

**Senator Drilon.** I have a pending motion for the closure of the period of individual amendments, Mr. President.

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

#### APPROVAL OF S. NO. 763 ON SECOND READING

**Senator Drilon.** Mr. President, I move that we vote on Second Reading on Senate Bill No. 763, as amended.

**The President.** Is there any objection? *[Silence]* There being none, we shall now vote on Second Reading on Senate Bill No. 763, 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 *nay*. *[Silence]*

Senate Bill No. 763, as amended, is approved on Second Reading.

**Senator Drilon.** Mr. President, we would like to express our gratitude and congratulations to the sponsor of the measure for having guided through the legislative mill this bill, the first legislative measure that this Chamber has approved under the presidency of Sen. Marcelo Fernan.

**The President.** The Chair wishes to congratulate the sponsor for steering the approval of this bill in record time.

#### BILL ON SECOND READING

S. No. 1136 - Amending Certain Sections of  
RA. No. 7916, the Special Ecozone Act of 1995  
*(Continuation)*

**Senator Drilon.** Mr. President, I move that we resume consideration of Senate Bill No. 1136, as reported out under Committee Report No. 2.

**The President.** Is there any objection? [*Silence*] There being none, resumption of consideration of Senate Bill No. 1136 is now in order.

**Senator Drilon.** The parliamentary status, Mr. President, is that the period of interpellations is already closed. We are now in the period of committee amendments.

For this purpose, may I ask the Chair to recognize the sponsor, Sen. Sergio Osmeña III.

**The President.** The sponsor, Sen. Sergio Osmeña III is recognized for the committee amendments.

**Senator Osmeña III.** Mr. President, because this is a substitute bill, we are not allowed under the *Rules* to present committee amendments. Therefore, may I request that we move to the period of individual amendments.

**Senator Drilon.** Mr. President, we move to close the period of committee amendments and proceed with the period of individual amendments.

**The President.** The Chair will now declare that we move to the consideration of individual amendments, having closed the period of committee amendments.

**Senator Roco.** Mr. President.

**The President.** Senator Roco is recognized.

SUSPENSION OF SESSION

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

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

*It was 3:37 p.m.*

RESUMPTION OF SESSION

*At 3:48 p.m., the session was resumed.*

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

MOTION OF SENATOR DRILON  
(Reopening the Period of Committee Amendments)

**Senator Drilon.** Mr. President, after conferring with our

colleagues, I move that we reconsider our earlier decision to close the period of committee amendments and reopen the same.

**The President.** Is there any objection? [*Silence*] There being none, the motion is approved and the period of committee amendments is hereby reopened.

**Senator Drilon.** With the consent of the Chamber, may I ask the Chair to recognize Sen. Sergio Osmeña III for the committee amendments.

**The President.** Senator Osmeña III is recognized for his committee amendments.

**Senator Osmeña III.** Thank you, Mr. President. The first proposed committee amendment will fall on page 1, line 13, after the word "zones".

SUSPENSION OF SESSION

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

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

*It was 3:50 p.m.*

RESUMPTION OF SESSION

*At 3:51 p.m., the session was resumed.*

**The President.** The session is resumed. Senator Osmeña III is recognized.

**Senator Osmeña III.** Mr. President, may I repeat that the first committee amendment on page 1, line 13, after the word "zones", the comma (,) is deleted and before the word "support", the phrase AS A PRINCIPAL COMPONENT WITH is added. So the entire line will now read: free trade zones AS A PRINCIPAL COMPONENT WITH SUPPORT FACILITIES.

**The President.** Is there any comment, Senator Roco?

**Senator Roco.** Yes, Mr. President. Just for clarity, the ecozone here, as I understand, applies both to the public and the private.

**Senator Osmeña III.** That is correct, Mr. President.

**Senator Roco.** Yes, Mr. President. Maybe, since the committee graciously agreed to the concept that the privately-

run ecozone will be treated differently, here there should be clarity in the distinction between the public and the 101 special economic zones that are private in character.

**Senator Osmeña III.** There is no problem, Mr. President. What is the pleasure of the gentleman?

**Senator Roco.** Subject to style, Mr. President, I hate to do this, but the idea being that an ecozone may contain the following things, but to show a distinction between the ecozone that is public and the special economic zones that are privately run, then the committee will also have no more problem about the industry standards, because the industry standards will refer now to the private special economic zones. I do not have words specifically in mind.

**The President.** In other words, the committee is qualified to refer to both public and private ecozones?

#### SUSPENSION OF SESSION

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

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

*It was 3:53 p.m.*

#### RESUMPTION OF SESSION

*At 3:56 p.m., the session was resumed.*

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

#### SUSPENSION OF CONSIDERATION OF S. NO. 1136

**Senator Drilon.** Mr. President, may we move to suspend consideration of Senate Bill No. 1136, under Committee Report No. 2.

**The President.** Is there any objection? [Silence] There being none, the motion is approved. Consideration of Senate Bill No. 1136 is hereby suspended.

#### SPECIAL ORDERS

**Senator Drilon.** Mr. President, may we move to transfer from the Calendar for Ordinary Business to the Calendar for Special Orders Committee Report No. 3 on Senate Bill No. 1137, entitled

AN ACT REQUIRING THE MANDATORY COMPLIANCE BY MOTORISTS OF PRIVATE AND PUBLIC VEHICLES TO USE SEAT BELT DEVICES AND REQUIRING VEHICLE MANUFACTURERS TO INSTALL SEAT BELT DEVICES IN ALL THEIR MANUFACTURED VEHICLES.

**The President.** Is there any objection? [Silence] There being none, Senate Bill No. 1137 is hereby transferred to the Calendar for Special Orders.

#### BILL ON SECOND READING S. No. 1137--Use of Seat Belts Act

**Senator Drilon.** Mr. President, I move that we consider on Second Reading, Senate Bill No. 1137, as reported out under Committee Report No. 3.

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

Consideration of Senate Bill No. 1137 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 whole text thereof.

**The Acting Secretary** [Atty. Tolentino]. Senate Bill No. 1137, entitled

AN ACT REQUIRING THE MANDATORY COMPLIANCE BY MOTORISTS OF PRIVATE AND PUBLIC VEHICLES TO USE SEAT BELT DEVICES AND REQUIRING VEHICLE MANUFACTURERS TO INSTALL SEAT BELT DEVICES IN ALL THEIR MANUFACTURED VEHICLES

*The following is the whole text of the bill:*

#### Senate Bill No. 1137

AN ACT REQUIRING THE MANDATORY COMPLIANCE BY MOTORISTS OF PRIVATE AND PUBLIC VEHICLES TO USE SEAT BELT DEVICES, AND REQUIRING VEHICLE MANUFACTURERS TO INSTALL SEAT BELT DEVICES IN ALL THEIR MANUFACTURED VEHICLES

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

Luneta, and as the father of the extravagant independence centennial celebration which is now under investigation by the Senate Blue Ribbon Committee. Instead, Mr. Ramos will merely be remembered as the grandfather of the Amari land scam, and the father of the 1998 economic recession. Mr. Ramos, dream on.

If Mr. Ramos lied about the Charter change initiative, and if Mr. Ramos lied about the economy, then logic dictates that he lied about his alleged victory over me. In the ultimate analysis, it is for history to judge this issue, but it is not for Mr. Ramos to reinvent reality. *Falsus in uno, falsus in omnibus*. False in one thing, false in all things. For him to claim that I withdrew my protest is pusillanimous prevarication.

I understand that Mr. Ramos is threatening to run for the position of UN Secretary General, which would explain his current media offensive. I give that a big yawn, although at some cocktail party with foreign diplomats, I may have occasion to derive entertainment from this latest misbegotten brainchild of his.

But, here and now, I say to Mr. Ramos: Say no more false word about my election protest. One more false word—just one word—from him and I shall make sure that copies of this speech and the partial results of my protest against him shall be distributed to every ambassador in the UN General Assembly and the Security Council. I was muffled for six years under his administration, but now he is finished. His 15 minutes of media fame have elapsed and it is time to move on.

Thank you, Mr. President.

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

The Majority Leader is recognized.

**Senator Drilon.** Mr. President, there are no reservations for interpellation. We thank our distinguished colleague for her privilege speech.

#### SUSPENSION OF SESSION

**Senator Tatad.** Mr. President, we are now supposed to resume consideration of the Anti-Dumping measure. May we ask for a one-minute suspension of the session.

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

*It was 4:53 p.m.*

#### RESUMPTION OF SESSION

*At 4:56 p.m., the session was resumed.*

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

#### BILL ON SECOND READING S. No. 763--Anti-Dumping Law (Continuation)

**Senator Drilon.** Mr. President, with the consent of the Chamber, may we move that we resume consideration of Senate Bill No. 763 under Committee Report No. 1.

The parliamentary status is that we have reopened the period of interpellations upon the request of Senator Santiago. Therefore for this purpose, may we ask the Chair to recognize Sen. Juan Ponce Enrile, the main sponsor of the measure, and Sen. Miriam Defensor Santiago for the interpellation.

**The President.** Is there any objection? *[Silence]* There being none, resumption of consideration of Senate Bill No. 763 is now in order.

Sen. Juan Ponce Enrile is hereby recognized to be interpellated by Sen. Miriam Defensor Santiago.

**Senator Santiago.** Mr. President, I would like to begin by extending my gratitude to the distinguished sponsor and to the Majority Leader for their graciousness in allowing me to continue this interpellation.

I would like to beg the indulgence of the distinguished sponsor. These questions will tend to be extensive because I have to explain the background of the question being raised. And so, if he would indulge me, I would like to signal to him when my question is finished by saying "That is the question" or words to that effect.

I should now like, with his permission, to begin with page 16, lines 14 to 20, simply to make a general comment. Please allow me, Mr. President, to begin with a general comment.

Probably the most significant amendment which this proposed bill seeks to introduce is the transfer of the authority to determine whether there is a case of dumping and the authority to impose anti-dumping duties from the Secretary of Finance to the Secretary of Trade and Industry and the Secretary of Agriculture. I wish to probe the reason behind the proposal to transfer such authority from the Secretary of Finance. I would like to submit that there is a need to look into the wisdom

or justification for this transfer of authority considering that:

1. A substantial portion of the process of the determination whether or not there is a case of dumping is to be performed by the Tariff Commission, which is an agency independent of the Department of Trade and Industry or the Department of Agriculture, specifically, all investigations, data-gathering and evaluation, determination of material injury or threat thereof, determination whether there is a proper case for cumulative assessment or to be done by the Tariff Commission.

More importantly, pursuant to page 24, lines 18 to 24, paragraph 8, the Secretary of Trade and Industry or the Secretary of Agriculture only imposes anti-dumping duties by way of a department order upon the favorable report of the Tariff Commission. It even appears from this paragraph that the issuance of such department order is a mere ministerial duty on the part of the Secretary, if the Tariff Commission has given a favorable report for the imposition of anti-dumping duties. If such is the case, then it would not make a difference whether the department order is issued by the Secretary of Finance, or Secretary of Trade and Industry, or Secretary of Agriculture.

Any anti-dumping duties imposed by the Secretary and any provisional remedies taken, such as the imposition of a cash bond, are to be enforced or implemented by the Bureau of Customs, another agency under the Department of Finance. It does not appear from the proposed provisions that the Department of Agriculture and the Department of Trade and Industry or any of the agencies under them, would have any participation whatsoever in the proceedings relating to the imposition of anti-dumping duties. Neither do their respective secretaries of these departments have an involvement with the process.

In view of the involvement of two departments in the proceedings, there is now a need to coordinate between the two departments. Notices to the Commissioner of Customs from the Secretary of Trade and Industry or from the Secretary of Agriculture are to be coursed through the Secretary of Finance and vice versa. Administrative problems and inefficiency might arise in view of this setup.

Hence, my question is: Should we not retain authority with the Secretary of Finance? That is the first question.

**Senator Enrile.** Mr. President, this procedure that is now proposed in the bill that is before us was precisely to hasten the process of determining whether there is dumping of products in the country and that dumping materially injures any industry or threatens to materially injure an industry or retards the establishment of an industry, and whether there is a

causal link between the dumping and this injury. But, more than that, to determine the margin of dumping.

The margin of dumping, Mr. President, is a function of price. The one that has the ability or technical capacity to determine pricing of products domestically produced as well as those that are imported into the country would be the Secretary of the Department of Trade and Industry in the case of nonagricultural products or commodities; or on the other hand, the Secretary of the Department of Agriculture in the case of agricultural products.

While it is true that we are talking here of the imposition of dumping which may suggest to us that this ought to be handled by the Secretary of Finance, the Bureau of Customs being under the Department of Finance, nonetheless, we are constrained by the circumstance that indeed the problem is the question of pricing that affects our industries.

In the United States, Mr. President, it is not the Secretary of the Treasury who imposes the anti-dumping duty. Under current US law, anti-dumping cases are handled by two administrative agencies of the United States. A complaint must be simultaneously filed with the Commerce Department which is the equivalent of our Department of Trade and Industry, and the International Trade Commission. It is the Commerce Department that is responsible for determining whether dumping exists, whether there is a margin of dumping and the International Trade Commission is responsible for examining whether the dumping or dumped goods are causing material injury of the competing industry within the United States.

Unfortunately for us, we do not have an International Trade Commission similar to the United States. The best agency that we could think of is the Tariff Commission. They are quite familiar with the obligations of the Republic with respect to the GATT-WTO (Uruguay Round) Agreement as well as the levels of tariff imposable on certain goods. They have the technical capability, I suppose, to conduct the hearings and obtain the necessary materials in order to determine whether or not there is dumping; and whether or not the dumping materially injures or threatens to materially injure or retard the establishment of an industry in the Philippines.

**Senator Santiago.** Thank you. I will now refer to page 16, lines 1 to 23.

I am sure that both committees are fully aware that there is a substantial difference between the legal and economic definition of dumping. For example, Paul Krugman and Morris Obsfield, two international economists, define dumping as a pricing practice in which firms charge a lower price for export goods than they do for the same goods sold domestically.

This pricing practice comes about because of imperfect world market conditions and the different degrees of trade openness among countries. Thus, from an economic perspective, dumping can be considered a legitimate business strategy in the same way that the giving of discounts by airlines to students and senior citizens is considered a legitimate business practice.

Since there is a substantial difference between the legal and economic definitions of dumping, will it not be possible that this act we are discussing today might pave the way for the cynical abuse of law and the improper evaluation of what constitutes dumping and how much dumping duty to levy?

**Senator Enrile.** Mr. President, my answer is no. I do not think so. But I would like to explain that the equation involved in determining whether there is dumping technically speaking or legally speaking for that matter, even from the viewpoint of economic concept, is quite simple. It is just this: Home Market Price minus Export Sales Price is equal to Margin of Dumping.

If the difference between the home market price of the product involved is higher than the export market price and the difference is more than the *de minimis*, meaning, it does not reach 2 percent of the home market price, then there is dumping. But apart from the determination that there is dumping, that would not justify the conclusion that a dumping duty ought to be imposed immediately. Because the other element to impose the dumping duty requires an investigation to determine whether that dumping of goods, technically speaking, brings about actual material injury to a domestic industry or threatens a material injury to a local industry, or retards the establishment of a domestic industry producing like goods.

Mr. President, I am aware that in the business world, businessmen would sell goods at less than their home market price provided that the price at which they sell the goods in other markets, for instance like our market, would mean that they recover their total variable cost, plus a certain amount of profit. I have given an example the other day here.

For instance, a factory, let us say in Hong Kong, produces 1 million pairs of shoes annually at a cost of US\$16 per pair and sells that product at \$20 per pair in the Hong Kong market on a one-shift basis per day. This same company will now produce 2 million pairs by using two shifts and diverts the additional 1 million pairs to the Philippine market selling it not at \$20 per pair but at \$14 per pair. And it is proven by facts and figures that the variable cost of these companies does not exceed \$10. Its fixed cost is \$6. So, by selling at \$14 per pair this same pair of shoes to the Philippine market, it recovers its variable cost, plus a margin of \$4. It can do that.

In this case, we can very well see that from the viewpoint of both economic and legal disciplines, there is dumping.

**Senator Santiago.** Thank you.

**Senator Enrile.** So, we are justified in imposing an equalizer, so to speak, to level the playing field to protect our industries in the form of what we call a dumping duty. And the extent of the dumping duty we are authorized to impose is the margin of dumping, which in this case, ought to be the equivalent in pesos of \$6.

**Senator Santiago.** The bill defines "dumping" in terms of importation of goods at less than the normal value. Should the term "normal value" not be defined for completeness and the proper guidance of those who will be drafting the implementing rules and regulations?

Republic Act No. 7843 introduced the use of the term "normal value" to replace the term "fair value." In maintaining the use of "normal value," are we affirming that the shift from "fair value" to "normal value" is reasonable and justified? In the absence of a definition of "normal value," should this term be taken to have the same definition as provided by RA No. 7843? That is the question.

**Senator Enrile.** Mr. President, the term "normal value" is used in the GATT-Uruguay Round-WTO Agreement that we ratified, and this has an accepted meaning in international trade. It means the home market price for this product or like product based on *X* factory price. In fact, what they say is, it is the price at which this product is destined for consumption in the ordinary course of trade in wholesale quantities in the home market.

**Senator Santiago.** Still in the definition of "dumping," on page 16. It is not clear in this paragraph, at least, that normal value, as referred to here, is the normal value of the product in question in the country or countries of origin or export for completeness of the description when there is a case of dumping.

**Senator Enrile.** The lady senator is correct. I anticipated that question. There are some errors in typing here. The word "Philippines" should be amended correspondingly to mean the exporting country or the country of origin.

**Senator Santiago.** Then I withdraw my question.

I will proceed to the next page—page 17, line 19. It is required that the verified petition filed for purposes of initiating an anti-dumping investigation should, among others, state information on the evaluation of the volume of the alleged dumped imports; the effect of these imports on prices of like product in the domestic



market; and the consequent impact of the imports on the domestic industry.

Would it be sufficient to simply allege this in the verified petition? Should the law not require that these allegations be specifically supported by actual figures or computations? That is the question.

**Senator Enrile.** I would like to read the entire paragraph B:

*B. Initiation of Action.* - An anti-dumping investigation shall be initiated by any person whether natural or juridical upon filing a verified petition which shall be accompanied by documents containing information supporting the facts that are essential to establish the presence of the elements required for the imposition of an anti-dumping duty, and shall further state, among others: 1) the identity x x x

The opening paragraph incorporates almost *in toto* the provisions of the treaty on anti-dumping which requires certain allegations to be made.

**Senator Santiago.** Thank you. What is the effect of the failure to allege any of the four items? I am referring to the same page 17, lines 9 to 24.

**Senator Enrile.** I guess this will be addressed to the authorities. If they feel that there is a substantial compliance with the requirements of paragraph B, the State should not close the door to its industries to protect themselves simply because on a technical ground that they did not allege with specificity and legal precision the requirements of the law.

**Senator Santiago.** For purposes of clarity, would it be correct to say that the failure to allege one or more of the four items in this paragraph will not necessarily be fatal to the petition?

**Senator Enrile.** I suppose they have to identify the applicant. The applicant must identify itself—the business organization for which it acts, if it is acting for an organization that is covered by the paragraph found in lines 25 to 30 and beyond; description of the volume and value of domestic products or like products of the applicant which is being injured; then, a complete description of the alleged dumped product. I am sure that any industry worth its salt must know its competitors not only inside the country but outside of the country as well.

Then the names of the country or countries of origin or exports; the identity of its known exporter or foreign producer and a list of known persons supporting the product in question; information on the normal value of the product in

question in the country or countries of origin or export; the information on the evaluation of the volume of alleged dumped imports; the effect of these imports on prices of like product in the domestic market; and the consequent impact of the imports on the domestic industry.

Mr. President, these are material allegations. They are essential allegations. I guess lawyers who will have to handle this must know that one cannot make a case of dumping unless he states these things in his application. But should there be some lapses in the language used in the application, then it is up to the authorities to determine whether there is a substantial compliance. If there is none, they will then deny the application, and the applicant can reword his application and refile it, and the process will go all over again.

**Senator Santiago.** So the remedy would simply be to amend the petition.

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

**Senator Santiago.** I would like to thank the distinguished gentleman, Mr. President.

Still on this page 17, I now go to lines 25 to 31.

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 50 PERCENT OF THE TOTAL PRODUCTION OF THE LIKE PRODUCT.

This presupposes that there are several producers who account for more than 50 percent of the total production of the like product.

**Senator Enrile.** That is correct, Mr. President. In fact, the other day, I gave the example of the beer industry. There are two producers in the country—San Miguel and Fortune. If it is San Miguel that files the application, there is no problem about it. It complies with both the industry volume requirement and the applicant volume requirement. On the other hand, if it is the other way around and it is Asia Brewery that files the application, then it must get the conformity of San Miguel.

**Senator Santiago.** Just for clarification. Would it be correct to say that if a single producer accounts for over 50 percent of the total production of the like product, a petition filed by this lone producer would constitute an application filed by or on behalf of the domestic industry?

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

**Senator Santiago.** If so, would it be correct then to say that the only criterion in determining whether an application is considered to have been made by or on behalf of the domestic industry is not the number of producers behind the application but the percentage of total production that they account for.

**Senator Enrile.** That is correct, Mr. President. If it is not by and on behalf of an industry but to protect the interest of the applicant, then he must show that he has 25 percent of the production, or at least he is joined by a group making up about 25 percent of the entire production in the country.

**Senator Santiago.** I would like to thank the distinguished gentleman, Mr. President. That is very clear.

I am still on page 17, but then I will jump over to page 18.

In some industries, only two or three firms account for more than 50 percent of the total domestic production of a certain good. If so, will this bill not pave the way for the protection of just a few large firms in an industry?

I have asked this question because it has already happened in the United States where a few large firms that owned and operated cement plants used anti-dumping laws to push out competitors who used cheaper imported cement to make concrete. This, for me, is a clear example of the sinister use and cynical abuse of the law.

Does the distinguished senator not think that the use of output share or collective output as basis for the initiation of antidumping investigation might lead to the protection of only a few large firms with vested interest? That is the question.

**Senator Enrile.** There is much to be said about what has been raised by the distinguished lady senator from Iloilo. On the other hand, if there is a price differential between the home market value of the cement, as mentioned by the distinguished lady senator, and the export price to us, and that dumping would mean an injury even of these three producers in the Philippines—if there are only three producers—then I think they have a right to be protected under this law. That they are carteled business to manipulate their political strength in order to exact monopoly prices from the public is something else. That is another issue that we must handle through another legislation which is known as the antitrust law in other countries. But we are crafting a general law to protect our local industries.

**Senator Santiago.** Thank you, Mr. President. I agree with the point about the imperative need for an antitrust law.

I will now go on to page 19, line 18.

The importer is given only 10 days from the receipt of the notice of the petition within which to file his answer. Is this period not too short, considering that some data or information which will be required by the importer to adequately counter the allegations against him may need to be obtained from abroad, such as data to contradict the normal value of the product in the country of export which would have to be alleged by the petitioners in their petition? Would 15 days not be more reasonable? Those are the questions.

**Senator Enrile.** Mr. President, time is of the essence in these cases. We are lucky if there is an isolated importation. If there is dumping into the country, I can almost say with certitude that it will be a series of shipment that would come into the country, and we should see to it that the time is not delayed by legal maneuvers.

I would suggest that we should maintain this and leave the discretion to the administering authorities to determine on a case-to-case basis whether there is merit to any request for an extension of time to furnish documents. Otherwise, legal luminaries will take advantage of this and they could make life very difficult for our local industries.

**Senator Santiago.** That would be an excellent procedure.

I will now go to page 22, lines 13 to 31, and also deal with page 23, lines 1 to 16.

Page 22, lines 13 to 31. What are the benchmarks to be used in measuring the material injury to or the material retardation of a domestic industry? Are these benchmarks absolute or relative to an industry? If there are no clear economic and quantitative bases or benchmarks for the evaluation of material injury, my concern is that a degree of arbitrariness in the interpretation of the law might arise.

Those are the questions.

**Senator Enrile.** The provision alluded to is quite broad and specific in some ways. It says:

DETERMINATION OF MATERIAL INJURY OR THREAT THEREOF. - THE PRESENCE AND EXTENT OF MATERIAL INJURY OR THE PRESENCE AND DEGREE OF THE THREAT OF MATERIAL INJURY TO DOMESTIC INDUSTRY, AS A RESULT OF THE DUMPED IMPORTS SHALL BE DETERMINED BY THE COMMISSION ON THE BASIS OF POSITIVE EVIDENCE AND

SHALL REQUIRE AN OBJECTIVE EXAMINATION OF: (1) THE RATE AND AMOUNT OF IMPORTS, EITHER IN ABSOLUTE TERMS OR RELATIVE TO PRODUCTION OR CONSUMPTION IN THE DOMESTIC MARKET; (2) THE EFFECT OF THE DUMPED 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 DUMPED IMPORTS AS COMPARED WITH THE PRICE OF LIKE PRODUCT, COMMODITY OR ARTICLE IN AND OR—

This will be amended later on, Mr. President.

—DOMESTIC MARKET, OR WHETHER THE EFFECTS OF SUCH IMPORTS IS OTHERWISE TO DEPRESS PRICES TO A SIGNIFICANT DEGREE OR PREVENT PRICE INCREASES, WHICH OTHERWISE WOULD HAVE OCCURRED, TO A SIGNIFICANT DEGREE; AND (3) THE RESULTING EFFECT OF THE DUMPED IMPORTS ON THE DOMESTIC PRODUCERS OR THE RESULTING RETARDATION OF THE ESTABLISHMENT OF A DOMESTIC INDUSTRY MANUFACTURING 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 OR POTENTIAL DECLINE IN OUTPUT SALES, MARKET SHARE, PROFITS, PRODUCTIVITY, RETURN ON INVESTMENT OR UTILIZATION OF CAPACITY, OTHER FACTORS AFFECTING DOMESTIC PRICES, THE MAGNITUDE OF THE DUMPING, ACTUAL AND POTENTIAL NEGATIVE EFFECTS ON CASH FLOW, INVENTORIES, EMPLOYMENT, WAGES, GROWTH AND ABILITY TO RAISE CAPITAL OR INVESTMENTS.

**Senator Santiago.** So would the distinguished sponsor say that these benchmarks are relative to the industry? Would they be absolute or relative benchmarks?

**Senator Enrile.** I guess, Mr. President, some of these are absolute benchmarks; some are relative. We have to consider other factors not only the presence of dumped goods but at the same time, if there is a recession, there is a change in the taste or style or consumption patterns of our people. These are things that must be taken into account.

**Senator Santiago.** Thank you. A related question. Although economists say that the effects of dumping are negative, there is a school of thought which posits that there is no good economic justification that dumping is harmful. In fact there are cases, it is said, when dumping may even lead to greater trade. This is what economists apparently call "reciprocal dumping" or when two countries reciprocally dump goods in each other's domestic market.

Is it not possible that dumped intermediate inputs and products which are obviously cheaper might even help domestic manufacturers to lower their cost of production and thus enable domestic industries to prosper and employment to grow?

**Senator Enrile.** This is really a center of debate in the economic world, Mr. President. Why should we prevent cheaper goods to come into our country that would benefit our consumers or our local industries?

When we talk of consumers, we are not just talking of the people who will eat beef and pork or chicken, but also those people who would be preparing hotdogs and potted meat for the market, using these materials as raw materials.

But the question is: How about the people working in our local industries producing like products? Are they not entitled to protection? This is a very difficult area to consider. We have to balance these various intertwined interests, interlocking interests, sometimes crisscrossing interests. I suppose that all we can do is to leave this matter to the judgment and good faith of our economic administrators who are going to be tasked to handle this very delicate problem.

**Senator Santiago.** I agree that that is an open-ended point. So I will proceed still on the same page 23, lines 17 to 32.

This paragraph provides for a way to avoid the imposition of provisional measures or anti-dumping duties through the execution of an undertaking under oath that it will revise or adjust its prices accordingly.

The bill, however, fails to provide the penalty or consequence for the exporter's breach of his undertaking. In case of breach of the undertaking which was executed, anti-dumping duties may be imposed upon observance of the necessary procedures. Furthermore, the anti-dumping duties must be assessed not only on current and future imports of such product, but also on all importations priced below the normal value of the product in violation of the undertaking which was executed. It would be retroactive to the date of violation of the undertaking. This retroactive imposition of the anti-dumping duty should sufficiently deter exporters from subsequently violating their undertaking.

Should we not impose a penalty of this nature? That is the question.

**Senator Enrile.** Mr. President, the purpose of an anti-dumping law is not really to punish, not to inflict punitive sanction on the importer but to promote fair trade practices by establishing an amount that would be added to the price at which the goods are imported into the Philippines or exported to the Philippines in order to equalize the playing field.

I think the local producers are more interested in the equalization of the playing field rather than the penalty that would be imposed on the importer of the goods or the exporter of the goods to the Philippines, because so what if somebody will go to jail. But if the practice of exporting cheap goods to the country will continue, it will ruin our local producers.

**Senator Santiago.** I take that explanation very well and I will concede the point. So now I will proceed to page 24, lines 1 to 11.

What volume will be considered as negligible? Should the law already not specify a threshold percentage of total import volume of such or similar product, for example, 5 percent, which will be considered as negligible? That is the question.

**Senator Enrile.** Mr. President, the treaty establishes less than 3 percent of the entire volume of imports of like products into the country to be *de minimis*. If we reach 3 percent, then we are already outside what we call "*de minimis* volume."

**Senator Santiago.** So we will simply refer to the treaty on this point.

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

**Senator Santiago.** Still on page 24, lines 29 to 30. Should it not be specifically provided that the remainder which is to be returned to the importer shall not earn any interest? That is the only question.

**Senator Enrile.** I have no objection if we amend it.

**Senator Santiago.** Thank you. So I will raise this again during the amendment period.

Now, I will go to page 25, line 5. With respect to a case of dumping assessed cumulatively as provided on page 24, paragraph (J), how will the amount of anti-dumping duty be determined? Will each country be assessed a different anti-dumping duty in accordance with the formula provided under this paragraph one? That is the question.

**Senator Enrile.** What was the question?

**Senator Santiago.** Will each country be assessed a different anti-dumping duty?

**Senator Enrile.** Yes, Mr. President, because then it would depend upon the pricing in the home market of each exporting country to us. So it is quite likely that there will be differentiated dumping duties for like products

**Senator Santiago.** Still on page 25, lines 5 to 15. What is the normal value referred to in line 7? Is this the normal value of the product in the domestic market of the importing country or the normal value of the product in the domestic market of the exporting country? Does the normal value refer to the market price or the production cost? That is the question.

**Senator Enrile.** This is the value *X* factory price at which like goods are destined for consumption in the market of the producing country or if there are no sales in that country, then of the country where it is transhipped for export to the Philippines.

**Senator Santiago.** So basically, it would be the normal value of the product in the domestic market of the exporting country?

**Senator Enrile.** That is correct.

**Senator Santiago.** Still on the same point. Did both committees consider the so-called fair price approach to the determination of the anti-dumping duty? The fair price approach, we already know, uses the production cost and not the market price of the product in the exporting country as the basis for the anti-dumping duty.

**Senator Enrile.** Actually, the treaty itself, Mr. President, gives us the formula for adjustments to the normal value in order to arrive at the *X* factory price. Meaning, we have to remove the advertising cost, the local taxes, if any, the packaging, the warranties, the after-service cost, and so forth and so on.

So the intention being that the export price to the Philippines in our case, ought to be equal to the *X* factory price of the producing and exporting country. That is my understanding.

**Senator Santiago.** So in effect, does this bill use the fair price approach?

**Senator Enrile.** No, Mr. President. I think there is only one country that uses the fair price approach—that is the United States. Because its formula is less than fair market value, there is dumping already.

**Senator Santiago.** Thank you. I have another question on this same point.

What are the implications of the method of valuation followed for the determination of the dumping duty on existing trade agreements that the Philippines has already entered into?

**Senator Enrile.** We are complying actually with our commitments under the GATT-Uruguay Round-WTO Agreement.

**Senator Santiago.** Would there be any treaties of FCN, or Friendship Commerce Navigation, that the Philippines has entered into where the other party to the treaty might not be a member of the GATT-Uruguay Round-WTO Agreement?

**Senator Enrile.** I am not aware of that, Mr. President. I do not think we have any trade agreement with any nonmember. I am not aware of any trade arrangement of the Philippines with any nonmember of the GATT-Uruguay Round-WTO Treaty.

**Senator Santiago.** In that case, that disposes of the question.

**Senator Enrile.** Because otherwise, if we are going to give a different treatment and a better treatment to a nonmember country, then we will be violating the Most-Favored-Nation clause which is one of the most basic principles of the GATT-Uruguay Round-WTO Agreement.

**Senator Santiago.** Yes, that is correct.

I am still on page 35, but now I go to lines 16 to 28. Are the provisions on the duration and review of the antidumping duty in consonance with the action plans particularly those that concern tariffs, nontariff measures and competitive policy that we have committed to APEC and similar world trade bodies? This question would require a review of the legal procedures governing the notification of dumping activities, review of dumping practices and imposition of a dumping duty. That is the question.

**Senator Enrile.** This is, more or less, attuned to the provisions of the GATT-Uruguay Round-WTO Agreement.

**Senator Santiago.** So again, we would simply refer to the treaty.

**Senator Enrile.** Yes.

**Senator Santiago.** I will now proceed to page 27, line 1 and the following lines. With respect to judicial review, may all aspects of the decision or ruling be subject to the judicial review?

It appears that under the old provisions, the aggrieved party may only appeal the amount of dumping duty that is levied and collected. Is the amendment intended to expand the right of the aggrieved party to judicial review?

**Senator Enrile.** I think a review by the courts will mean a reopening not just the level of dumping duty, but the factual basis for the imposition of the dumping duty and the extent of material injury to our local industries.

In other words, everything must be reopened and reviewed by the court.

**Senator Santiago.** That is clear.

**Senator Enrile.** I guess the courts, given the very technical nature of this discipline—the business practices involved here—will probably have to defer to the judgment of the fact-finding body that we are trying to burden with the responsibility of gathering the facts.

**Senator Santiago.** So it would be correct to say that the appeals court would have a free hand in reviewing all aspects of the case?

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

**Senator Santiago.** My final question refers to page 27, lines 21 to 26. I will have to make an extensive remark, subject to the general comment I made when I began this interpellation.

**Senator Enrile.** Lines 21 to 27?

**Senator Santiago.** Page 27, lines 21 to 26, on *Rules and Regulations*.

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

**Senator Santiago.** I will have to recall to the gentleman the remarks I made when I began this interpellation about returning the power to the Secretary of Finance.

In stating that the Secretary of Trade and Industry in the case of nonagricultural products, and the Secretary of Agriculture in the case of agricultural products, shall issue all rules and regulations to implement the Act, it appears that there will be two sets of implementing rules and regulations for this Act depending on which type of product is involved.

Is this the intention?

**Senator Enrile.** Mr. President, I guess the two secretaries

will have to harmonize their rules and regulations because both must comply not only with the law that we are crafting, but with the requirements of the GATT-WTO-Uruguay Round Agreement.

The reason each department head must issue its own rules and regulations is that there are certain provisions of the treaty bearing on agricultural products that do not bear on industrial products.

I do not pretend to know the two areas well enough to take the chance of giving it to just one department head like the Secretary of Finance. In fact, at the present time, the practice and the current regime is that all nonagricultural products are under the jurisdiction of the Secretary of Trade and Industry and all agricultural products will have to be dealt with by the Secretary of Agriculture.

That is why while we were discussing sugar earlier, we were talking of the tariffication law which lifted the quantitative restrictions on certain agricultural products and these are actually addressed to the Secretary of Agriculture. In fact, the administrative order which was raised earlier in this Chamber was issued by the Secretary of Agriculture.

**Senator Santiago.** Mr. President, my understanding is that the existing law vests the authority to issue the implementing rules and regulations on the Secretary of Finance.

My point is: Should there not be a unified set of implementing rules for the Act issued by the Secretary of Finance, except that the implementing rules which will require the technical expertise of either the Secretary of Trade or the Secretary of Agriculture will have to be supplied by them respectively?

The issuance of the implementing rules for the Act, I think, should be the responsibility of the Secretary of Finance rather than the Secretary of Trade and Industry and the Secretary of Agriculture concurrently.

**Senator Enrile.** Mr. President, I think it would be rather awkward for the Secretary of Finance to be issuing the rules and regulations to implement this law when his role is simply that of a conduit in order that either the Secretary of Trade and Industry or the Secretary of Agriculture would reach the bureau that would actually collect the dumping duties and that is the Bureau of Customs. The Secretary of Finance has no other role here except that. So, I would suggest that the rules and regulations will have to be issued by the corresponding department heads for the products involved. If it is agricultural, let it be a function of the Secretary of Agriculture; if it is nonagricultural, let it be a function of the Secretary of Trade and Industry.

**Senator Santiago.** Thank you, Mr. President. I consider that the answers have been extraordinarily competent and I thank the gentleman again for his graciousness in allowing me to conduct interpellation.

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

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

The Majority Leader is recognized.

**Senator Drilon.** For the next interpellation, may we ask the Chair to recognize Senator Pimentel.

**The President.** Sen. Aquilino Q. Pimentel Jr. is recognized.

**Senator Pimentel.** Mr. President, will the gentleman respond to a few clarificatory questions?

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

**Senator Pimentel.** Mr. President, the provisions that the gentleman is trying to propose are intended to protect any product, commodity or article of commerce which is already produced in the Philippines against the dumping of such products into the nation, or which threatens to materially retard the establishment of such an industry producing like products.

However, Mr. President, there is a requirement before an initiation of action under this provision can be supported that the application, according to the provision found on page 17, line 25, 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 50 percent of the total production of the product that is produced here and which is threatened by the importation in effect.

And yet, going on to page 18, lines 1 to 6, it seems that no investigation shall be initiated when a domestic producer expressly supporting the application accounts for less than 25 percent of the total production of the like product produced by the domestic industry.

**Senator Enrile.** That is the wording of the treaty, Mr. President. We just reflected it here. I had a hard time trying to fathom the interrelation of these two sentences, and the only thing I could come up with is, if the allegation of the petition is that the petition is being filed by a domestic industry or on behalf of a domestic industry, then we have to comply with the 50-percent requirement.

On the other hand, if there is no such allegation and the

applicant alleges that he is in this business, that he is producing this product and that he is being injured, then he must be prepared to show that he represents at least 25 percent of the industry.

Now, if there are several applicants and they do not allege that they are filing the petition by and on behalf of a domestic industry but they are filing it collectively on their behalf, then they must show that they represent at least 25 percent of the local production.

**Senator Pimentel.** Yes. And we are talking here, Mr. President, of the domestic producer who is complaining against the dumping, is that correct?

**Senator Enrile.** Yes, that is correct.

**Senator Pimentel.** Now, if we are talking of protecting incipient industries, I find it difficult to see how at a given point when they are starting....

**Senator Enrile.** It says retardation, meaning that the industry is just starting—

**Senator Pimentel.** Yes.

**Senator Enrile.** —and that they cannot move on because they are being killed by dumping. If this industry is producing 1,000 pairs of shoes or clothing material, let us say, per month or 12,000 per year. That is the total production, then...

**Senator Pimentel.** Then dumping duty will be allowed.

**Senator Enrile.** Then dumping duty will be allowed. Because then we are retarding the growth of this industry as against the producers of like goods abroad that are dumping their goods here. If there are several small businesses producing, let us say, 10 producers of 100 each, these are small atomized business houses, then they can. Let us say, about—what is 25 percent of 1,000, 200?—three of them could come together and file a petition that they want to be protected because the industry could not be established in the country because of this or that it is being retarded. The growth is being retarded, I think dumping duty would be justified.

**Senator Pimentel.** Mr. President, the gentleman's answer would be true despite the fact that on page 18, it is specifically stated that no investigation shall be initiated when the domestic producer expressly supporting the application accounts for less than 25-percent production of the like products.

**Senator Enrile.** Total production.

**Senator Pimentel.** Yes, Mr. President.

**Senator Enrile.** Yes, because even if we are producing, no matter how small the organization, we have a 100-percent production in the country. Now, if there is no production, then there is no product that will be injured.

**Senator Pimentel.** Yes, that is exactly what I wanted to clarify. Because the way this provision is worded, it is so obtuse that it is difficult to envision the protection that we want to accord to a local industry.

**Senator Enrile.** Mr. President, this is a product of negotiation, and even the economists agree that they made and intended these provisions to be vague because of certain give-and-take in the negotiation.

**Senator Pimentel.** In any event, if our understanding is that no matter how small an incipient producer of a product that is being threatened by the importation of like products from other countries, they are entitled to initiate an anti-dumping investigation.

**Senator Enrile.** Yes, Mr. President. That is correct as long as they comply with the requirements. If they produce, let us say, four bulldozers a year, one company that produces one bulldozer—if we want to push these to the streets—can go to the proper department and file an application for dumping.

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

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

The Majority Leader is recognized.

**Senator Drilon.** Mr. President, Sen. Teresa Aquino-Oreta is the last senator who has manifested and reserved the right to interpellate. May I ask the Chair to recognize the senator from Navotas.

**The President.** Sen. Teresa Aquino-Oreta is recognized for interpellation.

**Senator Aquino-Oreta.** Thank you, Mr. President. May I ask some questions from the distinguished gentleman from Cagayan?

**Senator Enrile.** Gladly, Mr. President, to our very charming and able member of this Chamber.

**Senator Aquino-Oreta.** Mr. President, I have been listening all throughout the interpellation of our colleagues, and I was

just wondering since in Senate Bill No. 763—I was looking at the consumer groups—some consumers and consumer groups believe that anti-dumping measures restrict choices for quality products by favoring domestic products and limiting imports.

Mr. President, what provisions or mechanisms are there in Senate Bill No. 763 which protect Filipino consumers by making available low-cost and high-quality imported goods against high-cost local products?

**Senator Enrile.** Mr. President, we are in a regime of import liberalization. We do not limit imports of certain products. But what we are doing in this measure is to provide our domestic industries the wherewithal to protect themselves in the event that there is “dumping”; meaning, that goods are sent to the Philippines not according to their prices at which the same goods are marketed in their home countries of production but in different and lower prices in order to injure local industries. Although the intention may not be to injure local industries deliberately, the effect of the entry of such priced goods would bring about material injury to local industry or threaten them with material injury.

**Senator Aquino-Oreta.** Yes, but will that not remove competition because we have better quality products from abroad at a lower price than our very own?

**Senator Enrile.** Well, in a sense, Mr. President, there is lessening of competition because we are stopping the entry of cheap goods. But I do not think our laws would allow cut-throat competition. What is allowed is a fair trade competition; a competition that is fair, without restraining trade inside our domain.

If on the other hand, if we are going to allow foreign interest to send products to the country at less than fair values, fair prices to the detriment of our local industries, *kawawa naman tyong mawawalan ng trabaho sa atin sapagkat* no businessman would continue producing products if it will lose money.

**Senator Aquino-Oreta.** Precisely, Mr. President, with these products coming in now, does the gentleman not think this is making our local products suffer? Because in the market now, we see better products but the prices are lower.

**Senator Enrile.** If the prices are lower, Mr. President, and the prices of these goods, lower as they are, are equal if not more than the prices at which they are being marketed in their home country of production or export, we cannot use the tool of anti-dumping duty to prevent the entry of these goods. It is only when the prices at which these goods are exported to the Philippines would be less than the prices at which they are marketed in their home country of production or export that we can use the tool of anti-dumping.

But the mere fact that the goods are marketed in the Philippines for less than local prices would not mean dumping. The applicant for dumping must establish that the export price at which these goods were sent to the Philippines is less than the price at which these goods are destined for consumption in the local market or in the market of manufacture.

**Senator Aquino-Oreta.** Then, Mr. President, what are the safeguards against capricious filing of dumping complaints by domestic industries?

**Senator Enrile.** This safeguard, Mr. President, is that the Secretary concerned must first establish the existence of a *prima facie* case before any action to thwart the importation would happen.

**Senator Aquino-Oreta.** Yes, and I think our colleague already asked this, but will that not give more time for these import products to ... will this give more protection to our local product?

**Senator Enrile.** Which is this?

**Senator Aquino-Oreta.** Mr. President, the gentleman said that they have to establish *prima facie* case and that will entail time.

**Senator Enrile.** The time is circumscribed and provided in the law that we are crafting, Mr. President. In fact, I must say that I cut it shorter in some ways than what is allowed.

**Senator Aquino-Oreta.** Actually, Mr. President, I am more concerned with our local products so that somehow there will not come a time when they will be in competition with these high quality and low-priced imported products against our high-priced products.

**Senator Enrile.** Let us take the case of beer, Mr. President. There is a big importation of Carlsberg, Heineken, Budweiser and all kinds of high-priced beer. But no one has raised any issue of dumping, because I suppose San Miguel and Asia Brewery know that these beers are being priced according to their real price in their home markets. But if there should be an occasion where Heineken would be marketed or exported to the Philippines at a price lower than the price at which it is marketed in its own home country, or if the Heineken in Singapore is sent to the Philippines at less than its price in the domestic market of Singapore, then surely, we will consider dumping.

**Senator Aquino Oreta.** I was thinking of corned beef, Mr. President, because the imported ones have better quality but cheaper in price than our local corned beef.

**Senator Enrile.** Madam, I am in the corned beef business.



Our local production is better than those that are being produced abroad. When they come here, they have very short, almost mast grains of meat. I think we are just affected by our mental conditioning that imported is better. Anyway, that is neither here nor there.

**Senator Aquino-Oreta.** No, no, Mr. President. I was looking at the prices. The price of our local corned beef is higher than the price of the imported product that we have here.

**Senator Enrile.** We have a lower price than any of the imported products. I think one of these days, I will send the lady senator a sample.

**Senator Aquino-Oreta.** That is good. Anyway, I would like to thank the gentleman, Mr. President. As I said, the concern for local products here in our country weighs more than imported, high quality, and lower priced products or as against our quality and high-priced products.

Thank you, Mr. President.

**The President.** Thank you, Sen. Teresa Aquino-Oreta.

The Majority Leader is recognized.

**Senator Drilon.** There are no more senators wishing to interpellate.

**Senator Blazon.** Mr. President.

**Senator Drilon.** I withdraw the motion, Mr. President. Senator Biazon would like to raise a few questions.

**The President.** Senator Biazon is recognized.

**Senator Biazon.** Thank you, Mr. President. Just two or three questions.

Mr. President, we are looking at two conflicting sectors here—protection of our industries/producers, as against the protection of our consumers, the latter, being raised by Sen. Teresa Aquino-Oreta. For our industries, does the protection come only in terms of volume being brought in or protection on the control of price in the form of exaction of tariff?

**Senator Enrile.** When we are protecting our local industries, we are talking primarily of the pricing because we are leveling the pricing by this law. The volume is part of the competition, Mr. President.

**Senator Biazon.** Unless a product is covered by the minimum access volume.

**Senator Enrile.** Yes, the product could be covered by the minimum access volume but we can bring in out-quota imports even if we have the minimum access volume. What a minimum access volume simply says is “Okay, this product has a minimum access volume of X-number of tons at this rate of duty.”

But an importer in the Philippines can go beyond that minimum access volume and import at a higher duty rate, what we call the out-quota rate. We cannot do anything because we are a part of globalization, for as long as the pricing mechanism is fair. If it is not fair, we apply anti-dumping duty or countervailing duty, as the case may be.

**Senator Biazon.** Mr. President, that means there are two measures that protect our industries; One is the minimum access volume; and two, is the tariff. I think this would answer the concern of Senator Aquino-Oreta—the protection of both our industries and our consumers in the sense that there is still a competitive atmosphere offered by the importation. This may be explained by the gentleman’s example about how to determine the tariff to be imposed which is to level the playing field as far as the pricing is concerned.

**Senator Enrile.** That is correct.

**Senator Biazon.** But it does not deal on the quality.

**Senator Enrile.** Quality-wise, that is a factor that has to be taken into account in determining the reasonableness of the price.

**Senator Biazon.** Meaning, Mr. President, the protection for our consumers is in terms of pricing but not on quality.

**Senator Enrile.** That is correct, Mr. President.

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

**The President.** Thank you, Senator Biazon. The Majority Leader is recognized.

**Senator Drilon.** Mr. President, I do not see any senator raising his hand to raise additional questions. Therefore, I once more move that we close the period of interpellations.

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

**Senator Drilon.** We now come to the period of committee amendments.

#### COMMITTEE AMENDMENTS

**Senator Enrile.** We have a few committee amendments, Mr. President.

On page 16, line 10, replace the word "Philippines" with the phrase EXPORTING COUNTRY OR THE COUNTRY OF ORIGIN.

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

**Senator Enrile.** On page 17, line 14, between the words "countries" and "origin", replace the word "or" with the preposition OF so that line will read "or countries OF origin or export."

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

**Senator Enrile.** On the same page, line 14, delete the words "IN QUESTION" after the word "export" before the comma(,).

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

**Senator Enrile.** Mr. President, on page 21, after line 20 and before the paragraph, starting with the word "IN" in line 21, insert the following as a paragraph:

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

Another paragraph following that paragraph.

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;

And then continue with the word "AND" (,).

**Senator Guingona.** Mr. President.

**The President.** The Minority Leader is recognized.

**Senator Guingona.** May we have that last portion of the proposed amendment, Mr. President.

**The President.** The last portion is requested by the Minority Leader, Senator Enrile.

**Senator Enrile.** The last portion of...

**The President.** The last portion of the proposed insertion.

*At this juncture, the Majority Leader handed a copy of the committee report to the Minority Leader.*

**Senator Guingona.** I have the committee report, Mr. President. Is there any time period within which ceases a reasonable period?

**Senator Enrile.** Mr. President, before the distinguished Minority Leader will proceed, I would like to amend what I said.

Instead of a semicolon (;) following the word "available", a period (.) will be inserted and delete the word "AND" and the comma(,). Replace the semicolon (;) with a period (.) and delete the rest of that line.

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

**Senator Enrile.** Mr. President, on page 24, between lines 17 and 18, before the present paragraph K, insert the following paragraph which I request to be identified as paragraph K.

K. 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.

And change the letters that would identify the paragraphs thereafter.

**The President.** Is there any objection to the proposed changes?

**Senator Guingona.** Mr. President.

**The President.** The Minority Leader is recognized.

**Senator Guingona.** Just a query, if the distinguished sponsor will not mind.

**Senator Enrile.** Not at all, Mr. President.

**Senator Guingona.** Is this intended to allow the possible reduction of the prices?

**Senator Enrile.** Not necessarily, Mr. President. This one is required by the WTO Agreement.

**Senator Guingona.** What is the principal purpose for this?

**Senator Enrile.** To give the parties to know the basis of the measures that would be undertaken by the Philippine government.

I would like to indicate the initial amendments that we inserted here granting authority to the Tariff Commission to require the production of certain documents, failure of which would justify a decision by the commission on the basis of available facts. This was intended to pressure the importer and/or the exporter to produce the documents that would not be available to us but available to them. This was one of the issues raised in the hearing by the local domestic manufacturers.

**Senator Guingona.** In the meantime the importer can continue importing but with the same deposits.

**Senator Enrile.** Subject to a cash bond. But this is a very brief period because there are certain periods that must be met by the two secretaries in their decisional process.

**Senator Guingona.** In accordance with rules and regulations?

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

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

**Senator Pimentel.** Mr. President.

**The President.** Senator Pimentel is recognized.

**Senator Pimentel.** Will the gentleman kindly clarify whether or not the grant of "sufficient time" will, in fact, go counter to his earlier manifestation that the 10-day period within which the investigation must commence, or something like that, had to be put in order to speed up the investigation?

**Senator Enrile.** Actually, at this point, the investigation is almost over.

**Senator Pimentel.** Yes, Mr. President.

**Senator Enrile.** The total number of days is 85 days completed. This is just some kind of a conference because of the possibility that the exporter could give a voluntary adjustment of prices.

**Senator Pimentel.** This is exactly what I am trying to drive at, Mr. President. That perhaps it would be best if we put a definite time frame for that action to be taken rather than leave it to the determination of the authority to say, "You have sufficient time to make a reply or produce the facts."

Would it not be better, Mr. President?

**Senator Enrile.** I have no objection to that, Mr. President, if the gentleman will suggest an amendment.

**Senator Pimentel.** Perhaps given a period of five days.

**Senator Enrile.** Subject to style, it is accepted, Mr. President.

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

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

**Senator Enrile.** I am through with the committee amendments, Mr. President.

**Senator Aquino-Oreta.** Mr. President.

**The President.** Senator Aquino-Oreta is recognized.

**Senator Aquino-Oreta.** Just a minor error, Mr. President. On page 26, line 14, I think instead of the word "not longer", grammatically...

**Senator Enrile.** This is going to be amended. There are individual amendments to handle this.

**The President.** Typographical. Thank you for the observation, Senator Aquino-Oreta.

**Senator Drilon.** We now close the period of committee amendments and now proceed with the individual amendments.

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

Let us now proceed to the period of individual amendments.

**Senator Drilon.** We propose to go line by line, page by page, Mr. President.

Unless there are any amendments from pages 1 to 15, we now go to page 16 where the amendments are found.

So any individual amendments on page 16, Mr. President?  
Page 17?

**Senator Roco.** Mr. President.

**Senator Drilon.** Mr. President, we ask that Senator Roco be recognized.

**The President.** Senator Roco is recognized.

**Senator Roco.** I was listening over the intercom earlier and I think most of the proposed amendments have been covered by the committee report. I am just going to ask the gentleman if the term "normal value" has been redefined.

**Senator Enrile.** No, it is not defined. I left that definition to the Tariff Commission because that is actually the term used in the treaty. In implementing this law, the two department heads and their investigating agency, the Tariff Commission, must consult the treaty itself.

**Senator Roco.** Under the WTO definition, Mr. President, I was under the impression that "normal value" was defined in this manner. Normal value is defined as:

- a. the comparable price of the like product destined for consumption in the exporting country;
- b. if the information about (a) is not available, the comparable price of the like product when exported to a third country; or
- c. if the information in (b) is not available, the price of the like imported product when first resold to an independent buyer.

**Senator Enrile.** In addition, there is a reconstructed value, Mr. President. That is why I did not bring that definition in this law because I would rather leave that in the treaty. After all the treaty would be deemed as a suppletory to this law.

**Senator Roco.** I realize that, Mr. President. But I thought if there is no objection to the concept, and it is really in the treaty in any event, even for the purpose of practitioners, it would be simpler if we articulate it already and then add the qualification of the reconstructed value so that we have flexibility.

**Senator Enrile.** It is very difficult to write that in this law because there are so many variables. For the sake of our law, I think it is better that we do not attempt to transport that into our legal system. We will have to await the interpretation of that term according to the treaty.

#### SUSPENSION OF SESSION

**Senator Roco.** Yes. May we have 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 6:29 p.m.*

#### RESUMPTION OF SESSION

*At 6:30 p.m., the session was resumed.*

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

#### ROCO AMENDMENT

**Senator Roco.** Mr. President, after conferring with the gentleman, we suggest, as a final paragraph in this paragraph A, the following additional paragraph which reads:

FOR THE PURPOSE OF THIS LAW, NORMAL VALUE IS DEFINED AS (A) THE COMPARABLE PRICE OF THE LIKE PRODUCT DESTINED FOR CONSUMPTION IN THE EXPORTING COUNTRY; (B) IF THE INFORMATION ABOUT (A) IS NOT AVAILABLE THE COMPARABLE PRICE OF THE LIKE PRODUCT WHEN EXPORTED TO A THIRD COUNTRY; OR (C) IF THE INFORMATION IN (B) IS NOT AVAILABLE, THE PRICE OF THE LIKE IMPORTED PRODUCT WHEN FIRST RESOLD TO AN INDEPENDENT BUYER.

**Senator Enrile.** Where are we going to insert that, Mr. President?

**Senator Roco.** At the end of paragraph A. In fact, originally, I would have preferred for the purpose of this paragraph, "normal value" means this.

**Senator Enrile.** But maybe since we are using the words "normal value" in the entire proposed statute, it is better that we adopt that already as a definition of the term "normal value."

It is accepted, Mr. President.

**Senator Roco.** Wherever it may be appropriate, Mr. President.

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

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

**Senator Drilon.** On page 17?

**Senator Flavier.** On page 17, Mr. President.

**The President.** Senator Flavier is recognized.

#### FLAVIER AMENDMENTS

**Senator Flavier.** On page 17, at the end of line 16, delete the word "supporting" and put the word IMPORTING.

**Senator Enrile.** It is accepted, Mr. President.

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

**Senator Flavier.** On the same page, Mr. President, line 20, delete the word "EVALUATION" and replace it with the word EVOLUTION.

**Senator Enrile.** It is accepted, Mr. President.

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

Is there any further amendment?

**Senator Drilon.** There are no further amendments on page 17. We now go to page 18. I am sorry, the Minority Leader has an amendment on page 17.

**The President.** The Minority Leader is recognized.

#### SUSPENSION OF SESSION

**Senator Drilon.** Before we proceed, may I ask for a one-minute suspension of the session and ask the Maintenance people to fix the microphones.

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

*It was 6:33 p.m.*

#### RESUMPTION OF SESSION

*After a few seconds, the session was resumed.*

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

#### GUINGONA AMENDMENT

**Senator Guingona.** On page 17, Mr. President, at the end of line 24, after the word "INDUSTRY," insert a new paragraph to read as follows:

TRADE OR FINANCE ATTACHÉS AND OTHER CONSULAR OFFICIALS OR ATTACHÉS ASSIGNED IN THE EXPORTING MEMBER COUNTRIES ABROAD ARE MANDATED TO ASSIST THE APPLICANT OBTAIN THE PERTINENT INFORMATION/DOCUMENTS TO SUPPORT HIS COMPLAINT.

**Senator Enrile.** I am willing to accept that amendment, Mr. President. But may I suggest that we place that amendment before paragraph C on page 18 in order not to break the continuity.

**Senator Guingona.** Where in paragraph C?

**Senator Enrile.** On page 18, that is the end of paragraph B, after line 14.

**The President.** Does the Minority Leader agree?

**Senator Guingona.** Yes, Mr. President.

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

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

**Senator Pimentel.** Mr. President, just a clarification.

**The President.** Senator Pimentel is recognized.

**Senator Pimentel.** The mandate or the requirement that attachés, et cetera should give support presupposes that the complaint is valid.

In other words, what I am worried about is, supposing here is a petition against anti-dumping, but it is not, shall we say, meritorious, why should attachés now be made to support such a move, Mr. President? I just assume that all these things will be taken into account; otherwise, we are just saddling our attachés with additional work which might not be warranted at all under the circumstances.

**Senator Guingona.** Mr. President, it is to the national interest that a domestic producer finds support and succor from the trade attachés abroad. When he files his complaint, it is a sworn complaint. But many times, he cannot find the

necessary information and documents, especially if he is a fledgling businessman starting a new enterprise. Therefore, since this is for the national interest, I think the trade attachés abroad should help. Anyway in this age of modernized telecommunications, it is easy for the trade attachés to do that.

**Senator Pimentel.** This representation has no quarrel with the purpose. What I am trying to point out is probably the need for a requirement of at least a show of *prima facie* basis before we add to the burdens of our attachés abroad.

In other words, there has to be some showing that the petition is meritorious, let us say, at first blush. Otherwise, just the mere fact that a complaint has been made and immediately, the whole structure of our foreign service, particularly the attachés are brought into play might be a little too much.

**Senator Enrile.** Mr. President.

**The President.** Senator Enrile is recognized. <sup>1</sup>

**Senator Enrile.** With the permission of the two gentlemen. I understand the concern of the distinguished gentleman from Cagayan de Oro. But I think the proposal is appropriate in view of the fact that before this proposed amendatory paragraph, the paragraph found in lines 7 to 14 says that: if, in special circumstances, the authorities concerned, meaning our Secretaries of Agriculture and/or Trade and Industry, decide to initiate an investigation without having received a written application by/or on behalf of domestic industry for the initiation of such investigation, they shall proceed only if they have sufficient evidence of dumping, injury and a causal link to justify the initiation of any investigation.

So, the assistance of our attachés abroad would be necessary in this respect.

**The President.** So with that clarification...

**Senator Enrile.** It is accepted, Mr. President.

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

**Senator Guingona.** From line 25 to page 17, Mr. President...

**Senator Roco.** Antecedent amendment, Mr. President.

**The President.** What page?

**Senator Roco.** Page 18, Mr. President.

**Senator Drilon.** No, we are still on page 17.

**Senator Roco.** No wonder I could not understand the distinguished gentleman.

**Senator Enrile.** We go back to page 17.

**The President.** Yes, please proceed.

**Senator Guingona.** Instead of that last paragraph, upon the filing of the petition by an applicant, the Department of Trade and Industry or Agriculture shall determine whether there exists express support from the appropriate domestic producers whose collective output is at least 25 percent as basis for an immediate conduct of a preliminary investigation.

**Senator Enrile.** I regret I cannot accept the proposed amendment, Mr. President, because this is an actual reproduction or a restatement of a treaty provision.

**Senator Guingona.** But the 25 percent will still be there. What we are trying to do is to make it easy for the applicant. Instead of the applicant going around getting the express support, it is the Secretary who will determine it. That is the only difference.

**Senator Enrile.** Mr. President, that is found on...

**Senator Guingona.** The treaty will still be complied with. Only the burden of determination will now be upon the public official concerned just to make things easier.

**Senator Enrile.** That is going to be treated on page 20, line 13, Mr. President. Upon determination by the Secretary of the existence of a *prima facie* case, he shall, without delay, require the applicant to secure a written support for the initiation of the formal anti-dumping investigation from the affected domestic industry producing 25 percent or more of like products.

**Senator Guingona.** In that case, there is no need for it.

**Senator Enrile.** The one on page 17 is simply a material allegation in the application, Mr. President.

**Senator Guingona.** He does not have to get a written consent?

**Senator Enrile.** Not yet.

**Senator Guingona.** It is the Secretary who will?

**Senator Enrile.** After the Secretary shall have determined the existence of a *prima facie* case when he is supposed to send the records to the Tariff Commission for inquiry or active inves-

tigation, he will require now the applicant to secure the written support of the industry.

**Senator Guingona.** So the applicant, as I understand it, need not get the express support...

**Senator Enrile.** When he files the application.

**Senator Guingona.** Yes. He makes an allegation.

**Senator Enrile.** Yes.

**Senator Guingona.** So the burden is left to the Secretary later on.

**Senator Enrile.** To tell him to get the support.

**Senator Guingona.** Who will get the support, the Secretary or the applicant?

**Senator Enrile.** Well, if the purpose of the amendment is to require the Secretary to secure the support of the industry, I have no quarrel with that, Mr. President.

**Senator Guingona.** That is the intent, Mr. President. We want to make things easier for the applicant.

**Senator Enrile.** Then the proper place to put that will be on page 20, Mr. President.

**Senator Guingona.** And that will include the 50 percent.

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

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

**The President.** Let us proceed. What is the next page, Mr. Majority Leader?

**Senator Drilon.** We will now go to page 18, Mr. President. Senator Roco has an amendment.

**The President.** Senator Roco is recognized.

**Senator Roco.** Thank you, Mr. President. In line 22, may we just ask about "shall notify the Government of the exporting Member." Before I propose an amendment, was there any particular reason that I have missed why the notice is only to the government of the exporting member?

**Senator Enrile.** Because that is the requirement of the treaty, Mr. President. This is an exact wording of the treaty.

**Senator Roco.** All right. That is good enough reason.

May it be improved if we say that we do not only notify the government of the exporter, but even the exporter and, maybe, the public in general, so that everybody gets to know about the pending anti-dumping investigation?

**Senator Enrile.** Mr. President, that will be too cumbersome for our people because then the exporter will say they did not receive any notice. "Your law requires that you must notify me." We should limit the people to be notified.

The only reason we placed this in this proposal is that this is a requirement of the treaty that as a member of the treaty, we have to notify. It says here:

The authorities shall avoid, unless a decision has been made to initiate an investigation, any publicizing of the application for the initiation of an investigation. However, after receipt of a properly documented application and before proceeding to initiate an investigation, the authorities shall notify the government of the exporting Member concerned.

That is a requirement. That is also how we will be treated if an anti-dumping duty against our own goods exported to another country would be a subject of an anti-dumping action.

**Senator Roco.** Yes, I appreciate the reason, Mr. President. But may it not be better for transparency if we notify even the general public just by publication? Otherwise, there seems to be—if it is government to government, there is a tendency to keep it...

**Senator Enrile.** Mr. President, why should we expand the burden of our local industry and go beyond what the treaty requires of us? The treaty simply requires us to notify the government of the exporter. Why should we expand the notice requirement by notifying the public, notifying the exporter? When the importer of the product is already within our jurisdiction, let him notify his own principal abroad.

**Senator Roco.** No, no, I am not referring to the exporter, Mr. President. I am referring to the general public, because some small importer may just pick it up and may in fact have good evidence to support the anti-dumping case. And there is no additional burden if it is by publication.

**Senator Enrile.** There is a prohibition, Mr. President, of publicizing.

**Senator Roco.** No, that is before. The prohibition refers to "before receipt of properly documented applications." After receipt of a properly documented application, when we restrict

the notice only to the exporting member country, then somebody in Davao who may be helped—because of notice by publication, everybody who is interested may just pick up. I mean it does not become part of...but the publication here, Mr. President, refers to the second part, not for the initial.

**Senator Enrile.** How long a time would the gentleman need, Mr. President? This will prolong the period. Because time is of the essence here. We are cutting down the time requirement in order to protect our local industries.

**Senator Roco.** I understand, Mr. President. In fact, we have no difference; if it is just published with a short notice, that will be satisfactory. But notifying government only of the exporting member, the government of the exporting member will have a tendency to protect the exporter because that is their interest. They may try to protect their business, their home business, the host business or the origin of the exporting business.

But when we tell more people, then maybe, considering that there are already documented applications--because this is already after the documentation--then if we just publish something for the benefit of all importers or whatever those documents have been received by the government to support or what Senator Pimentel was saying as a *prima facie*, to support *prima facie* anti-dumping violation, then somebody in Davao or in Cagayan may say, "Let us go forward and help that anti-dumping case." Because when we just tell, let us say, Bangkok or Thailand that there is now a *prima facie* case, they will try to....

**Senator Enrile.** I have no objection, Mr. President, if the gentleman wants to do it that way, but please give me a rewording of this.

**Senator Roco.** The wording shall be something like this, and this will be subject to style: IT SHALL NOTIFY THE GOVERNMENT OF THE EXPORTING COUNTRY AND MEMBERS OF THE IMPORTING PUBLIC IN THE PHILIPPINES BY PUBLICATION IN A NEWSPAPER OF GENERAL CIRCULATION, ABOUT THE IMPENDING ANTI-DUMPING INVESTIGATION.

**Senator Enrile.** Are we going to notify the public as a necessary party?

**Senator Roco.** No, Mr. President. In fact, there is another problem. I initially suggested the word "exporter" because of the problem of due process. If the exporter is not notified, then, later on some lawyers will raise it as a deprivation of property without due process. But I can see that it makes it more difficult for us.

**Senator Enrile.** Mr. President, maybe we can say here, if

I may suggest: However, after receipt of a properly documented application and before proceeding to initiate an investigation, the authority, the Secretary in our case...

**Senator Roco.** Shall notify the government.

**Senator Enrile.** Where is that?

**Senator Roco.** Line 22 or line 21.

**The President.** On page 18, line 22.

**Senator Enrile.** Let me just see where that provision is in the law. Does the gentleman know the exact location of that provision?

**Senator Roco.** On page 18, lines 21 to 22.

**Senator Enrile.** HOWEVER, AFTER RECEIPT OF A PROPERLY DOCUMENTED APPLICATION AND BEFORE PROCEEDING TO INITIATE AN INVESTIGATION, THE SECRETARY SHALL NOTIFY THE GOVERNMENT OF THE EXPORTING MEMBER ABOUT THE IMPENDING ANTI-DUMPING INVESTIGATION AND CAUSE A NOTICE TO BE PUBLISHED IN A NEWSPAPER OF GENERAL CIRCULATION REGARDING THE FILING OF THE ANTI-DUMPING APPLICATION.

Subject to style, Mr. President.

**Senator Roco.** Subject to style, Mr. President. Because the point is to alert all those who may have an interest in the matter to come forward and help in the investigation of the anti-dumping case.

**Senator Enrile.** Subject to style, Mr. President. I hope the distinguished gentleman can craft the style.

**Senator Roco.** We will try to figure it out, Mr. President. Maybe, it should be a separate sentence altogether. THE SECRETARY WILL ALSO THEN CAUSE THE PUBLICATION.

**Senator Enrile.** Subject to style, it is accepted, Mr. President.

**Senator Roco.** Subject to style, Mr. President.

**The President.** Subject to style, the amendment is accepted. Is there any objection?

**Senator Drilon.** On what page and line, Mr. President?



**Senator Enrile.** On page 18, paragraph c), last sentence. To the last sentence we will add a new sentence: THE SECRETARY SHALL ALSO CAUSE THE PUBLICATION OF A NOTICE IN A NEWSPAPER OF GENERAL CIRCULATION REGARDING THE FILING OF THE ANTI-DUMPING APPLICATION.

**Senator Roco.** REGARDING THE IMPENDING ANTI-DUMPING INVESTIGATION.

**Senator Enrile.** Subject to style, Mr. President.

**Senator Roco.** Yes, Mr. President.

**Senator Biazon.** Mr. President.

**The President.** Senator Biazon is recognized.

**Senator Biazon.** Mr. President, will this not impose additional load or burden on the part of the Secretary? What if there is a failure? Will this not be formed as a defense on the part of the dumper?

**Senator Enrile.** It will be a defense. There is no notice to the public.

**Senator Biazon.** *Iyon lamang po.*

**Senator Roco.** But it is so easy to avoid. Notice to the public has the advantage, Mr. President, of making people who are importers and who might be affected, making them come forward to help prove the case. Since the way it is worded, it is just publication in a newspaper of general circulation and it says that there is an impending investigation constituting anti-dumping violation of barbershop chairs, in that example.

**Senator Biazon.** If we can find a way, it is not going to form as a defense for the dumper; the dumper is the foreigner. While here, we are protecting our industries and if we impose this additional obligation on the part of our protector, then failure to satisfy this new obligation could form part as the defense on the part of the dumper. That is my objection, Mr. President.

**Senator Roco.** Then maybe in the crafting of the words we will say that is not an essential element and cannot be used, because on the other hand, Mr. President, we lost the possibility.

There are two risks of just notifying government: One is the question of due process. In fact in my mind I have not resolved whether we should notify also the exporter because the Constitution prevents one from depriving people of property without due process, and without notice there is supposed to be no due

process. That is a procedural problem that I have not still solved. Under the World Trade Organization Agreement, notice to the exporting government is notice to the exporter. I would imagine that is the interpretation.

**Senator Enrile.** Notice to the importer is also notice to the exporter.

**Senator Roco.** Also, Mr. President. So that will satisfy. But because anti-dumping is a very difficult case to handle, we need people to help us. If we keep quiet and we give it only to the government of Thailand, nobody in Kota Kinabalu will know that there was a dumping of barbershop chairs—and I am using that particular case because nobody knew. The barbers did not realize that the barbershop chairs made in Pampanga or Tarlac were being beaten in the market because some guy who was about to go bankrupt in Bangkok just dumped the barbershop chairs.

So notifying is good for the case because we have more supporters although it is not made an essential element, but we just notify; otherwise, the guys affected cannot come forward.

**Senator Enrile.** Will the distinguished gentleman accept an amendment to his proposed amendment in the sense that, subject to style, while the Secretary concerned is also required to give notice of the pending application for dumping duty in a newspaper of general circulation, failure to do so would not prevent the application to proceed its due cause.

**Senator Roco.** That is correct, Mr. President. Or something to the effect that to involve as many of the consuming public as possible, the Secretary shall cause the publication of the impending...

**Senator Enrile.** But if we are going to involve the consuming public, Mr. President, the implication is that we are making the consuming public a necessary party to the anti-dumping.

**Senator Roco.** Yes, but I did not mean it that way, Mr. President. I mean that in the preparation of the case. Because it is really, believe me—I have had involvement in only two anti-dumping cases and it was very difficult. Unless we have people who will be coming forward, it dies in vain.

So that is the problem I am trying to solve. I do not want to get into the snare of the necessary party. No, that is not my intention.

**Senator Enrile.** Actually, Mr. President, the protection from dumping is a function of the government and the industry, and I am sure that they will be armed with sufficient

documentation. The only thing is, while I go along with the gentleman that the public should be notified, I would suggest that subject to style, failure of the Secretary to give notice should not be treated as an impediment to the successful prosecution of the dumping application.

**Senator Roco.** Yes, Mr. President, subject to style.

**Senator Enrile.** Subject to style.

**The President.** So the last suggestion will be the final amendment. Is there any objection? *[Silence]* There being none, the amendment is approved, subject to style.

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

**Senator Drilon.** Let us move on to page 19, Mr. President. May we ask the Chair to recognize Senator Flavier.

**The President.** Senator Flavier is recognized.

#### FLAVIER AMENDMENTS

**Senator Flavier.** On page 19, Mr. President, lines 2, 3, 4 and 5.

In line 2, delete after the word "forthwith" the rest of the line; delete the whole of the line 3; delete the whole of line 4; and delete half of line 5 up to the word "to" before the word "gather".

So that the line will now read "COMMISSIONER OF CUSTOMS SHALL FORTHWITH GATHER", and so on.

**Senator Enrile.** It is accepted, Mr. President.

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

**Senator Flavier.** On page 19, line 8, after the word "submit", insert the words A REPORT IMMEDIATELY.

So that it will read: "and to submit A REPORT IMMEDIATELY to the Secretary through the Secretary of Finance" and so on, Mr. President.

**Senator Enrile.** It is accepted, Mr. President.

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

**Senator Flavier.** Finally, on page 19, line 23, after the word "personal" and before the word "delivery" is a comma (.). That should be deleted, Mr. President.

**Senator Enrile.** It is accepted, Mr. President.

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

**Senator Flavier.** On page 20, line 13, after the word "delay", insert the phrase REQUIRE THE APPLICANT TO. So that it reads: "he shall without delay REQUIRE THE APPLICANT TO secure a written support", and so on.

**Senator Enrile.** Mr. President, in view of the proposal of the Minority Leader, I regret to say that I could not accept that proposed amendment.

**Senator Flavier.** If it will contravene the amendment of my Minority Leader, I shall withdraw my amendment and become Minority Leader instead. *[Laughter]*

Finally, Mr. President, on the same page, line 16, after the word "products", put a COMMA (,) and insert the words AND THEREAFTER.

**Senator Enrile.** It is accepted, Mr. President.

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

**Senator Drilon.** May we ask the Chair to recognize the Minority Leader.

**The President.** The Minority Leader is recognized

**Senator Guingona.** After that amendment of Senator Flavier, perhaps we can place the proposed amendment, as follows:

**Senator Drilon.** In what line would that be, Mr. President?

**The President.** Is it line 16?

**Senator Guingona.** That would be line 16.

**The President.** "Like products, and thereafter transmit..."

**Senator Guingona.** No, no. Like products, before his amendment.

**The President.** Before his amendment, we are referring to page 20, line 16.

**Senator Guingona.** On page 20, line 16. With the indulgence of Senator Flavier, put a PERIOD (.) after the words "like products".

And then, IN THE COURSE OF THE INVESTIGATION, THE CONCERNED SECRETARY SHALL ALSO DETERMINE WHETHER THE APPLICATION IS SUPPORTED BY DOMESTIC PRODUCERS WHOSE COLLECTIVE OUTPUT CONSTITUTES MORE THAN 50% OF THE TOTAL PRODUCTION OF THE LIKE PRODUCT PRODUCED BY THAT PORTION OF THE DOMESTIC INDUSTRY.

**Senator Enrile.** Mr. President, I regret to decline accepting that proposal because that is only true when the application is by and on behalf of an industry. Anyway, that is already covered by the requirement that the Secretary without delay, secure a written support for the initiation of formal anti-dumping investigation from the affected domestic industry producing 25 percent or more.

**Senator Guingona.** As long as it is understood that the applicant need not personally labor to secure evidence that 50 percent or more support the application.

**Senator Enrile.** Yes, Mr. President. In fact, this law contemplates that even the Secretary concerned will initiate the investigation if there is dumping. If there is an application initiated by the private sector, we are now requiring him to see to it that the requirements of the treaty for 50 percent of the production in the country, if the application is by and on behalf of the industry, or at least 25 percent, if it is not by and on behalf of the industry that applies must be met.

**Senator Guingona.** With that clarification, Mr. President, I just would like to refer back to the last paragraph on page 17 because it gives the impression that it is the applicant who must secure.

**Senator Enrile.** He is making that allegation, Mr. President.

**Senator Guingona.** Yes, Mr. President.

**Senator Enrile.** He alleges that in the application.

**Senator Guingona.** That is correct, Mr. President.

**Senator Enrile.** Allegation and proof are two different things. We are talking now of proof or evidence here.

**Senator Guingona.** As long as that is made clear, I have no amendment to introduce.

**The President.** So, it has been clarified. There is no amendment. The Majority Leader will please proceed.

**Senator Drilon.** The Flavier amendment stands, Mr. President.

**The President.** Yes.

**Senator Drilon.** We are now on page 20. There are no more amendments on page 20. We proceed to page 21. There are no amendments. We proceed to page 22.

**Senator Flavier.** Mr. President.

**The President.** Senator Flavier is recognized.

#### FLAVIER AMENDMENT

**Senator Flavier.** On page 22, Mr. President, line 28, delete the word "and/or" and replace it with the article THE so that it will read, "As compared with the price of like product, commodity or article in THE domestic market" and so on.

**Senator Enrile.** It is accepted, Mr. President.

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

**Senator Drilon.** There are no more amendments on page 22. We proceed to page 23. There are no amendments on page 23. We proceed to page 24.

**Senator Enrile.** Re-paragraphing will begin on page 24, Mr. President.

**The President.** Yes, starting from letter K to L.

**Senator Drilon.** That was previously manifested. There are no more amendments on page 24. We proceed to page 25. There are no amendments on page 25. We proceed to page 26.

**Senator Flavier.** This is really the Oreta-Aquino amendment, Mr. President.

#### AQUINO-ORETA AMENDMENT

**Senator Flavier.** In line 14, we should delete the letter "t" on the word "not".

**Senator Enrile.** It is accepted, Mr. President.

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

**Senator Flavier.** On page 27, line 5...

**Senator Enrile.** Mr. President, may I request that on page 26, line 30, the numbers in bracket [5] be changed to 150.

**Senator Flavier.** It has been corrected already, Mr. President.

**Senator Enrile.** The copy that I have has not been corrected. Thank you.

#### FLAVIER AMENDMENTS

**Senator Flavier.** On page 27, lines 5 and 6, delete the last two words of line 5, "or by", and then delete the first two words of line 6, "registered mail", which is really the part that is bracketed. So that it will read, "EITHER BY PERSONAL DELIVERY A PETITION FOR THE REVIEW," and so on.

**Senator Enrile.** Mr. President, I would not accept that. I think what is contemplated here is to remove the brackets ([]) enclosing "OR BY REGISTERED MAIL". So that the filing of the appeal may be EITHER BY PERSONAL DELIVERY OR BY REGISTERED MAIL.

**Senator Flavier.** I accept that modification, Mr. President.

**Senator Drilon.** So the amendment will be the deletion of the brackets.

**Senator Flavier.** Just remove the brackets ([]) but retain the words.

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

**Senator Flavier.** I accept the amendment, Mr. President.

**The President.** So only the brackets will be removed in the amendment. Is there any objection? [Silence] There being none, the amendment is approved.

**Senator Drilon.** So the bracket ([]) is before the word OR in line 5 and the bracket ([]) after the comma (,) in line 6.

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

**Senator Flavier.** Finally, Mr. President, in lines 12 and 13, delete the last word "SAFEGUARD" in line 12 and the first word "MEASURE" in line 13 and replace them with the words ANTI-DUMPING DUTY.

**Senator Enrile.** It is accepted, Mr. President.

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

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

**Senator Drilon.** Mr. President, Senator Santiago has some amendments which she will submit for consideration tomorrow.

In the meantime, may we request the Secretary to prepare a clean draft of the bill for the consideration of the Chamber when we resume the consideration of this bill tomorrow, Mr. President.

**The President.** The Secretary is hereby directed.

#### SUSPENSION OF CONSIDERATION OF S. NO. 763

**Senator Drilon.** With that, Mr. President, I move to suspend consideration of Senate Bill No. 763 under Committee Report No. 1.

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

**Senator Drilon.** Mr. President, before we adjourn, we wish to inform our colleagues that tomorrow, we shall continue with the period of amendments on Senate Bill No. 763 under Committee Report No. 1; likewise, in the period of amendments, Senate Bill No. 1136 under Committee Report No. 2; and for sponsorship, Senate Bill No. 1137 under Committee Report No. 3.

May we, therefore, request our colleagues to prepare their individual amendments, if there are any, on these two measures—Senate Bill Nos. 763 and 1136.

#### ADJOURNMENT OF SESSION

With that, Mr. President, I move to adjourn the session until three o'clock tomorrow afternoon, September 1, 1998.

**The President.** Is there any objection? [Silence] There being none, the session is adjourned until three o'clock tomorrow afternoon, September 1, 1998.

*It was 7:13 p.m.*

## RECORD OF THE SENATE

WEDNESDAY, AUGUST 26, 1998

### OPENING OF THE SESSION

At 3:03 p.m., the Senate President, Hon. Marcelo B. Fernan, called the session to order.

**The President.** The 15th session of the Senate in the First Regular Session of the 11th Congress is hereby called to order.

We shall be led in prayer by Senate President Pro Tempore Blas F. Ople.

*Everybody rose for the prayer.*

### PRAYER

**Senator Ople.**

### PANALANGIN

Mahal naming Panginoon:

Sa amin pong kapaligiran ay naghahari pa rin ang lagim ng mga patayan, gutom at matinding pagdarahap at laganap na kawalan ng pag-asa;

Sa kabila nito'y buo ang aming pananampalataya sa Iyo at sa Iyong banal na pananalita. Sapagkat alam naming sa pamamagitan ng kalinga at pagpapala Mo ay maaari naming tawirin at pagtagumpayan ang lahat ng pagsubok na ito kung kami ay magiging tapat sa Iyo at sa aming sinumpaang tungkulin.

Pagpalain Mo po, Panginoon, ang Senado ng Pilipinas at ang lahat ng bumubuo sa Kapulungang ito.

Maraming salamat po.

**The President.** Thank you, Senate President Pro Tempore, Blas F. Ople.

### 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 ..... \*\*  
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 ..... Present  
Senator Loren B. Legarda-Leviste ..... Present  
Senator Ramon B. Magsaysay Jr. .... Present  
Senator Blas F. Ople ..... Present  
Senator John Henry R. 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 Francisco S. Tatad ..... Present  
The President ..... Present

**The President.** With 19 senators being present, the Chair declares the presence of a quorum.

The Majority Leader is recognized.

### 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

**The Secretary.**

Malacañang  
Manila

Aug. 20, 1998

Hon. MARCELO B. FERNAN  
Senate President  
Senate of the Philippines  
Pasay City

Dear Senate President Fernan:

I hereby endorse Senate Bill No. 586, entitled

\* Arrived after roll call  
\*\* On official mission

AN ACT AMENDING REPUBLIC ACT NUMBERED SEVENTY-SIX HUNDRED AND FIFTY-THREE ENTITLED "THE NEW CENTRAL BANK ACT" AND FOR OTHER PURPOSES,

as a priority Administration measure.

Best regards.

(Sgd.) JOSEPH EJERCITO ESTRADA

**The President.** Referred to the Committee on Rules

BILLS ON FIRST READING

**The Secretary.** Senate Bill No. 1110, entitled

AN ACT ESTABLISHING CERTAIN LIMITATIONS ON ADVERTISEMENTS RELATING TO TOBACCO PRODUCTS AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF

Introduced by Senator Santiago

**The President.** Referred to the Committees on Health and Demography; and Trade and Commerce

**The Secretary.** Senate Bill No. 1111, entitled

AN ACT PROVIDING FOR A NATIONAL LAND USE FRAMEWORK AND ITS IMPLEMENTING MECHANISMS

Introduced by Senator Santiago

**The President.** Referred to the Committees on Environment and Natural Resources; Urban Planning, Housing and Resettlement; Ways and Means; and Finance

**The Secretary.** Senate Bill No. 1112, entitled

AN ACT PRESCRIBING SCHOOL BUS SAFETY STANDARDS AND FOR OTHER PURPOSES

Introduced by Senator Santiago

**The President.** Referred to the Committee on Public Services

**The Secretary.** Senate Bill No. 1113, entitled

AN ACT RESTRICTING THE ACCESS OF YOUTH

TO TOBACCO PRODUCTS

Introduced by Senator Santiago

**The President.** Referred to the Committees on Health and Demography; and Trade and Commerce

**The Secretary.** Senate Bill No. 1114, entitled

AN ACT AMENDING REPUBLIC ACT NO. 7394 ALSO KNOWN AS THE CONSUMER ACT OF THE PHILIPPINES, ARTICLE 94

Introduced by Senator Santiago

**The President.** Referred to the Committees on Trade and Commerce; and Health and Demography

**The Secretary.** Senate Bill No. 1115, entitled

AN ACT AMENDING THE FAMILY CODE OF THE PHILIPPINES, ARTICLE 36

Introduced by Senator Santiago

**The President.** Referred to the Committees on Youth, Women and Family Relations; and Constitutional Amendments, Revision of Codes and Laws

**The Secretary.** Senate Bill No. 1116, entitled

AN ACT ESTABLISHING LEGAL STANDARDS AND PROCEDURES FOR PRODUCT LIABILITY LITIGATION AND FOR OTHER PURPOSES

Introduced by Senator Santiago

**The President.** Referred to the Committee on Trade and Commerce

**The Secretary.** Senate Bill No. 1117, entitled

AN ACT AMENDING THE FAMILY CODE OF THE PHILIPPINES, ARTICLE 26

Introduced by Senator Santiago

**The President.** Referred to the Committees on Constitutional Amendments, Revision of Codes and Laws; and Youth, Women and Family Relations

**The Secretary.** Senate Bill No. 1118, entitled  
REVISED INVESTMENT COMPANY ACT

Introduced by Senator Roco

**The President.** Referred to the Committees on Trade and Commerce; and Banks, Financial Institutions and Currencies

RESOLUTIONS

**The Secretary.** Proposed Senate Resolution No. 137, entitled

RESOLUTION DIRECTING THE SENATE COMMITTEE ON JUSTICE AND HUMAN RIGHTS TO ENDORSE TO HIS EXCELLENCY JOSEPH EJERCITO ESTRADA THE GRANTING OF PERMANENT RESIDENCY OF THE REMAINING VIETNAMESE BOAT PEOPLE IN THE PHILIPPINES

Introduced by Senator J. Osmeña

**The President.** Referred to the Committee on Justice and Human Rights

**The Secretary.** Proposed Senate Resolution No. 138, entitled

RESOLUTION DIRECTING THE APPROPRIATE SENATE COMMITTEES TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, INTO THE STATE OF PREPAREDNESS OF LAW ENFORCEMENT AND PUBLIC SAFETY AGENCIES OF THE GOVERNMENT IN CONTINGENCIES AND RESCUE OPERATIONS, WITH THE END IN VIEW OF ENACTING REMEDIAL OR SUPPLEMENTAL LEGISLATION

Introduced by Senator Barbers

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

**The Secretary.** Proposed Senate Resolution No. 139, entitled

RESOLUTION DIRECTING THE SENATE COMMITTEES ON AGRARIAN REFORM; AND ENVIRONMENT AND NATURAL RESOURCES TO INVESTIGATE, IN AID

OF LEGISLATION, THE ALLEGED IRREGULARITIES IN THE ISSUANCE OF PERTINENT DOCUMENTS, ALLOWING THE CONSTRUCTION OF A PROPOSED CEMENT PLANT AND QUARRYING OPERATIONS IN GUINOBATAN, ALBAY

Introduced by Senator Santiago

**The President.** Referred to the Committees on Environment and Natural Resources; and Agrarian Reform

**The Secretary.** Proposed Senate Resolution No. 140, entitled

RESOLUTION DIRECTING THE SENATE COMMITTEE ON BANKS, FINANCIAL INSTITUTIONS AND CURRENCIES TO INVESTIGATE, IN AID OF LEGISLATION, THE REPORTED ANOMALIES IN THE DEVELOPMENT BANK OF THE PHILIPPINES

Introduced by Senator Santiago

**The President.** Referred to the Committees on Accountability of Public Officers and Investigations; and Banks, Financial Institutions and Currencies

**The Secretary.** Proposed Senate Resolution No. 141, entitled

RESOLUTION DIRECTING AN INQUIRY, IN AID OF LEGISLATION INTO THE PERTINENT PROVISIONS OF THE COMPREHENSIVE AGREEMENT ON RESPECT FOR HUMAN RIGHTS AND INTERNATIONAL HUMANITARIAN LAW SIGNED BETWEEN THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES (GRP) AND THE NATIONAL DEMOCRATIC FRONT, IN ORDER TO ENSURE THAT THE INTERESTS OF ALL THE VICTIMS OF HUMAN RIGHTS VIOLATIONS DURING THE MARCOS REGIME ARE FULLY PROTECTED

Introduced by Senator Drilon

**The President.** Referred to the Committee on Justice and Human Rights

**The Secretary.** Proposed Senate Resolution No. 142, entitled

RESOLUTION DIRECTING THE SENATE TO

CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE ASSASSINATION OF SENATOR BENIGNO S. AQUINO JR. THROUGH A SELECT COMMITTEE, WITH A VIEW TO DETERMINING RESPONSIBILITY FOR THIS "CRIME OF THE CENTURY" AT THE HIGHER LEVEL OF GOVERNMENT

Introduced by Senator Ople

**The President.** Referred to the Committee Justice and Human Rights

**The Secretary.** Proposed Senate Resolution No. 143, entitled

RESOLUTION DIRECTING THE APPROPRIATE SENATE COMMITTEE TO INVESTIGATE, IN AID OF LEGISLATION, THE APPOINTMENT TO PUBLIC OFFICES OF NATIONAL CANDIDATES, WHO LOST IN THE LAST ELECTIONS

Introduced by Senators Santiago and Tatad

**The President.** Referred to the Committees on Constitutional Amendments, Revision of Codes and Laws; and Government Corporations and Public Enterprises

The Majority Leader is recognized.

#### SUSPENSION OF SESSION

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

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

*It was 3:11 p.m.*

#### RESUMPTION OF SESSION

*At 3:12 p.m., the session was resumed.*

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

#### BILL ON SECOND READING S. No. 763 - Antidumping Act (Continuation)

**Senator Drilon.** Mr. President, with the concurrence of

the the Chamber, we ask that we resume consideration of Senate Bill No. 763, as reported out under Committee Report No. 1.

The parliamentary status is that we are under the period of interpellations. For that purpose, may we ask the Chair to recognize Senator Enrile, sponsor of the measure, for the continuation of the interpellation.

Senator Tatad has made a reservation to interpellate but he is not in the hall right now. May we ask the Chair to recognize Sen. Renato L. *Compañero* Cayetano for the interpellation.

**The President.** Senator Enrile is recognized for the continuation of his interpellation of Senate Bill No. 763, as reported out under Committee Report No. 1. Senator Renato L. *Compañero* Cayetano is recognized for his interpellation.

**Senator Cayetano.** Thank you, Mr. President. Will the distinguished gentleman from Cagayan allow certain clarificatory questions?

**Senator Enrile.** Gladly, Mr. President, to the distinguished gentleman from Taguig, Pateros, Muntinlupa City, Bulacan and the Philippines.

**Senator Cayetano.** Thank you, Mr. President. First of all, let me add my voice to the previous interpellators who have complimented the good gentleman from Cagayan for his able, very lucid and clear presentation of the sponsorship of Senate Bill No. 763 which seeks to amend R.A. No. 7843.

As we know, Mr. President, the matter of taxation and public finance is one of the specialties of the gentleman from Cagayan. Certainly, we are very fortunate to have a colleague in the person of the gentleman who sponsored this very technical and sometimes philosophical Antidumping Act.

Mr. President, the Explanatory Note of Senate Bill No. 763 clearly indicates the rationale for seeking the amendment of Republic Act No. 7843, and that is by removing its restrictive provisions and by adopting a workable antidumping mechanism in order to attain the following:

1. conformity with the GATT-UR Agreement on antidumping, avoiding unnecessary restrictive provisions;
2. establishing common legal provisions like prescriptive periods that would also be applicable to other GATT-UR Agreements like countervailing measures and safeguard measure; and
3. transforming the law into a more workable and simple piece of legislation.



These indeed are the rationale behind the sponsorship of Senate Bill No. 763. Is that correct, Mr. President?

**Senator Enrile.** Well, the Explanatory Note speaks for itself. I think that would be the best evidence of what was intended by the measure.

**Senator Cayetano.** Mr. President, having said that Senate Bill No. 763 is intended to remove the restrictive provisions of Republic Act No. 7843, I wonder if the provision found on page 17, subsection B—

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

**Senator Cayetano.** —*Initiation of Action*, requires that a person, whether natural or juridical, may file a verified petition. Thereafter, it says beginning in line 25 that:

“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 50 percent of the total production of the like product,” et cetera.

Mr. President, is this provision found in the original Republic Act that is being sought to be amended?

**Senator Enrile.** No, Mr. President. Precisely, I was correcting the mistake committed by that original law. Because, in spite of the fact that the GATT-Uruguay Round-WTO Agreement was already ratified at that point in crafting the antidumping law, they forgot that they have ratified the provision of this treaty and they missed putting it in the law as a condition *sine qua non* to qualify the applicant for an antidumping duty.

I read into the records the requirement of the WTO Agreement yesterday, but I think it is worth repeating here, so that those who are unfamiliar with the text of the treaty could familiarize themselves. I would like to refer to page 152 of this document, *Uruguay Round Final Act*, Marrakesh, 15 April 1994, evidently published by PhilExport, and calling direct attention to paragraph 5.4, and I quote:

5.4 An investigation shall not be initiated pursuant to paragraph 1 unless the authorities have determined, on the basis of an examination of the degree of support for, or opposition to, the application expressed by the domestic producers of the like product, that the application has been made by or on behalf of the domestic industry. 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 50 percent of the total production of 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 25 percent of total production of like product produced by the domestic industry.

That is a requirement, Mr. President, of the treaty that we have ratified. And we are just repeating it in the proposed measure.

**Senator Cayetano.** So, Mr. President, it is clear that this requirement is indeed found in the treaty that the gentleman mentioned and it is a repetition of the provision that the gentleman...

**Senator Enrile.** It is a statement of this requirement, Mr. President, so that we will harmonize ourselves with the treaty that we have acceded to.

**Senator Cayetano.** Is it the position of the gentleman, Mr. President, that without restating this particular provision in the treaty in this proposed Senate Bill No. 763, this provision in the treaty may be violated by the Philippines?

**Senator Enrile.** Not necessarily, Mr. President. But there is no harm in restating the requirement because it will be required of the applicant anyway, and it will educate our young lawyers who will be practicing antidumping cases. They should know without reading these very complex treaty provisions.

**Senator Cayetano.** Mr. President, having been informed by the good gentleman of the source of this particular provision requiring a certain percentage before an application may be made on behalf of domestic industry, or an investigation may be initiated, would he consider this particular provision now as restated, restrictive or liberal?

**Senator Enrile.** Mr. President, we can quibble about whether this is restrictive or not. But whether it is restrictive or not, the fact is that it is a requirement of the treaty, and we cannot alter that, otherwise we have to go around the world and get the consent of the other nations.

**Senator Cayetano.** So the explanatory note that this piece of legislation that is now being sponsored is intended to remove the restrictive provisions in the existing law is indeed not restrictive in the sense that what is just being proposed in this new legislation is a restatement of what is found in the treaty and ratified by this august Body.

Anyway, Mr. President, my last question really is: What happens if these requirements are not met by an applicant? Is there an appeal process? Because I do not see in this particular piece of proposed legislation an appeal process where an applicant, for some reason, may be denied as far as his antidumping complaint with the Secretary is concerned.

**Senator Enrile.** There is none, Mr. President, because that means, first, that either there is no dumping found by the Secretary or that there is no compliance with the requirement that we bound ourselves under the treaty.

**Senator Cayetano.** There is no doubt about being bound by the treaty, Mr. President. The reason I asked is to give due process to the local industries that might be prejudiced by the initial decision of the Secretary of Trade and Industry, that no dumping has occurred as far as a particular domestic industry is concerned.

I wish to relate that question, Mr. President, to a latter paragraph in this legislation where the trade and industry secretary has imposed an antidumping duty. This can later on be recalled or even reconsidered after an expiration of a certain period of time.

**Senator Enrile.** Yes, because the measure of the right of any member-country under the treaty to use this response to unfair trade practices is limited by time to five years. And only if the injury persists. If there is no more injury to the domestic industry because of some economic conditions changing, then we cannot make the antidumping duty permanent. But that is a separate issue altogether. We are talking here about the requirements for the assumption of jurisdiction to initiate an investigation with respect to a claimed dumping.

Before the authorities of the Philippines can assume jurisdiction over an application, the applicant must comply with certain requirements to be alleged in the application and to be supported by evidence to establish a *prima facie* case.

**Senator Cayetano.** Mr. President, that is quite clear as far as the provision of the proposed legislation is concerned. I am only concerned as to the opportunity for an applicant whose complaint has been denied by the Secretary, and the good gentleman said that there is nothing in the law here which would allow the applicant to appeal the decision that no dumping exists.

I wonder, Mr. President, if it is possible to say that in spite of the absence of any appellate provision here where the complaint has been denied, that the provision of the Administrative Code that any decision of the department secretaries may be appealed to the Office of the President would apply.

**Senator Enrile.** That will be too cumbersome a procedure, Mr. President. In fact, we would not be able to comply with the text of the treaty.

I would like to state here that all of these measures that we are discussing are, in fact, encouraged by the Secretary of the Department of Trade and Industry who is the guardian and protector of our local industries as far as industrial goods are concerned, and by the Secretary of Agriculture who is the guardian and protector of the agricultural sector bearing on agricultural products coming into the country.

So, I could not possibly fathom a situation where the corresponding secretary, either of trade and industry or of agriculture, would say that there is no dumping if indeed there is dumping. Because the Secretary of Trade is supposed to protect his own clientele—the industries of the Philippines; and the agricultural sector in the case of the secretary of Agriculture. He would be most foolish as a secretary to deny the initiation of an investigation if indeed there is dumping and that the injury bears on the ratios established in the treaty that we have acceded to and now restated in this proposed measure.

**Senator Cayetano.** Mr. President, I understand the explanation or justification except the fact that whether we like it or not, when the Secretary of Trade and Industry makes a decision, let us say, denying an application for dumping, still it is a judgment based on his own perception on facts and information that he has with him. But as a matter of law, the Secretary of Trade and Industry or the Secretary of Agriculture and for that matter, all the department secretaries, are alter egos of the President, and it is a principle of administrative law that the decision of a department secretary is appealable to the Office of the President.

I am wondering, Mr. President, if it is possible that despite the absence of any provision on appeal, whether in fact an applicant for reason of his own may appeal a decision of the Secretary of Trade on the basis of the general principle on administrative law, which is—that the decision of the secretary of a department is appealable to the Office of the President?

**Senator Enrile.** Mr. President, time is of the essence in this particular situation. If we are going to elevate the matter to Malacañang *baka iyong kabayo ay patay na at hindi na kailangan iyong damo*. But we would just like to say here, that as far as complying with these percentages, I do not think there is any businessman worth his salt who will initiate an antidumping application without assuring himself—unless he has a band of lawyers—that he has the percentages that will support him because it is very clear.

In fact, many of the industries in the country have their own

Chamber of Agriculture, Chamber of Hog Producers, Chamber of Poultry Operators, Chamber of Steel Producers, Chamber of Beer Producers, Chamber of Glass Producers, and so forth and so on. So it is easy for them to comply with this requirement.

Second, even if there is no applicant for the imposition of an antidumping duty, the secretary concerned is obligated under this proposed law *motu proprio* to initiate an investigation—precisely there is dumping—to protect local industries. The assumption here is that the government, through the secretaries, will exercise their prerogative to protect local industries because the politics of this is that if we do not exercise this protective umbrella, many mouths, many families will be deprived of livelihood.

**Senator Cayetano.** Well, Mr. President, we do not dispute the justification or benefits from what is being sought by this particular legislation, we are just concerned that the decision of the Secretary of Trade, regardless of its objectivity, would deprive an applicant of due process of law.

**Senator Enrile.** I do not think, Mr. President, that the secretary concerned can ignore an antidumping application if the applicant alleges in his application that first, there is dumping and this is supported by documents of pricing and volume, and second, that he represents at least 25 percent of production in the community. If he files an application for himself, as well as by and on behalf of the industry to which he belongs, then he must comply with the 50-percent requirement.

That is why yesterday, I said facetiously that if it happens that the dumped product is beer, then one single applicant, like San Miguel, will probably be enough. But if it is the reverse, if it is Asia Brewery that will apply, it must allege that the application is supported by San Miguel because Asia Brewery has only 20 percent of the market.

**Senator Cayetano.** I would like to thank the sponsor for that. I only hope that the Secretary of Trade and Industry that the gentleman referred to would make a judgment on whether to accept or dismiss an application for dumping on the basis of what is good for the local industry.

**Senator Enrile.** I assure the gentleman, Mr. President, that the Secretary of Trade and Industry or the Secretary of Agriculture will not favor an antidumping application if it is established that the application complies with the requirements of the law. The entire industry will be against him. He will be booted out by President Estrada or by any president for that matter in the future.

**Senator Cayetano.** With that statement, Mr. President, I have no other question. Thank you very much.

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

**Senator Drilon.** Mr. President, may I ask the Chair to recognize Sen. Francisco S. Tatad.

**The President.** Sen. Francisco S. Tatad is recognized for the interpellation.

**Senator Tatad.** Thank you very much, Mr. President. Will the distinguished sponsor yield for a few questions?

**Senator Enrile.** Gladly, Mr. President, to one of the experts in this discipline. I will be very happy to accommodate and hear his questions, and answer them.

**Senator Tatad.** I would like to thank the sponsor for that.

First of all, may we congratulate the distinguished sponsor on this timely measure and on the patience that he has shown so far in responding to questions on the floor.

Mr. President, we ratified the Marrakesh Agreement establishing the World Trade Organization in December, 1994 and we became a member of the World Trade Organization effective January 1, 1995.

As part of the preparations for our membership in the WTO, we enacted the present law, Republic Act No. 7843, otherwise known as the Antidumping Act of 1994, which amends Section 301, Part II, Title 2, Book 1 of the Tariff and Customs Code. Four years later, or one Congress later, we have this bill, Senate Bill No. 763, proposing to rewrite the law.

My first question is: Have we had an opportunity to test the efficacy of this particular law that we are trying to amend?

**Senator Enrile.** No, Mr. President, because precisely it is so difficult to apply. The businessmen are complaining that they want to protect themselves but they could not find protection in the law because it is so complex. Apart from being complex, some of the provisions were muddled because they mixed the requirements of safeguards, the portion of the treaty bearing on safeguards, which have different standards with the requirements of the treaty bearing on antidumping and countervailing.

**Senator Tatad.** Mr. President, we will have the opportunity to examine this particular statement in detail as we go along. But for now, is our distinguished friend telling us that there has been dumping except that no industry has been able to bring up any petition that would stand before the appropriate jurisdiction because the law is defective?

**Senator Enrile.** Yes, Mr. President, because that seems to be the complaint. In fact, there has been no case of dumping filed because of the difficulty of the evidential requirement under the present law.

Second, some of the provisions, I understand, caused some confusion in the minds of legal practitioners.

**Senator Tatad.** It is possible, Mr. President, that some of the defects referred to by our distinguished colleague in the law came about because, although the law itself was passed after we had fully debated the WTO Agreement—I am not so sure if my date is correct—it was prepared long before the text of the treaty came into our hands. That is one possibility.

In any case, in the 1997 Annual Report of the WTO, we find that at least 206 antidumping investigations were initiated in 1996. The most active members during the year in terms of initiating antidumping investigations were South Africa with 30; Argentina and the European Community with 23 each; the United States with 21; India with 20; Australia and Brazil with 17 each; and Korea with 13.

As of December 31, 1996, WTO members reported 900 antidumping measures, including price undertakings that are enforced. Of these, 35 percent were maintained by the United States; 17 percent by the European Community; 11 percent by Canada and Mexico. Products from China were the subject of the most antidumping investigations initiated during the year. There were 39 in number, followed by products exported from the European Community or its members, 35; the United States, 21; Brazil and India, 10 each.

Looking at these numbers, we are quite impressed that some countries have indeed been using their antidumping laws quite actively. I wonder if the distinguished sponsor would have some familiarity with their laws as they stand right now—whether they are fully in conformity with Article 6 of GATT 1994, which is the basis of the antidumping law.

**Senator Enrile.** Mr. President, the only country that has quite a different antidumping statute, probably stricter in protecting its national interest than others, is the United States because had been using antidumping law long before the onset of the GATT. When the antidumping provision of the General Agreement on Tariff and Trade was adopted by the member countries, the United States was able to get what they call the “Grandfather Rule,” exempting their antidumping law from the requirements of the antidumping provision of the GATT-Uruguay Round WTO Agreement.

Second, all the other signatories to the agreement who are

not placed in the same position in *pari passu* with that of the United States would have to comply with the requirements of this treaty that we are discussing.

Third, Mr. President, apropos of what the gentleman has just read as a report of the WTO, the fact that other countries have been saddled with too many antidumping cases should suggest to us that indeed there are countries that are dumping their products. It is not farfetched to conclude, maybe even a certitude to say that the Philippines is a victim of dumping. And yet our businessmen could not protect themselves for the simple reason that the law crafted by us in Congress, which is now Republic Act No. 7843, is defective.

In fact, I was told—I do not know this for a fact but I was told—that the reason there had been no antidumping case arising under the provisions of Republic Act No. 7843 was due to the difficulty of a prospective petitioner or applicant in complying with the documentary requirements essential in the determination of a *prima facie* case that will usher a formal investigation of dumping. So the adversely affected domestic industries find it difficult to substantiate their claims, especially a claim for material injury.

Now, the restrictiveness of RA No. 7843 was in fact noticed by Argentina, Australia, the European Union, Hong Kong, and the United States. These WTO members expressed their desire for the amendment of RA No. 7843 to make it conform with GATT-Uruguay Round Agreement on Antidumping.

I understand this matter was last raised during the WTO review of this RA No. 7843 on the Subsidies and Countervailing Duties Conference in Geneva on April 24, 1996.

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

I would need a bit more enlightenment on a few points with respect to the US record on antidumping. Unless I am mistaken, my recollection is that the antidumping regime first became fashionable with the Kennedy Round, started in 1964 up to 1967, and then went on during the Tokyo Round, 1973 to 1979. Of course, it acquired a new life altogether during the Uruguay Round.

But it is not really a particular antidumping law that the United States has been using to protect its interests. It is a provision in the Trade Act, popularly known as “Super 301.”

Even in the Uruguay Round Agreements, there is a provision there which says that US laws would override the provisions of the treaty. This was one of the points hotly and intensely debated on the floor of the Senate in December 1994.

**Senator Enrile.** Precisely, Mr. President, because of what I have already alluded to, the United States was given what they call a "grandfather right" with respect to its antidumping law because it predated the Antidumping Code of the GATT Treaty.

**Senator Tatad.** I am sufficiently enlightened there, Mr. President. Now our distinguished colleague was saying that it is logical to suppose that the Philippines has been a victim of dumping.

With the permission of the Chair, may I step back a little into the area of principles. We are talking of antidumping. Can we talk a little about dumping? Is dumping illegal, as a trade practice?

**Senator Enrile.** No, Mr. President. If they will flood the country with a certain type of product, that would not be dumping. Unless we could show first that we have an industry to be affected here and that the products that are flooding the country would have a lower export price than the home market price.

If there is a difference between the export price and the home market price of the product, then there is dumping. Because that will be the measure of the additional duty that we are authorized to impose on the product exported to us.

**Senator Tatad.** That is very clear, Mr. President. I have no problem understanding when dumping occurs. I am referring now to the philosophical framework which Senator Cayetano referred to earlier. Is dumping illegal?

My understanding is that, GATT itself does not prohibit dumping. In fact, it is a normal business practice. There are many reasons why it happens. We have sporadic dumping where there is no deliberate intention to engage in dumping. We probably have a new industry, and the pricing system is not yet fixed. The people involved do not know yet how to price their commodities.

We have a situation where for profit maximization, they engage in dumping. We have a cyclical situation where to cover at least variable cost or to insure job security during periods of slack demand, dumping is resorted to. We have a defensive type of dumping where dumping is used to minimize losses resulting from excess capacity, which is maintained to deter entry by competitors.

We have dumping taking place when we want to establish an economy of scale. When we want to eat up the bigger part of the market, dumping occurs. When we want to attack a leader in the export market, as the Japanese have been doing, then dumping occurs. Then we have the predatory type of dumping which is meant to establish monopoly in a foreign market. These are day-to-day normal practices.

**Senator Enrile.** There is no question about that, Mr. President. That is looking from the viewpoint of the exporting country and the producing entities.

I will give a classic example to define everything that has been mentioned by the distinguished gentleman. Let us take, for instance, a factory producing ladies shoes.

If a factory in a foreign country could produce 1 million pairs of shoes annually on a one shift of eight hours per day, and it sells that pair of shoes for \$20 in its home market, it makes a profit of \$4 dollars per pair. It has a variable cost of \$10 and a fixed cost of \$16.

As far as the fixed cost is concerned, if it produces 1 million pairs, it covers its fixed cost, and with a variable cost of \$10 per pair, it makes a profit of \$4 per pair. It has a variable cost of \$10 and a fixed cost of \$16.

Now it wants to hit the Philippines and does two shifts a day and produces 2 million. It sells the 1 million additional pairs to the Philippines at \$14 per pair, which is about \$6 less than what it sells the same pair in its own home market. In that case, regardless of the intention of the exporting country and its producing unit, there is dumping in the Philippines, and we can apply the Dumping Law if it injures our Marikina shoe producers.

**Senator Tatad.** There is no dispute, Mr. President. I was merely making my statement...

**Senator Enrile.** Because the philosophy or the economic principle involved is, entities, producers would produce and sell their production in addition to their normal production for as long as they can sell the product for more than their variable cost. So if the variable cost is \$10 in this case, they can sell these goods even for \$12 in the Philippine market and still make \$2 million additional profit a year, in addition to their \$4 million already assured in their home market.

**Senator Tatad.** The point is understood, Mr. President. I was merely trying to give a preface to the next statement I am about to make.

Dumping is GATT legal, antidumping has also been made GATT legal. But in fact, antidumping is nothing but a protectionist measure in a liberalized market repackaged in order to look different and acceptable. I have no problem with that, but I believe it is necessary to identify properly the bills we are discussing according to its nature and accidents.

**Senator Enrile.** Mr. President, if all nations, as well as all human beings are honest with one another, there would be no need to have these laws—antidumping laws, countervailing duty

laws, safeguard laws, escape clauses and so on and so forth. But unhappily, in the world of business as it is in the world of politics, there are always dishonesties going on. While we want a liberalized international trading arrangement, this desire must not be allowed to prevail to the injury of our local entrepreneurs and industries.

I think the basic rationale of the GATT-Uruguay-WTO Agreement was to establish a system of international trading where the playing field is even or level. But if other countries will use unfair trade practices to assault, attack or injure the domestic economy of their fellow members, then it is equally understood by the members themselves realistically speaking, that each member is given the right to adopt an adequate response to protect itself, and one of the responses allowed is antidumping duty.

**Senator Tatad.** I thank the sponsor, Mr. President. As I said, there is no dispute there. I think the GATT-WTO document sustains both our positions on this issue.

Does our distinguished friend, however, foresee an anti-dumping regime that would be commodity-neutral where the law would apply to all commodities irrespective of their respective uses to the country?

**Senator Enrile.** I think the contemplation of the law is that this should be a commodity-neutral.

**Senator Tatad.** Let me explain, Mr. President. For instance, we are an energy-deficit country. We have a liberalized regime as far as the importation of petroleum products is concerned. Supposing there are shipments of petroleum products well below their prices in the home market, would these be welcomed by the Filipino people or opposed by the local industry?

**Senator Enrile.** Of course, because first, we will get cheaper fuel; and second, there is no adequate local supply of fuel. There is no industry to be injured. We will be clapping our hands as 70 million souls if they will send us cheap crude at, say, US\$10 per barrel.

**Senator Tatad.** But I have not completed my question, Mr. President. Precisely, we have several oil firms in the country, and all of them would combine and file a petition with the Secretary of Trade and Industry or we would have other firms that would file a similar petition saying that this importation of very cheap fuel would, in the words of the bill, "retard the establishment of the petroleum industry."

What happens there?

**Senator Enrile.** The distinguished gentleman is talking now of products that are processed in the Philippines, like gasoline, diesel and liquefied petroleum. That is a different matter altogether, Mr. President, because when I answered the distinguished gentleman's question, I was talking of crude. But if they dump products to us at prices that are below their home market prices, then in that event, our local industries must be protected.

Now, if they are selling the same type of product in their home market at the price at which they export the product to the Philippines, it is the duty of the local industries to lower their prices in order to serve the interest of the consumers and we are not going to protect them under this law.

**Senator Tatad.** Thank you, Mr. President. A similar instance. Let us talk of rice. Under the WTO—

**Senator Enrile.** I think that is excepted, Mr. President.

**Senator Tatad.** —we have not lifted the quantitative requirements...

**Senator Enrile.** Yes, that is excepted from...

**Senator Tatad.** We have not lifted the quantitative restrictions; we allow a maximum of 59,000 metric tons progressively increasing in small doses up to the year 2005, if I am not mistaken. But during emergencies, we authorize importations well above the 59,000 metric tons. We sometimes authorize importation up to one million metric tons. Supposing there is such an importation, because it is required—we have nothing to eat, but the commodity is priced below the prevailing prices here, not necessarily below the prices in the home market, but below the prices here, well above the 2 percent *de minimis*. Then we have an unusual group of people who would go to the Secretary of Agriculture to say, "This is going to kill our *palay* industry, therefore we stop it."

**Senator Enrile.** Mr. President, if admittedly, according to the question, there is a large gap between local supply and demand, then, there is no industry that will be injured.

The truth of the matter is that the local industry has such a lucrative market that the demand of which could not be covered. So there is no material injury to the local industry as technically understood under the treaty.

**Senator Tatad.** I thank the distinguished senator for that answer, Mr. President, it is very clear.

There have been instances in the past, Mr. President, in other countries in the '80s, for instance, when the European

Union imposed a 20-percent antidumping duty on 12 Japanese exporters of photocopiers. Then three years after the antidumping duty was imposed, a so-called anticircumvention case was brought by the EU industry. It claimed that the Japanese exporters had circumvented the antidumping duty by establishing assembly operations inside the European Union that imported most of the parts of photocopiers from Japan adding very little local value. This is a model that can be replicated in many parts of the world. My question is: Is there anything in the present bill that would protect the economy from this type of operation?

**Senator Enrile.** Mr. President, if the product is already locally manufactured, we import the parts. If we can show that the parts are priced at less than their home market value, then we can raise an issue of dumping. But if those parts are brought here at their home market price, and these goods are cheaper than locally produced like goods, there is no dumping. They become domestic products competing with other domestic products.

**Senator Tatad.** The contention of the host government under these circumstances would be to the effect that this is a way of circumventing the Antidumping Law.

But as our distinguished friend has pointed out, perhaps this now falls under "rules-of-origin" scheme rather than the antidumping scheme.

**Senator Enrile.** Or, we will have to craft another law that will deal with this kind of a situation maybe, some degree of pricing or we can attack it on the tariff level in a different way.

**Senator Tatad.** Mr. President, may we now go to the text of the bill.

Before we do so, on a question of personal privilege. I think the air conditioning has run out.

**The President.** Will the Maintenance attend to the air conditioning.

**Senator Enrile.** A matter of personal privilege, Mr. President, I like it a little warmer. [Laughter]

**The President.** Okay, two privileges are interfering. Let us look for a compromise.

**Senator Tatad.** I also can use a little warmth from the Chair.

**Senator Enrile.** That will collide with the bill of the distinguished Senate President, if we are going to embrace each other. [Laughter]

**Senator Tatad.** Mr. President, the present law provides the following procedure:

1. A petition against dumping is received from an industry, or the Secretary of Finance is led to believe that a particular good is being exported into the country at a lower price than its normal value which would, therefore, be harmful to local industry.

2. Within 20 days from receipt of such petition or information generated by the Secretary of Finance himself, the Secretary of Finance shall determine a *prima facie* case of dumping. He notifies the importer within five days after receipt of the petition and requires him to submit within 10 days documented evidence of the normal value of the imported product.

3. Pending determination of the of a *prima facie* case, the petitioner may ask the Commissioner of Customs to withhold release of the imported product. The Secretary of Finance may then direct the Commissioner of Customs to withhold the same upon filing by the petitioner of a bond equal to the margin of dumping alleged. This bond shall answer for damages which the importer suffers if there is no *prima facie* case, otherwise the bond shall be cancelled once a *prima facie* case is established.

4. Upon determination of a *prima facie* case, the Secretary of Finance shall advise the Tariff Commission to hold the release of the goods in question unless the importer files a bond equivalent to the estimated dumping duty, plus all other applicable charges and duties. If the petition is dismissed, this bond will be returned.

5. The Tariff Commission shall terminate its investigation within 90 days from date of advise and shall submit its findings to the Special Committee on Antidumping within 60 days from termination of its investigation; otherwise, it shall, *motu proprio*, terminate its investigation if it finds that the estimated amount of dumping does not exceed the *de minimis* quantities.

6. The Special Committee on Antidumping shall decide on the case within 15 days. In case the committee decides that dumping has been committed, it shall direct the Commissioner of Customs to collect the dumping duty and all other duties and charges. If the committee fails to decide within 15 days, the recommendation of the Tariff Commission shall become final and executory.

Finally, the decision may be appealed to the Court of Appeals whose finding shall be final and conclusive.

Assuming that we utilize all the periods for each of these steps to the maximum, the whole process stretches to about 185 days.

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

**Senator Tatad.** Now, the proposed amendment seeks to revise the existing procedures as follows:

First, A PETITION AGAINST DUMPING IS INITIATED BY A PERSON, NATURAL OR JURIDICAL, ON BEHALF OF AN INDUSTRY.

**Senator Enrile.** That is correct, Mr. President.

**Senator Tatad.** GOVERNMENT AUTHORITIES MAY NOT, BY THEMSELVES, INITIATE AN INVESTIGATION UNLESS THEY HAVE SUFFICIENT EVIDENCE TO JUSTIFY SUCH AN INVESTIGATION. NO PUBLICITY SHALL BE AUTHORIZED OF THE PETITION UNTIL THERE IS A DECISION TO INVESTIGATE.

2. THE SECRETARY OF TRADE AND INDUSTRY OR THE SECRETARY OF AGRICULTURE, AS THE CASE MAY BE, SHALL FURNISH THE SECRETARY OF FINANCE WITH A COPY OF THE PETITION, AND THE LATTER SHALL INFORM THE COMMISSIONER OF CUSTOMS OF THE SAME.

There is no period stipulated for this process.

3. THE COMMISSIONER SHALL ORDER THE IMPOSITION OF A CASH BOND EQUAL TO THE ESTIMATED DUMPING DUTY, except that it is not clear who is supposed to post this bond.

**Senator Enrile.** There is some error. We are going to propose an amendment to that.

**Senator Tatad.** Is it the petitioner or the importer?

**Senator Enrile.** Mr. President, the commissioner is not authorized to require a cash bond. It is the Secretary concerned who will determine that after establishing the margin of dumping. There was error in crafting the provision.

**Senator Tatad.** All right. So, this particular part of the bill is going to be corrected later?

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

**Senator Tatad.** Now, after this "WITHIN FIVE (5) DAYS FROM RECEIPT OF THE PETITION, THE SECRETARY SHALL NOTIFY THE IMPORTER OF THE PETITION AND WITHIN TEN (10) DAYS, THE IMPORTER SHALL REPLY TO THE PETITION. IF HE

FAILS TO DO SO, HE IS DECLARED IN DEFAULT AND THE SECRETARY SHALL MAKE A PRELIMINARY DETERMINATION OF HIS CASE ON THE BASIS OF THE UNANSWERED PETITION.

4. IF HE ANSWERS NOT LATER THAN TEN (10) DAYS FROM RECEIPT OF THAT ANSWER, THE SECRETARY SHALL MAKE A PRELIMINARY DETERMINATION WHETHER A *PRIMA FACIE* CASE EXISTS.

5. IF A *PRIMA FACIE* CASE EXISTS, THE SECRETARY SHALL INITIATE AN INVESTIGATION AND ORDER THE COMMISSIONER OF CUSTOMS THROUGH THE SECRETARY OF FINANCE TO AUTHORIZE THE RELEASE OF THE PRODUCT UPON PAYMENT OF ALL DUTIES AND CHARGES AND UPON THE POSTING OF A CASH BOND EQUAL TO THE PROVISIONALLY ESTIMATED MARGIN OF DUMPING.

6. WITHIN TEN (10) DAYS FROM RECEIPT OF A FAVORABLE REPORT FROM THE TARIFF COMMISSION, THE SECRETARY SHALL IMPOSE AN ANTI-DUMPING DUTY UNLESS THE EXPORTER HAS EARLIER MADE A PRICE UNDERTAKING AND THE SECRETARY HAS ACCEPTED IT. THE DUTY SHALL BE APPLIED TO THE CASH BOND, and if the cash bond is not sufficient, then additional payments must be made.

Finally, THE RULING MAY BE APPEALED TO THE COURT OF TAX APPEALS, so there is no need for the Office of the President to come in, PROVIDED THE APPEAL WILL NOT SUSPEND THE COLLECTION OF ALL DUTIES.

**Senator Enrile.** Pending appeal, while the appeal is pending.

**Senator Tatad.** While the appeal is pending. So this process, again assuming that we use the maximum periods for every step, would stretch to a total of 35 days.

**Senator Enrile.** No, Mr. President, not 35 days. Five days plus 10, plus 10, plus 60, plus 10....

**Senator Tatad.** Where is the 60, Mr. President?

**Senator Enrile.** Sixty (60) days of hearing by the commission.

**Senator Tatad.** This is not clear here. It is not stated here.

**Senator Enrile.** It is stated in the law, Mr. President.



**Senator Tatad.** May we see where that appears. This is in the old law.

**Senator Enrile.** Just a minute, Mr. President.

**Senator Tatad.** It is in the old law, but not in the proposed amendment.

**Senator Enrile.** It is in the present law, Mr. President.

**Senator Tatad.** It is in the present law, but not in the proposed amendment.

**Senator Enrile.** No, it is in the present text of the proposed measure.

SUSPENSION OF SESSION

**Senator Tatad.** May we ask for a minute-suspension of the session?

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

*It was 4:15 p.m.*

RESUMPTION OF SESSION

*At 4:22 p.m., the session was resumed.*

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

**Senator Tatad.** Mr. President, my mistake, I missed that portion.

So from 185 days, the proposed amendment cuts down the period to 95 days, and I believe that is a distinct improvement, and for which we congratulate the distinguished sponsor of this measure.

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

**Senator Tatad.** Mr. President, there are a few points I would like to clarify, just certain terms.

This is on page 16, which states:

A. WHENEVER ANY PRODUCT, COMMODITY OR ARTICLE OF COMMERCE IS IMPORTED INTO THE COUNTRY AT LESS THAN ITS NORMAL VALUE IN THE ORDINARY COURSE OF TRADE, FOR THE LIKE PRODUCT, COMMODITY OR ARTICLE DESTINED FOR

CONSUMPTION IN THE PHILIPPINES,...

**Senator Enrile.** This "Philippines" should be read as "in the home country or the country of export."

**Senator Tatad.** I think it is in the committee report, Mr. President.

**Senator Enrile.** Yes, we will be changing that.

**Senator Tatad.** But just to continue, Mr. President.

AND IS CAUSING OR IS THREATENING TO CAUSE MATERIAL INJURY TO A DOMESTIC INDUSTRY, OR MATERIALLY RETARDING THE ESTABLISHMENT OF SUCH AN INDUSTRY PRODUCING LIKE PRODUCTS AS 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 FINDING OF THE TARIFF COMMISSION TO HAVE CAUSED OR THREATENS A MATERIAL INJURY TO A DOMESTIC INDUSTRY, OR MATERIALLY RETARDS THE ESTABLISHMENT OF SUCH A DOMESTIC INDUSTRY PRODUCING LIKE PRODUCTS, A DUMPING DUTY SHALL BE LEVIED et cetera.

I am interested, Mr. President, and I am trying to clarify the meaning of the phrase "materially retarding the establishment of." The question is: The industry is not yet in existence and is to be established, or is the industry in its infant stage and would be retarded by the entry of dumped goods?

**Senator Enrile.** Yes, Mr. President. Probably we can interpret this to mean—this is actually taken from the wording of the treaty.

**Senator Tatad.** Yes, I see it in the treaty.

**Senator Enrile.** I suppose that what is contemplated here is that the industry is, in its infant stage and is now being threatened or killed because of the dumping, or not really killed but its growth in the market is being retarded because of the entry of dumped like goods.

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Another possible scenario, Mr. President, is that there are industries already strong enough to stand by themselves. When I say industries here, I am talking of enterprises, manufacturing units producing like goods. There is a growing gap between supply and demand and the entry of new entrants would not take place because of the entry of dumped like products.

**Senator Tatad.** One very important issue, Mr. President, with which not too many of us are familiar, is the so-called price undertaking. In the course of an investigation, an exporter may wish to terminate the investigation simply by offering a change in the price of the commodity being exported. What would be the standards to be used here?

**Senator Enrile.** The standard is very simple, Mr. President. The price that must be offered and accepted by the authorities would be a price that will level the playing field in our domestic economy. Meaning, that it is a price in competition with the price in our domestic economy, or a fair price that would erase the actual or threatened injury to a local industry.

**Senator Tatad.** Mr. President, supposing in a less than normal situation, an anticipated price movement is to take place at a given period and a volume of imports comes in at prices very much below the anticipated rise in prices, would there be basis for a petition from the industry that would be affected?

**Senator Enrile.** Mr. President, the price that we are talking here to be compared would be—

**Senator Tatad.** The home market?

**Senator Enrile.** —the home market. The home market price as against the export sales price.

**Senator Tatad.** And nothing else?

**Senator Enrile.** And nothing else. That is the starting point of the analysis. Even if there is such a price differential if the importation would not cause any actual injury to a local industry or if there is no industry at all, there is no problem. If there is an industry and that price differential will not result in an actual injury, material injury to a local industry, or will not threaten a material injury to a local industry or will not retard, then even if we have that price differential there is no justification for a dumping duty because we also have to consider the interest of the consumers.

Well, this is a law that will balance, Mr. President, the interest of our local producers and the consuming public in the country.

**Senator Tatad.** On page 25 to 26, Mr. President, it states:

Any interested party may also petition the Secretary for a review of the continued imposition of the Anti-Dumping Duty provided that a reasonable period of time has elapsed since the imposition of the Anti-Dumping Duty and upon the need for a review.

Would the distinguished sponsor enlighten us on the meaning of the phrase "reasonable period of time"?

**Senator Enrile.** I suppose, Mr. President, this will mean that at least several months or a year has passed before a review could be made. We are using this standard and leaving it to the implementing agencies to determine what is a reasonable time. Because we cannot possibly say a reasonable time is six months or one year in all situations.

**Senator Tatad.** I thank the sponsor for that, Mr. President. I have one last question and this has to do with the sunset clause.

The duration of the antidumping duty includes this provisional measure and the time extensions shall not exceed five years.

This is a full stop. But it is altogether possible that the injury may persist or that the removal of the measure could lead to a recurrence of dumping or the injury caused by dumping.

**Senator Enrile.** This is also in accord with our commitment. The text of the treaty, I think, the contemplation here is that I think it would be rather unrealistic for an exporter in the United States to keep sending goods here at dumping prices for that length of time to destroy an industry, or that the other side of the coin is, if within that period with the equalizing anti-dumping duty in place would not make the domestic industry survive, then I do not think the industry would be a viable industry.

**Senator Tatad.** Well, I suppose that is all, Mr. President. May I thank our distinguished colleague for accommodating us this afternoon. May we assure him of our full support for this measure.

**Senator Enrile.** Thank you very much.

**Senator Tatad.** I do not believe it is too early to congratulate him for having sponsored the first important measure to be approved by the 11th Congress.

**The President.** Thank you, Sen. Francisco Tatad.

The Majority Leader is recognized.



REPUBLIC OF THE PHILIPPINES  
CONGRESS OF THE PHILIPPINES  
**SENATE**

# **Record of the Senate**

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Malacañang. In other words, there should be a more active role for the Vice President and who is at the same time, concurrently the Secretary of Social Welfare and Development. Why she has not been able to step into this breach could be corrected even at this late stage.

**Senator Tatad.** Salamat po sa sagot ng ating kaibigan. Panghuling salita na lamang po. Tungkol ito sa ating mga pulitiko na maraming ipinangangako pero hindi naman natutupad. Sana sa susunod na halalan ay mangampanya tayo pero huwag tayong mangangako.

Mayroon po akong natatandaang isang pulitiko na magaling pong mangako pero walang natutupad na pangako. Noong siya ay sinisingil ng kanyang mga kababayan ang sagot po niya ay napakagaling. "Kayong nakikinig lamang sa aking pangako, bakit kayo naniniwala samantalang ako mismong nangangako hindi naniniwala sa aking pangako?"

Marahil ang edukasyon ng ating masa ang isa-isa mga puntong dapat bigyang diin upang maging maginhawa ang kalagayan ng nakararami. Kailangang maging mas matalino ang bayan upang makilala nila kung sino ang nagsasabi ng totoo at kung sino ang hindi.

Marami pong salamat, Ginoong Pangulo.

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

**Senator Drilon.** Mr. President, there are no other reservations for interpellation. We thank our colleague from Iloilo for such profound analysis of the incident last week.

#### MOTION OF SENATOR DRILON

(Referral of Senator Santiago's Speech together with Senator Tatad's Interpellations Thereon to the Committee on Social Justice, Welfare and Rural Development)

**Senator Drilon.** Mr. President, may we move that the speech of Senator Santiago, together with the interpellations thereon, be referred to the Committee on Social Justice, Welfare and Rural Development.

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

#### SPECIAL ORDERS

**Senator Drilon.** Mr. President, may I move that we transfer from the Calendar for Ordinary Business to the Calendar for

Special Orders, Committee Report No. 1 on Senate Bill No. 763, entitled

AN ACT PROVIDING THE RULES FOR THE IMPOSITION OF AN ANTI-DUMPING DUTY, AMENDING FOR THE PURPOSE SECTION 301, PART 2, TITLE II, BOOK 1 OF THE TARIFF AND CUSTOMS CODE OF THE PHILIPPINES, AS AMENDED BY REPUBLIC ACT NO. 7843, AND FOR OTHER PURPOSES.

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

#### BILL ON SECOND READING S. No. 763—Rules for the Imposition of the Anti-dumping Duty

**Senator Drilon.** Mr. President, I move that we consider Senate Bill No. 763 as reported out under Committee Report No. 1.

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

Consideration of Senate Bill No. 763 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 whole text thereof.

**The Secretary.** Senate Bill No. 763, entitled

AN ACT PROVIDING THE RULES FOR THE IMPOSITION OF AN ANTI-DUMPING DUTY, AMENDING FOR THE PURPOSE SECTION 301, PART 2, TITLE II, BOOK 1 OF THE TARIFF AND CUSTOMS CODE OF THE PHILIPPINES, AS AMENDED BY REPUBLIC ACT NO. 7843, AND FOR OTHER PURPOSES

*The following is the whole text of the bill:*

Senate Bill No. 763

AN ACT PROVIDING THE RULES FOR THE IMPOSITION OF AN ANTI-DUMPING DUTY, AMENDING FOR THE PURPOSE SECTION 301, PART 2, TITLE II, BOOK 1 OF THE TARIFF AND CUSTOMS CODE OF THE PHILIPPINES, AS AMENDED BY REPUBLIC ACT NO. 7843, AND FOR OTHER PURPOSES

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

SECTION 1. Section 301, Part 2, Title II, Book 1 of the Tariff and Customs Code, as amended by Republic Act No. 7843, is hereby further amended to read as follows:

“SEC. 301. *Dumping Duty.* -

“[a. Whenever the Secretary of Finance or the Secretary of Trade and Industry (hereinafter called the “Secretary”) received an anti-dumping petition from the domestic industry or the Secretary has reason to believe, from any invoice or other document or newspaper, magazine or information or translation thereof by any reputable language translator made available by any government agency or interested party, that a specific kind or class of foreign article, is being imported into, or sold or is likely to be sold in the Philippines, at a price less than its normal value, the importation or sale of which might injure, retard the establishment of, or is likely to injure an industry producing like articles in the Philippines, the Secretary shall, within twenty (20) days from receipt of such petition or information, determine a *prima facie* case of dumping. Within five (5) days from such receipt, he shall notify the protestee-importer and require him to submit within ten (10) days from such notice, evidence from the producer of the imported article duly authenticated by the Philippine consular or trade office to support the normal value of such product. If no such evidence is submitted within the prescribed period, the Secretary shall base his decision on the available pertinent data.

“Pending determination of a *prima facie* case of dumping, the petitioner may petition that the release from the Bureau of Customs of the alleged dumped product be withheld. If the Secretary determines that on the face of the petition and documents presented, there exists an imminent danger of injury to a particular industry as a result of the alleged dumping, he shall direct the Commissioner of Customs to hold the release of the questioned importation, upon filing by the petitioner of a bond equal to the alleged margin of dumping. The bond shall answer for damages which the importer may suffer as a result of the holding of the release of the questioned importation, in case the Secretary finds

that there is no *prima facie* case. However, the petitioner’s liability for damage shall not exceed the amount of his bond. This bond shall be canceled once a *prima facie* case has been determined by the Secretary. The Secretary may, *motu proprio*, hold the release of the questioned articles based on his information that an imminent danger of injury exists to a particular industry as a result of the alleged dumping.

“The Secretary upon the determination of a *prima facie* case of dumping shall so advise the Tariff Commission (hereinafter called the “Commission”) and shall instruct the Commissioner of Customs to hold the release of the goods or articles in question, unless the protestee/importer shall have filed a cash bond of not less than the provisionally estimated dumping duty plus the applicable regular duty based on the documentary evidence submitted with the dumping protest to answer for the payment of such duties, fees and charges if a dumping case is established. If the protest is dismissed, the cash bond shall be returned to the importer within ten (10) days from the finality of the order.

“The Secretary shall have the discretion to exclude related parties from the domestic industry. A producer and an exporter or importer are related if the producer directly or indirectly controls the producer; a third party and there is a reason to believe that the relationship causes the producer to act differently than an unrelated producer would act.

“b. The Commission, upon receipt of the advice from the Secretary shall conduct an investigation to:

“1. Verify if the kind or class of article in question is being imported into, or sold or is likely to be sold in the Philippines at a price less than its normal value;

“The normal value of an article shall be the comparable price in the ordinary course of trade for the like articles when destined for domestic consumption in the exporting country which for purposes of this section means the country of production or manufacture.

“If the normal value of an article cannot be determined, the following rules shall apply:

"If the like article is not being sold in the ordinary course of trade in the domestic market of the exporting country or if the sale does not allow a fair comparison or if the normal value is not available or unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party or the agency providing the normal value is state-controlled or jointly owned by the state or the exporting country, or where products are not imported directly from the country of production then, the normal value shall be based on the higher of values determined from any of the following methods, such as but not limited to, the normal value of like articles in a proxy country at the same stage of development of the industry producing like products, or the cost of production in the country of production or manufacture or on the estimated landed cost in the country of production or manufacture which is based on C and F price of such articles including duties, surcharges, and taxes when imported by an importer in the country of production.

"2. Ascertain the difference, if any, between the export price and the normal value of the article.

"3. Determine if, as a result thereof, a domestic industry producing like articles in the Philippines suffers, or will be threatened with, injury, or will suffer a material retardation of the establishment of a domestic industry in the Philippines: *Provided*, That in determining whether the domestic industry has suffered or is being threatened with injury, the Commission shall determine whether the wholesale prices at which the domestic articles are sold are reasonable, taking into account the cost of raw materials, labor, overhead, a fair return on investment and the overall efficiency of the industry; and/or whether a further importation of such articles and/or like articles are clearly foreseen and imminent considering such relevant factors as:

"(a) Rate of increase of importation of such article: *Provided*, That in the determination of potential injury, there should be at least three percent (3%) increase in the volume of importation of such articles being dumped relative to the average monthly volume of importation of such like articles for the immediately preceding three (3) months; or

"(b) Reasonable likelihood of increased importations; or

"(c) Freely disposable or increased capacity of the exporter of such imported articles; or

"(d) Import prices which will have a significant depressing or suppressing effect on domestic prices: *Provided, further*, That in determining whether a domestic industry that will produce like articles is being retarded in its establishment, there must be evidence of the forthcoming commercial operation of the industry: *Provided, finally*, That in determining injury, the following shall also be considered:

"i. Whether or not the imported articles under consideration are identical or alike in all respect to articles produced by the domestic industry or substantially of the same material or although of different composition or material serves the same or similar purpose such as substitute as the articles produced in the Philippines in quantities sufficient to supply at least ten percent (10%) of local consumption (arrived at by taking the sum of the average local production and average importation and subtracting therefrom average exportation) for the immediately preceding three (3) months prior to the filing of the dumping protest;

"ii. The volume of dumped imports and their effects on prices in the domestic market for like articles: *Provided*, That the Commission shall determine the consequent impact of these imports on domestic producers by considering relevant economic factors and indices such as:

"(a) Five percent (5%) decline in sales volume or decline in sales price of at least two percent (2%) as compared to the average monthly sales for the immediately preceding three (3) months; or

"(b) Five percent (5%) decline in the volume of production as compared to the average monthly volume of production for the immediately preceding three (3) months; or

"(c) Actual and potential negative effects on employment and inventories of the subject articles.

"Within five (5) days from receipt of the advice from the Secretary of Finance, the Commission shall identify all parties concerned and require them to submit their respective memoranda within fifteen (15) days from notice.

"C. The Commission shall terminate its investigation within ninety (90) days from receipt of the aforesaid advice and shall submit its findings to the Special Committee on Anti-Dumping (hereinafter referred to as "Special Committee") within sixty (60) days from the termination of its investigation: *Provided*, That the Commission shall give notice to interested parties of such findings submitted to the special committee.

"In case any or all of the parties on record fail to submit their respective memoranda within the period prescribed above, the Commission shall base its findings on the best available evidence.

"The Commission shall *motu proprio* terminate its investigation if the provisionally estimated margin of dumping is less than two percent (2%) of export price or the volume of dumped imports is negligible. The volume of dumped imports from a particular country accounts for less than three percent (3%) of the average monthly imports of the like articles in the Philippines unless countries which individually account for less than three percent (3%) of the average monthly imports of the like articles in the Philippines collectively account for more than seven percent (7%) of total average monthly imports of that article.

"D. The Special Committee shall, within fifteen (15) days after receipt of the report of the Commission, decide whether the article in question is being imported in violation of this section and shall give due notice of such decision. In case the decision of dumping is in the affirmative, the special committee shall direct the Commissioner of Customs to cause the dumping duty, to be levied, collected and paid, as prescribed in this section, in addition to any other duties, taxes and charges imposed by law on such article, and on the articles of the same specific kind or class subsequently imported under similar circumstances coming from the specific country.

"In the event that the Special Committee fails to decide within the period prescribed herein, the recommendation of the Commission shall be deemed approved and shall be final and executory.

"E. The 'dumping duty' as provided for in subsection D hereof shall be equal to the difference between the actual export price and the normal value of the article as determined in the dumping

decision. All importations of like articles within one hundred fifty (150) days immediately preceding the filing protest are covered by the investigation. However, in cases of subsequent importations of same kind or class of article from the specific country named in the protest, the dumping duty shall be equal to the difference between the actual export price and the normal value actually existing at the time of importation as determined by the Commission from the supporting documents submitted or from other reliable sources.

"F. Pending investigation and final decision of the case, the article in question, and articles of the same specific kind or class subsequently imported under similar circumstances, shall be released to the owner, importer, consignee or agent upon the giving of a case bond in an amount not less than the provisionally estimated difference between the actual export price and the normal value including the applicable regular duty prescribed in paragraph "a" above.

"G. For purposes of this section, the parties concerned including the protestant, domestic producers/manufacturers, importers and the protestee shall be afforded with the Commission and the Secretary and avail of any technical information and the data necessary to sustain its case.

"H. Any interested party of record who is dissatisfied with a decision in a dumping protest may file a motion for reconsideration with the Special Committee within thirty (30) days from notice of such decision: *Provided*, That no motion for extension of time to file a motion of reconsideration under this subsection shall be allowed.

"I. Any aggrieved party may appeal only the amount of the dumping to the Court of Appeals in the same manner and within the same period as provided for by law in the case of appeal from decision of the Commissioner of Customs. The findings of fact in a dumping case shall be final and conclusive.

"J. (1) The article, if it has not been previously released under cash bonds as provided for in subsection "F" hereof, shall be released after payment by the party concerned of the corresponding dumping duty in addition to any ordinary duties, taxes, and charges, if any, or reexported by the owner, importer, consignee or agent, at his option and

expense, upon the filing of a such cash bond in an amount not less than the provisionally estimated difference between the actual export price and the normal value plus the applicable regular duty conditioned upon presentation of landing certificate issued by a consular officer of the Philippines at the country of destination: or

(2) If the article has been previously released under cash bond, as provided in subsection "F" hereof, the party concerned shall be required to pay the corresponding dumping duty in addition to any ordinary duties, taxes, and charges, if any.

"K. Any investigation to be conducted by the Commission under this section shall include a public hearing or hearings where the owner, importer, consignee or agent, of the imported article, the local producers or manufacturers of a like article, other parties directly affected, and such other parties as the judgment of the Commission are entitled to appear, shall be given an opportunity to be heard and to present evidence bearing on the subject matter.

"L. The established dumping duty shall be subject to adjustment based on whichever is higher of the prevailing normal values as defined in paragraph b-1. The Commission shall conduct quarterly examination and/or verification of the normal value to determine the necessity of adjustment. Should the Special Committee, upon receipt of the report of the Commission, find that there is a need for an adjustment after a public hearing it shall advise the Commissioner of Customs so that he may effect the necessary adjustment in dumping duty.

"The Philippine Finance Attaché or, in the absence thereof, the Commercial Attaché or, Trade Attaché or in the absence thereof, the diplomatic officer or consular officer aboard shall be advised by the Special Committee of any article covered by dumping decision. The concerned Attaché or the Officer shall submit quarterly report on normal values of said articles to the Special Committee.

"M. Whenever the Commission, on its own motion or upon application of any interested party, finds after a public hearing that any of the conditions which necessitated the imposition of the dumping duties has ceased to exist, it shall submit the necessary recommendation to the Special Committee

for the discontinuance or modification of such dumping duty and shall so advise the Commissioner of Customs. Any decision or order made under this Section by the Special Committee shall be published in the *Official Gazette* and/or in a newspaper of general circulation.

"N. Any dumping decision promulgated by the Special Committee 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 Special Committee shall advise the Commission to conduct an investigation to determine whether any of the conditions in paragraph b-1 and b-3 still exists. The action for extension shall be brought before the Special Committee at least six (6) months before the expiration of the period.

"The findings of the Commission shall be submitted to the special committee at least three (3) months before the expiration of the period but in no case shall it exceed one (1) month after receipt of the advice from the Special Committee.

"The period of extension shall, in no case, exceed twenty-four (24) months or two (2) years.

"O. For the purpose of this Section, the term:

"1. "Comparable price" shall mean the domestic price in the exporting country at the same level of trade which is sold or offered for sale at wholesale on the date of exportation to the Philippines;

"2. "Cost of production" of an imported article shall be the sum of:

(a) The cost of materials of, and of fabrication, manipulation or other process employed in manufacturing or producing like articles, at a time preceding the date of shipment of the particular article under consideration which would ordinarily permit the manufacture or production of the particular article under consideration in the usual course of business;

(b) The actual administrative, selling and general expenses at least ten percent (10%) of production costs incurred by the exporter or producer of articles and/or like articles;



“(c) The cost of all containers and coverings, and all other costs, charges and expenses incident to placing the particular article under consideration in condition, packed ready for shipment to the Philippines but not less than one percent (1%) of production costs; and

“(d) A reasonable amount for profit not less than eight percent (8%) of the sum of the amounts referred to in the preceding sub-paragraphs a, b, and c.

“3. “Domestic industry” shall refer to the domestic producers of like articles as a whole or to those whose collective output of the products constitute a significant share of the total domestic production of those products in the industries concerned. Except, when producers are related to the exporters or importers, the term “domestic industry” may be interpreted as referring to the rest of the producers;

“4. “Export price” of an imported article shall be the price at which such article has been purchased or agreed to be purchased, prior to the time of exportation, by the person by whom or for whose account the article is imported, plus, when not included in such price;

“(a) The cost of all containers and covering and all other costs, charges and expenses incident to placing the article in condition, packed ready for shipment to the Philippines;

“(b) The amount of any import duties imposed by the country of exportation which have not been collected, by reason of the exportation of the articles to the Philippines; and

“(c) The amount of any taxes imposed in the country of exportation upon the manufacturer, producer or seller, in respect to the manufacture, production or sale of the article which have been rebated, or which have not been collected by reasons of the exportation of the articles to the Philippines.

“Any additional costs, charges and expenses incident to bringing the article from the place of shipment in the country of exportation to the place of delivery in the Philippines, and Philippine customs duties imposed thereon shall not be included.

“5. “Like article” shall mean a product which is identical or alike in all respect to the article under consideration or one substantially of the same material or although of different composition or material serves the same or similar purpose, such as a substitute, as the articles produced in the Philippines;

“6. A special committee on anti-dumping is hereby created to decide whether the article in question is being imported in violation of this Act, and shall be composed of three (3) members: The Secretary of Finance, as chairman; the Secretary of Trade and Industry; and either the Secretary of Agriculture, if the article in question is an agricultural product; or the Secretary of Labor, if the article is a non-agricultural product.

“P. The Secretary of Finance in consultation with the special committee on anti-dumping and the Commission shall promulgate all rules and regulations necessary to carry out their respective functions under this Section.]”

A. WHENEVER ANY PRODUCT, COMMODITY OR ARTICLE OF COMMERCE IS IMPORTED INTO THE COUNTRY AT LESS THAN ITS NORMAL VALUE IN THE ORDINARY COURSE OF TRADE, FOR THE LIKE PRODUCT, COMMODITY OR ARTICLE DESTINED FOR CONSUMPTION IN THE PHILIPPINES, AND IS CAUSING OR IS THREATENING TO CAUSE MATERIAL INJURY TO A DOMESTIC INDUSTRY, OR MATERIALLY RETARDING THE ESTABLISHMENT OF SUCH AN INDUSTRY PRODUCING LIKE PRODUCTS AS 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 FINDING OF THE TARIFF COMMISSION (HEREINAFTER REFERRED TO AS “THE COMMISSION”) TO HAVE CAUSED OR THREATENS A MATERIAL INJURY TO A DOMESTIC INDUSTRY, OR MATERIALLY RETARDS THE ESTABLISHMENT OF SUCH

A DOMESTIC INDUSTRY PRODUCING LIKE PRODUCTS, A DUMPING DUTY SHALL BE LEVIED AND COLLECTED ON SUCH PRODUCT, COMMODITY OR ARTICLE THEREAFTER IMPORTED TO THE PHILIPPINES UNDER SIMILAR CIRCUMSTANCES, IN ADDITION TO ORDINARY DUTIES, TAXES AND CHARGES IMPOSED BY LAW ON THE IMPORTED PRODUCT, COMMODITY OR ARTICLE.

B. INITIATION OF ACTION. - AN ANTI-DUMPING INVESTIGATION SHALL BE INITIATED BY ANY PERSON WHETHER NATURAL OR JURIDICAL UPON FILING A VERIFIED PETITION WHICH SHALL BE ACCOMPANIED BY DOCUMENTS CONTAINING INFORMATION SUPPORTING THE FACTS THAT ARE ESSENTIAL TO ESTABLISH THE PRESENCE OF THE ELEMENTS REQUIRED FOR THE IMPOSITION OF AN ANTI-DUMPING DUTY, AND SHALL FURTHER STATE, AMONG OTHERS: 1) THE IDENTITY OF THE APPLICANT AND A DESCRIPTION OF THE VOLUME AND THE VALUE OF THE DOMESTIC PRODUCT OR THE LIKE PRODUCT OF THE APPLICANT; 2) A COMPLETE DESCRIPTION OF THE ALLEGED DUMPED PRODUCT, THE NAMES OF THE COUNTRY OR COUNTRIES OR ORIGIN OR EXPORT IN QUESTION, THE IDENTITY OF EACH KNOWN EXPORTER OR FOREIGN PRODUCER AND A LIST OF KNOWN PERSONS SUPPORTING THE PRODUCT IN QUESTION; 3) INFORMATION ON THE NORMAL VALUE OF THE PRODUCT IN QUESTION IN THE COUNTRY OR COUNTRIES OF ORIGIN OR EXPORT; 4) INFORMATION ON THE EVALUATION OF THE VOLUME OF THE ALLEGED DUMPED IMPORTS, THE EFFECT OF THESE IMPORTS ON PRICES OF LIKE PRODUCT IN THE DOMESTIC MARKET AND THE CONSEQUENT IMPACT OF THE IMPORTS ON THE DOMESTIC INDUSTRY.

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 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 25 PERCENT OF TOTAL PRODUCTION OF THE LIKE PRODUCT PRODUCED BY THE DOMESTIC INDUSTRY.

IF, IN SPECIAL CIRCUMSTANCES, THE AUTHORITIES CONCERNED DECIDE TO INITIATE AN INVESTIGATION WITHOUT HAVING RECEIVED A WRITTEN APPLICATION BY OR ON BEHALF OF A DOMESTIC INDUSTRY FOR THE INITIATION OF SUCH INVESTIGATION, THEY SHALL PROCEED ONLY IF THEY HAVE SUFFICIENT EVIDENCE OF DUMPING, INJURY AND A CAUSAL LINK, TO JUSTIFY THE INITIATION OF AN INVESTIGATION.

C. NOTICE TO EXPORTING MEMBER-COUNTRY. - THE SECRETARY SHALL AVOID, UNLESS A DECISION HAS BEEN MADE TO INITIATE AN INVESTIGATION, ANY PUBLICIZING OF THE APPLICATION FOR THE INITIATION OF THE INVESTIGATION. HOWEVER, AFTER RECEIPT OF A PROPERLY DOCUMENTED APPLICATION AND BEFORE PROCEEDING TO INITIATE AN INVESTIGATION, THE SECRETARY SHALL NOTIFY THE GOVERNMENT OF THE EXPORTING MEMBER ABOUT THE IMPENDING ANTI-DUMPING INVESTIGATION.

D. NOTICE TO THE SECRETARY OF FINANCE - UPON RECEIPT OF THE PETITION, THE SECRETARY SHALL, WITHOUT DELAY, NOTIFY THE SECRETARY OF FINANCE AND FURNISH HIM WITH A COMPLETE COPY OF THE PETITION, INCLUDING ITS ANNEXES, IF ANY, AND THE LATTER SHALL IMMEDIATELY INFORM THE COMMISSIONER OF CUSTOMS REGARDING THE FILING AND PENDING OF THE PETITION. THE COMMISSIONER OF CUSTOMS SHALL FORTHWITH ISSUE AN ORDER REQUIRING

THE IMPOSITION OF A CASH BOND EQUAL TO THE AMOUNT OF DUMPING PROVISIONALLY ESTIMATED ON ALL PENDING IMPORTATIONS; AND FOR HIM TO GATHER, HOLD AND SECURE ALL IMPORT ENTRIES COVERING SUCH PRODUCT, COMMODITY OR ARTICLE WITHOUT LIQUIDATION; AND TO SUBMIT TO THE SECRETARY THROUGH THE SECRETARY OF FINANCE, AND TO MAKE SUCH SIMILAR ADDITIONAL REPORTS EVERY TEN (10) DAYS THEREAFTER.

E. 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.

F. 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 AN ANTI-DUMPING DUTY ON THE IMPORTED PRODUCT, COMMODITY OR ARTICLE.

UPON DETERMINATION BY THE SECRETARY OF THE EXISTENCE OF A *PRIMA FACIE* CASE, HE SHALL, WITHOUT DELAY, SECURE A WRITTEN SUPPORT FOR THE INITIATION OF THE FORMAL ANTI-DUMPING INVESTIGATION FROM THE AFFECTED DOMESTIC INDUSTRY PRODUCING TWENTY-FIVE PERCENT (25%) OR MORE OF LIKE PRODUCTS. TRANSMIT THE RECORDS OF THE CASE CONSISTING OF THE PETITION, THE ANSWER AND THE WRITTEN SUPPORT OF THE DOMESTIC INDUSTRY, 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 PRODUCT, COMMODITY OR ARTICLE UPON THE PAYMENT OF THE CORRESPONDING ORDINARY DUTIES, TAXES AND OTHER CHARGES IMPOSED BY THE LAW ON SUCH PRODUCT, COMMODITY OR ARTICLE AND ALSO UPON POSTING OF A CASH BOND EQUAL TO THE PROVISIONALLY ESTIMATED MARGIN OF DUMPING. THE CASH BOND SHALL BE DEPOSITED WITH THE 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.

G. INVESTIGATION OF 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 OF 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.

IN THE FORMAL INVESTIGATION, THE COMMISSION SHALL ESSENTIALLY DETERMINE: (1) THE PRESENCE AND EXTENT OF MATERIAL INJURY OR THE THREAT THEREOF TO DOMESTIC INDUSTRY, OR THE MATERIAL RETARDATION OF THE ESTABLISHMENT OF SUCH AN INDUSTRY PRODUCING LIKE OR DIRECTLY COMPETING PRODUCT; (2) THE EXISTENCE OF A CAUSAL RELATIONSHIP BETWEEN THE ALLEGEDLY DUMPED PRODUCT, COMMODITY OR ARTICLE AND THE MATERIAL INJURY OR THREAT OF MATERIAL INJURY TO THE AFFECTED DOMESTIC INDUSTRY, OR MATERIAL RETARDATION OF THE ESTABLISHMENT OF SUCH AN INDUSTRY; (3) THE ANTI-DUMPING DUTY TO BE IMPOSED; AND (4) THE DURATION OF THE IMPOSITION OF THE ANTI-DUMPING DUTY.

THE FORMAL INVESTIGATION SHALL BE CONDUCTED IN A SUMMARY MANNER. NO DILATORY TACTICS NOR UNNECESSARY 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.

H. DETERMINATION OF MATERIAL INJURY OR THREAT THEREOF. - THE

PRESENCE AND EXTENT OF MATERIAL INJURY OR THE PRESENCE AND DEGREE OF THE THREAT OF MATERIAL INJURY TO DOMESTIC INDUSTRY, AS A RESULT OF THE DUMPED IMPORTS SHALL BE DETERMINED BY THE COMMISSION ON THE BASIS OF POSITIVE EVIDENCE AND SHALL REQUIRE AN OBJECTIVE EXAMINATION OF (1) THE RATE AND AMOUNT OF IMPORTS, EITHER IN ABSOLUTE TERMS OR RELATIVE TO PRODUCTION OR CONSUMPTION IN THE DOMESTIC MARKET, (2) THE EFFECT OF THE DUMPED 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 DUMPED IMPORTS AS COMPARED WITH THE PRICE OF LIKE PRODUCT, COMMODITY OR ARTICLE IN AND/OR DOMESTIC MARKET, OR WHETHER THE EFFECTS OF SUCH IMPORTS IS OTHERWISE TO DEPRESS PRICES TO A SIGNIFICANT DEGREE OR PREVENT PRICE INCREASES, WHICH OTHERWISE WOULD HAVE OCCURRED, TO A SIGNIFICANT DEGREE; AND (3) THE RESULTING EFFECT OF THE DUMPED IMPORTS ON THE DOMESTIC PRODUCERS OR THE RESULTING RETARDATION OF THE ESTABLISHMENT OF A DOMESTIC INDUSTRY MANUFACTURING 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 OR POTENTIAL DECLINE IN OUTPUT SALES, MARKET SHARE, PROFITS, PRODUCTIVITY, RETURN ON INVESTMENTS, OR UTILIZATION OF CAPACITY; OTHER FACTORS AFFECTING DOMESTIC PRICES; THE MAGNITUDE OF DUMPING; ACTUAL AND POTENTIAL NEGATIVE EFFECTS ON CASH FLOW, INVENTORIES, EMPLOYMENT, WAGES, GROWTH, AND ABILITY TO RAISE CAPITAL OR INVESTMENTS.

I. VOLUNTARY PRICE UNDERTAKINGS. - ANTI-DUMPING INVESTIGATIONS MAY

BE SUSPENDED OR TERMINATED WITHOUT THE IMPOSITION OF PROVISIONAL MEASURES OR ANTI-DUMPING DUTIES UPON RECEIPT OF THE SECRETARY OF A SATISFACTORY VOLUNTARY PRICE UNDERTAKING EXECUTED BY THE EXPORTER UNDER OATH THAT IT HAS REVISED OR INCREASED ITS PRICES; OR HAS CEASED EXPORTS TO THE PHILIPPINES AT DUMPED PRICES, THEREBY ELIMINATING THE MATERIAL INJURY TO THE DOMESTIC INDUSTRY PRODUCING LIKE PRODUCTS. PRICE INCREASES UNDER SUCH UNDERTAKINGS SHALL NOT BE HIGHER THAN NECESSARY TO ELIMINATE THE MARGIN OF DUMPING.

PRICE UNDERTAKINGS FROM EXPORTERS SHALL BE ACCEPTED BY THE SECRETARY ONLY AFTER HIS DETERMINATION OF THE EXISTENCE OF A *PRIMA FACIE* CASE OF DUMPING.

J. CUMULATION OF IMPORTS. - WHEN IMPORTS OF PRODUCTS, COMMODITIES OR ARTICLES FROM MORE THAN ONE COUNTRY ARE SIMULTANEOUSLY THE SUBJECT OF AN ANTI-DUMPING INVESTIGATION; THE COMMISSION MAY CUMULATIVELY ASSESS THE EFFECTS OF SUCH IMPORTS ONLY IF THE COMMISSION IS CONVINCED THAT (1) THE MARGIN OF DUMPING 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 LIKE DOMESTIC PRODUCTS, COMMODITIES AND ARTICLES.

K. IMPOSITION OF THE ANTI-DUMPING DUTY. - THE SECRETARY SHALL,

WITHIN TEN (10) DAYS FROM RECEIPT OF THE FAVORABLE REPORT OF THE COMMISSION, ISSUE A DEPARTMENT ORDER IMPOSING AN ANTI-DUMPING DUTY ON THE IMPORTED PRODUCT, COMMODITY, OR ARTICLE, UNLESS HE HAS EARLIER ACCEPTED A PRICE UNDERTAKING FROM THE EXPORTER. IN CASE OF A FAVORABLE REPORT OF THE COMMISSION, THE CASH BOND IMPOSED AT THE INITIATION OF THE INVESTIGATION SHALL BE APPLIED. IF THE CASH BOND IS GREATER THAN THE IMPOSED ANTI-DUMPING DUTY, AFTER THE FORMAL INVESTIGATION, THE REMAINDER SHALL BE RETURNED TO THE IMPORTER IMMEDIATELY. IF THE CASH BOND IS NOT ENOUGH TO COVER THE ANTI-DUMPING DUTY, THE RESPONDENT IMPORTER SHALL BE IMMEDIATELY ASSESSED FOR THE DEFICIENCY AND SHALL PAY THE SAME WITHIN FIFTEEN (15) DAYS FROM THE RECEIPT OF THE DEFICIENCY ASSESSMENT.

L. COMPUTATION OF ANTI-DUMPING DUTY. - THE AMOUNT OF ANTI-DUMPING DUTY SHALL BE EQUAL TO THE DIFFERENCE BETWEEN THE NORMAL VALUE AND THE ACTUAL EXPORT PRICE OF THE IMPORTED PRODUCT, COMMODITY OR ARTICLE ON THE BASIS OF THE APPLICABLE PROVISION OF THIS CODE ON ASSESSMENT OF DUTY. THE COMMISSIONER OF CUSTOMS SHALL SUBMIT TO THE SECRETARY, THROUGH THE SECRETARY OF FINANCE, HIS ORDER ON THE IMPOSITION OF CASH BONDS AND A CERTIFIED COMPUTATION OF EACH CASE OF ANTI-DUMPING DUTY.

M. DURATION AND REVIEW OF THE ANTI-DUMPING DUTY. - AS A GENERAL RULE, THE IMPOSITION OF AN ANTI-DUMPING DUTY SHALL REMAIN IN FORCE ONLY AS LONG AND TO THE EXTENT NECESSARY TO COUNTERACT DUMPING WHICH IS CAUSING OR THREATENING TO CAUSE MATERIAL INJURY TO DOMESTIC INDUSTRY, OR MATERIAL RETARDATION OF THE ESTABLISHMENT OF SUCH INDUSTRY.

HOWEVER, THE NEED FOR THE

CONTINUED IMPOSITION OF THE ANTI-DUMPING DUTY MAY BE REVIEWED BY THE COMMISSION UPON THE DIRECTION OF THE SECRETARY, TAKING INTO CONSIDERATION THE NEED TO PROTECT EXISTING OR SOON TO BE ESTABLISHED DOMESTIC INDUSTRY.

ANY INTERESTED PARTY MAY ALSO PETITION THE SECRETARY FOR A REVIEW OF THE CONTINUED IMPOSITION OF THE ANTI-DUMPING DUTY: *PROVIDED*, THAT A REASONABLE PERIOD OF TIME HAS ELAPSED SINCE THE IMPOSITION OF THE ANTI-DUMPING DUTY, AND UPON THE NEED FOR A REVIEW. INTERESTED PARTIES SHALL HAVE THE RIGHT TO REQUEST THE SECRETARY TO EXAMINE (1) WHETHER THE CONTINUED IMPOSITION OF THE ANTI-DUMPING DUTY IS NECESSARY TO OFFSET THE MATERIAL INJURY OR THREAT THEREOF TO DOMESTIC INDUSTRY OR SOON TO BE ESTABLISHED INDUSTRY; AND (2) WHETHER THE INJURY WOULD LIKELY CONTINUE OR RECUR IF THE ANTI-DUMPING DUTY WERE REMOVED OR MODIFIED, OR BOTH.

IF AS A RESULT OF THE REVIEW BY THE COMMISSION, THE SECRETARY DETERMINES THAT THE ANTI-DUMPING DUTY IS NO LONGER NECESSARY OR WARRANTED, THE IMPOSITION OF THE ANTI-DUMPING 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.

THE DURATION OF THE ANTI-DUMPING DUTY INCLUDING ITS PROVISIONAL MEASURES AND THE TIME EXTENSIONS SHALL NOT EXCEED FIVE (5) YEARS.

THE PROCEDURE AND EVIDENCE GOVERNING THE DISPOSITION OF THE PETITION FOR THE IMPOSITION OF THE ANTI-DUMPING DUTY SHALL APPLY WITH 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 REVIEW.

N. JUDICIAL REVIEW. - ANY INTERESTED PARTY WHO IS ADVERSELY AFFECTED BY A FINAL RULING OF THE SECRETARY IN CONNECTION WITH THE IMPOSITION OF A DUMPING 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 THIRTY (30) 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 OR COLLECTION, AS THE CASE MAY BE, OF THE SAFEGUARD MEASURE 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 IN APPEALS IN CONNECTION WITH ADVERSE RULINGS ON TAX MATTERS TO THE COURT OF APPEALS.

SEC. 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.

SEC. 3. *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.

SEC. 4. *Separability Clause.* - If any of the provisions

of this Act is declared invalid by a competent court, the remainder of this Act or any provisions not affected by such declaration of invalidity shall remain in full force and effect.

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

Approved,

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

**Senator Drilon.** Mr. President, may we ask the Chair to recognize Sen. Juan Ponce Enrile for the sponsorship speech.

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

#### SPONSORSHIP SPEECH OF SENATOR ENRILE

**Senator Enrile.** Thank you, Mr. President. I will be very brief. I will not take more than what is necessary of the time of the Senate.

Mr. President, with the accession of the Republic of the Philippines to the GATT-WTO Agreement (Uruguay Round), we have become a member of the international economic order, most especially in the area of international trade, to the extent that we are now going to be governed by the regime of the treaty to which we adhered to. As a consequence of this, there are certain provisions that impel us to open up our markets to foreign-made goods both industrial and agricultural.

And in our time, Mr. President, given the very sensitive and difficult condition of the economy of the world where countries compete for ascendancy in different markets even to the point of losing money in the process but with the hope that in penetrating a market eventually they would get a substantial share of the profits to be made in those markets, this situation will surely pose a clear and present danger to the domestic industries of the Republic most especially our agricultural sector.

Having this in mind and conscious of the deleterious effect of the inordinate inflow of foreign-made, or grown, or produced goods and commodities, the leaders of this Chamber and the Congress, right after the ratification of the GATT-Uruguay Round WTO Agreement, hurriedly enacted what is now known as Republic Act No. 7843 which sought to amend, as it amended, the provisions of the then current anti-dumping law as embodied in the Tariff and Customs Code, to be precise, Section 301 of that Code.

Unfortunately, Mr. President, the statute embodied in Republic Act No. 7843 has been somewhat made complex and difficult to implement possibly because the drafting was not done in a clear and disciplined manner, and also because of the fact that it was hurriedly done. As a consequence of this, to date, in spite of what were perceived to be dumping incidents in our country, there has been no occasion or there was no occasion for our businessmen, let alone our government, to make use of Republic Act No. 7843 in order to protect our domestic industries.

I do not have to emphasize to this Chamber the deleterious effect of dumping of foreign-made goods into our economy. I think all the members of this Chamber would be aware of the impact and difficulties that would ensue to our people should that happen. It would mean unemployment to many if the dumping is not controlled or not arrested, although admittedly there is a downside benefit in the sense that our consuming public will get perhaps cheaper goods and hopefully, of better quality. But nonetheless, we will be depriving many of our countrymen of their sources of livelihood, both the capitalists, whose business will be placed out of business or threatened with insolvency, but most especially our laboring class who depends on the product of the sweat in the factories to earn money to support their families.

Because of this, Mr. President, this representation has seen fit to revisit the issue and thereby introduce into this Chamber Senate Bill No. 763 which is now the subject matter of Senate Committee Report No. 1 which is under discussion.

What we have done is to amend actually Section 301 of the Tariff and Customs Code, as amended by Republic Act No. 7843, by recasting the entire provisions of Section 301, as amended, to make the text clearer, logical, and simpler to implement, adhering closely to the mandates provided in the GATT-Uruguay Round WTO Agreement that we ratified.

I need not repeat here the text of the proposed measure before us. I think everyone was provided with a copy. All I can say is that I believe, humbly and sincerely, that this will serve the best interest of our Republic and our people if we adopt it.

With that, Mr. President, I would like to recommend the approval of Senate Bill No. 763 by the Chamber.

Thank you.

**Senator Drilon.** Mr. President.

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

**Senator Drilon.** Mr. President, for the interpellations, may I ask the Chair to recognize Sen. Juan M. Flavies; and

thereafter the Minority Leader, Sen. Teofisto T. Guingona, Jr.

**The President.** Senator Flavier is recognized first; and thereafter, Senator Guingona.

**Senator Flavier.** Mr. President, will my *guru* and professor in Taxation 103, the great senator from Cagayan, allow me to ask a few clarificatory questions for my continuing education?

**Senator Enrile.** How can I possibly refuse or ignore the distinguished gentleman from the Cordilleras with that introduction, and most especially being the tallest member of the Senate? I yield to his questions, Mr. President.

**Senator Flavier.** Thank you, Mr. President. I feel like 6'2" tall for a change.

My first question relates to the fact that everytime anti-dumping is mentioned, this is generally done in the context of another concept, which is the countervailing duties.

May the good senator explain to this representation the difference between these two concepts and why are they generally discussed in somewhat the same vein, Mr. President?

**Senator Enrile.** Mr. President, before I answer the essential point raised by the distinguished gentleman, I would like to start by saying that the word "dumping," loosely used, covers a lot of things. For instance, the inflow of tremendous quantity of sugar into the country would be considered dumping of goods here. But that is not the kind of dumping contemplated by this measure.

What is contemplated by this measure, Mr. President, is the importation into this country of goods at an export price less than the home consumption price or normal value of that like goods in the market of the country of production or the country of exportation regardless of the quantity of that importation, unless the quantity comes under the level of what we call *de minimis*. Meaning, if it is less than 3 percent of the total volume of imports of similar goods, then that particular importation will be meaningless as far as dumping, technically speaking, is concerned.

Coming now to the essential issue or point raised by the distinguished gentleman from the Cordilleras. The difference between dumping duty or the imposition of dumping duty and countervailing duty lies on the fact, Mr. President, that in the case of dumping, we are dealing with the issue of price differential between the normal price at which that product imported is emitted or destined for consumption in the ordinary course of business in wholesale quantity in the country of

production or in the country of export without any government intervention.

On the other hand, in the case of goods subject to countervailing duty, government intervenes in the form of subsidies. These goods are subsidized. And that is why we use what we call a duty that countervails the act of the government of the producing country or the country of export in order to level the playing field between these goods and the goods produced or like goods produced in our domestic economy.

**Senator Flavier.** I would like to thank the distinguished senator for that very clear differentiation, Mr. President.

**Senator Enrile.** I hope so, Mr. President.

**Senator Flavier.** It is very clear because I understood it, Mr. President. *[Laughter]*

My second question is, it is my impression that under the GATT-Uruguay Round, Mr. President, the attempt is to lower the tariffs. But it is also my impression that in this particular Senate Bill No. 763, the effort will be to increase the duties.

**Senator Enrile.** That is correct, Mr. President. But while under the GATT-Uruguay Round WTO Treaty we have bound or committed ourselves to lower tariff duties on certain types of goods up to a certain level. Nonetheless it is recognized by all the member-countries to the treaty that should there be a case of dumping by other countries, while we impose the reduced duty, we are allowed to protect ourselves by putting a surtax in effect, an additional duty on top of the normal duty.

In other words, when this particular book, for instance, assuming that this is the product being dumped, enters the country, we impose a normal duty on it. But if this particular article is imported into the country at an export price lower than the normal price at which that same article is destined for sale and consumption in the home market or the country of origin, production or export, then this very treaty that we ratified authorizes us to impose an additional duty on top of the ordinary duty.

**Senator Flavier.** What I am hearing, Mr. President, is that, the importation duty we are talking about is not in violation of any provisions of the GATT-Uruguay Round.

**Senator Enrile.** No, it is not, Mr. President. That is also the rationale of the countervailing duty, because the additional duty will equal what we call the margin of dumping, in the case of dumping. And the countervailing duty cannot exceed or go beyond the amount of subsidy that is included in the price of the goods exported to us.



**Senator Flavier.** Mr. President, it is also my impression that Republic Act No. 7843 was, in fact, an attempt to enact the procedure for anti-dumping which already amended Section 301. Therefore, my question is: Why is there a need to enact a new law to supersede what Republic Act No. 7843 did? Can the gentleman explain a little bit the difference between the enactment now and Republic Act No. 7843?

**Senator Enrile.** I do not want to criticize those who formulated and crafted Republic Act No. 7843, but I would like to state here that Republic Act No. 7843 is rather restrictive, complicated and impractical, if not impossible, to apply. Rather than protecting domestic industries, that purpose is defeated.

For instance, in terms of venue for the filing of a petition for anti-dumping, the anti-dumping petition may be filed either with the Secretary of Finance or with the Secretary of Trade and Industry. This is in itself a very cumbersome problem. Why should the Secretary of Finance come into the picture when he has no technical capability to determine the levers of production, pricing, markets, and the volume of supply and demand?

In the economy of the goods involved, that should be a function of the DTI. When it comes to agricultural products, even the Secretary of Trade and Industry would not have the intellectual skills and experiences that would enable him to handle this area. The Secretary of Agriculture ought to come into the picture.

So, we have to recast this and state in this proposed measure that should the commodity, article of commerce or produce involved is an agricultural product or commodity rather than an industrial commodity, then the one that should handle it is the Secretary of Agriculture—the Secretary of Trade and Industry has nothing to do with it—and vice versa. If it is an industrial commodity, it will be the Secretary of Trade and Industry, and the Secretary of Finance is merely a conduit or a channel through which the process will be used in order for either secretaries to instruct the Bureau of Customs to perform certainties in order to arrest the inflow of these commodities. Because all of these goods will have to pass through our border which is the Customs house. That is one.

Apart from what I have stated, with the present provision where the petitioner may either file the petition with the Secretary of Finance or the Secretary of Trade and Industry, the applicant will now be given the privilege of shopping for the favorable forum, which is also unfair to the importer. To some extent, it will be unfair to our consumers because these anti-dumping statutes would arrest, would affect the degree of supply of a commodity in the domestic economy, and thereby affect the pricing mechanism. The one that will suffer the injury will not only be domestic

industries but equally our consumers. So we want to level the playing field.

Second, Mr. President, Republic Act No. 7843 did not follow closely the technical terms used in the Agreement in defining the kind of injury that should be suffered by local industries in order that the applicant could invoke the anti-dumping provisions that we are proposing. RA No. 7843, instead of using "threat of material injury," uses the phrase "injury that might injure or retard the establishment of or is likely to injure an industry producing like articles." This is a very vague untested phraseology which will require a lot of definition and a lot of misinterpretation.

Then, again, there are certain requirements to qualify a petitioner under the treaty that we have adhered to, and this was ignored by RA No. 7843. It is required that at least 25 percent of the industry must be represented in the petition. If one is filing a petition for and in behalf of an industry, he must get the support of at least 50 percent of the entire industry to be considered as a petition filed for, by and in behalf of an industry.

There are other considerations embodied in RA No. 7843 that violate the Agreement that we have ratified. For instance, the question of the cash bond. Under RA No. 7843, the cash bond may be paid any time after the filing of the application. There are time constraints provided in the treaty on this, and we might be called upon by the WTO to explain if we do not correct this.

In the case of release of imports, RA No. 7843 provides that the Secretary, either the Secretary of Finance, maybe the Secretary of Finance—it does not say—or the Secretary of Trade and Industry—which I doubt—may *motu proprio* hold the release of the imports when he has information that an imminent danger of injury exists. There is no such terminology as "imminent danger" in the GATT, Mr. President.

There are others like price undertaking, likely to be sold, and there are many vague provisions that were stated here in this Republic Act. The final problem that I encountered is that there was a confusion in the mind of the person who drafted Republic Act No. 7843 in that he mixed in his mind the requirements for countervailing duty and the requirements for dumping.

If we are importing subsidized goods, it does not necessarily mean that there is dumping because the importation may be in accordance with the current pricing in the country of production or export and, therefore, we cannot use dumping. And yet, we can stop the importation of those goods if our country can prove that there is subsidy included in the export price of these goods such that they could export them to us at a cheaper price.

**Senator Flavier.** I would like to thank the distinguished gentleman for that comprehensive reply, Mr. President.

If I may be allowed to be a little bit more specific. Can the distinguished gentleman educate me on how do we determine when dumping actually occurs and what guidelines can we follow to enable us to establish that dumping has been practiced by a certain country or exporter?

**Senator Enrile.** We will have to deal with both volume and price, Mr. President. If the importation of the commodity in question comes from different countries, then each country's export to us must not be less than 3 percent of the total cumulative aggregate of that commodity.

But even if we have that volume, we still have to deal with the question of price and that is, that the export price at which these goods are exported to us would be less than the normal price at which the same goods are destined for consumption in the country of production or export.

In other words, the equation is very simple, Mr. President. Home consumption value less export sales price is equal to margin of dumping.

**Senator Tatad.** Mr. President.

**The President.** Senator Tatad is recognized.

**Senator Tatad.** With the permission of our colleagues on the floor, just a small point of clarification because I heard the sponsor say, "3 percent for each exporting country."

My understanding is that if we are dealing with only one supplier, in excess of 3 percent, we already have dumping. But if we have more than one, I think the percentage is 7 percent of the total and we need not breakdown the quantity per exporting country.

#### SUSPENSION OF SESSION

**Senator Enrile.** May I 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 4:14 p.m.*

#### RESUMPTION OF SESSION

*At 4:17 p.m., the session was resumed.*

**The President.** The session is resumed. Senator Enrile is recognized.

**Senator Enrile.** Mr. President, I would like to read into the *Record* the pertinent provision of the Uruguay Round Final Act, Marrakesh, 15 April 1994. This is paragraph 5.8 of Article V of Part I of the Agreement on implementation of Article VI of the General Agreement on Tariffs and Trade of 1994 which deals with dumping.

The provision of paragraph 5.8 reads as follows:

An application for dumping shall be rejected and an investigation shall be terminated promptly as soon as the authorities concerned are satisfied that there is not such sufficient evidence of either dumping or of injury to justify proceeding with the case. There shall be immediate termination in cases where the authorities determine that the margin of dumping is *de minimis*, or that the volume of dumped imports, actual or potential, or injury, is negligible. The margin of dumping shall be considered to be *de minimis* if this margin is less than 2 percent, expressed as a percentage of the export price.

The equation is normal value minus export sales price equal to margin of dumping over export sales price. If it reaches 2 percent of that ratio, then there is dumping as price is concerned, Mr. President.

To continue:

The volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from a particular country is found to account for less than 3 percent of imports of like products in the importing country; unless countries which individually account for less than 3 percent of the imports of like products in the importing member collectively account for more than 7 percent of imports of like product in the importing member.

In which case, even if all the imports of the various supplying countries would be less than 3 percent, if their collective share of the totality of imports of like product in our economy is 7 percent, their imports would not be considered *de minimis*.

**Senator Flavier.** Mr. President, I think Senator Tatad is satisfied with the reply.

Information for volume and price was mentioned by the good senator. I would assume that these data will be supplied or gathered by our embassies.

My question is: Is the gentleman confident that our embassies have the capability to render that service in terms of the dumping issue?

**Senator Enrile.** Mr. President, normally, the embassies of our Republic would be helping us in gathering this information. But essentially—the gentleman was present when this matter was raised with the industries concerned during the hearing of this measure—the responsibility for gathering price information belongs to the the local industries concerned. I think they could help themselves if they would gather information regarding their own products where like products are manufactured in other countries. They should be because they are the ones most affected, although the government will have to assist them.

**Senator Flavier.** I thank the gentleman for that answer, Mr. President.

**Senator Enrile.** At the same time, since we are institutionalizing in this measure the Tariff Commission as the technical agency to conduct the actual investigation, that Commission will become the repository of information of various prices on various commodities that we produce in the country and also produced in other countries.

**Senator Flavier.** Thank you. I have two more small questions of definition and I will be finished, Mr. President.

**Senator Enrile.** Never mind about the size, Mr. President. Big or small, we will be glad to reply.

**Senator Flavier.** Big or small provided not short, Mr. President. [Laughter]

**Senator Enrile.** I do not know about that, Mr. President, but some people are probably boasting. [Laughter]

**Senator Flavier.** Mr. President, the first definition I would like to clarify, Mr. President, is the rather frequent referral to a “material injury.” Can the gentleman describe or explain a little bit to this representation the meaning of this “in the light of dumping duties”?

**Senator Enrile.** Mr. President, the term “material injury” could not be defined with any degree of specificity, because there are so many factors to consider in this. I would like to rather read into the *Record* Article III of Part I of the Agreement on implementation of Article VI of the General Agreement on Tariffs and Trade 1994, if I would be permitted by the Chamber.

**The President.** Please, by all means.

**Senator Enrile.**

Article 3

*Determination of Injury*

“3.1 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 dumped imports and the effect of the dumped imports on prices in the domestic market for like products, and (b) the consequent impact of these imports on domestic producers of such products.

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

3.3. Where imports of a product from more than one country are simultaneously subject to anti-dumping investigations, the investigating authorities may cumulatively assess the effects of such imports only if they determine that (a) the margin of dumping established in relation to the imports of each country is more than *de minimis* as defined in paragraph 8 of Article 5 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.

Paragraph 3.4, I think I better read this *in toto* so that future interpreters of this law will understand what we are discussing here, because these are a little technical.

3.4. The examination of the impact of the dumped imports on the domestic industry concerned 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 sales, profits, output,

market share, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.

3.5. It must be demonstrated that the dumped imports are, through the effects of dumping, as set forth in paragraphs 2 and 4, causing injury within the meaning of this Agreement. The demonstration of a causal relationship between the dumped 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 dumped 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 dumped imports. Factors which may be relevant in this respect include, *inter alia*, the volume and prices of imports not sold at dumping prices, 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.

3.6. The effect of the dumped imports shall be assessed in relation to the domestic production of the like product when available data permit the separate identification of that production on the basis of such criteria as the production process, producers' sales and profits. If such separate identification of that production is not possible, the effects of the dumped imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes the like product, for which the necessary formation can be provided.

3.7. A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent. In making a determination regarding the existence of a threat of material injury, the authorities should consider, *inter alia* such factors as:

(i) a significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importation;

- (ii) sufficient freely disposable, or an imminent substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped exports to the importing Member's market, taking into account the availability of other export markets to absorb any additional exports;
- (iii) whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and
- (iv) inventories of the product being investigated.

No one of these factors by itself can necessarily give decisive guidance but the totality of the factors considered must lead to the conclusion that further dumped exports are imminent and that, unless protective action is taken, material injury would occur.

3.8. With respect to cases where injury is threatened by dumped imports, the application of anti-dumping measures shall be considered and decided with special care.

In other words, Mr. President, the determination of material injury, threat of material injury, retardation of the local industry or the establishment of a local industry for the production of light products must be assessed and evaluated by a technical agency that we will identify which is, in our case, the Tariff Commission, and we will be guided by the findings of that technical agency.

**Senator Flavio.** Finally, Mr. President, in the latter part of the bill, I came across a phrase that I would like to request the good senator to annotate a little bit, and that is "voluntary remedy which leads to the automatic closure or cessation of the anti-dumping duties." May the gentleman just annotate a little bit?

**Senator Enrile.** Mr. President, that is actually lifted from a corresponding provision of the GATT-WTO Treaty.

#### SUSPENSION OF SESSION

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

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

*It was 4:38 p.m.*

RESUMPTION OF SESSION

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

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

**Senator Enrile.** Mr. President, I am ready to answer the question of the distinguished gentleman from the Cordilleras. Would the gentleman kindly point out the page of that paragraph he was referring to?

That is paragraph (i) on page 23 of the text of the bill. That was patterned after Art. 8 of Part I of the Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade, 1994. I would like to read this Art. 8, with the permission of the Chair and the members of the Chamber.

Article 8  
Price Undertakings

8.1 Proceedings may be suspended or terminated without the imposition of provisional measures or anti-dumping duties upon receipt of satisfactory voluntary undertakings from any exporter to revise its prices or to cease exports to the area in question at dumped prices so that the authorities are satisfied that the injurious effect of the dumping is eliminated. Price increases under such undertakings shall not be higher than necessary to eliminate the margin of dumping. It is desirable that the price increases be less than the margin of dumping if such increases would be adequate to remove the injury to the domestic industry.

Mr. President, for purposes of expeditiousness and brevity, may I request that all the other paragraphs of Art. 8, meaning, paragraphs 8.2, 8.3, 8.4, 8.5 and finally, paragraph 8.6, be incorporated and recorded as part of my answer and our proceedings.

**The President.** It is so recorded.

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*The full text of each of the paragraphs abovementioned are the following:*

8.2 Price undertakings shall not be sought or accepted from exporters unless the authorities of the importing Member have made a preliminary affirmative determination of dumping and injury caused by such dumping.

8.3 Undertakings offered need not be accepted if the authorities consider their acceptance impractical, for example, if the number of actual or potential exporters

is too great, or for other reasons, including reasons of general policy. Should the case arise and where practicable, the authorities shall provide to the exporter the reasons which have led them to consider acceptance of an undertaking as inappropriate, and shall, to the extent possible, give the exporter an opportunity to make comments thereon.

8.4 If an undertaking is accepted, the investigation of dumping and injury shall nevertheless be completed if the exporter so desires or the authorities so decide. In such a case, if a negative determination of dumping or injury is made, the undertaking shall automatically lapse, except in cases where such a determination is due in large part to the existence of a price undertaking. In such cases, the authorities may require that an undertaking be maintained for a reasonable period consistent with the provisions of this Agreement. In the event that an affirmative determination of dumping and injury is made, the undertaking shall continue consistent with its terms and the provisions of this Agreement.

8.5 Price undertakings may be suggested by the authorities of the importing Member, but no exporter shall be forced to enter into such undertakings. The fact that exporters do not offer such undertakings, or do not accept an invitation to do so, shall in no way prejudice the consideration of the case. However, the authorities are free to determine that a threat of injury is more likely to be realized if the dumped imports continue.

8.6 Authorities of an importing Member may require any exporter from whom an undertaking has been accepted to provide periodically information relevant to the fulfillment of such an undertaking and to permit verification of pertinent data. In case of violation of an undertaking, the authorities of the importing Member may take, under this Agreement in conformity with its provisions, expeditious actions which may constitute immediate application of provisional measures using the best information available. In such cases, definitive duties may be levied in accordance with this Agreement on products entered for consumption not more than 90 days before the application of such provisional measures, except that any such retroactive assessment shall not apply to imports entered before the violation of the undertaking.

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**Senator Flavio.** Thank you very much, Mr. President. I would like to thank the national treasure of Cagayan for his excellent replies.

Thank you, Mr. President.

**The President.** The Chair thanks Senator Flavie.

**Senator Enrile.** I thank the gentleman, Mr. President. I have become a national treasure of Cagayan. The Cagayan is not yet converted into a republic.

**The President.** Next to be recognized is Sen. Teofisto Guingona.

**Senator Guingona.** Thank you, Mr. President. Will the distinguished gentleman from Cagayan yield?

**Senator Enrile.** Gladly, Mr. President, to the distinguished other Minority Leader. They are equal Minority Leaders—recognized.

**Senator Guingona.** Mr. President, the intended law is in the national interest, is it not?

**Senator Enrile.** I think so, Mr. President. We would not be presenting this if we do not believe that there is a national interest to be subserved.

**Senator Guingona.** And because it is to the national interest, then anything that would facilitate the complaint for anti-dumping should be inserted into the intended law?

**Senator Enrile.** Yes, Mr. President, to the extent that such an insertion will be in harmony and attuned to the commitments we have made under the GATT (Uruguay Round)-WTO Agreement.

**Senator Guingona.** Yes, and the distinguished gentleman has already made reference to the previous law which was confusing, excessive and not really to the interest of the complainant, and we are grateful for the corrective measures.

**Senator Enrile.** May I just make an aside, Mr. President, with respect to the statement of the distinguished gentleman.

I would like to erase the implication that the authors of Republic Act No. 7843 were not conscious of our national interest. It was simply that, perhaps, while they were faithfully implementing the national interest, the verbalism of their faith and their intent did not match the noble intention.

**Senator Guingona.** Does the intended bill apply both to finished products and raw materials entering the country?

**Senator Enrile.** All kinds of products, Mr. President, whether finished or raw.

**Senator Guingona.** Does it also apply to agricultural as well as commercial products?

**Senator Enrile.** Yes, Mr. President, as long as we produce those products.

**Senator Guingona.** But, of course, as far as the agricultural products are concerned, because of the nation's high cost of production, many countries who have lesser costs of production would import into our shores similar or the same kind of products and they would not merit anti-dumping but anti-countervailing duties.

**Senator Enrile.** Mr. President, for all I know, the cost of production of those products would be higher than ours. But because of domestic government policy to subsidize, they recover a portion of their cost from their own government, and therefore, they could afford to sell those products to us at less than cost. And because of that, we are not using the anti-dumping duty to arrest that problem, but a countervailing duty.

**Senator Guingona.** Let us take the example of rice. Of course, rice importation is banned except under certain circumstances. But just as an example.

If the cost of production here is such that the selling price or the normal price is P10 per kilo and Thailand, because of technology and more efficient production, sells it at P5 a kilo, the corrective measure would be to determine whether their product—rice—is being sold at that low price because of government aid or subsidy.

**Senator Enrile.** Mr. President, in that example, if I were the lawyer of the domestic industry concerned, I will either use countervailing duty or dumping duty, whichever is easier for me to use to protect our local rice industry. Because if they sell for less than cost, I will ignore the subsidy of the foreign government and apply the fact that they are selling this commodity in our domestic economy for less than the home consumption price which would indicate to me which would be at least over cost.

**Senator Guingona.** If we reverse that process and we export rice at a price and volume in accordance with the standards which the importing country would consider below the normal price—because our President has said that irrigation would be free—would that be a subsidy on the part of the government?

**Senator Enrile.** I do not think that is the kind of subsidy that is actionable under the treaty, Mr. President. The subsidy must be something that is peculiar to a particular industry and not a generalized policy of the government.

It is just like putting up a road being used by people who will transport their goods. That is not subsidy in the sense of the treaty. But if we grant loans at less than open market or we buy a portion of the produce in order that they will recover their cost at a higher price or some similar arrangement or direct subsidy—grant of free fertilizers, free pesticides, and so on and so forth—maybe they can complain. But I doubt whether to irrigate the entire country as a domestic policy would be considered as an actionable subsidy under the GATT-Uruguay Round WTO Agreement.

**Senator Guingona.** The distinguished gentleman also said that the law applies to raw materials. For example, rattan. If rattan is brought into the country from, let us say, Indonesia under the standards set here in this bill, would that apply?

**Senator Enrile.** If they are sold here at less than cost, compared to the price at which they are sold in their home market, I suppose we can impose anti-dumping duty to protect the people who are engaged in rattan gathering in the country.

**Senator Guingona.** The intended law on page 12, says: "To cause material injury to a domestic industry or materially retarding the establishment of such an industry producing like products as determined by the Secretary."

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

**Senator Guingona.** Page 12, Mr. President.

**Senator Enrile.** Page 12 is the text of the old law that we are eliminating. Material injury here is found on page 22, paragraph 8, which are all capitalized, Mr. President.

**Senator Guingona.** Yes, Mr. President. But in other portions of the bill, it talks of the threat or potential damage.

**Senator Enrile.** I did not use the words "potential damage," Mr. President. What line is that?

**Senator Guingona.** I have the old law.

**Senator Enrile.** We are removing that old law precisely, Mr. President. We bracketed it.

#### SUSPENSION OF SESSION

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

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

*It was 4:55 p.m.*

#### RESUMPTION OF SESSION

*At 4:56 p.m., the session was resumed.*

**The President.** The session is resumed. Senator Guingona is recognized.

**Senator Guingona.** Mr. President, I cannot find the potential aspect here in the new printed bill. But is it essential that the importation actually be made before a case can be filed?

**Senator Enrile.** Yes, Mr. President, it must be within the borders.

**Senator Guingona.** If there is a threat or imminent injury in the eyes and contemplation of the manufacturer, can he not file a case because it speaks of threatening to cause material injury, just as in the courts when they issue restraining orders to prevent a threat?

**Senator Enrile.** The importation must threaten the industry, Mr. President.

**Senator Guingona.** Yes, it threatens in the eyes of the manufacturer. But must he wait for the actual importation before he can file a case? Or can he file a case of prevention?

**Senator Enrile.** I am not in a position to give a very definite answer to the question of the gentleman whether an industry here can file an anti-dumping application with the Secretary of Trade and Industry or the Secretary of Agriculture, as the case may be, for the potential importation of one shipload of potato or one shipload of textile because the action will be premature.

But I suppose this will raise the question: When shall importation be considered to have started? Is it at the time when the goods enter the jurisdiction of the Philippines? Or would importation be deemed to have started at the time when the goods were loaded on board ship bound for the Philippines as a point of destination?

I think I will not venture to give a legal provision on this. I will leave that to the assessment of the Tariff Commission, Mr. President.

**Senator Guingona.** Yes, Mr. President. Because in the cited GATT articles, I think paragraph 8, that was read into the *Record* by the distinguished senator, he mentioned threats of material injury. So I was thinking, in order to protect the manufacturer here, that he can be allowed to file a preventive importation of anti-dumping.

At any rate, would the distinguished gentleman agree to an amendment at the proper time?

**Senator Enrile.** I would, Mr. President.

**Senator Guingona.** I would like to thank the distinguished gentleman. In the bill, the standard is that it must do injury to 50 percent of the industry?

**Senator Enrile.** No, Mr. President. First of all, the standard is not just injury. It must be a material injury or threat of a material injury, or retardation of existing industries, or the establishment of new industries producing like products.

The 50 percent goes to the qualification of the petitioner or the applicant. If the petition is intended as a petition by and on behalf of the domestic industry, then there must be a showing that at least...

The provision is in Article 5, part 1 of the Agreement to Implement Article VI of the GATT Agreement of 1994. I would like to read the pertinent provision of Article 5, paragraph 5.4. It says:

An investigation shall not be initiated pursuant to paragraph 1 unless the authorities have determined, on the basis of an examination of the degree of support for, or opposition to, the application expressed by the domestic producers of the like product, that the application has been made by or on behalf of the domestic industry. The application shall be considered to have been made "by and in behalf of the domestic industry" if it is supported by those domestic producers whose collective output constitutes more than 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 25 percent of total production of like product produced by the domestic industry.

To tell the gentleman frankly, Mr. President, until now I have a very difficult time understanding the real meaning of this paragraph. That is why when I crafted this proposal, I provided here a shortcut. I must admit that this is somewhat of a shortcut in order to make it easier for us to implement this.

Let me just look at the correct paragraph, Mr. President. That is on page 20:

UPON DETERMINATION BY THE SECRETARY OF THE EXISTENCE OF A *PRIMA FACIE* CASE, HE SHALL, WITHOUT DELAY, SECURE A WRITTEN SUPPORT FOR THE

INITIATION OF THE FORMAL ANTI-DUMPING INVESTIGATION FROM THE AFFECTED DOMESTIC INDUSTRY PRODUCING TWENTY-FIVE PERCENT (25%) OR MORE OF LIKE PRODUCTS.

**Senator Guingona.** Yes, Mr. President. Does this mean that he would have to get written signatures?

**Senator Enrile.** We will propose, through some members of the Chamber, a modification of the wording of this sentence in the sense that "he will, without delay, require the applicant to secure...."

**Senator Guingona.** Since it is to the national interest, and since the Secretary will undertake an investigation anyway, could we not consider this some sort of a class suit filed by an individual who feels material damage in behalf of the 25 percent and in behalf of the 50 percent of the industry, so that the determination can be made by the Secretary, instead of requiring him to go to 25 percent and secure written signatures significant of support?

**Senator Enrile.** I think the producers of certain commodities in this country, Mr. President, have their own chambers. They have their own organizations and it is easy for them to pass a resolution supporting any action to protect themselves. This is a very important requirement of the treaty, and we could not skirt this.

**Senator Guingona.** I agree that this is an important ingredient. But the Secretary anyway will conduct a preliminary investigation to determine whether there is a *prima facie* case to support the sworn allegations of the complaint.

To make things easier for the complainant in the national interest, would the distinguished senator accept an amendment at the proper time that the complainant be allowed to file without this showing and it is up to the Secretary, who will investigate it anyway, to determine whether the 25 percent and 50 percent are not....

**Senator Enrile.** Mr. President, the scenario is simple. There is nothing that will prevent a member of a domestic industry, let us say, people who are in the manufacture of corrugated roofing, to file an application for anti-dumping if there is an importation of that kind of product for less than home consumption value. But for that application to proceed to be investigated by the Tariff Commission, the Secretary concerned—the Secretary of Trade and Industry in this case—would see to it that the representative quantum of the industry must be represented as petitioners. It is then and only then that he must forward the entire record to the Tariff Commission



for final definitive investigation so that the anti-dumping duty could be imposed on a permanent basis.

In the meantime, once the Secretary has found a *prima facie* case, he takes certain actions. He will not impede the entry of the goods, otherwise our Custom's house will be clogged. But we will require the importer to put up a cash bond to the extent that would cover the margin of dumping.

**Senator Guingona.** Because we feel that anything that would make it easier for the complainant should be resorted to for after all, it is the Secretary who will investigate with all of his resources at his command and determine whether the percentages required under the GATT are met or not.

**Senator Enrile.** Mr. President, in fact, this requirement of more than 25 percent is a material allegation of the application.

**Senator Guingona.** Yes. The complainant will materially allege that.

**Senator Enrile.** Yes.

**Senator Guingona.** So he need not get the written signatures, the records, the supporting documents. In other words, it will be easier for him to file the complaint.

**Senator Enrile.** Domestically, we can do that, Mr. President, but since we are signatories to the GATT Uruguay Round-WTO Agreement, as much as possible, we must conform to the requirements of that Agreement so that whatever actions our authorities here will do would not be challenged in the Dispute Settlement Board of the WTO.

**Senator Guingona.** That is why I was thinking of an amendment at the proper time that would obligate the Secretary to look into the merits of the case and to determine for himself the percentages imposed by the GATT.

If the gentleman will agree, we will propose that amendment at the right time.

**Senator Enrile.** That is a requirement, Mr. President, and I will not commit to accept or not accept a proposed amendment at this point. I will have to look at the wording of that amendment then because I do not want to craft a law that will be challenged by other countries and could be the basis for an action against us.

**Senator Guingona.** Under the bill and under the treaty, the government usually helps in gathering facts and data for the complainant so that he can be furnished the required data necessary in filing the complaint.

But I heard the distinguished gentleman say that it is the industry itself, the manufacturer and the farmer who must do the work. I think both can be combined and perhaps it would be good to mandate the government, through the financial and commercial attachés all over the globe, to help a legitimate Filipino entrepreneur or manufacturer or farmer to get the necessary data.

And since this is for the national interest, will the distinguished gentleman agree to an amendment imposing an obligation upon the pertinent government officials to help?

**Senator Enrile.** I will accept an amendment to require our ambassadors who busy themselves attending cocktails to gather the materials to support our local entrepreneurs and industries, Mr. President.

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

I have one or two other questions but since the new printed copy is a little longer, I would need more time. I therefore would like to thank the distinguished gentleman from Cagayan for the interpellation.

**The President.** Thank you.

**Senator Drilon.** For the next interpellation, may we ask the Chair to recognize Sen. Aquilino Pimentel Jr.

**The President.** Senator Pimentel is recognized for the interpellation.

**Senator Pimentel.** Will the distinguished gentleman, Mr. President, respond to a few questions?

**Senator Enrile.** Gladly, Mr. President, to the distinguished son of Mindanao.

**Senator Pimentel.** Mr. President, when the distinguished gentleman's bill speaks of material injury, do we have any extrinsic measure to resort to, to determine whether or not indeed some material injuries are being caused to any like product, commodity or article being sold or consumed in the Philippines?

The reason I asked this question is that probably, there has to be a kind of a measure that is beyond, shall we say, the personal likes or dislikes of the authorities, in order to determine whether or not there is indeed a material injury to the products, commodity or article which we are trying to...

**Senator Enrile.** Frankly, Mr. President, I felt that we

should leave this to the expert judgment of the investigating agency to determine the level of imports more than *de minimis* that would injure any local industry, because there are peculiarities here.

In the case of the issue raised by the distinguished Minority Leader, if we take, for instance, the beer industry, there are only two companies involved. San Miguel has a market share of, I think, about almost 80 percent. So that if San Miguel files an anti-dumping case, there is no need for the Secretary to secure support or require the applicant to secure support of the minimum requirement of the treaty and this law to qualify the petitioner as a qualified petitioner.

On the other hand, in the case of the question of the distinguished senator, I have read the treaty several times and I do not find any absolute quantification of what would be considered as a level of imports that would automatically suggest to us that it inflicts material injury to the industry. I think the peculiarity of the entire international trade is that there are so many products involved and there are different factors that would affect these industries and their products to warrant a conclusion that this quantity would be injurious.

**Senator Pimentel.** Is my understanding correct therefore, Mr. President, that the distinguished senator would rather leave that determination of material injury to the Tariff Commission, which will have the duty to determine whether or not material injury will be caused to the product or industry or commodity by the product which is being dumped?

**Senator Enrile.** That is correct, Mr. President. Although we indicated in the law the essential factors that the commission must look into to assess the threat of material injury to our domestic industry.

**Senator Pimentel.** That is exactly, Mr. President, what I was trying to ask of the distinguished senator because, to my mind, it is always fraught with danger if we allow bureaucrats to do determination for, let us say, the Legislature. It would probably be tantamount to a blanket delegation of our power to legislation.

**Senator Enrile.** I agree with the distinguished senator, Mr. President. There is a risk involved here not only of a possible use of wide discretion, but a possible corruption in the application of this.

But on the other hand, I think that the delegation of the authority being required into this area is sufficiently guided by the provisions that we have crafted, especially paragraph (h) found on page 22.

**Senator Pimentel.** This particular paragraph speaks of the determination of material injury.

As the distinguished senator has indicated apparently, there are some general legislative guidelines which the Tariff Commission will have to consider if it is to determine that the importation is indeed intended for dumping and will cause some material injury to a local industry, product or commodity.

**Senator Enrile.** That is why I even read into the *Record* the provisions of the treaty so that these things could be looked into by the Tariff Commission when it applies the law that we are crafting. We cannot just restate the entire treaty here because it will be too cumbersome as a statute.

**Senator Pimentel.** Mr. President, the distinguished gentleman's bill speaks of the product, commodity or article of commerce which is being imported into the country. This is on lines 7 and 8 of page 16, and I quote, "... at less than its normal value."

This question now arises: Supposing the value is equal to—

**Senator Enrile.** Normal.

**Senator Pimentel.** —to the normal value of the goods being produced in this country?

**Senator Enrile.** By the way, Mr. President, there is a typographical error in the use of the word "Philippines" here. We will propose to some members of the Body to amend this at the proper time. The typist wrote "Philippines" instead of "the country of manufacture" or "export."

**Senator Pimentel.** Indeed, Mr. President, we were misled by that phrase.

**Senator Enrile.** It is the price where the goods are produced for consumption. That must be the price at which the export-price to us must be compared to determine whether there is a difference and that difference is what we call "the margin of dumping."

The equation is, "Home sales price less export sales price equals margin of dumping," with certain adjustments like advertisement, packaging, taxes and so on.

**Senator Pimentel.** This formula which the distinguished gentleman has just explicated on does not take into account whether the goods that are being exported are of less quality or of better quality.

**Senator Enrile.** That will be taken into account, Mr. President.

**Senator Pimentel.** By the Tariff Commission?

**Senator Enrile.** By the Tariff Commission.

**Senator Pimentel.** Very good.

**Senator Enrile.** What is contemplated here, Mr. President, is articles of comparable durability and comparable quality.

**Senator Pimentel.** I see.

**Senator Enrile.** Let us say, a scissor compared to a scissor manufactured here of the same use and quality, the prices of these must be compared. The starting point of the comparison is the export price compared to the price at which that scissor exported to the Philippines would sell in the ordinary course of business, in wholesale quantities, meaning, ex-factory price in the home country of production, or in the home country of export if there is no sale in the home country of production. It is possible that a particular product could be manufactured in one country to be marketed in another country that needs it.

**Senator Pimentel.** Mr. President, would this proposed Anti-Dumping legislation cover the same and exact produce of any other country that is exporting to the Philippines or would it cover generics?

**Senator Enrile.** Similar products, Mr. President.

**Senator Pimentel.** For example, Mr. President, as of today, the price of apples in the Philippines are cheaper than the price of mangoes. Would anti-dumping apply in that particular instance? Because generically, they would come under the term "fruit."

**Senator Enrile.** I do not think it will apply, Mr. President. But if mangoes of India would be exported to the Philippines with prices less than they would sell those goods in India to recover their variable costs and dump them here to the detriment of our mango industry, then I think we can impose a dumping duty.

**Senator Pimentel.** Mr. President, the reason I ask that question is the fact that the threat to the mango industry in this country does not only come from importation of mangoes also from India or Pakistan, but in the importation of fruits that may substitute for mangoes.

**Senator Enrile.** That is true, Mr. President, but I do not think that was contemplated by the treaty that we are discussing

when they actually crafted that.

**Senator Pimentel.** If the gentleman is correct that it was not contemplated, may we not therefore supply or provide for the missing link? I am just asking.

**Senator Enrile.** I am not sure whether we can do it. Maybe. I could not answer the gentleman with definiteness. I would rather tread the safer road rather than risk that which we will be called to account in the international forum because of some provisions extraneous to what we have agreed upon.

**Senator Pimentel.** Just about two more points, Mr. President. This particular legislation would cover both raw materials as well as finished products?

**Senator Enrile.** That is correct, Mr. President.

**Senator Pimentel.** On page 18, lines 15 to 24, "the Secretary" being referred to here—I suppose this is the Finance Secretary, Mr. President—

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

**Senator Pimentel.** —"is precluded from publicizing the application for the initiation of the investigation."

**Senator Enrile.** Until he makes a *prima facie* determination that there is a case.

**Senator Pimentel.** Mr. President, in the regime of free speech and press, how do we do this?

**Senator Enrile.** That is a requirement also of the treaty, Mr. President.

**Senator Pimentel.** But, Mr. President, I recall that in the law creating the Ombudsman, there is a prohibition against publicizing the names of the people being investigated there, but we always see their names in the newspapers.

**Senator Enrile.** Anyway, Mr. President, what it simply means is that the Secretary concerned must not assume the responsibility of disseminating the information. If an enterprising media man would get hold of a copy of the petition and it is disseminated, as long as it is not an official act of the government of the Philippines, I do not think we collide with the provision of the treaty.

**Senator Pimentel.** In any event, Mr. President, we are not imposing any sanction for, let us say, a violation of this act by the

Secretary, assuming that he is "ambushed" in an interview, and he says, "Yes, there is an initiation to withhold the importation of this and that product."

**Senator Enrile.** If I were the Secretary, Mr. President, I will probably say, "Yes, there is, but I cannot go beyond confirming that there is an application." Then I will just say, "I am going to assess it."

**Senator Pimentel.** So, just like the Americans, Mr. President, the gentleman would neither confirm nor deny the presence of...

**Senator Enrile.** That is true. I do not know why they require this. I cannot just pinpoint the exact provision. I read that somewhere here, Mr. President. But this is patterned after that provision of paragraph 6.5 of Article 6, it says: Any information which is by....

#### SUSPENSION OF SESSION

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

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

*It was 5:30 p.m.*

#### RESUMPTION OF SESSION

*At 5:31 p.m., the session was resumed.*

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

**Senator Enrile.** This is actually found, Mr. President, in paragraph 5.5 of Article 5. I would like to read it into the *Record*.

The authorities shall avoid, unless a decision has been made to initiate an investigation, any publicizing of the application for the initiation of an investigation. However, after receipt of a properly documented application and before proceeding to initiate an investigation, the authorities shall notify the government of the exporting Member concerned.

That is the provision of the treaty which we modified somewhat in order to conform with our domestic requirement.

**Senator Pimentel.** Yes, particularly on the freedom of speech and of the press. Unless there is a sanction to it and if we can remove it, we might as well strike it out.

**Senator Enrile.** I have no problem if we strike it out, Mr. President. After all, whether we put it here or not, we are bound by the mandate of the treaty that we signed.

**Senator Pimentel.** That is correct, Mr. President, but considering that this is our own act—I mean, if we pass the bill that the gentleman is sponsoring....

**Senator Enrile.** We will accept a proposed amendment at the proper time, Mr. President.

**Senator Pimentel.** Yes, in due time. Finally, Mr. President, on page 26, line 30. Just a clarification. Are we talking of "ONE HUNDRED FIFTY DAYS" or "(15) DAYS," Mr. President?

**Senator Enrile.** Before we go into that, Mr. President, may I just say here that we will recast this because there is a requirement that we will have to notify the exporting Member country under the treaty. Anyway, we will craft this.

What is the question of the distinguished gentleman, Mr. President?

**Senator Pimentel.** On page 26, line 30. I think there is a typographical error. The written words speak of "ONE HUNDRED FIFTY DAYS," but the numerical statement there is less, "(15)" not 150.

**Senator Enrile.** Yes, I saw it already. I will check the text of this.

#### SUSPENSION OF SESSION

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

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

*It was 5:34 p.m.*

#### RESUMPTION OF SESSION

*At 5:35 p.m., the session was resumed.*

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

**Senator Enrile.** I understand that it is one hundred fifty (150) both in words and in figures, Mr. President.

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

**Senator Enrile.** Thank you very much.

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

**Senator Drilon.** Mr. President, Sen. Loren Legarda-Leviste has also reserved the right to interpellate. If she is ready, she may proceed.

**Senator Enrile.** I am ready. We can continue tomorrow if that is the pleasure of the Chamber.

**Senator Drilon.** Just a few questions, Senator Enrile, if he will agree.

**Senator Enrile.** I have no problem about it. I would like to accommodate our distinguished lady senator of the Philippines.

**The President.** Sen. Loren Legarda-Leviste is recognized.

**Senator Legarda-Leviste.** Thank you, Mr. President. This humble representation would be privileged and honored if the honorable senator from Cagayan, whom I consider one of the most illustrious members of this august Body, would yield to just a few basic clarificatory questions for my education, as Senator Flavier puts it.

**Senator Enrile.** I could not possibly refuse to yield, Mr. President.

**Senator Legarda-Leviste.** As we know, Mr. President, the process of globalization is sweeping around the world, and ready or not, some countries will be losers and some countries will be winners.

The subject of today's deliberation reminds us that the era of free markets and free trade does not mean an end to unfair trade practices. It reminds us that even in the field of economics as much as in politics, eternal vigilance is still the price of freedom. As the volume of our trade with other countries grows, our exposure to all forms of unfair trade practices such as dumping, unfair state subsidies, grows proportionately.

Under this regime, Mr. President, can we afford to address the various threats on a piecemeal basis? Should we not develop a comprehensive plan to address all of the old and all of the new trade related situations being brought about by the liberalized broad trading regime?

For this purpose, may I ask, Mr. President, which of our government agencies has the principal responsibility for understanding the new agreements and developing a strategy

and tactic in this new international regime and whether or not they have the adequate legal mandate and resources to carry out such a crucial task?

**Senator Enrile.** For industrial and intellectual goods and services, Mr. President, these are addressed to the attention of the Secretary of Trade and Industry. But for agricultural products, this would be addressed to the Secretary of Agriculture.

**Senator Legarda-Leviste.** Mr. President, does the honorable senator believe that there is a need to have a more comprehensive and concerted effort to try to address these problems by mapping out a plan that would be more coordinated with each other?

**Senator Enrile.** That is what we have been doing all these years, Mr. President, and we will continue to do so. Actually, what we are doing now is just a part of the national effort to protect ourselves.

Recently in the last Congress, the distinguished gentleman from Bicol handled the intellectual property portion of this work. There are others that we have to do yet: the countervailing duty and the law on safeguards. But basically, these are actually guided by the provisions of the GATT-Uruguay Round-WTO Agreement that we have adopted and ratified in the Senate.

The lady senator is correct that we have to develop an overall plan. These are items that could not be placed in one single statute. They have to be adopted singly, but the totality of this safeguard measures hopefully would protect our local economy and local industries.

**Senator Legarda-Leviste.** Thank you, Mr. President. This humble representation thanks the honorable senator for shedding some light on this issue.

**The President.** Thank you, Sen. Loren Legarda-Leviste.

The Majority Leader is recognized.

#### SUSPENSION OF CONSIDERATION OF S. NO. 763

**Senator Drilon.** Mr. President, I move to suspend consideration of Senate Bill No. 763.

**The President.** Is there any objection? *[Silence]* There being none, the consideration of Senate Bill No. 763 under Committee Report No. 1 is hereby suspended.

**Senator Drilon.** A few matters, Mr. President, before we adjourn.

**MOTION OF SENATOR DRILON  
(Referral of S. No. 7 to Agriculture and Food  
Committee as Primary Committee; and Trade and  
Commerce Committee as Secondary Committee)**

The referral of Senate Bill No. 7, upon the request of the chairman of the Committee on Agriculture and Food is transferred from the Committee on Agriculture and Food to the Committee on Trade and Commerce as the primary committee; and the Committee on Agriculture and Food as the secondary committee.

May we so move, Mr. President.

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

**Senator Roco.** Mr. President.

**The President.** Senator Roco is recognized.

**Senator Roco.** Mr. President, if I may.

I requested that consideration of the Investment Company Act be deferred primarily and it was approved in the hall. I will give the number to the Secretariat. But the way it was referred and approved, it became secondary referral to the Committee on Banks, Financial Institutions and Currencies.

We have no problem with that, Mr. President, except that because of the nature of the subject matter, now that we are discussing the Securities Act which is being given priority status, we shall have two different judgments unless we put them primarily in the same committee.

So, if we may move, Mr. President, especially now that there will be I guess—I am just assuming—a new chairman of Trade and Commerce Committee, maybe it is an appropriate time to make a primary reference of the Investment Company Act and the Investment Houses Act to the Banks, Financial Institutions and Currencies Committee instead of the Trade and Commerce Committee, then there will be consistency in the definitions.

**Senator Drilon.** With the indulgence of Senator Roco, we have no basic problem with that, except that if Senator Roco will allow, we would like to consult also the Chair before we act on it. So may we defer consideration of that until tomorrow?

**Senator Roco.** Of course, of course, there is no problem.

**The President.** The motion is deferred until tomorrow.

The Majority Leader is recognized.

**Senator Drilon.** Mr. President, we want to make it of record that Sen. Ramon Magsaysay Jr. today has affiliated with the LAMP and has become a member of the Majority alliance in the Senate.

**MOTION OF SENATOR DRILON  
(Sen. Magsaysay Jr. as Chairman of Trade and  
Commerce Committee; and Sen. Sergio Osmeña III  
as Member of Same Committee)**

In view of that transfer, Mr. President, may I move for his election as chairman of the Committee on Trade and Commerce in substitution of Sen. Sergio Osmeña III, who now becomes a member only of the Committee on Trade and Commerce.

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

**MOTION OF SENATOR DRILON  
(Sen. Magsaysay Jr. as Chairman of Cooperatives  
Committee; and Sen. Sergio Osmeña III  
as Member of same Committee)**

**Senator Drilon.** Similarly, Mr. President, in the Committee on Cooperatives, we move that we elect Sen. Ramon Magsaysay Jr. as chairman in lieu of Sen. Sergio Osmeña III, who now becomes only a member.

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

**MOTION OF SENATOR DRILON  
(Sen. Magsaysay Jr. as Vice Chairman and Member  
of Finance Committee)**

**Senator Drilon.** In the Committee on Finance, we move that Sen. Ramon Magsaysay Jr. be elected as member of the Committee on Finance and be designated also as Vice Chairman.

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

**MOTION OF SENATOR DRILON  
(Senator Honasan as Member and  
Vice Chairman of the Finance Committee)**

**Senator Drilon.** Similarly, Sen. Gregorio Honasan is nominated by the Majority as a member of the Committee on Finance and also as vice chairman, with the concurrence of the chairman of the Committee on Finance present in the hall.

**The President.** Sen. Gregorio Honasan is nominated as

member and also as vice chairman of the Committee on Finance.

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

ADJOURNMENT OF SESSION

**Senator Drilon.** There is no more business in the

Calendar. We therefore move to adjourn the session until tomorrow, August 26, 1998, at three o'clock in the afternoon.

**The President.** The session is hereby adjourned until August 26, 1998, at three o'clock in the afternoon, if there is no objection. [*There was none.*]

*It was 5:46 p.m.*