



REPUBLIC OF THE PHILIPPINES

S e n a t e

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Journal

SESSION NO. 43

Tuesday, December 7, 2004

**THIRTEENTH CONGRESS
FIRST REGULAR SESSION**

SESSION NO. 43
Tuesday, December 7, 2004

CALL TO ORDER

At 2:41 p.m., the Senate President, Hon. Franklin M. Drilon, called the session to order.

PRAYER

The Body observed a minute of silent prayer.

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. 42 to a later hour.

AUDIO VISUAL PRESENTATION

At this juncture, with the permission of the Body, Senator Madrigal made an audio visual presentation which forms part of her privilege speech.

SUSPENSION OF SESSION

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

It was 2:46 p.m.

RESUMPTION OF SESSION

At 2:48 p.m., the session was resumed.

PRIVILEGE SPEECH OF SENATOR MADRIGAL

Availing herself of the privilege hour, Senator Madrigal delivered the following speech:

A JUGGERNAUT OF DESPOLIATION

I find myself delivering a privilege speech, which I would have wanted to deliver much later, at this moment because of the catastrophes that have befallen our country in the past weeks. And I find myself compelled once again to rise on a matter of the highest personal and collective privilege.

We have all been united and concerned over the catastrophic damage to towns and infrastructure wrought by typhoons Unding, Violeta, Winnie and Yoyong. All Filipinos share the grief of the residents of Real, General Nakar, Polilio, Infanta in Quezon, and of the people of Dingalan, Aurora Province; and Mercedes, Camarines Norte. We are all horrified by the destruction in those provinces, in Rizal, Nueva Ecija and Pampanga.

All of us in this Chamber join my distinguished colleague from Aurora in mourning the dead, praying for the rescue of the missing, and hoping for the recovery of the injured. We pay tribute too, to the heroism and dedication of the volunteers who did their duty and in many cases went far above and beyond the call of that duty in ministering to the needs of their compatriots.

From the Philippine National Red Cross to the Armed Forces of the Philippines, from the national to local government units, from doctors to dentists and nurses, from engineers to laborers, from military reservists to retired civil servants, from social workers to relief workers, from the families in all our regions and all four corners of the globe, we have come together to do our part to give generously in time and treasure to help our countrymen in need. And where

we have given, and continue to give generously, at home, the nations of the world have rallied as well to the assistance of our unfortunate countrymen.

I know I speak for this Chamber when I say adversity has brought out the best in the Filipino.

But the time has come for us in this Chamber to take stock as to why a series of natural disasters has had such calamitous results. Counting conservatively, there are 628 dead, 718 missing, 579 injured in the wake of four typhoons. The casualties have compounded by the disappearance of entire towns and the wrecking of provincial infrastructure due to seas of mud and dead tree trunks from mountainsides denuded by legal and illegal logging operations.

The photographs and accounts of the rivers of mud bringing with them rocks, boulders, and trunks and branches of felled trees, crushing everything in their path and entombing all those who could not escape the relentless advance of the landslides, have horrified the nation. I have seen the destruction for myself. Last Friday, the third of December, I visited Candaba, Pampanga and saw big narra logs brought down by the torrential waters being cut and sawn apart by the agents of loggers. I had to intervene and asked General Aglipay to confiscate and guard the logs and drive away the minions of the loggers who were profiteering even as the nation recoiled in horror over the ongoing tragedy. The gall of our loggers, who in their disrespect for national tragedy might as well have been robbing the dead, is only surpassed by the profound indifference of the Department of Environment and Natural Resources, which was obviously being relied on by the loggers certain of the impunity with which they could disregard any official interference in the transport of their contraband. For is it not the duty of the DENR to control, through supervision and the issuing of permits, the transport of logs? And yet here were the agents of loggers hacking away, obviously

prepared to cart-off -- and profit from -- the lumber carried down to the lowlands by the rains.

It was while I was in Pampanga that I was informed of the destruction in Aurora and Quezon provinces. Upon receiving this information, I embarked on a visit of inspection by chopper, in the company of the venerable Bishop Julio Labayen, Bishop of Infanta. Together, we talked to the townspeople of Dingalan. They explained what caused the scandalous number of fatalities in those towns. In the mountains, loggers stacked logs by the mountainsides, and as the rains fell, the logs acted as dams that prevented the descent of the natural cataracts that form in the wake of the rains. The dammed-up waters built up pressure and volume, finally carrying with them gigantic boulders and rocks, sweeping aside everything in their torrential path. The boulders and logs, cascading in a torrent of mud, uprooted and felled living trees, and swept forward with such speed that no one in their path had a chance. The deluge was so violent and so swift that those who died in its path had no possible way of being warned of what was coming.

As we flew over Infanta, General Nakar and Real, we saw mountainsides, river channels, and the shore covered with mud, rocks, and logs, a limitless horizon of death and destruction. As we flew by sea, we saw what we thought was one of our nation's many coastal islands. But it was not an island. It was a solid raft of felled trees, a mass of tree trunks several kilometers square; hundreds if not thousands of logs, hundreds if not thousands of examples of the destruction and plunder caused by logging. This graphic demonstration of the inexorable ferocity of nature when man's rapacity has gone too far, brought to my mind the words of the father of the atom bomb, Robert Oppenheimer. When he witnessed the first nuclear explosion at Los Alamos, New Mexico, his mingled feelings of awe and horror arising from playing fast and free with nature were expressed in a

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quotation from the Bhagavad Gita in which Krishna incarnates as Shiva, who says, "I am become death, the destroyer of worlds."

Unscrupulous logging has destroyed many worlds. It is what transformed a series of typhoons into a litany of tragedies. The rivers of mud, boulders and tree trunks crushing everything in their path was as pitiless and cruel as the wheels of the huge car or wagon on which the idol of Krishna was drawn in an annual procession at Puri in east-central India, and under whose wheels worshipers would throw themselves in suicidal sacrifice. That grisly vehicle of death, as my learned colleagues know, was known as a juggernaut. And to this day, a juggernaut is what we call something, such as a belief or institution, that elicits blind and destructive devotion, or to which people are ruthlessly sacrificed, such as the logging industry. A juggernaut is an overwhelming, advancing force that crushes, or seems to crush, everything in its path, such as the seas of mud that rampaged down the mountainsides of Quezon and Aurora.

It was loggers that hewed this juggernaut, who created a merciless engine of destruction; it is loggers and their coddlers, both in national and local government, in and out of uniform, in the ranks of the establishment and in the cadres of insurgency, who have crafted the relentless and pitiless machine of greed; by plundering our mountainsides, they have unleashed a juggernaut of despoliation that grinds under its terrible wheels our nation, our people, and the possibility of a sustainable way of life.

Reason tells us that the juggernaut of despoliation must be destroyed. Logging must end. And yet there are still those who hem and haw, who quibble, and pay lip service to our collective horror by saying that this vehicle for the mass destruction of our forests should not be destroyed, it should only be retired -- temporarily.

We must not retire the machine. We must destroy it before it destroys what forests we have left and by doing so, destroys us all. This is why I rise on a question of personal and collective privilege. The survival of our people requires that we destroy the juggernaut of despoliation, and with it, dismantle the entire apparatus of official complicity that has eased the deadly inroads logging has made into our remaining forests.

The Executive would have us believe that action consists of proclaiming a ban -- a temporary ban, if this Chamber would mind -- on logging. Action of this nature is not only window-dressing, it is official hypocrisy of the most reprehensible kind. For it ignores, indeed, it attempts to cover up, the complicity of this administration in the destruction of our nation's forests. The administration has claimed great achievements in environmental protection; indeed, it boldly said there was no illegal logging taking place. The hundreds, the thousands, of logs that we saw in Quezon and Aurora are a hundred, a thousand pieces of evidence that collectively demonstrate the manifestly shameless lies that are being told. The logs that formed a natural dam, and which were carried down by the rampaging waters, were cut by loggers. Whether they acted legally or illegally is a distinction only an administration attempting to exculpate itself from responsibility can make. For when the administration claims it only allows legal logging, it makes a hollow distinction in the face of so many deaths.

It is true that there have been numerous studies that show, beyond any reasonable doubt, that our forests have been under siege for generations. In fact, the most sustained and relentless attack took place under the dark years of martial law when, answerable to no one and refusing to be responsible to the citizenry and their posterity, the dictatorship undertook logging activities on an unprecedented scale. But to apportion the blame on the

leaders of the past, who richly deserve the condemnation of history for their systematic and ruthless plunder of our nation and of nature, should not excuse the complicity of the present administration in the continuing advance of the juggernaut of despoliation.

This administration, until it was faced to reckon with the poisonous fruits of its own profiteering, not only allowed the juggernaut of despoliation to continue its grisly advance, it actually laid down paths to make it more convenient and profitable for logging interests. It could claim there was no longer any illegal logging because it went out of its way to legalize logging efforts. It acted to facilitate legal paths upon which the juggernaut of despoliation could travel.

The paths laid down by the administration were made by the state agency supposedly devoted to hindering the advance of logging interests: the Department of Environment and Natural Resources.

The path took the form of a flurry of department orders issued by outgoing Secretary Elisea Gozun last August. Department Administrative Order Nos. 2004-37 to 50 classified and declared 27,000 hectares of forest lands in Cagayan, Benguet, Zamboanga Del Sur, Cebu, Bataan, Bukidnon, Palawan, Surigao Del Sur, Capiz, Pampanga and Nueva Ecija to be alienable and disposable lands for agricultural purposes. If our country today mourns the consequences of the ecological destruction in Nueva Ecija, Quezon, Aurora, Pampanga and Bicol, this Chamber and the public deserve to know that last August, the administration prepared the way for the systematic destruction of forests in other parts of the country.

And the complicity of the administration does not stop there. Aside from generally targeting forest lands for elimination, the administration set about systematically

planning the particular ways destruction could be justified. Secretary Gozun also signed Department Administrative Order No. 204-59 which allowed the use and management of our forest lands for what are called "special uses," a bureaucratic euphemism as neat and clinical as the term "resettlement" used by the Nazis to refer to the liquidation of the Jews.

What are these "special uses"? They are the conversion of forest land to the following:

- * Bodega/Warehouse sites
- * Drydock site/ship building/ship-breaking sites
- * Industrial Processing sites
- * Herbal Medicinal Plantations
- * Nipa Plantations
- * Fish Drying Sites
- * Air Strips
- * Lumberyards
- * Mineral storage sites
- * Mining Waste Disposal sites
- * Motorpool sites
- * Plant nursery sites
- * Power station sites
- * Right-of-way/communication right-of way facilities
- * School sites
- * Water reservoirs or impounding dam location.

Does it make sense for virgin forest to be cleared in order to build bodegas?

Are we so shortsighted, so stupid, so voracious for instant fortunes without regard to long-term effects to us and our posterity, that our bureaucrats think it makes sense to set aside virgin forest lands for motorpools, lumberyards, or ship-breaking sites?

Why should we exchange the pristine, which is what a virgin forest is, in order to construct an ecological pigsty, which is the only thing a wrecking yard, motorpool, industrial processing site or lumberyard can environmentally be?

And can a manual for suicide be written and declared national policy? And this policy of national suicide proclaimed a rational means of attaining progress?

Indeed, should an administration be able to get away with arguing that something is legally justifiable, while ignoring the fact that it is morally and economically reprehensible?

Should a Secretary of Environment and Natural Resources be able to lay down, by department order, the bureaucratic means for the increased plunder of our forests?

And should the Executive and her appointees, both past and present, be expected to avoid any responsibility and culpability, for their actions?

The actions of this administration directly contributed to the national tragedy we have experienced, and will result in similar tragedies in the future. A national lamentation over the effects of logging has resulted in a frenzy of executive action, from tough speeches, to a logging moratorium, to the appointment of an anti-logging czar. But the frenzy only tries to hide the complicity of the administration in what has taken place, and cannot excuse its culpability not only for these DENR orders but also for the administration's violation of the Constitution and the principles of republican government.

Section 2, Article XII of the present Constitution states:

All lands of the public domain, waters, minerals, coal, petroleum and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State.

This constitutional policy which mandates the State's full control and supervision over our natural resources, proceeds from the concept of *jura*

regalia. Our natural resources, since they are owned by the State, must be held in responsible stewardship by the State and all the officials who hold authority by virtue of the operations and provisions of the Constitution.

I submit, that when an administration sets about facilitating logging interests, its actions make it the accomplice of the juggernaut of despoliation. It was as directly responsible for those who died in the recent typhoons as if it had tied them down and deliberately left them in the path of the landslides that buried entire towns and villages.

The culpability of the administration does not end there. Recall further that the framers of our Constitution recognized the need to protect our forest. According to Section 4, Article XII of our present Constitution, "The Congress shall, as soon as possible, determine by law the specific limits of forest lands and national parks, marking clearly their boundaries on the ground. Thereafter, such forest lands and national parks shall be conserved and may not be increased or diminished except by law. The Congress shall provide, for such period as it may determine, measures to prohibit logging in endangered forests and watershed areas."

It is Congress, therefore, that has the power to define the limits of our forest lands, and only through legislation. There is a reason for this: our forests are a fundamental requirement for national survival. They are not merely a source of income. They are meant to be conserved, and only used, when necessary, after the representatives of the people have taken into consideration the basic requirements of life, which include the preservation of forests.

It is because our communities must live with the consequences of government policies toward forest lands that our Constitution requires Congress, composed of representatives of local communities,

and senators answerable to a national constituency, to deliberate on the use of forest lands. Our Constitution, in specifying who has the obligation to manage our forest lands does not say, either implicitly and explicitly, that the executive branch of government may assume the powers of Congress; and further there is no law passed by Congress that deputizes the President to act for Congress in this regard.

What the Constitution has not disposed, neither the president nor her minions can propose.

As if this were not enough, the violation of the spirit and the letter of the Constitution is compounded by a flagrant violation of existing laws. The DENR violated Section 4(a) of the Comprehensive Agrarian Reform Law or Republic Act 6657.

Allow me to refer to this section of this law which reads as follows:

...No reclassification of forest mineral lands to agricultural lands shall be undertaken after the approval of this Act until Congress, taking into account ecological, developmental and equity considerations, shall have determined by law, the specific limits of the public domain.

Indeed, permit me to have recourse to an instructive opinion rendered by the Department of Justice on 9 December 1993, in which then Secretary of Justice Franklin M. Drilon, our beloved Senate President, who in reply to a query made by then DENR Secretary Angel C. Alcala as to whether or not the prohibition in Section 4(a) of RA 6657 applied to unclassified public forest, stated that:

"It is readily apparent from a reading of the above quoted provision of the law that there is no reference to public forest or permanent forest. The provision, it is noted, uses the general term "forest lands" without qualification.

A well-known doctrine in statutory construction states: *ubi lex non distinguit nec nos distinguere debemos*. Under this legal principle, there should be no distinction in the application of a statute where none is indicated (*Lo Cham vs. Ocampo*, 77 *Philippine Reports* 636; *Palmolive Colgate Philippines vs. Gimenez*, 1 *SCRA* 267; *Libudan vs. Gil*, 45 *SCRA* 19).

"Significantly, the term "forest lands" is defined in Section 3(d) of P. D. No. 705 as including the public forest, the permanent forest or forest reserves, and forest reservations. The generic term "forest lands" in Section 4(a) of the CARL should have the same meaning ascribed to it under the Forestry Code which is the governing law on forests. Indeed, the determination of the specific limits of the public domain can only be achieved by Congress when all forest lands, among other lands of the public domain, are accounted for.

"Wherefore, your query is answered in the affirmative."

This learned exposition clearly explains that in the eyes of the law, a forest is a forest.

And if it was not bad enough that the administration contravened the Constitution and violated the law of the land, it also went against the provisions of its own executive issuances. For the DENR violated Sections 2.1.2 of Executive Order No. 318 s. 2004, signed by the President.

Section 2.1.2 of Executive Order No. 318, for the reference of this Chamber, reads as follows:

"Conversion of forest lands into non-forestry uses shall be allowed only through an act of Congress and upon the recommendation of concerned government agencies."

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By allowing the special uses of forest lands as provided for in DAO 2004-59, the DENR has usurped the power given to Congress to solely define the limits of forest lands and define its uses. It has violated a Republic Act. It has contravened an Executive Order.

I must say that for all its colossal vanity and avarice, the dictatorship was always careful to preserve a veneer of legality. Its actions all made sense according to the laws and constitutional setup of the time, however fraudulently established. But today, ostensibly operating under the rule of law, and with a supposed mandate from the people, this administration not only breaks the law, it contravenes its own instructions. And for what end? So that it may facilitate the juggernaut of despoliation. So that it can pave the way for a future marked by landslides and deaths in Cagayan, Benguet, Zamboanga del Sur, Cebu, Bataan, Bukidnon, Palawan, Surigao del Sur, Capiz, Pampanga and Nueva Ecija on a scale to match, and surely inevitably surpass, the sufferings of Quezon, Aurora, Pampanga, Bicol, Nueva Ecija, and Rizal, all of which are provinces we all love and which some of us in this Chamber are proud to call home.

Section 16, Article II of our Constitution demands, and I quote, that:

“The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.”

This constitutional guarantee was explained eloquently in the case of *Minors of the Philippines vs. DENR, et. al.*, in which the Supreme Court, through then Associate Justice Hilario Davide Jr., said:

“While the right to a balanced and healthful ecology is to be found under the Declaration of Principles and State

Policies and not under the Bill of Rights, it does not follow that it is less important than any of the civil and political rights enumerated under in the latter. Such right belongs to a different category of rights altogether for it concerns nothing less than self-preservation and self-perpetuation—aptly and fittingly stressed by the petitioners—the advancement of which may even be said to predate all governments and constitutions....

“The right to a balanced and healthful ecology carries with it the correlative duty to refrain from impairing the environment....”

The country must realize that the path of destruction caused by this juggernaut of despoliation has been made possible by the continued connivance of people in the administration with logging interests. Together with those interests, the administration is trying to pacify the citizenry by proclaiming action when all it is doing is buying time -- for the future resumption of logging operations. This juggernaut of despoliation, the relentless advance of the agents of deforestation, also means the dwindling of our fishery resources and the depreciation of our upland soils. Losses to these two resources alone were estimated to be approximately P1 billion for 1996 to 1997 only. The expansion of areas that can be subjected to logging puts in peril the expulsion from their ancestral lands of up to 6 million of our indigenous peoples.

If the forest cover of the Philippines ranks as one of the 11 poorest among 89 countries in the tropics with a per capita forest cover of about 0.085 hectares, it is because of official assistance extended to logging interests. If our forest cover has declined, as it has declined, from 70% of the total land area in 1900 to about 18.3% in 1999, or just about 5 million hectares of residual and old growth forests, it is because of official encouragement and protection of loggers.

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Our old growth forests are estimated to cover less than one million hectares today and are mostly located in protected areas, reserves, concession areas, and cancelled, suspended or expired concession areas. And yet, the present administration has been actively seeking to reduce this coverage even further.

If our forest cover is expected to decline to 6.6% of the total land area by the year 2010, incidentally the year the present administration supposedly expects to retire to count its millions, if not billions, of blessings, it is because of the present administration's deliberate policy of assisting the continued depredations of this juggernaut of despoliation.

The national outcry, the national concern, the national clamor for action, is something we cannot ignore. I am personally devastated that it has taken calamity after calamity, culminating in these recent tragedies and loss of lives to convince our people of the validity of what environmentalists have been saying for years. Our environmental officials, hand in hand with our presidents, were content to conduct window-dressing by sprinkling seeds on hillsides and distributing saplings in the name of reforestation.

Reforestation is a panacea; it is a fool's errand so long as logging continues unabated. The saplings of today will take 200 years of unhampered growth to achieve the same ecological benefits that the trees chopped down by loggers were already giving today. The simple truth is, there is no substitute for conservation, there is no substitute for protection, just as there is no substitute for victory in war.

I sympathize with the millions of our citizens who have been brushed aside in the past when they tried to bring illegal logging, and unscrupulous legal logging, to the attention of the authorities. Instead of working for the people and aiding the citizenry, the Department of Environment and Natural Resources all too often devoted

its energies to frustrating environmental efforts. Time and again, it showed itself more interested in coddling loggers and ruthless urban developers. The uncooperative and environmentally subversive tendencies of the DENR are best exemplified by an experience I had with the machinations of that department.

On October of this year, together with Bishop Labayen, I convened a multi-sectoral conference to address the issues of mining and logging. The participants resolved to oppose the continuation of logging and mining operations in Quezon province. In November, the DENR organized a counter-conference, in which it sought to obtain, and indeed obtained, the free and prior consent of residents to allow the continuation of logging and mining. Where we worked to arrest environmental degradation, the government reversed our efforts. I am sad to say that those who were persuaded by the government to give their free and prior consent are among those who suffered the most in the wake of the recent typhoons. Some of them are now dead.

What government is this, what department is this that can claim to protect the environment when it took steps to persuade the residents of Real, Dingalen, Infanta and General Nakar, to name just a few localities, to permit the continuation of logging and mining? What administration is this that has the temerity to wring its hands in regret over the fatal effects of its own lobbying?

I therefore move that this Chamber make its first order of business to conduct an investigation of all legal or illegal logging operations in the country, and these DENR Orders that are inimical to the welfare of the Filipino people. I move that this Chamber investigate the circumstances surrounding the issuance of highly questionable orders issued by the DENR, orders that violate the Constitution, the laws passed by Congress,

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and the instructions of the Executive herself. Justice demands, and *delicadeza* demands that Secretary Mike Defensor resign the DENR portfolio, without prejudice to his possible prosecution for command responsibility for the recent environmental catastrophes.

And so that the DENR will no longer sabotage the constitutional mandate to protect the environment, I shall be submitting a bill that seeks to divide the DENR into two separate agencies, to eliminate the inherent contradiction between environmental protection and resource exploitation that makes it an enemy of the environment. In such time, I would ask this Chamber to deliberate on my proposal to establish a Department of Environmental Protection and a Department of Natural Resources. We can no longer tolerate a department that is half plunderer and half protector.

I move that this Chamber act immediately and favorably towards legislation imposing a total log ban in the Philippines for a period of at least 20 years to 30 years. By a total log ban, I also mean a ban on the felling of trees in our cities, where the efforts of unscrupulous developers and narrow-minded bureaucrats are choking our cities in their own filth just as our rural areas are drowning in rivers of mud.

I call on Congress to aggressively exercise its power to define the limits of the country's forest lands, to prevent their further alienation. I move for the deliberation and passage of a National Land Use Code, and the codification of all environmental laws.

I call for a paradigm shift in our attitudes toward the environment. We must have a national policy on the conservation and protection of natural resources, particularly of our remaining forest lands that makes a clean break with the current policy of resource extraction and

exploitation. We have destroyed our forests, we have emptied our mines, enriching the loggers and the owners of the mines. But no chainsaw operator and no miner has gained wealth or achieved more than a basic level of existence in the wake of the systematic plunder of our natural resources. I call on this Chamber to lead our people in achieving the true blessings of social justice and a healthful ecology not just for ourselves but for future generations.

"This Chamber must answer the call of the times, and submit to the imperatives of our Constitution. It must take the lead in destroying the juggernaut of despoliation. We must become the vanguard of ecological recovery; we must be the bulwark of efforts to arrest the tide of destruction that has been threatening to tumble the mountains into the plains, and suffocate some of the most impoverished of our countrymen in a sea of mud and dead trees. We must act or bear on our hands the blood of the dead and those who will surely die. We must labor mightily for a people who deserve more than the lip service and window-dressing and the outright guilt for the miseries that have so recently afflicted our brethren, that are the hallmark of the present administration. We cannot condemn more of our countrymen to being crushed by the juggernaut of despoliation.

REFERRAL OF SPEECH

Upon motion of Senator Pangilinan, there being no objection, the Chair referred the privilege speech of Senator Madrigal to the Committee on Environment and Natural Resources.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 3:26 p.m.

Handwritten initials or signature.

RESUMPTION OF SESSION

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

ROLL CALL

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

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| Angara, E. J. | Lacson, P. M. |
| Arroyo, J. P. | Lapid, M. L. M. |
| Biazon, R. G. | Lim, A. S. |
| Drilon, F. M. | Madrigal, M. A. |
| Ejercito Estrada, J. | Magsaysay Jr., R. B. |
| Ejercito Estrada, L. L. P. | Pangilinan, F. N. |
| Enrile, J. P. | Roxas, M. |
| Flavier, J. M. | Villar Jr., M. B. |
| Gordon, R. J. | |

With 17 senators present, the Chair declared the presence of a quorum.

Senators Cayetano, Osmeña and Recto arrived after the roll call.

Senators Defensor Santiago and Pimentel were on official mission.

Senator Revilla was absent.

REFERENCE OF BUSINESS

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

BILL ON FIRST READING

Senate Bill No. 1870, entitled:

AN ACT TO ESTABLISH A BAN ON ALL LOGGING OPERATIONS IN THE COUNTRY TO ENSURE THE PROTECTION, PRESERVATION AND REHABILITATION OF THE PHILIPPINE'S ENVIRONMENT, PROVIDING FOR CITIZEN'S RIGHTS AND THE APPROPRIATE PENALTIES FOR VIOLATIONS OF THIS ACT

Introduced by Senators M. A. Madrigal and Lim

To the Committees on Environment and Natural Resources; and Constitutional Amendments, Revision of Codes and Laws

RESOLUTION

Proposed Senate Resolution No. 137, entitled

RESOLUTION DIRECTING THE SENATE COMMITTEE ON PUBLIC ORDER AND ILLEGAL DRUGS TO CONDUCT AN INVESTIGATION, IN AID OF LEGISLATION, INTO ALARMING REPORTS THAT THE PHILIPPINES HAS BECOME THE WORLD'S THIRD BIGGEST PRODUCER OF SHABU AND THE WORLD'S FOURTH BIGGEST CONSUMER OF AMPHETAMINE AND METHAMPHETAMINE, WITH THE END VIEW OF REVIEWING THE PERFORMANCE OF THE DANGEROUS DRUGS BOARD AND THE PHILIPPINE DRUG ENFORCEMENT AGENCY AND RECOMMENDING THE EFFECTIVE IMPLEMENTATION AND/OR POSSIBLE AMENDMENT OF REPUBLIC ACT NO. 9165

Introduced by Senator Villar Jr.

To the Committee on Public Order and Illegal Drugs

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. 42 and considered it approved.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 3:29 p.m.

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RESUMPTION OF SESSION

At 3:50 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.

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

The Chair recognized Senator Recto, sponsor of the measure, and Senator Madrigal for the continuation of her interpellation.

**ACKNOWLEDGMENT OF
THE PRESENCE OF GUESTS**

At this point, Senator Madrigal acknowledged the presence of the following guests: Dipolog Bishop Jose Manguiran, DD and companions; Datu Lito Omos of Kasapi, Inc.; Fr. Al Albor, representative of Bishop Labayan; Sister Rosario Batung of the Good Shepherd Sisters, and companions; Ms. Ester de Tagle, chairperson of Concerned Citizens Against Pollution (COCAP); Ms. Socorro Lammoglia of Tanggol Puno; and representatives of different environmental groups and indigenous peoples.

**INTERPELLATION OF
SENATOR MADRIGAL**

(Continuation)

At the outset, Senator Madrigal stated that the data on liquor consumption that she requested had not yet been provided, for which reason, she would focus her interpellation on cigarettes.

Asked if he is familiar with the principles of sound taxation, Senator Recto replied in the affirmative.

Senator Madrigal clarified that she wanted to raise questions about the principles of sound taxation because Adam Smith always contended that taxation is not intended to make the law valid but only to make the system sound. On whether having a sound system is more important than a valid law, Senator Recto replied that both are important.

On whether a sound system is important when doing tax considerations, Senator Recto replied in the affirmative, adding that it should be a sound and fair system.

Senator Madrigal observed that in the principles of a sound tax system, Adam Smith talked about fiscal adequacy as the proceeds of the revenues that should coincide with the approximate need of government expenditures.

Asked if he agrees with "theoretical justice" that states that the tax system should be fair to the average taxpayer and based upon his ability to pay, Senator Recto replied that he has been invoking that point in the last weeks and the same is found in the committee report.

Senator Madrigal observed that there should be administrative feasibility, meaning, the government should be capable of properly and effectively administering and enforcing the tax system with the least inconvenience to the taxpayers.

Asked if he believes that the government would adequately enforce his tax measures, Senator Recto replied in the affirmative, adding that he, in fact, followed the concept and framework of Senator Enrile, the principal author of the present law, as it is easier to administer the specific tax system than the *ad valorem* tax system.

Asked if the revenues to be generated from the implementation of the Act on cigarette consumption would meet the needs of the government for health expenditures arising from the adverse effects of smoking cigarettes,

Senator Recto replied in the affirmative, as based on his conversations with the President.

On whether the projected revenue on cigarettes alone is P7 billion, Senator Recto clarified that the amount is P10 billion in the first year – P5 billion from tobacco and P5 billion from alcohol.

Senator Madrigal recalled that during a public hearing of the Committee on Ways and Means, a point was raised that the country spends P26 million daily or P9.5 billion annually to sustain the cigarette industry; on the other hand, the projected revenues to be generated is P7 billion-P8 billion only. She posited that the government might actually be incurring a deficit. Senator Recto said that he does not see it that way.

On the issue of health expenditures, Senator Recto contended that it might be intellectually dishonest to say that the government expense on tobacco-related illnesses is P9 billion-P10 billion as it covers respiratory illnesses, the main cause of which is not only smoking but also pollution and genetics.

SUSPENSION OF SESSION

Upon motion of Senator Madrigal, the session was suspended.

It was 3:59 p.m.

RESUMPTION OF SESSION

At 4:01 p.m., the session was resumed with Senate President Pro Tempore Flavio presiding.

Senator Madrigal said that in an open letter published in the *Philippine Daily Inquirer*, Solita Monsod wrote that it was uncontested during a hearing of the Committee on Ways and Means on October 28 that the country has been spending P26 million a day or P9.5 billion a year, and that it has been proven that cigarettes cause cancer. The World Health Organization, she pointed out, estimates that lung cancer and other tobacco-related diseases kill 20 million Filipinos yearly and leave the government and citizens poorer by about P46 billion in economic and medical costs.

Senator Recto said that he has seen the numbers and heard the arguments and while the committee members might not have raised a ruckus about them, it does not mean that they do not doubt the accuracy of the numbers. He surmised that Senator Madrigal was probably talking about the total health costs of lung-related diseases but not necessarily tobacco-related diseases alone because it is impossible that 90% of the DOH budget is spent on lung cancer cases alone. The secondary purpose of the measure, he pointed out, is to earmark 10% of the incremental revenues to be generated for PhilHealth programs and 2.5% for the education of the public on the ill effects of smoking. He recommended that cigarette advertisements be banned on television particularly during the airing of *telenovelas*, at the same time, that the government put more gruesome warning labels on cigarette packs. He assured the Body that he would be willing to help the Senate ratify the treaty on tobacco regulation.

Asked whether he would be deterred by a mere warning on a cigarette pack, Senator Recto said that while he intended to stop smoking sooner than later, gruesome warning labels like those on cigarette packs in Singapore would surely instill fear among smokers.

On whether low-end cigarettes also have warning labels, Senator Recto replied in the affirmative.

As to the different warning labels, the Chair informed the Body that the present requirement is a common warning of "Smoking is hazardous to your health." It said that the new law requires four different warning labels, one warning label for every quarter, some written in the native dialects to reinforce and strengthen the warning.

On whether the warning labels on low-end cigarettes should be in Tagalog, Senator Recto replied in the affirmative. The four warning labels, he pointed out, include "Cigarette smoking is dangerous to your health," "Cigarettes are addictive," "Tobacco smoke can harm your children," and "Smoking kills." He suggested that these warning labels include pictures as well, such as of a cancerous lung.

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The Chair stated that it wanted to include in the warning labels the figure of the skull with two bones but it was not able to incorporate it into the measure. Senator Recto said that he is fully supportive of the idea.

On another matter, Senator Madrigal pointed out that there has been a drop in tax collection from P19.8 billion in 2002 to P19.6 billion in 2003. Senator Recto disclosed that the government is expected to collect P22 million for 2004 since it is during an election year when consumption of distilled spirits and tobacco increases. The drop, he said, might not necessarily be due to the inefficiency of government.

Asked what would happen to revenue collection now that the elections are over, Senator Recto replied that in making the projections, the committee considered many factors including the experience with specific tax for the last seven to eight years. He pointed out that projections could also be affected by a credit downgrade and the depreciation of the peso, in which case the imported tobacco would become more expensive. He stated that when high-end tobacco products become more expensive, there could be a drop in tobacco consumption and tax collection as well. He pointed out that with the growth of the telecommunications industry that is expected to increase 20% to 30% per annum, most consumers buy prepaid cards for their mobile phones instead of spending on cigarettes; and the increase in oil prices make the people spend more on transportation.

Asked when the Convention on Tobacco Control was signed, the Chair said that it was signed this year, copy of which has not been forwarded to the Senate.

Senator Madrigal pointed out that the Framework Convention on Tobacco Control (FCTC), which reaffirms the right of all people to higher standards of health, represents a paradigm shift in developing a regulatory strategy to address addictive substances and asserts the importance of demand reduction strategies as well as supply issues. The specific demand reduction provisions of the FCTC, she said, are price and tax measures; nonprice measures; and measures on protection against exposure from

tobacco smoke, regulation of the contents of tobacco products and product disclosures, packing and labeling of tobacco products, education, communication, training and public awareness, tobacco advertising, promotion and sponsorship, and dependence and cessation. She expressed hope that the Philippines would actively take part in such a treaty which is for the health of its people.

Senator Recto expressed support for the treaty. For its part, the Chair said that the Members would ratify the treaty when it reaches the Senate.

Asked whether he would be amenable to some amendments to the tax rates, Senator Recto said that the measure seeks to increase the tax rate of low-end cigarettes by 48%; medium-end cigarettes, 17%; high-end cigarettes, 16%; premium cigarettes, 30%; and native cigarettes, 112%. The committee, he stated, has been liberal on the matter and conscious of the need to balance the interest of all stakeholders and tobacco farmers whose produce is normally used for low-end cigarettes, the consumer's ability to pay, the welfare of factory workers, and the need to raise revenues for government. He said that he does not want the tax proposal to cause the importation of sin products.

Further, Senator Recto said that while he has agreed with Senator Enrile on at least four of the five tax brackets, he is positive that he would be able to resolve issues with Senator Madrigal.

Senator Madrigal asked whether it would not be nice to have a tax bill that would increase revenues and not affect the demand for cigarettes.

Senator Recto explained that in proposing the bill, the committee took into consideration the interest of the various stakeholders in the cigarette industry. He pointed out that a 48% increase in the excise tax on the low-end cigarettes would not have a negative effect on the industry itself.

As regards market-share neutrality, Senator Recto said that, if, for example, the government needed to raise P10 billion, and it is well known that one manufacturer controls 60% of the industry and another, more or less controls 40%

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of the industry, the committee proposed that the manufacturer which controls 60% should pay 60% of the incremental revenue while the company with a market share of 40% should pay 40% of the incremental revenue. He said that it would be an aberration if the manufacturer with 60% of the market would be made to pay 90% of the tax or the company with the 40% market share would be made to pay 90% of the incremental revenue. Moreover, he reasoned that it would be unfair, if, under the present law, a manufacturer with a 50% market share is paying only 10% of the taxes and the manufacturer with a 35% market share is paying 80% of the taxes.

Senator Madrigal expressed the view that the deliberations on the issue would be put to rest if the price elasticity of demand and the price elasticity of consumer spending could be determined.

Noting that 93% of the 23.8 million Filipino smokers are consuming low-end cigarettes, Senator Madrigal asked at what point the increase in the tax rate would be a deterrent. In reply, Senator Recto stated that the figure cited by Senator Madrigal forms part of the demographic profile of the Filipino voters. Nonetheless, he pointed out that low-end cigarettes and native wines like *lambanog* are not widely sold in Metro Manila but in the rural areas where the poorest of the poor or the so-called D and E consumers are located. It is for this reason, he said, that he expressed hope that in the discussion of the tax on sin products, only one rule should apply to both the cigarettes and alcohol since the "degree of badness" between them is not that wide.

Asked if he really believed that the tax measure would protect the consumers, Senator Recto reiterated that the measure took into consideration the interest of all the stakeholders in the industry and that it adhered to the principle of ability to pay, one of the tenets of a sound tax system. He affirmed that the bill would level the playing field.

However, Senator Madrigal believed otherwise, arguing that it would only favor the manufacturers of low-end cigarettes. Senator Recto disagreed as he stated that the bill

provides that only Congress can reclassify the cigarettes and since the tax system shifted from *ad valorem* to specific, it would be easier for the BIR to administer the tax measure once it becomes a law. He said that while he is biased in favor of the *ad valorem* system, the committee, for purposes of predictability, would be willing to give the specific tax system a chance to work within the next six years.

Asked if it can be honestly said that the bill would level the playing field by allowing competition to enter freely without protecting existing brands, Senator Recto replied in the affirmative, pointing out that all players would be covered by one provision. He stressed that if a company manufactures a new brand or has an existing product that is not listed in the Annex (d), the BIR is authorized to make a final reclassification three months after the brand has been introduced in the market. Moreover, he recalled that he already agreed with the suggestion of Senator Enrile on the need to strengthen the language of the provision to ensure that its intent would really be applied.

Senator Madrigal observed that based on the BIR records, the removals for low-end cigarettes in the low-taxed category increased its share from 28.8% to 48% in 1997. Senator Recto agreed as he pointed out that this reflects the consumption pattern of the Filipinos who are getting poorer, whose consumption is going down because they have less money to spend.

Senator Madrigal expressed doubts that cigarette consumption was going down in view of the fact that there are more removals. Senator Recto pointed out that for the last eight years, the growth in consumption was as follows: high-end cigarettes -- 2%; medium-end -- negative growth; low-end -- 6% growth. He added that 65% of the cigarettes are sold by stick.

Asked if there has been a downtrading in consumption from high-end to low-end, Senator Recto replied in the affirmative, stating that the committee precisely proposed a higher tax rate of 48% for low-end cigarettes to capture the down trading or the down trend in consumption. He stated that the House proposed a tax rate of 20% while Senator Enrile wanted a 435% tax

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but the Committee recommended a 48% increase in tax rate.

On whether a moderate increase in the tax rate would be good for the country, Senator Recto replied that a moderate taxation is not only for the low-end but also for all types of cigarettes. He did not believe that the solution to the fiscal problem of the government is to take away the hard-earned money of the people.

On the comment that the demand for low-end cigarettes has not been effectively controlled, Senator Recto reiterated that the measure is not a nicotine patch for the masses but a bill that seeks to generate revenues for the government, taking into consideration the interests of all stakeholders.

Asked if there is now a downtrading, Senator Recto replied that he would rather call it a consumption pattern.

On whether there is empirical data to support the assertion, Senator Recto reiterated that in 1997, consumption of low-end cigarettes was 30% compared to the 50 % at present because of the decline in per capita income and an increase in population.

Stating that the deliberation of the bill is important to the Filipino people, Senator Madrigal requested that some economic and financial issues be considered and certain matters be defined. Senator Recto said that he would appreciate it if Senator Madrigal would present an econometric model to speed up the interpellation on the bill with proposed amendments that would be considered at the proper time.

At this point, Senator Madrigal defined the following terms:

- 1) *elasticity* — the relative response of one variable to changes in another;
- 2) *price elasticity* of demand — the relative response of a change in quantity demanded to a relative change in price;

Senator Madrigal stated that Senator Roxas corrected her, that is, the Pythagorean theorem

applied to all triangles and when it applies to right triangles, the formula is $a^2 + b^2 = c^2$ and the hypotenuse = $\sqrt{a^2 + b^2}$.

- 3) *Personal consumption expenditures* — the measure of consumption expenditures undertaken by the household sector, seeking to quantify the portion of the gross domestic product that is purchased by the household sector and is used in theory, at least to satisfy wants and needs.

Asked if in the preparation of the tax measure, an econometric model was used taking into consideration certain terms, Senator Recto replied in the negative as he said that the committee studied the personal consumption expenditure survey from the early 1990s up to the present as well as other elasticity measurements.

Senator Recto informed the Body of the data that the committee was able to gather.

For alcohol beverage:

| YEAR | PERCENTAGE OF CONSUMPTION |
|------|---------------------------|
| 1988 | 1.1% |
| 1991 | 1% |
| 1994 | 0.9% |
| 1997 | 0.8% |
| 2000 | 0.7% |
| 2004 | 0.7% |

For tobacco:

| YEAR | PERCENTAGE OF CONSUMPTION |
|------|---------------------------|
| 1988 | 2.1% |
| 1991 | 1.7% |
| 1994 | 1.4% |
| 1997 | 1.3% |
| 2000 | 1.1% |
| 2001 | 1.1% |

For purposes of comparison, Senator Recto cited the family expenditure data gathered by

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the committee in the area of transportation and communication.

| YEAR | PERCENTAGE OF EXPENDITURE |
|------|---------------------------|
| 1988 | 4.7% |
| 1991 | 5.4% |
| 1994 | 4.7% |
| 1997 | 5.6% |
| 2000 | 6.8% |
| 2003 | 7.4% |

SUSPENSION OF SESSION

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

It was 4:45 p.m.

RESUMPTION OF SESSION

At 4:54 p.m., the session was resumed.

On the normal supply and demand curve with the price on the *X-axis* and the demand on the *Y-axis*, Senator Madrigal queried if Senator Recto agrees that in Adam Smith's ideal world, where supply and demand intersects, there is a point where the quantity and price for a certain product may be obtained.

At this point, using a graph, Senator Madrigal explained that in the study, when the price of low-end cigarettes is increased because of elasticity, demand also increases because of substitution. She explained that using an algorithmic multiple regression model with data from 1997 to 2004, she calculated the point where the price for low-end cigarettes could be raised; product demand would finally be inelastic; low-end cigarette manufacturers could no longer turn in profits; the government could raise enough revenues; and the poor consumers discouraged from purchasing low-end cigarettes.

At this point, Senator Madrigal presented the formula that she and her economist-consultants had used in preparing the algorithmic model to prove substitution, where:

Q = quantity

a = a constant

X = expenditure income elasticity of demands

Y = price elasticity of demand

Z = elasticity of demand relative to the price of the substitute

Qd = quantity demanded

fCSp = function of real consumer spending

= Average Price for category

= Average Price for substitute category

This, she said, produced a mathematically stated equation as follows:

$$Q = a = fC^X P^Y S^Z$$

Further, she defined "elasticity" as a percentage effect on demand corresponding to a 1% change in the factor considered such as income over expenditure which is the cross or substitute price. This, she said, translates to the following workable equation:

$$\text{Log}Q = -2.51 + 2.85\text{Log}C - 0.0207\text{Log}P$$

$$\text{Rate to fit} = 0.90^2$$

$$A = 0.00309$$

$$X = \text{EQd or } 2.544$$

$$\text{Quantity} = 0.00309C \times \text{Price}$$

Using this formula on historical data, she concluded that an increase in the price of low-end cigarettes will result in an annual 2.544% increase in the quantity of demand for the product, which means that for every 1% increase in real consumption spending, there is a 2.544% increase in low-priced cigarette demand.

Senator Recto interjected that, using the formula, for every P1.00 increase in his income, a consumer would spend 2.5% of it on cigarettes. Senator Madrigal stated that she merely wanted her calculations placed on record as basis for the other Members' arguments. Using her formula, she gave the following result:

$$\text{EQd} = -0.0207$$

She said that the elasticity of quantity demanded (EQd) would be very negligible such that for every price increase of low-end cigarettes there

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would not be a decrease in the demand for the product, so, if taxes for low-end cigarettes were increased, the demand for the product, rather than decline, would even double. She presented the following comparison between the Recto and Enrile bills:

| Proposals | Increase in tax | Increase in volume | Total Net in Price | Income gained by low-end cigarette manufacturer |
|-----------|-----------------|--------------------|--------------------|---|
| Recto | 47.432 | 12.723 | P11.74 | P24.4B |
| Enrile | | | | P3.23B |

Moreover, she said that even if cigarette prices were raised by 614.64%, there would be no increase in consumer demand for the product because the demand elasticity would become negligible at this point when a deterrence would occur. Consequently, she said, poor consumers would no longer enrich low-end cigarette manufacturers.

On the incremental revenue effect, she said, using the formula of volume multiplied by the tax rate, if there is zero growth and a zero demand tax rate, the incremental revenue would be almost P15 billion for low-priced cigarettes. She gave the following incremental revenue projections:

| Current tax rate | Recto Bill | Enrile Bill | Zero (O) |
|------------------|------------|-------------|----------|
| P2.6 B | P0.915 B | P10.2 B | P15.95B |

Senator Recto, however, disagreed with Senator Madrigal's assumption that there would be a P10.2 billion gain in incremental revenue from low-end cigarettes with a 435% increase in cigarette taxes. He also disagreed to the theory that a 5% increase in consumer income would result in an increase in consumption of cigarette products. Being a smoker himself, he averred that he would not increase his consumption to three or four packs a day if his income increased.

Recalling the case of Memphis cigarettes which was taxed at P1.12 a pack, Senator Recto noted that the sales volume of the brand dropped by 80% after the BIR reclassified the tax rate to P5.60. But Senator Madrigal argued that the

assumption was false as there was no level playing field then since the other cigarette brands did not undergo reclassification. However, Senator Recto maintained that a drop in sales volume of one brand does not necessarily result in an increase in the sales of other low-end products.

Senator Madrigal stressed that she made her presentation to prove that there is an empirical process that could be used in taxing cigarette products. For his part, Senator Recto said that while he respected Senator Madrigal's findings, his committee used a different method for its computations.

To the comment that his findings were neither calculated nor empirically based, Senator Recto explained that even though low-end cigarettes account for 50% of the total sales volume of cigarette products, these brands contribute only 13% of total cigarette sales. In effect, he said that Senator Madrigal's position is that with a 600% tax hike, the current P1.12 rate would then go up to P7.00 but that even a 635% tax rate will not lower sales volume for low-end brands. Senator Madrigal disagreed, saying that if the tax rate is hiked by 600% or more, a cigarette manufacturer would neither gain nor lose from the sales of his product. She stressed that she was not making a projection in terms of the revenues of cigarette manufacturers.

INQUIRIES OF SENATOR ROXAS

Asked by Senator Roxas on the factor and the exact finding of the model, Senator Madrigal replied that the model attempted to find out at which point taxes could be increased where the demand for the low-end product would not increase and remain on the same level.

Senator Roxas noted that the slope of the demand curve that indicates elasticity will be in the form of coefficient, a fraction, and rise over run. He said it is a negative in the case of demand because the rise will decline; demand and quantity will decline every time there is an increase in price assuming there is no substitution.

Upon query, Senator Madrigal explained that for every 1% increase in real consumption

spending, there is a 2.544 increase in demand for low-end cigarettes.

Senator Roxas commented that the model assumes a broad range of actions or behavior patterns by the consumer because it takes the impetus as an increase in consumer activity.

Asked what the behavior pattern would be for every 1% or unit change in price assuming there is no substitution, Senator Madrigal replied that she would study the matter; however, she said that based on studies from 1997 to 2004, the consumption pattern is that downtrading is rampant especially in the Philippines. She said she would like to compare the data on cigarettes and alcohol, but she was having problems in getting data on the latter.

Senator Roxas commended Senator Madrigal for her effort and the scientific rigor that she applied to the discussions. He proposed though that the model be simplified such that there would be no substitution because there can be a great deal of debate as to what would be substituted, not only in terms of tobacco products but in other goods like candies or softdrinks. He said that rough projections would be of great help.

Senator Madrigal stated that she would provide Senator Roxas with the paper at a later time. She said that Y or the elasticity of quantity demand to price is $-.0207$ which means that for every 1% increase in price, there is $.0207\%$ decrease in the quantity demand for low-end cigarettes, meaning, it is inelastic and is negligible.

INQUIRIES OF SENATOR LIM

Senator Lim noted the statement made by Senator Madrigal that in case the Enrile bill would be approved, the profit of a certain manufacturer would be so much. He asked how much it would be. Senator Madrigal replied that if the Recto bill is approved, it has an incremental revenue of 11.74% or P2.2 billion incremental revenue; if it is the Enrile bill, there would be 3.723% or just a P700 million incremental revenue.

Senator Lim wondered if the measure would, in effect, favor a certain manufacturer who would

earn a big sum of money to the detriment of the government that is in need of increased revenues and the people who deserve to be protected from all the ill effects of cigarettes. He said that the House of Representatives is already the subject of suspicion and conjectures about lobby money. He appealed to the Members not to allow the Senate to be included in the speculation.

In reply, Senator Recto said that there was an allegation that the committee report favors Mr. Lucio Tan or Fortune Tobacco which has 65% of the market for low-end cigarettes. He said that the committee increased the tax by 48% while the Enrile bill initially increased it by 435% , but he disputed the projections, as far as the revenues are concerned. He said he does not know how Fortune would have additional profits when the tax rate on the low-end products would be increased by 48% . He pointed out that in the medium-tier, Fortune has 98% of the market, but the tax would be increased by 17% in the bill, and 7% in the Enrile bill.

On the other hand, Senator Recto said that the tax rate on high-end cigarettes would be increased by 16% , while in the original Enrile bill, the increase was only 6% . He added that in this tier, 65% of the market is controlled by Philip Morris. He said that in all these tiers, the committee increased tax rates and stood by its findings on the projections. He stated that the committee had worked on these projections with the Department of Finance. He noted that tobacco companies which know the industry and the market better than anybody could have increased prices for low-end products by at least 600% and reaped so much profits but they did not because they knew the market will not allow it and the consumers will not buy their products.

While he respects Senator Madrigal for her efforts to present another model, Senator Recto stressed that their opinions differed. He said that appropriate judgment should be made at the proper time. But he believed that the committee's calculations and projections would generate the most optimum amount of revenues for the government and would ensure market-share neutrality, meaning, if Fortune has 60% of the market, it must pay at least 60% of any new tax, and if Philip Morris has 40% of the market, it

should pay at least 40% of any new tax. In this case, he said, Lucio Tan pays more than his market share because Philip Morris does not have low-end cigarettes.

Senator Madrigal said that it was distressing that certain assumptions were being argued without exhausting all the possibilities, all the technical models and economic tools in crafting a bill that has far-reaching effects on the people. She clarified that she has no interest in pointing fingers at certain manufacturers as she undertook this analysis and presented it as a tool with an unbiased attitude. She believed that the alternative model she has just presented is worthy of study.

REMARKS OF SENATE PRESIDENT DRILON

At this juncture, Senate President Drilon stated that the Senate owes a debt of gratitude to Senator Madrigal for educating the senators on economic theories. He added that this, indeed, is the purpose of the interpellation – to present the other side of the picture.

However, Senate President Drilon noted that Senator Recto has his own view. Considering that the senators have listened intently for the past hour-and-a-half to the interesting and educational debate, Senate President Drilon believed that each senators would have to make a decision, at the proper time, on the basis of the presentations made by Senators Madrigal and Recto. He then appealed to the Body to proceed to other areas of debate, if there are still some.

INQUIRIES OF SENATOR LIM

Senator Lim adverted to the issue that former Finance Secretary Isidro Camacho wrote a letter alleging that the BIR was unable to collect P40 billion in taxes because of that specific provision in the law that no changes could be made without authorization from Congress. He asked if the incumbent Secretary of Finance opposes the view of former Secretary Camacho that is shared by former Secretaries Jaime Estanislao, De Ocampo, former acting Secretary Leung and former NEDA Secretary Solita Monsod.

Senator Lim stated that the Opposition was not casting aspersion on the characters of Senators Recto and Madrigal because the bottom line is each senator would vote on the bill.

Senator Recto pointed out that it is no secret that the administration supports the measure and the same was certified by the Executive. He stated that the bill offers a win-win solution in increasing revenues for the government and balancing the interests of the stakeholders; moreover, it is fair, equitable and just.

At this juncture, Senator Madrigal stated that she made studies with an unbiased attitude of an economist as she hoped that the Body would look at it as a tool in crafting the bill. She added that every Member would still have to vote on the bill according to his conscience.

Senator Lim asked anew what position the incumbent secretary has taken on the open letter of former secretaries who seemingly showed support for the bill crafted by Senator Enrile. He said that he wanted to be clarified on the issue before he casts his vote on the bill.

MANIFESTATION OF SENATOR LACSON

Senator Lacson informed the Body that he had received the documents from the Department of Finance as he manifested that he would resume his interpellation the following day.

INTERPELLATION OF SENATOR OSMEÑA (Continuation)

Senator Osmeña said that everyone works along the same principle of supply and demand and inelasticities. However, he asked to be provided the DOF data or the committee data so that he could make a comparison and see where, who or what went wrong because the two models differed vastly.

Asked where the inelasticities mentioned by Senator Recto came from since Senator Madrigal's presentation showed a .02 or 1/5 of 1% increase in price per unit assuming that taxes would be raised to P10 per pack and if the demand for

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low-end cigarettes still holds, Senator Recto replied that based on the projections of Senator Madrigal, if tax rates would be increased on low-end cigarettes by roughly 600% or 635%, consumption would still be the same. He said that no one knows the market better than the tobacco manufacturers. Assuming that the projections are accurate, he said that the manufacturers could have increased prices by P6-P7 and reaped the benefits; however, they did not, indicating that there is a different practice in the market.

Senator Osmeña stated that the argument was valid to a certain point, but there must be some figures that would indicate at what point demand becomes elastic.

Senator Recto stated that while the data would have to be made available, the DOF has done studies that showed certain elasticity numbers for 1997 and 2000.

As regards Astro, Memphis, Champion and other low-end cigarettes, Senator Recto stated that these brands were reclassified by the BIR because they were new in the market. He added that because of their reclassification, their tax rate increased from P1.12 to P5.60 and their volumes dropped by 80%.

Asked at what point the cigarettes would be sensitive to price, Senator Recto replied that calculations would have to be made.

On the observation that buyers of Astro and Memphis downgraded to other low-end cigarettes that were available at much cheaper prices, Senator Recto stated that the buyers of Astro and Memphis did not have the ability to upgrade. He explained that when the BIR reclassified Astro and Memphis, their tax rate increased by 400%, so their prices went up to the next tier, the medium-end. Consumers of the products, he said, did not follow and remained with the low-end cigarettes.

Senator Recto stated that while he does not have the data as to what point a person would downgrade to a low-end cigarette due to price constraints, he assumed that Senator Osmeña

would have an answer since he had downgraded twice already.

Citing the data of Senator Madrigal, Senator Osmeña stated that the demand is so inelastic that a 600% tax increase on the lowest bracket would result in a very miniscule decrease in demand – the manufacturers would continue to make the same level of profits while the government would increase its tax take by 600% at the low-end tier.

Senator Recto stated that in the last seven or eight years under the specific tax system, it appeared that the market for high-end cigarettes had an average growth rate of 2%; -.62% for medium-end; and 6.86% for low-end cigarettes.

Senator Osmeña argued that the experience with Astro and Memphis only shows that price is a consideration because people who can only afford brands at P6 a pack would not follow Astro and Memphis to the medium-end at P10-P11 per pack.

Agreeing with Senator Osmeña, Senator Recto stated that the conventional wisdom is that low-end cigarettes are not consumed in Metro Manila but sold in *sari-sari* stores by stick in most rural communities.

Senator Osmeña explained that he was merely trying to find out at what price point there would be a substantial drop in the consumption of tobacco at the lowest price bracket.

Senator Recto stated that the bill seeks to capture the revenues in case of downtrading.

Asked if there would be significant difference in demand between the P1.12 and the P2.12 tax rates, Senator Recto expressed willingness to accept amendments at the proper time. However, he believed that while the increment would seem low in peso unitary terms, such an increase is relative as a peso might mean nothing to some but would be very valuable to people living in the countryside. He said that he was actually against the imposition of a heavier tax burden on the poorest sector of society.

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Senator Osmeña clarified that he just wanted to do a comparison. He noted that a one-peso increase would mean a P0.05 per stick increase which would be quite insignificant as *sari-sari* stores might not even be carrying 5-centavo coins. He agreed that all the numbers are relative—the supply and demand estimates, the inelasticities, the substitution effect—even as most economists or purists would like to run their numbers *ceteris paribus faces*. For instance, he noted that phone cards have been squeezing out sales of beer, softdrinks and cigarettes in the *sari-sari* stores indicating a substitution effect. For a given level of income, he said, a man who smokes may opt to spend his money on buying a phone card instead of beer, coca cola, Shoktong or cigarettes.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 1854

Senator Pangilinan informed the Body that Senator Lacson would continue his interpellation on the bill the following day.

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

ADDITIONAL REFERENCE OF BUSINESS

The Secretary of the Senate read Committee Report No. 9, prepared and submitted by the Committee on Ways and Means on Senate Bill No. 1871 with Senators Recto as author thereof which the Chair referred to the Calendar for Ordinary Business:

AN ACT TO IMPROVE THE REVENUE COLLECTION PERFORMANCE OF THE BUREAU OF INTERNAL REVENUE (BIR) AND THE BUREAU OF CUSTOMS (BOC) THROUGH THE CREATION OF A REWARDS AND INCENTIVES FUND AND OF A PERFORMANCE EVALUATION BOARD AND FOR OTHER PURPOSES,

recommending its approval in substitution of Senate Bill No. 1236, taking into consideration House Bill No. 2996.

Sponsor: Senator Recto

SPECIAL ORDER

Upon motion of Senator Pangilinan, there being no objection, the Body approved the transfer of Committee Report No. 9 on Senate Bill No. 1871 to the Calendar for Special Orders.

COMMITTEE REPORT NO. 9 ON SENATE BILL NO. 1871

Upon motion of Senator Pangilinan, there being no objection, the Body considered, on Second Reading, Senate Bill No. 1871 (Committee Report No. 9), entitled

AN ACT TO IMPROVE THE REVENUE COLLECTION PERFORMANCE OF THE BUREAU OF INTERNAL REVENUE (BIR) AND THE BUREAU OF CUSTOMS (BOC) THROUGH THE CREATION OF A REWARDS AND INCENTIVES FUND AND OF A PERFORMANCE EVALUATION BOARD AND FOR OTHER PURPOSES.

Pursuant to Section 67, Rule XXIII of the Rules of the Senate, with the permission of the Body, upon motion of Senator Pangilinan, only the title of the bill was read without prejudice to the insertion of its full text into the Record of the Senate.

Thereupon, the Chair recognized Senator Recto, Chairman of the Committee on Ways and Means, for the sponsorship.

SPONSORSHIP SPEECH OF SENATOR RECTO

In sponsoring Senate Bill No. 1871, Senator Recto delivered the following speech:

LATERAL ATTRITION

This is a simple bill unlike the sin tax bill. Essentially, it exploits the nature of men to work hard if an incentive is at hand. It springs from the belief that people tend to strive harder if a reward awaits them.

In his journey from caves to condominiums, man labors mightily if a prize lies ahead.

Through the ages, it was the profit motive which animated individuals and made civilizations march. Today, we are tapping this basic human instinct to solve a problem that confronts our nation.

The crisis we face is of poor tax collection. Many solutions have been proposed, from lifestyle checks to increasing taxes. For each, econometric models have been built, and academic papers churned out.

In this sea of suggestions, however, one proposal stands out for its common sense approach to the problem. It posits the theory: Tax collection will increase if those who will do it will have a share of what they can collect.

Meaning, motivate the collector to collect more by giving him a share of the additional collection. Or place a pot of gold at the end of the revenue rainbow.

This bill taps into the simple but powerful idea which has stood the test of time: reward performance. It is an idea that can be applied to taxation as well because well-written tax laws may not always boost collection but well-motivated taxmen always do.

Do not be misled by the term "lateral attrition" which this bill is popularly but mistakenly known as. That label was designed to give a tinge of complexity to what is essentially a simple idea. It is a classic example of how the bureaucracy complicates matters by attaching beautiful labels out of simple things, and sometimes even out of empty baggage.

So what is this bill really all about? It seeks to set aside 20 percent of what they were able to collect in excess of the target—as bonus to be divided among the collectors.

To illustrate: If the goal is to collect one peso a year, and actual collection reached P1.20, thus exceeding the target by 20 centavos, then 20 percent of the 20 centavos, or four centavos, will be given to collectors as incentive.

This administration, and those before it, believes that this is what it takes to energize the people in the BIR and the BOC to collect more. To break the lethargy in these two agencies, it believes that dangling a carrot would improve collection.

This administration seems to have tried all the motivational tools in the book to rally the people in the BIR and the BOC to increase their output, from lectures on patriotism to the reshuffling of key personnel to actually firing people. All, it seems, to no avail.

The missing link, it has found out, is to try the tack of rewarding people for good performance, which this bill seeks to institutionalize.

In short, a management tool that would inspire people to perform more than what is expected of them. I say we give this management tool to the government for it will raise revenues but will not result in new taxes that will hurt the people.

But it is not all carrots for the BIR and BOC in this bill. There is also a corresponding stick, and a big one at that, if I may add. While this bill gives out pay slips to the deserving, it also hands out pink slips to those who are not.

The question now is: Who will set the collection target that must be hurdled? I know the fear of many that the target-setting might be an exercise in *limbo rock*, where the bar is set lower.

No, that will not happen, for the agency target is set by the Development and Budget Coordinating Council, and the figure

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stated in the Budget of Expenditures and Sources of Financing, so the goal will be handed down like tablets from Mount Sinai.

A Performance Evaluation Board will be created in each of these agencies, but it is not an oversight body composed of outsiders, but one that will function as a jury of peers, one that will spread around benefits to the hardworking and sanctions to those who are not.

If sanctions will be established and handed down to the weakest link in the organization, the saying of goodbyes will follow civil service laws, rules and regulations. This bill does not sacrifice rights for fiscal expediency, but it does not prevent the board from expediting the separation of an incorrigibly non-performing officer either.

If the board decides to do a Donald Trump and tells a colleague "You're fired!" yes, it can be done fast, but most important, it will be done right.

I have been told that some BIR and BOC personnel are quaking in their shoes, fearing that this bill heralds the coming of the Grim Reaper. No, it is not. The saying, "There is nothing to fear but fear itself" is written all over this bill.

If there is something that this bill would usher in, it will not be a bringer of bad news but a bearer of good tidings, like a yearlong Santa Claus. How? Let me do some math, and tell you how this bill could really be a double-your-money measure for BIR and BOC men.

There are 11,711 BIR employees. Their average basic pay is P148,365. If they would be able to meet their collection target of P600 billion next year, then the average collection of each would be P51,281,000.

If the BIR, for example, can collect P25 billion more, which is one half of one

percent of the GDP, or a half-percentage point increase in the tax effort, then under this bill, its employees would be entitled to a P5 billion bonus, representing 20 percent of the excess collection.

Divide that P5 billion by 11,711 persons, and the result is a performance bonus of P427,000 each. Some of you might squirm in your seats upon hearing this figure. Are we paying mercenaries here? Some of you might ask. The question of ethics, I am sure, will be raised as we tackle this bill.

My reply to all these is: There is no more indecent and immoral situation than mortgaging our children's future when we borrow money to make up for our lack of cash.

I would rather pay a premium to BIR and BOC men than pay foreign bankers and their brokers interest charges and commissions for loans that will be used to bridge our deficit.

I would rather give a bonus to our own than be on the receiving end of endless implorations from the likes of Fitch, Moodys, Standard & Poors, to tax and tax our people more, so their subscribers can be paid on loans that would not have been taken out in the first place if our tax collection was efficient, and our taxmen motivated.

This is a stripped-down version of the bill that was vetoed in 2001. It retained the concept and philosophy of that measure, but delegated to the agencies on how to dangle the carrot and the stick.

In calling for less cumbersome procedures, we are injecting flexibility on the implementation of this measure. It does not matter if the cat is black or white for so long as it catches the mice.

This one, the administration says, will catch a lot.

✓ JB

I hope that my colleagues will support and approve this measure.

**SUSPENSION OF CONSIDERATION
OF SENATE BILL NO. 1871**

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

REMARKS OF SENATOR PANGILINAN

Senator Pangilinan informed the Body that Senators Revilla and Lim would deliver speeches on matters of personal and collective privileges in the next day's session. As such, he said, based on a standing agreement, the session would convene at two thirty in the afternoon of the following day.

ADJOURNMENT OF SESSION

Thereafter, upon motion of Senator Pangilinan, there being no objection, the Chair declared the session adjourned until two thirty in the afternoon of the following day.

It was 6:15 p.m.

I hereby certify to the correctness of the foregoing.



OSCAR G. CABES
Secretary of the Senate

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Approved on December 8, 2004