

**PHILIPPINE INTERNATIONAL TRADING CORPORATION,
PETITIONERS, VS. HON PRESIDING JUDGE ZOSIMO Z. ANGELES,
BRANCH 58, RTC, MAKATI; REMINGTON INDUSTRIAL SALES
CORPORATION; AND FIRESTO...**

G.R. No. 108461. October 21, 1996

Ponente: TORRES, JR., J.

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TORRES, JR., J.:

The PHILIPPINE INTERNATIONAL TRADING CORPORATION (PITC, for brevity) filed this Petition for Review on Certiorari, seeking the reversal of the Decision dated January 4, 1993 of public respondent Hon. Zosimo Z. Angeles. Presiding Judge of the Regional Trial Court of Makati, Branch 58, in civil Case No.92-158 entitled Remington Industrial Sales Corporation, et. al. vs. Philippine Industrial Trading Corporation.

The said decision upheld the Petition for Prohibition and Mandamus of REMINGTON INDUSTRIAL SALES CORPORATION (Remington, for brevity) and FIRESTONE CERAMICS, INC. (Firestone, for brevity), and, in the process, declared as null and void and unconstitutional, PITC's Administrative Order No. SOCPEC 89-08-01 and its appurtenant regulations. The dispositive portion of the decision reads:

"WHEREFORE, premises considered, judgment is hereby rendered in favor of Petitioner and Intervenor and against the Respondent, as follows:

1) Enjoining the further implementation by the respondent of the following issuances relative to the applications for importation of products from the People's Republic of China, to wit:

a) Administrative Order No. SOCPEC 89-08-01 dated August 30, 1989 (Annex A, Amended petition);

b) Prescribed Export Undertaking Form (Annex B, Id.);

c) Prescribed Importer-Exporter Agreement Form for non-exporter-importer (Annex C, Id.);

d) Memorandum dated April 16, 1990 relative to amendments of Administrative Order NO. SOCPEC 89-08-01 (Annex D, Id.);

e) Memorandum dated May 6, 1991 relative to Revised Schedule of Fees for the processing of import applications (Annexes E, E-1., Id.);

f) Rules and Regulations relative to liquidation of unfulfilled Undertakings and expired export credits (Annex Z, Supplemental Petition),

the foregoing being all null and void and unconstitutional; and,

2) Commanding respondent to approve forthwith all the pending applications of, and all those that may hereafter be filed by, the petitioner and the Intervenor, free from and without the requirements prescribed in the above-mentioned issuance.

IT IS SO ORDERED."

The controversy springs from the issuance by the PITC of Administrative Order No. SOCPEC 89-08-01,[1] under which, applications to the PITC for importation from the People's Republic of China (PROC. for brevity) must be accompanied by a viable and confirmed Export Program of Philippine Products to PROC carried out by the importer himself or through a tie-up with a legitimate importer in an amount equivalent to the value of the importation from PROC being applied for, or, simply, at one is to one ratio.

Pertinent provisions of the questioned administrative order read:

3. COUNTERPART EXPORTS TO PROC

In addition to existing requirements for the processing of import application for goods and commodities originating from PROC, it is declared that:

3.1 All applications covered by these rules must be accompanied by a viable and confirmed EXPORT PROGRAM of Philippine products to PROC in an amount equivalent to the value of the importation from PROC being applied for. Such export program must be carried out and completed within six (6) months from date of approval of the Import Application by PITC. PITC shall reject/deny any application for importation from PROC without the accompanying export program mentioned above.

3.2 The EXPORT PROGRAM may be carried out by any of the following:

- a. By the IMPORTER himself if he has the capabilities and facilities to carry out the export of Philippine products to PROC in his own name; or
- b. Through a tie-up between the IMPORTER and a legitimate exporter (of Philippine products) who is willing to carry out the export commitments of the IMPORTER under these rules. The tie-up shall not make the IMPORTER the exporter of the goods but shall merely ensure that the importation sought to be approved is matched one-to-one (1:1) in value with a corresponding export of Philippine Products to PROC.[2]

3.3 EXPORT PROGRAM DOCUMENTS which are to be submitted by the importer together with his Import Application are as follows:

- a) Firm Contract, Sales Invoice or Letter of Credit.
- b) Export Performance Guarantee (See Article 4 hereof).
- c) IMPORTER-EXPORTER AGREEMENT for non-exporter IMPORTER (PITC Form No. M-1006). This form should be used if IMPORTER has a tie-up with an exporter for the export of Philippine Products to PROC.

4. EXPORT GUARANTEE

To ensure that the export commitments of the IMPORTER are carried out in accordance with these rules, all IMPORTERS concerned are required to submit an EXPORT PERFORMANCE GUARANTEE (the "Guarantee") at the time of filing of the Import Application. The amount of the guarantee shall be as follows:

For essential commodities: 15% of the value of the imports applied for.

For other commodities: 50% of the value of the imports applied for.

4.1 The guarantee may be in the form of (i) a non-interest bearing cash deposit; (ii) Bank hold-out in favor of PITC (PITC Form No. M-1007) or (iii) a Domestic Letter of Credit (with all bank opening charges for account of Importer) opened in favor of PITC as beneficiary.

4.2 The guarantee shall be made in favor of PITC and will be automatically forfeited in favor of PITC, fully or partially, if the required export program is not completed by the importer within six (6) months from date of approval of the Import Application.

4.3 Within the six (6) months period above stated, the IMPORTER is entitled to a (i) refund of the cash deposited without interest; (ii) cancellation of the Bank holdout or (iii) Cancellation of the Domestic Letter of Credit upon showing that he has completed the export commitment pertaining to his importation and provided further that the following documents are submitted to PITC:

- a) Final Sales Invoice
- b) Bill of lading or Airway bill
- c) Bank Certificate of Inward remittance
- d) PITC EXPORT APPLICATION FOR NO. M-1005

5. MISCELLANEOUS

5.1 All other requirements for importations of goods and commodities from PROC must be complied with in addition to the above.

5.2 PITC shall have the right to disapprove any and all import application not in accordance with the rules and regulations herein prescribed.

5.3 Should the IMPORTER or any of his duly authorized representatives make any false statements or fraudulent misrepresentations in the Import/Export Application, or falsify, forge or simulate any document required under these rules and regulations, PITC is authorized to reject all pending and future import/export applications of said IMPORTER and/or disqualify said IMPORTER and/or disqualify said IMPORTER from doing any business with SOCPEC through PITC."

Desiring to make importations from PROC, private respondents Remington and Firestone, both domestic corporations, organized and existing under Philippines laws, individually applied for authority to import from PROC with the petitioner, They were granted such authority after satisfying the requirements for importers, and after they executed respective undertakings to balance their importations from PROC with corresponding export of Philippine products to PROC.

Private respondent Remington was allowed to import tools, machineries and other similar goods. Firestones, on the other hand, imported Calcine Vauxite, which it used for the manufacture of fire bricks, one of its products.

Subsequently, for failing to comply with their undertakings to submit export credits equivalent to the value of their importations, further import applications were withheld by petitioner PITC from private respondents, such that the latter both barred from importing goods from PROC.[3]

Consequently, Remington filed a Petition for Prohibition and Mandamus, with prayer for issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction on January 20, 1992, against PITC in the RTC Makati Branch 58.[4] The court issued a Temporary Restraining Order on January 21, 1992, ordering PITC to cease from exercising any power to process applications of goods from PROC.[5] Hearings on the application for writ of preliminary injunction ensued.

Private respondents Firestones was allowed to intervene in the petition on July 2, 1992,[6] thus joining Remington in the latter's charges against PITC. It specifically asserts that the questioned Administrative Order is an undue restrictions of trade, and hence, unconstitutional.

Upon trial, it was agreed that the evidence adduced upon the hearing on the Preliminary Injunction was sufficient to completely adjudicate the case, thus, the parties deemed it proper that the entire case be submitted for decision upon the evidence so far presented.

The court rendered its Decision[7] on January 4, 1992. The court ruled that PITC's authority to process and approve applications for imports from SOCPEC and to issue rules and regulations pursuant to LOI 444 and P.D. No. 1071, has already been repealed by EO No. 133, issued on February 27, 1987 by President Aquino.

The court observed:

"Given such obliteration and/or withdrawal of what used to be PITC's regulatory authority under the Special provisions embodied in LOI 444 from the enumeration of powers that it could exercise effective February 27, 1987 in virtue of Section 16 (d), EO No. 133, it may now be successfully argued that the PITC can no longer exercise such specific regulatory power in question conformably with the legal precept "expresio unius est exclusio alterius."

Moreover, the court continued, none of the Trade protocols of 1989, 1990 or 1991, has empowered the PITC, expressly or impliedly to formulate or promulgate the assailed Administrative Order. This fact, makes the continued exercise by PITC of the regulatory powers in question unworthy of judicial approval. Otherwise, it would be sanctioning an undue exercise of legislative power vested solely in the Congress of the Philippines by Section 1, Article VII of the 1987 Philippine Constitution.

The lower court stated that the subject Administrative Order and other similar issuances by PITC suffer from serious constitutional infirmity, having been promulgated in pursuance of an international agreement (the Memorandum of Agreement between the Philippine and PROC), which has not been concurred in by at least 2/3 of all the members of the Philippine Senate as required by Article VII, Section 21, of the 1987 Constitution, and therefore, null and void.

"Section 21. No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate."

Furthermore, the subject Administrative Order was issued in restraint of trade, in violation of Sections 1 and 19, Article XII of the 1987 Constitution, which reads:

"Section 1. The goals of the national economy are a more equitable distribution of opportunities, income and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and, an expanding productivity as the key to raising the equality of life for all, especially the underprivileged."

"Section 19. The State shall regulate or prohibit monopolies when the public interest so requires. No combination is restraint of trade or unfair competition shall be allowed."

Lastly, the court declared the Administrative Order to be null and void, since the same was not published, contrary to Article 2 of the New Civil Code which provides, that:

"Article 2. Laws shall take effect fifteen (15) days following the completion of their publication in the Official Gazette, unless the law otherwise provides. xxx"

Petitioner now comes to us on a Petition for Review on Certiorari,[8] questioning the court's decision particularly on the propriety of the lower court's declarations on the validity of Administrative Order No. 89-08-01. The Court directed the respondents to file their respective Comments.

Subsequent events transpired, however, which affect to some extent, the submissions of the parties to the present

petition.

Following President Fidel V. Ramos' trip to Beijing, People's Republic of China (PROC), from April 25 to 30, 1993, a new trade agreement was entered into between the Philippines and PROC, encouraging liberalization of trade between the two countries. In line therewith, on April 20, 1993, the President, through Chief Presidential Legal Counsel Antonio T. Carpio, directed the Department of Trade and Industry and the PITC to cease implementing Administrative Order No. SOCPEC 89-08-01, as amended by PITC Board Resolution Nos. 92-01-05 and 92-03-08.[9]

In the implementation of such order, PITC President Jose Luis U. Yulo, Jr. issued a corporate Memorandum[10] instructing that all import applications for the PROC filed with the PITC as of April 20, 1993 shall no longer be covered by the trade balancing program outlined in the Administrative Order.

Forthwith, the PITC allowed the private respondents to import anew from the PROC, without being required to comply anymore with the lifted requirement of balancing its imports with exports of Philippine products to PROC.[11] In its Constancia[12] filed with the Court on November 22, 1993, Remington expressed its desire to have the present action declared moot and academic considering the new supervening developments. For its part, respondent Firestone made a Manifestation[13] in lieu of its Memorandum, informing the court of the aforesaid developments of the new trade program of the Philippines with China, and prayed for the court's early resolution of the action.

To support its submission that the present action is now moot and academic, respondent Remington cites Executive Order No. 244,[14] issued by President Ramos on May 12, 1995. The Executive Order states:

"WHEREAS, continued coverage of the People's Republic of China by letter of Instructions No. 444 is no longer consistent with the country's national interest, as coursing Republic of the Philippines-People's Republic of China Trade through the Philippine International Trading Corporation as provided for under Letter of Instructions No. 444 is becoming an unnecessary barrier to trade;

NOW, THEREFORE, I FIDEL V. RAMOS, President of the Republic of the Philippines, by virtue of the powers vested in me by law, do hereby order:

The Committee on Scientific and Technical Cooperation with Socialist Countries to delete the People's Republic of China from the list of countries covered by Letter of Instructions No. 444.

Done in the City of Manila, this 12th day of May in the year of Our Lord, Nineteen Hundred and Ninety-Five."

PITC filed its own Manifestation[15] on December 15, 1993, wherein it adopted the arguments raised in its Petition as its Memorandum. PITC disagrees with Remington on the latter's submission that the case has become moot and academic as a result of the abrogation of Administrative Order SOCPEC No. 89-08-01, since respondent Remington had incurred obligations to the petitioner consisting of charges for the 0.5% Counter Export Development Service provided by PITC to Remington, which obligations remain outstanding.[16] The propriety of such charges must still be resolved, petitioner argues, thereby maintaining the issue of the validity of SOCPEC Order No. 89-08-01, before it was abrogated by Executive fiat.

There is no question that from April 20, 1993, when trade balancing measures with PROC were lifted by the President, Administrative Order SOCPEC No. 89-08-01 no longer has force and effect, and respondents are thus entitled anew to apply for authority to import from the PROC, without the trade balancing requirements previously imposed on proposed importers. Indeed, it appears that since the lifting of the trade balancing measures, Remington had been allowed to import anew from PROC.

There remains, however, the matter of outstanding obligations of the respondents for the charges relating to the

0.5% Counter Export Development Service in favor of PITC, for the period when the questioned Administrative Order remained in effect. Is the obligation still subsisting, or are the respondents freed from it?

To resolve this issue, we are tasked to consider the constitutionality of Administrative Order No. SOCPEC 89-08-01, based on the arguments set up by the parties in their Petition and Comment. In so doing, we must inquire into the nature of the functions of the PITC, in the light of present realities.

The PITC is a government owned or controlled corporation created under P.D. No. 252[17] dated August 6, 1973. P.D. No. 1071,[18] issued on May 9, 1977 which revised the provisions of P.D. 252. The purposes and powers of said governmental entity were enumerated under Section 5 and 6 thereof.[19]

On August 9, 1976, the late President Marcos issued Letter of Instruction (LOI) No. 444,[20] directing, inter alia, that trade (export or import of all commodities), whether direct or indirect, between the Philippines and any of the Socialist and other Centrally Planned Economy Countries (SOCPEC), including the People's Republic of China (PROC) shall be undertaken or coursed through the PITC. Under the LOI, PITC was mandated to: 1) participate in all official trade and economic discussions between the Philippines and SOCPEC; 2) adopt such measures and issue such rules and regulations as may be necessary for the effective discharge of its functions under its instructions; and 3) Undertake the processing and approval of all applications for export to or import from the SOCPEC.

Pertinent provisions of the Letter of Instruction are herein reproduced:

LETTER OF INSTRUCTION 444

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II. CHANNELS OF TRADE

1. The trade, direct or indirect, between the Philippines and any of the Socialist and other centrally-planned economy countries shall upon issuance hereof, be undertaken by or coursed through the Philippine International Trading Corporation. This shall apply to the export and import of all commodities of products including those specified for export or import by expressly authorized government agencies.

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4. The Philippine International Trading Corporation shall participate in all official trade and economic discussions between the Philippines and other centrally-planned economy countries.

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V. SPECIAL PROVISIONS

The Philippine International Trading Corporation shall adopt such measures and issue such rules and regulations as may be necessary for the effective discharge of its functions under these instructions. In this connection, the processing and approval of applications for export to or import from the Socialist and other centrally-planned economy countries shall, henceforth, be performed by the said Corporation. (Emphasis ours)

After the EDSA Revolution, or more specifically on February 27, 1987, then President Corazon C. Aquino promulgated Executive Order (EO) No. 133[21] reorganizing the Department of Trade and Industry (DTI) empowering the said department to be the "primary coordinative, promotive, facilitative and regulatory arm of the government for the country's trade, industry and investment activities" (Sec. 2, EO 133). The PITC was made one of DTI's line agencies.[22]

The Executive Order reads in part:

EXECUTIVE ORDER NO. 133

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Section 16. Line Corporate Agencies and Government Entities.

The following line corporate agencies and government entities defined in Section 9 (c) of this Executive Order that will perform their specific regulatory functions, particularly developmental responsibilities and specialized business activities in a manner consonant with the Department mandate, objectives, policies, plans and programs:

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d) Philippine International Trading Corporation. -- This corporation, which shall be supervised by the Undersecretary for International Trade, shall only engage in both export and trading on new or non-traditional products and markets not normally pursued by the private business sector; provide a wide range of export oriented auxiliary services to the private sector; arrange for a establish comprehensive system and physical facilities for handling the collection, processing, and distribution of cargoes and other commodities; monitor or coordinate risk insurance services for the existing institutions; promote and organize, whenever warranted, production enterprises and industrial establishments and collaborate or associate in joint venture with any person, association, company or entity, whether domestic or foreign, in the fields of production, marketing, procurement, and other relate businesses; and provide technical advisory, investigatory, consultancy and management services with respect to any and all of the functions, activities, and operations of the corporation.

Sometime in April, 1988, following the State visit of President Aquino to the PROC, the Philippines and PROC entered into a memorandum of Understanding[23] (MOU) wherein the two countries agreed to make joint efforts within the next five years to expand bilateral trade to US \$600 -- US \$800 Million by 1992, and to strive for a steady progress towards achieving a balance between the value of their imports and exports during the period, agreeing for the purpose that upon the signing of the Memorandum, both sides shall undertake to establish the necessary steps and procedures to be adopted within the framework of the annual midyear review meeting under the Trade Protocol, in order to monitor and ensure the implementation of the MOU.

Conformably with the MOU, the Philippines and PROC entered into a Trade Protocol for the years 1989, 1990 and 1991,[24] under which was specified the commodities to be traded between them. The protocols affirmed their agreement to jointly endeavor to achieve more or less a balance between the values of their imports and exports in their bilateral trade.

It is allegedly in line with its powers under LOI 444 and in keeping with the MOU and Trade Protocols with PROC that PITC issued its now assailed Administrative Order No. SOCPEC 89-08-01[25] on August 30, 1989 (amended in March, 1992).

Undoubtedly, President Aquino, in issuing EO 133, is empowered to modify and amend the provisions of LOI 444, which was issued by then President Marcos, both issuances being executive directives. As observed by us in Philippine Association of Service Exporters , Inc. vs. Torres,[26]

"there is no need for legislative delegation of power to the President to revoke the Letter of Instruction by way of an Executive Order. This is notwithstanding the fact that the subject LOI 1190 was issued by President Marcos, when he was extraordinarily empowered to exercise legislative powers, whereas EO 450 was issued by Pres. Aquino when her transitional legislative powers have already ceased, since it was found that LOI 1190 was a mere administrative directive, hence, may be repealed, altered, or modified by EO 450."

We do not agree, however, with the trial court's ruling that PITC's authority to issue rules and regulations pursuant to the Special Provisions of LOI 444 and P.D. No. 1071, have already been repealed by EO 133.

While PITC's power to engage in commercial import and export activities is expressly recognized and allowed under Section 16 (d) of EO 133, the same is now limited only to new or non-traditional products and markets not

normally pursued by the private business sector. There is no indication in the law of the removal of the powers of the PITC to exercise its regulatory functions in the area of importations from SOCPEC countries. Though it does not mention the grant of regulatory power, EO 133, as worded, is silent as to the abolition or limitation of such powers, previously granted under P.D. 1071, from the PITC.

Likewise, the general repealing clause in EO 133 stating that "all laws, ordinances, rules, and regulations, or other parts thereof, which are inconsistent with the Executive Order are hereby repealed or modified accordingly, cannot operate to abolish the grant of regulatory powers to the PITC. There can be no repeal of the said powers, absent any cogency of irreconcilable inconsistency or repugnancy between the issuances, relating to the regulatory power of the PITC.

The President, in promulgating EO 133, had not intended to overhaul the functions of the PITC. The DTI was established, and was given powers and duties including those previously held by the PITC as an independent government entity, under P.D. 1071 and LOI 444. The PITC was thereby attached to the DTI as an implementing arm of the said department.

EO 133 established the DTI as the primary coordinative, promotive, facilitative and regulatory arm of government for the country's trade, industry and investment activities, which shall act as a catalyst for intensified private sector activity in order to accelerate and sustain economic growth.[27] In furtherance of this mandate, the DTI was empowered, among others, to plan, implement, and coordinate activities of the government related to trade industry and investments; to formulate and administer policies and guidelines for the investment priorities plan and the delivery of investment incentives; to formulate country and product export strategies which will guide the export promotion and development thrust of the government.[28] Corollarily, the Secretary of Trade and Industry is given the power to promulgate rules and regulations necessary to carry out the department's objectives, policies, plans, programs and projects.

The PITC, on the other hand, was attached as an integral part to the said department as one of its line agencies,[29] and was given the focal task of implementing the department's programs.[30] The absence of the regulatory power formerly enshrined in the Special Provisions of LOI 444, from Section 16 of EO 133, and the limitation of its previously wide range of functions, is noted. This does not mean, however, that PITC has lost the authority to issue the questioned Administrative Order. It is our view that PITC still holds such authority, and may legally exercise it, as an implementing arm, and under the supervision of, the Department of Trade and Industry.

Furthermore, the lower court's ruling to the effect that the PITC's authority to process and approve applications for imports from SOCPEC and to issue rules and regulations pursuant to LOI 444 and P.D. 1071 has been repealed by EO 133, is misplaced, and did not consider the import behind the issuance of the later presidential edict.

The President could not have intended to deprive herself of the power to regulate the flow of trade between the Philippines and PROC under the two countries' Memorandum of Understanding, a power which necessarily flows from her office as Chief Executive. In issuing Executive Order 133, the President intended merely to reorganize the Department of Trade and Industry to cope with the need of streamlined bureaucracy.[31]

Thus, there is no real inconsistency between LOI 444 and EO 133. There is, admittedly, a rearranging of the administrative functions among the administrative bodies affected by the edict, but not an abolition of executive power. Consistency in statutes as in executive issuances, is of prime importance, and, in the absence of a showing to the contrary, all laws are presumed to be consistent with each other. Where it is possible to do so, it is the duty of courts, in the construction of statutes, to harmonize and reconcile them, and to adopt a construction of a statutory provision which harmonizes and reconciles it with other statutory provisions.[32] The fact that a later

enactment may relate to the same subject matter as that of an earlier statute is not of itself sufficient to cause an implied repeal of the latter, since the law may be cumulative or a continuation of the old one.[33]

Similarly, the grant of quasi-legislative powers in administrative bodies is not unconstitutional. Thus, as a result of the growing complexity of the modern society, it has become necessary to create more and more administrative bodies to help in the regulation of its ramified activities. Specialized in the particular field assigned to them, they can deal with the problems thereof with more expertise and dispatch than can be expected from the legislature or the courts of justice. This is the reason for the increasing vesture of quasi-legislative and quasi-judicial powers in what is now not unreasonably called the fourth department of the government.[34] Evidently, in the exercise of such powers, the agency concerned must commonly interpret and apply contracts and determine the rights of private parties under such contracts. One thrust of the multiplication of administrative agencies is that the interpretation of contracts and the determination of private rights thereunder is no longer uniquely judicial function, exercisable only by our regular courts. (*Antipolo Realty Corporation vs. National Housing Authority*, G.R. No. L- 50444, August 31, 1987, 153 SCRA 399).

With global trade and business becoming more intricate nay even with new discoveries in technology and electronics notwithstanding, the time has come to grapple with legislations and even judicial decisions aimed at resolving issues affecting not only individual rights but also activities of which foreign governments or entities may have interests. Thus, administrative policies and regulations must be devised to suit these changing business needs in a faster rate than to resort to traditional acts of the legislature.

This tendency finds support in a well-stated work on the subject, viz.:

"Since legislatures had neither the time nor the knowledge to create detailed rules, however, it was soon clear that new governmental arrangements would be needed to handle the job of rule-making. The courts, moreover, many of them already congested, would have been swamped if they had to adjudicate all the controversies that the new legislation was bound to create; and the judges, already obliged to handle a great diversity of cases, would have been hard pressed to acquire the knowledge they needed to deal intelligently with all the new types of controversy.

So the need to "create a large number of specialized administrative agencies and to give them broader powers than administrators had traditionally exercised. These included the power to issue regulations having the force of law, and the power to hear and decide cases-- powers that had previously been reserved to the legislatures and the courts. (Houghteling/Pierce, *Lawmaking by Administrative Agencies*, p. 166.)

The respondents likewise argue that PITC is not empowered to issue the Administrative Order because no grant of such power was made under the Trade Protocols of 1989, 1990 or 1991. We do not agree. The Trade Protocols aforesaid, are only the enumeration of the products and goods which the signatory countries have agreed to trade. They do not bestow any regulatory power, for executive power is vested in the Executive Department,[35] and it is for the latter to delegate the exercise of such power among its designated agencies.

In sum, the PITC was legally empowered to issue Administrative Orders, as a valid exercise of a power ancillary to legislation.

This does not imply however, that the subject Administrative Order is a valid exercise of such quasi-legislative power. The original Administrative Order issued on August 30, 1989, under which the respondents filed their applications for importations, was not published in the Official Gazette or in a newspaper of general circulation. The questioned Administrative Order, legally, until it is published, is invalid within the context of Article 2 of Civil Code, which reads:

"Article 2. Laws shall take effect after fifteen days following the completion of their publication in the Official

Gazette (or in a newspaper of general circulation in the Philippines), unless it is otherwise provided. xxx"

The fact that the amendments to Administrative Order No. SOCPEC 89-08-01 were filed with, and published by the UP Law Center in the National Administrative Register, does not cure the defect related to the effectivity of the Administrative Order.

This court, in *Tanada vs. Tuvera*[36] stated, thus:

"We hold therefore that all statutes, including those of local application and private laws, shall be published as a condition for their effectivity, which shall begin fifteen days after publication unless a different effectivity is fixed by the legislature.

Covered by this rule are presidential decrees and executive orders promulgated by the President in the exercise of legislative powers or, at present, directly conferred by the Constitution. Administrative rules and Regulations must also be published if their purpose is to enforce or implement existing law pursuant also to a valid delegation,

Interpretative regulations and those merely internal in nature, that is, regulating only the personnel of the administrative agency and not the public, need not be published. Neither is publication required of the so-called letters of instructions issued by administrative superiors concerning the rules or guidelines to be followed by their subordinates in the performance of their duties.

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We agree that the publication must be in full or it is no publication at all since its purpose is to inform the public of the contents of the laws."

The Administrative Order under consideration is one of those issuances which should be published for its effectivity, since its purpose is to enforce and implement an existing law pursuant to a valid delegation, i.e., P.D. 1071, in relation to LOI 444 and EO 133.

Thus, even before the trade balancing measures issued by the petitioner were lifted by President Fidel V. Ramos, the same were never legally effective, and private respondents, therefore, cannot be made subject to them, because Administrative Order 89-08-01 embodying the same was never published, as mandated by law, for its effectivity. It was only on March 30, 1992 when the amendments to the said Administrative Order were filed in the UP Law Center, and published in the National Administrative Register as required by the Administrative Code of 1987.

Finally, it is the declared Policy of the Government to develop and strengthen trade relations with the People's Republic of China. As declared by the President in EO 244 issued on May 12, 1995, continued coverage of the People's Republic of China by Letter of Instructions No. 444 is no longer consistent with the country's national interest, as coursing RP-PROC trade through the PITC as provided for under Letter of Instructions No. 444 is becoming an unnecessary barrier to trade.[37]

Conformably with such avowed policy, any remnant of the restrained atmosphere of trading between the Philippines and PROC should be done away with, so as to allow economic growth and renewed trade relations with our neighbors to flourish and may be encouraged.

ACCORDINGLY, the assailed decision of the lower court is hereby **AFFIRMED**, to the effect that judgment is hereby rendered in favor of the private respondents, subject to the following **MODIFICATIONS**:

1) Enjoining the petitioner:

a) From further charging the petitioners the Counter Export Development Service fee of 0.5% of the total value of the unliquidated or unfulfilled Undertakings of the private respondents;

b) From further implementing the provisions of Administrative Order No. SOCPEC 89-08-01 and its appurtenant rules; and

2) Requiring petitioner to approve forthwith all the pending applications of, and all those that may hereafter be filed by, the petitioner and the Intervenor, free from and without complying with the requirements prescribed in the above-stated issuances.

SO ORDERED

Regalado (Chairman), Romero, Puno, and Mendoza, JJ., concur.

[1] Annex B, Petition, Rollo, p. 47.

[2] Under PITC Board Resolution No. 92-02-05 (Volume III/I, The National Administrative Register, p. 113-116), a third means to carry out the Export Program under provision 3.2. of Administrative Order No. SOCPEC 89-08-01 was allowed, i.e., through the PITC itself, by paying to the PITC a Counter Export Development Service (CEDS) fee of 0.5% of the total value of the unliquidated or unfulfilled Undertaking by the importer

[3] Records, p. 47.

[4] Ibid., p. 1.

[5] Ibid., p. 53.

[6] Ibid., p. 459.

[7] Annex "A", Petition for Review, Rollo, p. 33.

[8] Rollo, p. 2.

[9] Ibid., p. 195

[10] Ibid., p. 196.

[11] Ibid., p. 200.

[12] Ibid., p. 199.

[13] Ibid., p. 209.

[14] Ibid., p. 233.

[15] Ibid., p. 213.

[16] Ibid.

[17] 69 O.G. No. 32 7035.

[18] 73 O.G. No. 19 3760.

[19] Section 5. Purposes of the Corporation. -- The corporation is hereby authorized.:

(a) To engage in or handle for Philippine and third country enterprises through methods, systems, devices and facilities intended to achieve economies of scale and better terms of trade for Philippine business, both foreign procurement as well as foreign marketing and distribution;

- (b) To arrange for or establish comprehensive facilities for handling all phases of warehousing and to develop and operate physical facilities for the collection, processing and distribution of cargoes and other commodities;
- (c) To obtain or arrange more comprehensive protection for activities undertaken or commodities dealt with by monitoring or coordinating risk insurance services for existing institutions or supplementing the same;
- (d) To employ, utilize, monitor trade promotion services, facilities and activities being undertaken by government or private agencies;
- (e) To promote or organize, whenever warranted, production enterprises and industrial establishments and to collaborate or associate in joint venture with any person, association, company or entity, whether domestic or foreign, in the fields of production, marketing, procurement, and such other related businesses;
- (f) To provide technical, advisory, investigatory, consultancy and management services with respect to any or all of the functions, activities and operations of the corporation; and,
- (g) In general, to undertake such activities as would be appropriate to an institution created for the purpose of international trading.

Section 6. Powers of the Corporation. -- In order to attain its purposes and objectives, the Corporation shall have the following powers:

- (a) To engage in and carry on the business of dealership, brokerage, manufacture and distribution of commodities, products, goods, wares, merchandise, machineries, and equipment and in connection therewith to purchase, borrow, acquire, hold, exchange, sell, distribute, lend, mortgage, pledge, or otherwise dispose of import or export, process or turn to account in any lawful manner, commodities, products, goods, wares, merchandise, and other articles of commerce and interest therein or instrument evidencing rights to acquire such interest and to guarantee any and all obligations relating to transactions made on any board of trade, commodities exchange, commodities, or similar institutions, and to do any and all things which may be useful in connection with or incidental to the conduct of such business;
- (b) To build, make, construct, maintain, purchase, sell, charter, deal in and with, own lease, pledge, and otherwise dispose of all modes of transportation, together with all components, tools, machinery and appliance appurtenant thereto as are utilized in the transport of goods and merchandise by air, land, or sea;
- (c) To carry on the business of public and private warehousing and all business necessarily or impliedly incidental thereto, and to further carry on the business of general warehousing in all its several aspects; to construct, hire, purchase, operate and maintain any means or conveyances for the transportation to and from storage, by air, land or water, of any and all products, goods, wares, merchandise or manufactured articles, to issue certificates, warrants and receipts, negotiable, or otherwise, to persons warehousing goods with the Corporation, and to make, negotiate, or secure advances or loans upon the security of such stored merchandise and products or otherwise to construct, purchase, take or lease, develop, operate or otherwise acquire any wharf, pier, dock, warehouse, storage room, or other facilities, rights, franchises premises deemed capable of being advantageously used in connection with the business of the Corporation, and to rent, lease, hypothecate, and convey the same, and generally to carry on and undertake all business activities, transaction or operation commonly carried on or undertaken by warehousemen;
- (d) To act as shipping agent and ship broker, to handle ship husbanding and ship chandlery, and to engage in any aspect for the business of longshoring, lighterage, stevedoring, freight forwarding, packing and carting, and conveying;

- (e) To borrow, raise, or obtain funds to support or carry out its objects and purposes and/or to arrange financing or equipment credit or any kind of financial or material assistance for its own account or its clients from any financial or lending institutions, local or foreign, and to secure any or all of the same, to the extent that may be required such as by any lawful guaranty or counter-guaranty by pledge, mortgage or deed of trust, or by creating or suffering to exist a charge, lien or encumbrance, general or special, upon its revenues and/or assets, and likewise by similar guaranties, pledges, mortgages, liens and other security arrangements to secure the performance by the Corporation of any obligation or liability it may undertake for itself or for other companies or enterprises in which it may be interested. Such loans obtained under this authority shall be guaranteed by the government in accordance with existing regulations;
- (f) To provide financial accommodations to its clients, and maintain with or for customers' accounts with respect to commodities and/or securities including margin accounts and to do such things as may be requisite or appropriate or incidental to the maintenance of such accounts;
- (g) To act as agents or brokers in the business of marine, fire, life, accident and fidelity insurance, in the business of giving protection to principals and employers and any other kind or class of insurance in all its branches;
- (h) To organize and incorporate subsidiaries whose capital stock may be subscribed in whole or in part by the Corporation; Provided, however, that the controlling interest of not less than sixty per cent (60%) of the authorized capital stock of such subsidiaries shall at all times remain with the corporation; Provided, finally, that the organization and incorporation of such subsidiaries shall be subject to prior approval of the President of the Philippines;
- (i) To establish, maintain, operate or conduct branch business or offices for the transaction of business for itself and on behalf of other persons, firms, corporations, or other entities, either domestic or foreign, and to act as manufacturer's agents, commission merchants, merchandise brokers, insurance, shipping and transport agents, or in any other representative capacity for persons, firms corporations or other entities, either domestic or foreign, for the investment, loan, payment, transmission or collection of money, commodities or securities and for the purchase, sale improvement, development and management of property including business concerns and undertaking and generally to transact and undertake an agency business, whether in respect of any commercial or financial matters;
- (j) To undertake or contract for researchers, studies and surveys on any subject of interest to the Corporation including but not limited to such matters as business and economic conditions of various countries, including the structure of their commodities and financial markets, the institutional arrangements for mobilizing investments thereat, the legal and tax constraints and incentives obtaining therein; to promote products overseas through holding of trade fairs, exhibits and the like, coordinating with the Department of Trade in undertaking such activities;
- (k) To acquire an interest in or to enter into partnership, amalgamate with or enter into other arrangements for sharing profits, mutual assistance or cooperation with any person or company carrying on or about to carry on or engage in any business transaction, operation or work capable of being conducted so as to purchase, take or otherwise acquire and hold shares of stock or other securities of interest in any such company and to sell, hold and re-issue with or without guaranty or otherwise deal with the same;
- (l) Subject to the limitations established by law, to acquire by purchase, subscription, exchange, assignment, gift, or otherwise, and to sell, assign, transfer, exchange, mortgage, pledge and deal in and with, and otherwise, to enjoy and dispose of, any bonds, debentures, promissory notes, shares of capital stock and/or other securities and/or obligations, created, negotiated, or issued by any corporation, association, or other entity, foreign or

domestic, and while the owner thereof, to exercise all the rights, power and privileges of ownership, including the right to receive, collect and dispose of any and all dividends, interest and income, derive therefrom, and the right to vote on any shares of the capital stock, and upon any bonds, debentures and/or other securities, having voting power so owned;

(m) To cause or allow the legal title to or any legal or equitable interest in any business or any real or personal property acquired or carried on by the Corporation to remain or be vested or registered in the name of any person or entity whether upon trust for or as agent nominee of the Corporation or upon such other terms and conditions which may be determined to be necessary or expedient by the Board of Directors of the Corporation;

(n) To acquire by purchase or lease, or otherwise, lands and interests in lands and to own, hold, improve, develop, and manage any real estate so acquired and to erect or cause to be erected on any lands owned, held or occupied by the Corporation, buildings or other structures with their appurtenances, and to rebuild, enlarge, alter or improve any buildings or other structures now or hereafter erected on any lands so owned or occupied;

(o) To purchase, own, hold or otherwise acquired such machineries, equipments, tools, materials, supplies, or other parts as may be necessary, convenient or appropriate for any of the purposes for which the corporation is formed;

(p) To invest and deal with the funds of the Corporation in such manner as may be deemed proper, in order not to make such funds idle and unproductive pending their full utilization for the principal objects and purposes for which the Corporation has been organized;

(q) To apply for, register, purchase or otherwise acquire, or obtain a lien on, or interest in, any patent, patent rights, licenses, designs, processes, trademarks, trade names, distinctive marks, inventions, and improvements thereof, and concessions which may appear likely to be advantageous or useful to the Corporation or its clients; to use, exercise and to enter into know-how and data or process feedback agreements, including the use of computers, as the same may be related to or necessary or appropriate to carry on the objects and purposes of the Corporation;

(r) To pay for any property or rights acquired or services obtained by the Corporations either in cash, shares, or other securities of the Corporation, or partly in cash and partly in shares or other securities, under such terms and conditions as its Board of Directors shall determine to be reasonable. To enter into any agreement or contract with any government or any of the agencies and instrumentalities thereof, or with any person or company on any undertaking that maybe conducive to the attainment of objectives of the Corporation or of any of them and to obtain from any such government or authority, person or company any rights, privileges and concessions which the Corporation may think desirable;

(s) To established, operate, and maintain its own communication system throughout the country as may be needed or required by its business operations for which purpose, the proper franchise is hereby granted; and,

(t) To do all such other things as are incidental or appurtenant to or growing out of or connected with the aforesaid business or powers of the Corporations or any part thereof or conducive to the attainment of its corporate purposes and objects.

[20] Rollo, p. 70.

[21] 83 O.G. No. 15 1732.

[22] Section 9 (c) of EO 133 defines a Line Agency, as understood under the said law, as a government entity or government owned or controlled corporation under the administrative supervision of the Department, and is

deemed to be an integral part of the Department structure notwithstanding their organizational form, and which perform a focal and implemental role in the Department's programs for the development of trade, industry and investments.

[23] Rollo, p. 76.

[24] Ibid., pp.77, 84, 91.

[25] Ibid., p. 47.

[26] G.R. No. 98472 August 19, 1993 225 SCRA 417.

[27] Executive Order 133, Section 2.

[28] Ibid., Section 3 (a), (I), (m).

[29] Ibid., Section 16.

[30] Ibid., Section 9 (c).

[31] Section 17, Article VII, 1987 Constitution.

[32] People vs. Hon. A. Antillon et al., G.R. No. L-21657, June 29, 1982, 114 SCRA 665.

[33] Valera vs. Tuason. G.R. No. L- 1276, April 30, 1948, 80 Phil 823, citing Crawford, Statutory Construction p. 634.

[34] Solid Homes, Inc. vs. Payawal, G.R. No. 84811, August 29, 1989, 177 SCRA 72.

[35] Section 1, Article VII, 1987 Constitution.

[36] G.R. No. L-63915, December 29, 1986, 146 SCRA 446.

[37] Rollo, p. 233.

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