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Wednesday, December 1, 2004

**THIRTEENTH CONGRESS
FIRST REGULAR SESSION**

SESSION NO. 41
Wednesday, December 1, 2004

CALL TO ORDER

At 2:56 p.m., the Senate President, Hon. Franklin M. Drilon, called the session to order.

PRAYER

Sen. Francis N. Pangilinan led the prayer, to wit:

We place ourselves in God's presence.

Almighty God, when we are rendered helpless by the face of natural calamity and disaster, help us to see Your face of holiness, concern and love more clearly. When we are victimized by the imprudence and recklessness of some who disregard the protection of our environment, give us a sense of hope and the noble deed of compassion that have been generated by people made in Your likeness.

After the onslaught of typhoons that have hit our nation, we pray for those who are still suffering; for those who mourn their dead; for those who have lost their loved ones; for those whose homes, whose crops and places of work have been destroyed, especially for those who have lost hope that they find renewed strength in You to sustain them as they grieve.

In the midst of our grief and confusion, we thank You; for brave rescue workers and volunteers; for people who have given resources, time and prayers for victims; for uniting people of different ideologies and faiths to be one nation.

O Mighty God, we commit ourselves to Your sovereign care. By Your Son's dying and rising, He remains our light in

the darkness, our strength in every weakness.

Giver of peace, make us one in celebrating Your praise, both now and forever.

Amen.

DEFERMENT OF THE ROLL CALL

Upon motion of Senator Pangilinan, there being no objection, the Body deferred the roll call to a later hour.

DEFERMENT OF APPROVAL OF THE JOURNAL

Upon motion of Senator Pangilinan, there being no objection, the Body deferred the consideration and approval of the Journal of Session No. 40 to a later hour.

PRIVILEGE SPEECH OF SENATOR PIMENTEL

Availing himself of the privilege hour, Senator Pimentel delivered the following speech:

MYANMAR DOES NOT DESERVE TO CHAIR ASEAN IN 2006

Let me start by saying that I read in the papers early this morning that Myanmar's military rulers had rebuffed two days ago President Gloria Macapagal Arroyo's suggestion that Daw Aung San Suu Kyi be allowed to participate in the political process of the country in Vientiane, Laos.

It is a sad development and renders the articulation of this privilege speech all the more necessary.

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ASEAN parliamentarians coming from six member-countries met in Kuala Lumpur over the weekend on the reported continued harassment and detention of the leaders of the National League of Democracy and other ethnic communities by the military regime of Myanmar.

The members of parliament who attended the Kuala Lumpur meeting came from Cambodia, Indonesia, Malaysia, Singapore, Thailand and our country. And they came not only from the majority parties of their respective countries but also from the minority.

Unjust restrictions

The main issue of the conference had to do with the continuing "hamleting" – this is particularly a Philippine phrase – and harassment of Burmese ethnic minorities by the military junta running Myanmar and the patently unjust restrictions of the freedom of movement of the leaders of the National League of Democracy, particularly of the Nobel Laureate, Daw Aung San Suu Kyi.

If we remember, sometime in 1990, the Myanmar military government called for parliamentary elections which, to be brief, were literally swamped by the candidates of the NLD led by Daw Aung.

Daw Aung, as everyone knows, is the daughter of Aung San, the recognized Burmese freedom fighter and hero who led the country's resistance against the country's colonizers, at first, the British and subsequently, the Japanese. Daw Aung and the NLD candidates were the overwhelming choice of the people to lead the nation as it embarked on the long and arduous road towards parliamentary democracy from authoritarian rule.

The people of Myanmar rejoiced over the results of the elections and prepared themselves for a civilian-led government for the first time in their history as a people.

Election nullified

Unfortunately, the military had other thoughts about it. Led by Gen. Ne Win, the militarists believed that the future of Myanmar lay on the bared blades of bayonets in their hands, not in the ballots cast freely by the people. According to the CIA website, "Gen. Ne Win dominated the government from 1962 to 1988, first as military ruler, then as president, and later as political kingmaker."

The military junta under Ne Win nullified the election results and placed NLD leader and Nobel Peace Prize recipient Aung San Suu Kyi under house arrest from 1989 to 1995 and again from 2000 to 2002. She was rearrested in May 2003 and is currently under house arrest after the military violently dispersed a peaceful motorcade in Depayin where 283 NLD supporters were killed and some 100 plus NLD followers were detained.

Systematic oppression

Other NLD and ethnic minority leaders were less fortunate because they were either summarily executed or they had to seek refuge in the company of armed rebels or exile themselves in foreign lands.

The military junta went by the name of SLORC (State Law and Order Restoration Council) and it changed the name of their country, Burma, to Myanmar in 1988.

Since then, SLORC – which has by now altered its dangerous drug-sounding acronym to SPDC (State Peace and Development Council) – has systematically oppressed their own people with unspeakable cruelty.

Constructive engagement

In 1997, Myanmar was accepted as a member of ASEAN after it committed to abide by certain principles of democratic

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governance. For their part, ASEAN members justified Myanmar's accession to the organization as a way of engaging it "constructively" as they say. It was diplomatese for getting its military rulers to ease up on the repression of their own people and to prod them to respect the human rights of the latter.

Yet, truth to tell, even after seven years since Myanmar's membership in ASEAN and after 16 years or so since the adoption of the policy of "constructive engagement" by the original members of ASEAN, there are still hardly any signs that its military rulers are letting go of their iron grip of their country. Of course, it is true that recently SPDC has purged Gen. Kyin Nyunt from the premiership of their government and removed many of his personal following from certain key positions of the military establishment. But the way it looks, the purge was not intended to lift the military boot that is firmly planted on the neck of the people of Myanmar but as a clear signal of the impatience of other generals' and military officers' wanting to cash in on their predominant government positions now rather than later. To put it in the vernacular, the purge now turns out to be a case of: *"alis diyan, kami naman."*

True, the SPDC has reportedly recently ordered the release of some 9000+ prisoners. Some Burmese leaders told me, however, that most of those who had been released were common criminals and that only a few were "political prisoners." In fact, the latest information I received is that out of 1,300 political prisoners, only 40 had been released. The fates of the National League of Democracy and other ethnic leaders who had been detained when the military junta overturned the will of the electorate in 1990 remain unclear, undisclosed and unverified.

National Convention

At this point, then, the releases of prisoners from Myanmar jails may, thus, be pure and simple gimmickry to earn

brownie points in good governance for the military junta as it prepares to assume the chair of ASEAN by 2006.

The SPDC had also convened on December 28, 1995, a so-called National Convention to draft the country's constitution. Apparently, however, the more perceptive people of Myanmar see the convention as but a ploy to perpetuate the militarist character of governing the country. It is difficult for us who are looking at the situation in Myanmar from the outside to even give the holding of the convention the benefit of the doubt because the major stakeholders who are in the country see it as a device to institutionalize the iron grip of the military establishment on the reins of government. The apprehension of the leaders of the NLD and the ethnic minorities appears to be well-founded because the composition of the convention is tilted heavily in favor of the military rulers and their allies.

Lesson from our own Concon

I am reminded of the work of the 1971 Constitutional Convention in our country which — when overtaken by the proclamation of martial rule in 1972 — was actually completed by the minions of the martial ruler and passed off as the work of the freely elected delegates of the people.

I, therefore, cannot blame the leaders of the NLD and the ethnic minorities in Myanmar for distancing themselves from the SPDC-sponsored convention. Had they joined the convention, they would certainly only be used to legitimize their own enslavement by the ruling military clique.

Unfortunately, that is not the end of the story. The military junta now under the presidency of Gen. Than Shwe appears more determined to proceed with its unilateral determination that the convention is the way to unify the country and woe to them who do not believe so. #

If that attitude remains unchecked, we will see a continued bloodbath in Myanmar.

What, then, can we do as members of the Senate?

We can and should exert pressure on the Myanmar military regime to ease up on the repression of the rights of their own people and normalize the situation there by recognizing the rights of the other sectors of their society to have a say in the running of the affairs of the country.

But would our making known our disenchantment with the way the military rulers of Myanmar are mistreating their own people violate the so-called policy of constructive engagement or non-interference in the affairs of a member-country of ASEAN?

House on fire

I do not think so. When the house of a neighbor is on fire, we cannot just fold our hands and say we cannot interfere. I think we should, at least, call the attention of that neighbor that his or her house is on fire.

This is how I see the situation in Myanmar. Its house is on fire. And since Myanmar is not only a neighbor but a sister in the ASEAN family of nations, it is incumbent upon us to call its attention to the fire that is gutting its very foundations. We must do so because the spill-over effects of the blatant human rights violations being perpetrated by the military junta in Myanmar have sent more than two million refugees into its neighboring countries and the confabulation of the military rulers and the drug dealers in the country has reportedly produced more than 1.5 million drug addicts in the region.

Moreover, there have been instances in recent years when some ASEAN countries criticized the policies of other member-countries. Singapore's Lee Kuan

Yew denounced oppression in Burma; Malaysia called on Indonesia to explain why the latter has not been able to control the forest fires in Sumatra and Kalimantan; Singapore chewed out President Ramos's Philippine-style "democracy"; and Mahathir Mohammed of Malaysia asked that Myanmar be expelled from ASEAN. Nobody cried that these were violative of the ASEAN doctrine of "constructive engagement".

Demands

More specifically, then, I suggest we take off from what President Macapagal Arroyo had tactfully asked the military rulers of Myanmar "to allow Daw Aung to participate" in the country's political process. With the decision of the military junta to continue detaining Daw Aung for, at least, one more year, we should now demand her unconditional release and the release of the leaders of the NLD and the ethnic minorities.

We should also ask Sec. Alberto Romulo of the Department of Foreign Affairs to express the sentiment of this Chamber that Myanmar's apparent inability to respect the human rights of its own people and to behave in a democratic manner makes it unworthy to chair ASEAN in 2006.

As an alternative, this Chamber should prod Secretary Romulo and through him, the other ASEAN member-countries to engage the military rulers of Myanmar and all the major stakeholders there -- from Aung San Suu Kyi and the leaders of NLD and the ethnic minorities -- in a meaningful and democratic search for peace and unity of the peoples of Myanmar that may include the holding of a truly free National Convention to draft the country's constitution.

Block Myanmar's chairing ASEAN

Should Myanmar prove unwilling to go along with proposals to ensure a democratic outcome in the country's

search for peace and unity, then, we should (a) block its chairing ASEAN in 2006; and (b) eventually call for its expulsion from ASEAN.

Our country has earned a name for upholding democratic principles and for vindicating the human rights of our people.

Our ASEAN countries rightfully look to us for guidance in this regard. We should not let the people of Myanmar and the rest of ASEAN down.

INTERPELLATION OF SENATOR DEFENSOR SANTIAGO

At the outset, Senator Defensor Santiago congratulated Senator Pimentel for his idealism and his perceptive analysis of the situation in Myanmar.

To assess the feasibility of Senator Pimentel's proposals, Senator Defensor Santiago stated that Section 2, Article II of the Constitution provides that the Philippines adopts the generally accepted principles of international law as part of the law of the land. Thus, she said, international law is part of the Philippine Constitution and anything that is done by Philippine officials must conform to it.

Senator Defensor Santiago, however, pointed out that international law is not a code of rules like the domestic law of the Philippines or of any other country. In fact, she said that she defines international law as a process -- not a body or code of rules -- that has become the accepted definition of international law. Thus, she explained that since international law is a process, when it is applied, the effort must always start with a search for the international law on the subject but unfortunately, there is no encyclopedia or a Code of International Law like a Civil Code or a Penal Code. She said that the search for international law by itself is already an art and a science that only the experts are able to do. She pointed out that the two main sources of international law are: 1) written agreements often called "conventions" and therefore resulting in conventional international law; and 2) "custom"

which is not written but consists of certain elements, namely, a) a practice between or among states; b) repetition of that practice over a decent period of time; and c) acceptance by international public opinion that the practice is obligatory on the part of all, or *jus cogens*, a principle of international law against which no derogation is permitted.

Asked by Senator Defensor Santiago whether the first paragraph of the United Nations Charter provides for the principle of nonintervention in domestic affairs, Senator Pimentel replied in the affirmative. He further affirmed the observation that nonintervention in domestic affairs was a generally accepted principle when the UN Charter was adopted in 1945 because it was considered a convention or a written agreement.

Senator Defensor Santiago said that since 1945, however, a new body of law called the "Human Rights Law" evolved which demands that a state should be acknowledged in certain circumstances and under certain criteria to have a right to interfere or to participate in the domestic proceedings of another sovereign state if human rights are at stake. Senator Pimentel concurred with the observation, adding that the human rights law has overtaken the principle of nonintervention as he adverted to the foreign intervention of many countries in Kosovo.

Senator Defensor Santiago stated that many great powers of the world like the United States, United Kingdom, France and Germany have seen fit to interfere in the domestic processes both in the European and Latin American continents on the basis that the human rights law allows intervention under certain cases when the violation is blatant. In view thereof, she said that human rights law is now part of the Philippine Constitution; hence, it would be safe for the Senate to pass a resolution embodying all the sentiments clearly elucidated by Senator Pimentel.

Senator Defensor Santiago asked whether the thrust of the speech was to bring to the attention of the military government of Myanmar the desire of the Filipino people to have Daw Aung San Suu Kyi immediately released from detention. She pointed out that the Daw Aung San has not committed any crime against her people; she was elected President of her country by a virtually

unanimous vote but instead of assuming the presidency, she was placed under house arrest for many years until her husband died, her children grew up, she reached middle age and acquired illnesses, and won the Nobel prize. She opined that it seemed cowardly for the Philippines to ignore the Myanmar problem and to appear in the ASEAN meeting as if it were not acquainted with what was going on very near its borders and placing more importance on trade over and above human rights.

Senator Pimentel underscored that the Philippine Senate should support moves to protect the rights of the minorities in Myanmar where human rights violations still continue up to this day. He said that thousands are being forcibly evicted from their villages reminiscent of the hamleting that had been done in the past in many parts of the world, including the Philippines.

MOTION OF SENATOR DEFENSOR SANTIAGO

Senator Defensor Santiago moved to refer the speech to the Committee on Foreign Relations with the end in view of drafting a resolution embodying the concerns raised by Senator Pimentel and to furnish a copy thereof to all authorities who could possibly act on them, particularly the President of the Philippines with whom Congress shares the power to design foreign policy, and the Secretary of Foreign Affairs with instructions that the sentiments of the resolution be strongly expressed at the next ASEAN meeting.

REMARKS OF SENATOR ENRILE

At the outset, Senator Enrile stated that he supported the thrust of the speech of Senator Pimentel as he believed that the idea of democracy should be fostered in Myanmar.

Asked if he had been to Myanmar, Senator Pimentel replied in the negative. Senator Enrile said that having gone to Myanmar several times, he could attest to the heroism of Aung San, the father of Daw Aung San Suu Kyi, who is considered the father of Myanmar. He agreed that efforts should be exerted for the possible release of Daw Aung San. However, he cautioned government leaders not to antagonize

Myanmar that has the potential of becoming one of the great nations in the ASEAN because of its medium-sized population of about 45 million; a contiguous land area stretching all the way from Bangladesh down to Thailand; rich marine resources and a long coastline of about 3,000 miles; and rich natural resources, especially thick wood with six million hectares of virgin forest and even a bamboo grove equal to the size of the entire island of Luzon. Adding that Myanmar is so rich in other natural resources such as huge quantities of gold deposits, he said that undoubtedly it would be one of the most gifted parts of the earth if it is released from its present political condition and the energies of its people could be harnessed. Moreover, he said that Myanmar is self-sufficient in power and in food.

INTERPELLATION OF SENATOR ARROYO

Senator Arroyo disclosed that he spent a week in Myanmar just out of curiosity and could attest to the human rights violations in the country. He said that every time he passed by the house of Daw Aung San Suu Kyi, his car was trailed by military elements.

In view of the chairing by Myanmar of the ASEAN in 2006, he said that the Philippine Senate has still one year to negotiate with the Myanmar government.

At this point, Senator Arroyo asked why the Philippines voted for the membership of Myanmar in the ASEAN whose standards it did not meet, particularly with respect to human rights. Senator Pimentel replied that Myanmar was admitted to the ASEAN in 1997 apparently because of the weight of opinion of the original members that Myanmar should be admitted so that it could engage constructively as well as to prod it along the way of democracy. Unfortunately, he said, this did not happen.

Senator Arroyo expressed hope that the Executive department, which has control over foreign policy and foreign relations, could block Myanmar from chairing the ASEAN in 2006.

Noting that Myanmar would have full rights when its turn comes, Senator Arroyo asked how the problem could be solved. Senator Pimentel said

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that blocking Myanmar from chairing ASEAN is the maximum demand that the Philippine government should work on. What is being done at the moment, he said, is to raise the consciousness of the Filipino people and the leadership and to ask the rulers of Myanmar to ease up on its people, the first sign of which is to release Daw Aung San Suu Kyi unconditionally.

Senator Arroyo noted that Daw Aung San Suu Kyi has been in and out of detention several times; released but always under house arrest when the government wanted to have a good image abroad.

Asked what standards could be instituted by the Philippines as it could not always lay down the standards, Senator Pimentel replied that as pointed out by Senator Defensor Santiago, the issue of human rights has now become a bedrock of assertion for other countries to "interfere" in the affairs of other countries. He said that the Philippines does not have to go to war over the issue but, on the moral level, it should not give up on the mandate to assert the rights of people. Relative thereto, he said that he was heartened by the fact that parliamentarians from Malaysia, Indonesia and Cambodia in a recent conference manifested their desire to forcefully bring the issue to the fore during the ASEAN meeting in Myanmar in 2006.

Senator Arroyo said that should the Philippines fail to realize its objectives for Myanmar, at least, it should bring the issue to the fore by registering its position and, thus, would show the world that it is always in the forefront of human rights advocacy.

REFERRAL OF SPEECH TO COMMITTEE

Upon motion of Senator Defensor Santiago, there being no objection, the Chair referred the speech of Senator Pimentel to the Committee on Foreign Relations, with the instruction to the Secretariat to provide copies thereof to the President, the Executive Secretary, and the Secretary of Foreign Affairs.

ROLL CALL

Upon direction of the Chair, the Secretary of the Senate, Oscar G. Yabes, called the roll, to which the following senators responded:

Arroyo, J. P.	Lapid, M. L. M.
Cayetano, C. P. S.	Lim, A. S.
Defensor Santiago, M.	Madrigal, M. A.
Drilon, F. M.	Magsaysay Jr., R. B.
Ejercito Estrada, J.	Pangilinan, F. N.
Ejercito Estrada, L. L. P.	Pimentel Jr., A. Q.
Enrile, J. P.	Recto, R. G..
Flavier, J. M.	Roxas, M.
Gordon, R. J.	Villar Jr., M. B.

With 18 senators present, the Chair declared the presence of a quorum.

Senators Angara, Biazon, Osmena and Revilla arrived after the roll call.

Senator Lacson was on official mission.

APPROVAL OF THE JOURNAL

Upon motion of Senator Pangilinan, there being no objection, the Body dispensed with the reading of the Journal of Session No. 40 and considered it approved.

REFERENCE OF BUSINESS

The Secretary of the Senate read the following matters and the Chair made the corresponding referrals:

BILLS ON FIRST READING

Senate Bill No. 1868, entitled

AN ACT DETERRING AND PUNISHING ESTABLISHMENT AND OPERATION OF CRIMINAL STREET GANGS, RECRUITMENT OF INDIVIDUALS TO PARTICIPATE THEREIN, COMMISSION OF VIOLENT GANG CRIMES, AND FOR OTHER PURPOSES"

Introduced by Senator Luisa "Loi" P. Ejercito Estrada (L.)

To the Committee on Public Order and
Illegal Drugs

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Senate Bill No. 1869, entitled

AN ACT REQUIRING THE TEACHING OF INTELLECTUAL PROPERTY OWNERSHIP PARTICULARLY COPYRIGHT LAW AS PART OF THE CURRICULUM OF ALL PRIMARY, SECONDARY AND TERTIARY SCHOOLS IN THE COUNTRY, AND FOR OTHER PURPOSES

Introduced by Senator Luisa "Loi" P. Ejercito Estrada (L.)

To the Committees on Education, Arts and Culture; Trade and Commerce; and Finance

COMMITTEE REPORT NO. 5 ON SENATE BILL NO. 1854

(Continuation)

Upon motion of Senator Pangilinan, there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 1854 (Committee Report No. 5), entitled

AN ACT INCREASING THE EXCISE TAX RATES IMPOSED ON ALCOHOL AND TOBACCO PRODUCTS, AMENDING FOR THE PURPOSE SECTIONS 141, 142, 143, 144, 145 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED.

Senator Pangilinan stated that the parliamentary status was the period of interpellations.

Thereupon, the Chair recognized Senator Recto, Sponsor of the measure, and Senator Enrile for the continuation of his interpellation.

SUSPENSION OF SESSION

Upon motion of Senator Enrile, the session was suspended.

It was 3:37 p.m.

RESUMPTION OF SESSION

At 3:38 p.m., the session was resumed.

INTERPELLATION OF SENATOR ENRILE
(Continuation)

Senator Enrile recalled that in his interpellation the previous day, he asked for the volume of production of distilled spirits from nipa, coconut, cassava, camote, buri palm and sugar cane. Senator Recto replied that according to the BIR, 100% of local distilled spirits like gin and rum are made from sugar cane but other distilled products such as whiskey and brandy are made from grapes and, therefore, fall under Section 141(b).

Senator Enrile informed the Body that at one time, brandy rum was produced in the country from nipa sap by La Granja Distillery in Cagayan Valley; however, the distillery was destroyed during the war and production stopped. He claimed that it was the best rum marketed in the Philippines and the world.

Senator Recto explained that locally distilled spirits would be taxed at a much lower rate of 30% since they are made from local raw materials and the committee believed that this type of producers should be assisted; on the other hand, imported distilled spirits would be taxed 50%.

On whether the Philippines is importing gin from China, Senator Recto replied in the negative, adding that if it did, the product would fall under paragraph (b) and would be taxed at a much higher rate.

Asked what paragraph Japanese *sake* falls under, Senator Recto replied that since *sake* is made from rice, it falls under the wine category. He said that depending on its alcohol content, the tax on wine is entirely different.

On the meaning of the term "spirits of wine," Senator Recto explained that the term is not new in the bill since it was lifted from the original law authored by Senator Enrile in 1997. He said that

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the term "distilled spirits" is defined as "the substance known as ethyl alcohol, ethanol or spirits of wine, including all dilutions, purifications and mixtures from whatever source, by whatever process produced and shall include whisky, brandy rum, gin and vodka, and other similar products or mixtures."

On whether there are products that would be taxed under the term "spirits of wine," Senator Recto replied that the committee is not changing the particular provision of the existing law.

As for bracketing the rest of Section 141(a) after the word "cane" on line 6, page 1 of the bill, Senator Recto explained that the Department of Finance wanted to delete paragraph (a) and place all types of distilled spirits, regardless of raw materials used, under paragraph (b); however, he disagreed to the proposal as he believed that it would be to the interest of the nation to protect the local manufacturers. He noted that after consultation, he learned that there would be no problem with respect to the provision, although the DTI was concerned that the deletion of the phrase "provided such materials are produced commercially in the country" in Section 141(a) might be a problem with the WTO.

On the second proviso of Section 141(a), Senator Recto said that it was the intention of the committee not to tax native distilled spirits like *lambanog* as he agreed with Senator Enrile that the language of the provision could still be improved.

Asked if he would agree to the deletion of a portion of Section 141(a) on page 1, beginning with the word "Provided" on line 8 up to the figure "P4.00" on line 11, Senator Recto replied that he would not object to it, provided that lines 5 to 8 are retained except the words "in the country" on line 7 which should be deleted to avoid any problems with the WTO.

Asked how the rate of P11.65 on page 1, line 12, was arrived at, Senator Recto explained that the 20% tax increase recommended by the House was increased to 30% by the committee since the tax burden on distilled spirits under Section 141 is very much lower than the tax

burden on fermented liquor or tobacco. He reiterated that since the "degree of badness" between cigarettes and alcohol is not that wide, the committee suggested a formula whereby the tax rates on distilled spirits would catch up with the tax rates on cigarettes.

On the volume of production of distilled spirits under Section 141(a) and the amount to be realized based on the excise tax of P11.65, Senator Recto replied that it is roughly 250 million proof liters and the excise tax would be about P2.70 billion.

On whether the P2.70 billion is the maximum amount of revenue that could be raised from distilled spirits, Senator Recto admitted that it is hard to arrive at the maximum revenue because the taxes on distilled spirits are very low.

Queried if the demand would diminish if the tax rate was increased by 50%, Senator Recto pointed out that distilled spirits have the lowest tax burden, so to raise revenues, they could be taxed higher. However, he emphasized that as chair of the Committee on Ways and Means, he did not want to tax exorbitantly. Senator Enrile said that the Minority were willing to be more aggressive on tax increase for the sake of the country. Senator Recto, in turn, remarked that he would rather stay on the conservative side as he believed that exempting the poorest of the poor from taxes is not a solution to the fiscal crisis. He noted that by and large, distilled spirits like gin that fall under Section 141(a) are consumed by the poor.

Asked if the 30% is indeed the maximum tax rate increase, Senator Recto replied that it depends on how the proposal would affect the producers and the consumers in the industry. He pointed out that he proposed a 50% rate increase for high-end distilled spirits like Johnny Walker Black Label and the Johnny Walker Blue Label because these have less elasticity than domestically produced distilled liquor. He emphasized that while the House proposed a 20% tax increase on both domestic and imported distilled spirits, the committee proposed a 30% tax on domestic distilled spirits and 50% tax on high-end distilled spirits as he pointed out that the latter are consumed by the affluent members of society.

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Upon query, Senator Recto agreed that gin is hazardous to one's health. Senator Enrile queried why the government has not come out with a warning label on gin bottles that says gin is hazardous to one's health, observing that this had been done on cigarette packages. Senator Recto said that he would support a measure to ban alcohol advertising.

Asked if the tax rates on distilled spirits, as provided for under Section 141(a), were really discussed in a committee meeting, Senator Recto replied in the affirmative.

On whether the country has raw materials other than those mentioned in Section 141(a), Senator Recto replied that it is possible. He pointed out that the types of distilled spirits produced domestically are listed in Section 141(a). He affirmed that distilled spirits covered by Section 141(b) are imported and cannot be produced in pot still or similar distilling apparatus.

Asked why the tax rates for products listed under subparagraphs (1), (2) and (3) of Section 141(b) were uniformly increased by 50%, Senator Recto explained that affluent members of society consume imported products, hence, if the primary objective is to raise revenues, they should pay higher taxes. He said that in the existing law, Section 141(b) has three tiers and the proposal is to increase the taxes thereon.

Considering that the consumers of these types of distilled spirits belong to the upper class of society, Senator Enrile queried why the committee provided for a 50% increase instead of a 75% or even to a 100% increase if the intent is just to raise revenues. Senator Recto replied that he pegged the increase at a very liberal rate of 50%, cautioning that the Body should not increase it too much. However, he said that he would be open to an amendment if the Members would like to increase the tax rate further. He stated that he fully understood why Senator Enrile wanted a 100% increase considering that the affluent consumers are the ones to be affected. He added that it is the same conceptual framework that the committee has worked on.

Senator Enrile asked to be clarified on the provision that the tax shall be based on the net retail price per bottle of 750 ml. volume capacity or per proof liter. He cited the definitions of "proof liter" as a liter of proof spirit, and "proof spirit" as a liquor containing one-half of its volume alcohol of specific gravity of 0.7939 at 15 degrees centigrade. He stated that he wanted to know how the tax would be quantified because the provision speaks of proof liter but the content of a bottle is 750 ml. Senator Recto reiterated that the existing provision of the law would be retained as he noted that imported distilled spirits are mostly in 750 ml. bottles. In layman's term, he said, the higher the alcohol content of the liquor, the higher the tax. He gave the following equation for computing the corresponding tax on a 750-ml. bottle:

$$\begin{aligned} 750 / 1000 \times 180 / 100 &= .75 \times 1.8 \\ = 1.35 \times \text{tax rate} &= N \\ &\text{based on} \\ &\text{the tier} \end{aligned}$$

Where N = tax of the 750 ml. bottle

Asked to identify the current brands of distilled spirits in the market, as provided for under Section 141 (a) and (b), Senator Recto replied that he has on hand a five-page list for the local brands and a sixteen-page list for the imported brands that he would submit to the Secretariat.

Senator Enrile asked on the tax treatment for brands of distilled spirits that are not listed under Annex A of the Code but were registered and considered active on or before January 1, 1997. Senator Recto replied that these brands are covered by Revenue Regulation 2-97. Upon request, he gave Senator Enrile a copy of the said regulation.

SUSPENSION OF SESSION

With the permission of the Body, the Chair suspended the session.

It was 4:15 p.m.

RESUMPTION OF SESSION

At 4:19 p.m., the session was resumed.

Senator Recto said that the committee adopted certain provisions for new brands and variants in the future that may not be listed in Annex A; for example, line 28 of page 3 of the bill mandates BIR at the end of three (3) months from the product launch, to validate the suggested net retail price against the net retail price as defined in the bill to determine the correct tax bracket to which the brand shall be classified. This, he pointed, would prevent the BIR from being arbitrary.

Senator Enrile recalled that on January 1, 1997, the Senate required annexes to the National Internal Revenue Code classifying all the sin products, which classifications could not be revised by anyone except Congress. Adverting to Senator Recto's reply to an earlier query that not all the brands were listed in the annexes, he asked whether these unlisted yet registered and marketed brands would be treated as new brands under the bill. He underscored that the consumer should not be penalized with higher taxes if the inadvertence was due to the haste on the part of the DOF and the BIR to produce the annexes. He argued that brands registered and active in the market by January 1, 1997, but were not included in the annexes should be treated in the same way as those listed in the annexes.

Senator Recto agreed as he expressed willingness to accept Senator Enrile's amendments at the proper time. In fact, he said, the case of distilled spirits is covered by Section 2, paragraph 3 of Revenue Regulation No. 2-97.

On a related matter, Senator Enrile pointed out that under Senate Bill No. 1854, a new brand shall mean a brand registered after the date of the effectivity of the proposed law and shall include previously registered but inactive brands of distilled spirits. He asked whether it is correct to assume that previously registered but inactive brands of distilled spirits brands that are in the market as of January 1, 2005, but not recorded in the annexes will not be considered new brands and would remain under their original classifications as contemplated in 1997.

Senator Recto explained that a new brand shall mean a brand registered after the date of the effectivity of the proposed law. As such, he stated that any brand introduced in the market after January 5, 2005, will then be considered a new brand and would be classified depending on its suggested retail price. However, he clarified that registered but inactive brands listed in the annex would be treated as new brands.

Upon further queries, Senator Recto affirmed that a new brand of fermented liquor, tobacco, cigarette or distilled spirit with a suggested retail price accepted by the BIR as within the low class category would be classified as such. Moreover, he said that an old foreign brand sold into the local market and listed in the annex of the existing law would be classified according to its suggested retail price; otherwise, it would be considered a new brand or variant and if such brand had a low net retail price, it would fall under the low bracket. He informed the Body that brands and variants are not treated fairly under the existing law as the BIR could reclassify them at any given time.

To the suggestion that only Congress should have the power to reclassify products, Senator Recto agreed, especially since the existing law is a specific tax system and not an *ad valorem* system. He reiterated that line 28 of page 3 of the bill removes the arbitrary power of the BIR to reclassify such products. He expressed willingness to accept an amendment expressly barring BIR from making a reclassification since the price of the product is the basic measurement.

Asked to explain the term "downward reclassification" on line 8 of page 4 of the bill, Senator Recto stated that this proposal would apply to distilled spirits, wines, fermented liquor and cigarettes. For example, he cited the case of Fortune Tobacco Corporation which won P1 billion tax refund after the Court of Appeals reversed a ruling of the BIR which led to an excess payment of taxes by the company. He explained that under the *ad valorem* system, certain cigarette products paid a higher tax rate but with the shift to the specific tax system, Fortune cigarettes did not fall within any of the tax brackets. Moreover, he noted that there is a

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provision in the existing law that states that the new specific tax rate for existing brand of cigarettes shall not be lower than the excise tax that is actually being paid before the year 2000.

Senator Recto noted that this was where the problem began because the interpretation of the court was that after three years, the taxes could be lowered. In view thereof, he said that the committee put in the bill a provision on page 4, lines 8 to 12, that, "Any downward reclassification of present categories for tax purposes of existing brands of distilled spirits duly registered at the time of the effectivity of this Act which will reduce the tax imposed herein, or the payment thereof, shall be prohibited." He stressed that this provision should be in favor of government.

Senator Enrile stated that in 1997, the intent of the law was to increase taxes and since the government was in a hurry to pass the law, there was apprehension that some brands could not be classified as low, medium, high or premium. Hence, he noted, the law set rates that became effective on January 1, 1997, but the taxes on the brands shall not be lower than the taxes being paid as of October 1, 1996. He said that the transition provision provides that in the next three years, before the adjustment of 12% supervenes on January 1, 2000, the rates shall remain, meaning, that they shall have to wait until they are adjusted upwards. The intent, he underscored, was not to allow the tax on any brand to go back to a lower rate. He said that it would have been silly for anybody to structure a tax system in that fashion. At any rate, he pointed out, the matter would be left to the courts to decide. If the provision on downward classification is placed in the measure, he cautioned that it could become a potent argument for the cigarette manufacturers to ask for a refund precisely because errors are now being corrected.

Senator Recto replied that such is not the intent of the law. Senator Enrile said that he was merely clarifying what was already in the law as of January 1, 1997.

Senator Recto believed that explaining the law in that context would be favoring government over the manufacturers in the court, an action that he does not intend to do. He clarified that his intention is prospective, meaning, that whatever

tax one is paying upon the effectivity of the Act shall not be lower than the tax one paid prior to 2005.

However, Senator Enrile argued that one can never tell whether there are registered or unregistered brands that are active in the market but are not listed in any of the documents. He asked whether Senator Recto would be amenable to including in the bill a provision, at the proper time, that in those cases where the brands are not identified, the tax of higher value shall be paid.

Senator Recto reiterated that the provision should be prospective; it should not interfere with the courts one way or the other. However, Senator Enrile countered that Congress is constitutionally mandated to clarify or interpret the law.

Senator Recto said that he does not have any problem with the interpretation of the law; all he is concerned about is that the Congress should not interfere with cases filed in court. He stated that the provision was placed in the bill precisely to avoid the mistakes of the past.

Senator Enrile argued that Congress is a continuing body that has a mind of its own, saying that, in fact, the courts try to fathom the intent of Congress all the time. In this case, he said, the Body is discussing the real intent of Congress when it enacted R.A. No. 8240. He underscored that the power of taxation must be interpreted in favor of the State and against the taxpayer.

For his part, Senator Recto disclosed that some of the House Members do not believe that such was the intent of the law in 1997. However, he said that he would not favor any side but leave the decision to the courts.

Relative thereto, the Chair stated that the matter of interpreting the intention of the framers of the law is reflected in the record of the Legislature.

Senator Enrile stated that under the bill, the tax rates on distilled spirits under Section 141 are to be increased every two years at a constant rate of 8% across-the-board. Senator Recto agreed, pointing out that the 8% increase would be implemented every two years until 2011.

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Asked on the empirical basis for selecting that percentage, Senator Recto replied that the application is different when it comes to cigarettes because as already stated, there seems to be an agreement between the President, the committee and the industry players. He said that a formula pertinent thereto was devised such that for the first year, the tax rate would be 12% plus P0.40, and in the succeeding years, 3.6% plus P0.16. He noted that in the committee report, there is a difference in application as far as indexing the rates for alcohol and tobacco is concerned because the committee wanted alcohol to catch up with tobacco which has a higher tax burden. He mentioned that the inflation rate suggested in the MTPDP is roughly 3.4% which is the reason the index rates are higher for alcohol, including the first year of rate increases, to catch up with cigarettes because the "degree of badness" of the two products is not that wide.

Asked if the purpose for catching up with tobacco is to raise revenues or to address a health concern, Senator Recto replied that the primary consideration of the committee is to raise revenue, although there is also a health consideration in the sense that higher tax rates are being imposed and there is a provision earmarking a certain percentage of the revenues for health care.

On whether the sumptuary effect of these taxes would be applied, Senator Recto replied in the affirmative. He said that at the proper time, he would introduce the necessary amendments.

In view thereof, Senator Enrile posited that since the people are willing to pay taxes, they should be taxed some more. Senator Recto agreed; however, he said that there is a point of diminishing return.

Asked what point of the supply-demand curve determines that the tax rate is appropriate, Senator Recto opined that the rates being proposed by the committee are at that particular point.

Supposing the inflation rate goes beyond 4% per annum in 2005 and 2006, Senator Enrile asked whether fixing the adjustment rate at 8% would result in a loss of government revenue. Senator

Recto replied that inflation rate is not the fairest way to tax industries because they have different inflation rates. He opined that it would be unfair to use the CPI inflation rate as an indexing rate for taxes for any particular industry because it is possible that the inflation rate could be higher than the ability of the industry to increase its prices, or vice-versa.

If the inflation rate applicable to distilled spirits is less than 4% per annum, Senator Enrile asked why there is need to fix the inflation rate for that industry at 4% per annum. In answer, Senator Recto opined that it would be better if Congress set the inflation rate like it did in 1997 instead of leaving it to the finance secretary or the NCSO chair. That way, he stressed, it would be predictable and transparent.

However, Senator Enrile asserted that government has been using the CPI to measure inflation based on the statistical data generated by the proper government agency that are more accurate. At least, he said, Congress would reflect in the bill that the CPI, as determined by the proper government agency, is the measurement of the deterioration of the purchasing power of the peso and upon which basis, the tax rates could be adjusted.

Senator Enrile asked whether a uniform rate for all products could be established in the bill to establish a definite rate of adjustment. He recalled that in 1997, Congress imposed a 12% tax on distilled spirits; 12% on cigarettes; and 12% on other products. Senator Recto stated that he has no quarrel with the proposal.

Senator Enrile expressed hope that like alcohol, low-class cigarettes would be able to catch up with higher-priced cigarettes.

Senator Recto stated that he understood the view of Senator Enrile; however, he opined it would be best to be consistent in the bill. He stated that the line of thinking seems to be that if low-priced alcohol would be exempted from tax increase, consequently, low-priced cigarettes should not be taxed so high. However, he observed that he and Senator Enrile are in agreement as regards medium- and high-tier cigarettes.

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Citing Section 14(c) of the Code, Senator Enrile asked what other preparations use distilled spirits. Senator Recto replied that medicinal preparations like rubbing alcohol and toilet preparations like perfumes and colognes fall under Section 150 of the Code -- they have alcohol content but are not distilled spirits.

Asked if raising the tax on distilled spirits would result in a corresponding increase in the prices of medicines and food that use flavoring extracts like vetsin, Senator Recto stated that even some food extracts are hazardous to health.

Asked if it would be better to delete the provision, Senator Recto replied that he was open to proposals to reduce taxes, especially on health products. He added, however, that he needed to consult the Department of Finance since some products like rubbing alcohol generate significant revenues for the government.

As regards Section 142 of the Code, asked if the Philippines produces wine, Senator Recto replied that the Philippines, in fact, produces wine in commercial quantities.

Queried about local raw materials from which wines are made, Senator Recto cited mangoes. He mentioned the following locally produced wines — Van de Vandan, Maria Clara Sangria, Novellino Strawberry Passion, Novellino Russo Classico, Novellino Blanco Classico; and sparkling wines — Russo Vivache and Blanco Vivache.

On whether locally produced wines should be treated differently than imported wines in terms of taxes, Senator Recto stated that domestic wines fall under the first tier, while many of the imported wines fall under the second tier.

On the incremental revenue to be collected under Section 142 of the Code for the year 2005, Senator Recto stated that the only data provided shows that the BIR has collected P200 million. He said that no data is available from the Bureau of Customs as he assumed that a lot of wines are being smuggled into the country.

For the record, Senator Recto stated that the House of Representatives increased the tax rate on wines by 20%, whereas, Senate Bill

No. 1854 increased it to 30% because 90% of the wines in the market are imported and consumed by the affluent.

Asked where smuggled wines enter the country, Senator Recto mentioned Subic, Duty Free and the Port of Manila.

Senator Enrile queried why only 30% tax is being applied in Senate Bill No. 1854 when wines are for the rich and well-to-do as he further asked if it is possible to raise it to 50%. He observed that for wines with a price of P500 or less per bottle, under the bill, the tax would be increased by 30% from P112 to P145.60; for wines with a price of more than P500 per bottle, under the bill, the tax would be increased by 30% from P336 to P436. Senator Recto stated that he would be open to amendments.

SUSPENSION OF SESSION

Upon motion of Senator Enrile, the session was suspended.

It was 5:07 p.m.

RESUMPTION OF SESSION

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

At this juncture, Senator Enrile classified the three types of still wines, to wit: wines with 14% alcohol content by volume or less; wines with more than 14% but not exceeding 25% alcohol per volume content; and fortified wines. He stated that these are all subject to 30% tax and consumed by the more affluent members of society.

Asked if the government could increase the rates on these types of wines, Senator Recto replied in the affirmative.

As regards fortified wines, Senator Recto stated that there are two types, one being wines that contain more than 25% alcohol by volume like Chardon Blanc produced by Tanduay. He stated that the tax rate thereon is classified under the category of distilled spirit in the existing law, which provision the committee is not proposing to amend.

Asked who consumes locally produced fortified wines, Senator Recto replied that they appear to be cheap wines that the affluent would not drink. He affirmed that a 30% tax would also be imposed on fortified wines.

Upon further query, Senator Recto affirmed that imported distilled spirits prepared from other raw materials would be imposed a 50% tax.

Relative to locally produced distilled spirits, Senator Recto affirmed that they would be impose a 30% tax which would increase the tax from P8.96 to a very low P11.75.

As regards Section 143 on *Fermented Liquor*, queried why the word "domestic" on line 1 of page 9 is bracketed, Senator Recto explained that the word is being deleted as it is a WTO-sensitive issue. He clarified that fermented liquors except *tuba*, *basi*, and *tapuy* would be exempted from any form of tax. Besides, he pointed out, he knows of no other country that produces these types of fermented liquor.

Senator Enrile stated that he raised the issue precisely because rice wine or *tapuy* from China and *basi* from Indonesia would be allowed to enter the country. He said that he wanted the word "domestic" retained to protect the local manufacturers, especially the Ilocanos who are fond of *basi*. Senator Recto expressed willingness to remove the brackets from the word "domestic" at the proper time.

Noting that the net retail prices in Section 143 (a), (b) and (c) were adopted from a 1996 survey when Republic Act No. 8240 was approved by Congress, Senator Enrile asked why these are being retained in the bill. Senator Recto said that the committee worked on the concept of Senator Enrile's bill in 1997 that adopted specific taxes, hence, the taxes should be based on volume.

Senator Enrile observed that while the net retail prices of many low-class beers and low class-cigarettes have already increased, they are still classified as low class. He said that he only wanted to know if the purpose of retaining the prices is

merely to classify the brands according to the level at which they must be taxed.

Senator Recto explained that since the previous Congress had already classified the products as low, medium and high class, the committee intended to likewise adopt a specific tax system based on volume.

Senator Enrile reiterated that he just wanted it understood that the net retail prices were being retained in order to identify which products are to be taxed at a specific level as well as to recognize the brands that were registered and active in 1997 and have remained active until now but are not found in the Annex.

Asked if the same applies to products listed under Sections 141 and 142, Senator Recto replied in the affirmative.

Queried why the taxes on fermented liquor under Section 143 (a), (b) and (c) were uniformly increased by 20%, Senator Recto said that the increase was uniform, following the decision of the committee as regards distilled spirits, with the exception of the imported ones. In the case of fermented liquor, he said that he accepted the House position as well as the DOF's proposal to increase the tax by 20%.

Upon query, Senator Recto said that it was the product of an agreement between the House, the DOF, and the committee, not necessarily the industry players.

At this point, Senator Enrile asked for a break in his interpellation so that he could attend to some personal political problem. He said that he would continue with his interpellations on the tobacco products in less than 30 minutes because he had promised Senate President Drilon that he would finish his interpellations that day.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 1854

Upon motion of Senator Pangilinan, there being no objection, the Body suspended consideration of the bill.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended for 30 minutes.

It was 5:23 p.m.

RESUMPTION OF SESSION

At 6:03 p.m., the session was resumed.

**COMMITTEE REPORT NO. 5
ON SENATE BILL NO. 1854**

(Continuation)

Upon motion of Senator Pangilinan, there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 1854 (Committee Report No. 5), entitled

AN ACT INCREASING THE EXCISE TAX RATES IMPOSED ON ALCOHOL AND TOBACCO PRODUCTS, AMENDING FOR THE PURPOSE SECTIONS 141, 142, 143, 144, 145 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED.

Thereupon, the Chair recognized Senator Recto, Sponsor of the measure, and Senator Enrile for the continuation of his interpellation.

INTERPELLATION OF SENATOR ENRILE
(Continuation)

Senator Enrile queried if the tax rates on tobacco products under Section 144 are proposed to be increased by 19% - 20%. Further, he asked on the rationale for taxing tobacco products on the basis of volume instead of prices. Senator Recto replied that the specific tax system has been adopted, hence, the taxes are based on volume.

Asked whether the tobacco products mentioned in the same section are native tobaccos or low-cured Virginia leaf tobaccos, Senator Recto stated that they could be both as he clarified that products under Section 144(a) and (b) refer to the primary processing of tobaccos that can be used for other industrial and agricultural purposes and not necessarily for smoking.

Senator Enrile pointed out that these are also used for preparing chewing tobacco, cigarettes and cigars, and other industrial products using tobacco as raw materials.

Asked about tobaccos that are prepared with or without the use of any machine or instrument, or without being pressed or sweetened, Senator Recto replied that as regards Section 144(a) and (b), the tobaccos are for primary processing and could be used for purposes mentioned by Senator Enrile.

Asked who will pay the tax on these products, Senator Recto replied that for Section 144(a), (b) and (c), the processors are the ones who will pay the taxes. He clarified that lines 19 to 26 of page 12 provides that if tobacco products under paragraph C shall be utilized for the manufacture of cigarette or cigar, whether for domestic use or for export, then there is no need to pay the excise tax on the raw materials.

Asked if there is no prepayment of the excise tax on the tobacco products to be exported under Section 144(c), Senator Recto replied in the affirmative. He further affirmed that there is no prepayment of taxes on the same products used in the manufacture of other tobacco products on which the excise tax will eventually be paid on the finished product.

Asked if the products mentioned in Section 144(c) are used in the manufacture of cigars and cigarettes, Senator Recto replied in the affirmative.

Noting Section 140 of the Code on "stemmed leaf tobacco," Senator Enrile asked why there is a requirement for prepayment of tax for tobacco products enumerated in Section 144. Senator Recto replied that if these products are not to be used for the production of a cigarette or cigar and any other industrial or agricultural purposes the tax to be imposed is P1 per kilogram.

Senator Enrile asked why these products should not be treated in a similar manner to harmonize the provisions. Senator Recto said that he has no problem with it as he affirmed that he would accept an amendment thereto at the proper time.

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Senator Enrile asked if the tax on chewing tobaccos could be also deleted. Senator Recto replied that he has no objection to it.

The Chair commented that it is a tax on the poor which the government does not collect. It further stated that lines 27 to 29 on page 12 could be deleted at the proper time.

Asked on the total revenue of the government from Section 145, Senator Recto replied that it is roughly P5 billion. However, Senator Enrile computed that the revenue is only P4 billion based on the 2003 volume.

Senator Recto explained that in the computation, the growth rate of the industry from 1997 to 2003 was taken into consideration, including the first nine months of 2004. He further clarified that 1997 was the year when the tax structure shifted from *ad valorem* to specific. Using this data, he said, the committee, along with the Department of Finance, adopted the growth rates of the different tiers. He added that the same thing was done in comparing all the proposals, taking into consideration other elasticity issues.

As to why Senate Bill No. 1854 shifted from specific system to *ad valorem* in taxing cigars under Section 145(a), Senator Recto explained that based on the records, the cheapest cigar is P5 and the most expensive is P2,500. He added that it was difficult for him to work out a specific tax system for cigars because of the wide disparity in rates, so the committee adopted the *ad valorem* system for cigars, taking into consideration the average prices of imported and domestic cigars. Further, he said, the committee proposed a two-tier classification for cigars, thus, the tax on cigars worth P500 and below is 20% and 30% on anything above P500.

As to who will collect the tax, Senator Recto replied that the manufacturer will pay the tax based on their suggested net retail price.

Asked if the price from the manufacturer to the wholesaler and from the wholesaler to the retailer would be the same, Senator Recto replied in the negative.

Queried how the manufacturer can collect the tax, Senator Recto explained that the situation is similar to specific tax. The initial tax classification of a new brand or variant is based on the net retail price, he said.

On the frequency of the remittance to the BIR, Senator Recto stated that it is upon removal, meaning, the manufacturer pays the tax when the product is removed from his warehouse.

The Chair pointed out that since the tax is based on the suggested net retail price, the manufacturer is in effect required to pay the tax. It asked how the *ad valorem* tax could be determined and whether it could be based on the net retail price.

Senator Recto clarified that the suggested net retail price would be dependent on the declaration of the manufacturer or the importer. He added that there is a similar procedure under the provisions on distilled spirits, fermented liquors and cigarettes packed in 30s or 20s.

Senator Enrile related that he went to the market to find out the range of prices of cigars; Tabacalera was marketing the cheapest – Panetelas – at P35.80 per cigar. With the proposal using *ad valorem* so each cigar would be paying a 461% tax increase over the present rate of P1.12, he asked if the increase is justifiable. Senator Recto noted that “Cojeba” cigar priced at P2,000 has the same tax rate of P1.12; an “1881 centennial edition” of a local cigar priced at P138 is also taxed P1.12. He pointed out that cigars are consumed by the rich.

Senator Enrile pointed out that in the case of low-class cigarettes, his proposal was a 400% increase in tax rates, but in the case of cigars, there is a resistance to his proposal. He added that there would be a 461% tax increase on cheap cigars.

Asked about the equity and tax justice in the policy, Senator Recto stated that only the rich and the affluent smoke cigars and they can definitely pay even a 400% increase in tax.

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Asked whether the tax on a Don Juan Urquijo, the most expensive cigar, net of excise tax and VAT, would increase by 2.695%, Senator Recto replied that the most expensive local cigar is Tabacalera Corona Standard which is priced at P1,125 per piece but for which its manufacturers pay a tax of only P1.12 tax.

On the observation that Champion which belongs to the low-class cigarettes made from foreign Virginia tobacco grown in the Philippines and is taxed only P1.12 per pack would not be subjected to a tax increase but the tax on cigarettes using native tobacco from Cagayan Valley would increase by 3,695%, Senator Recto reiterated that the tax rate of low-brand cigarettes consumed by 93% of the poorest of society would be increased by 48% from P1.12 a pack. But the tax rate on cigars which are consumed by the affluent is very low, thus, he was proposing a 2-tier, even a 3-tier approach, he said. He expressed willingness to work with Senator Enrile on a reasonable compromise formula for premium cigarettes.

In the case of the lowest priced cigarettes, Senator Enrile proposed a tax rate increase of 200% to 300% since the tax on low-priced cigars would be increased by 461%. He argued that cigars do not cause cancer unlike cigarettes. He believed that a tax rate of P1.65 per pack of low-priced cigarettes is very low.

On Senator Recto's apprehension that low-end products carry 50% of the volume in sales, Senator Enrile clarified that his concern is to reduce the number of smokers who lack the means to get medical treatment.

At this juncture, the Chair noted that Senators Recto and Enrile had agreed to find an acceptable formula.

Senator Recto expressed the hope that the Members would understand that just like cigarettes which cause lung cancer and other respiratory diseases, liquors such as whiskey, gin and rum affect the liver of people. He reiterated that if the tax rates on distilled spirits would be reduced,

the tax rates on the low-end cigarettes should not also be too high.

Senator Enrile pointed out that precisely, the initial increase of tax rates on packed cigarettes which are being smoked by the elderly and poor sectors of society would only be 93% for 2005; in the case of Champion cigarettes, the increase would only be 47%.

Senator Recto explained that the tax rates on the foreign branded but locally produced cigarettes are being increased because the present rates are very low and it is possible that a downgrading from the low end to the native tobacco products could happen in the future. But he expressed openness to a reduction of the tax rates.

Senator Enrile also gave the assurance that he would agree to all the provisions that the Sponsor would like to include provided that the tax rates on the low-end cigarettes would be increased to protect the health of the poor sectors of society. Senator Recto agreed to confer with Senator Enrile on how to effect an additional increase on the present rates of low branded cigarettes.

REMARKS OF THE CHAIR

At this juncture, the Chair expressed its appreciation for Senator Enrile's gesture of statesmanship on the very controversial tax measure.

REMARKS OF SENATOR PANGILINAN

Senator Pangilinan stated that Senators Madrigal and Lacson have made reservations to interpellate Senator Recto. He said that Senator Osmeña would resume his interpellation as soon as he shall have been furnished the requested documents.

The Chair requested the Office of Senator Pangilinan to remind Senators Madrigal and Lacson of their schedule to interpellate Senator Recto on Monday, December 6, 2004.

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**SUSPENSION OF CONSIDERATION
OF SENATE BILL NO. 1854**

Upon motion of Senator Pangilinan, there being no objection, the Body suspended consideration of the bill.

**ACKNOWLEDGMENT OF THE
PRESENCE OF GUESTS**

At this juncture, Senator Pangilinan acknowledged the presence of the Mayors League Association of Cagayan headed by Mayor Antonio; and representatives of the Student Council of the University of the Philippines headed by its chairman, Christian Ablan.

ADDITIONAL REFERENCE OF BUSINESS

The Acting Secretary read the following matters and the Chair made the corresponding referrals:

RESOLUTIONS

Proposed Senate Resolution No. 135, entitled

**RESOLUTION DIRECTING THE
COMMITTEE ON ENVIRONMENT
AND NATURAL RESOURCES TO
INVESTIGATE, IN AID OF
LEGISLATION, THE RAMPANT
CUTTING OF FOREST TREES
WHICH RESULTED TO FLASH
FLOODS IN THE PROVINCES
OF NUEVA ECIJA, AURORA AND
QUEZON AS WELL AS SOME
PARTS OF THE BICOL REGION**

Introduced by Senator Compañera Pia S. Cayetano

**To the Committee on Environment and
Natural Resources**

Proposed Senate Resolution No. 136, entitled

**RESOLUTION CALLING FOR AN
INVESTIGATION, IN AID OF
LEGISLATION, ON THE CAUSES**

**OF TYPHOON-TRIGGERED
TRAGEDIES AND THE ACTIONS
AND PRECAUTIONS TO AVOID
ITS RECURRENCE**

Introduced by Senator Richard J. Gordon

**To the Committee on Environment and
Natural Resources**

REMARKS OF SENATOR PANGILINAN

At this juncture, Senator Pangilinan informed the Body that Senator Gordon had expressed his desire to take the floor on Monday, December 6, 2004, on a matter of personal and collective privilege.


He reminded the Body of the standing agreement that the session would convene at 2:30 in the afternoon to hear the privilege speech.

ADJOURNMENT OF SESSION

Upon motion of Senator Pangilinan, there being no objection, the Chair declared the session adjourned until two thirty in the afternoon of Monday, December 6, 2004.

It was 6:40 p.m.

I hereby certify to the correctness of the foregoing.


OSCAR G. YABES
Secretary of the Senate

Approved on December 6, 2004