

SOUTHERN CROSS CEMENT CORPORATION, PETITIONER, VS. THE PHILIPPINE CEMENT MANUFACTURERS CORP., THE SECRETARY OF THE DEPARTMENT OF TRADE & #038; INDUSTRY, THE SECRETARY OF THE DEPARTMEN...

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TINGA, J.:

“Good fences make good neighbors,” so observed Robert Frost, the archetype of traditional New England detachment. The Frost ethos has been heeded by nations adjusting to the effects of the liberalized global market.[1] The Philippines, for one, enacted Republic Act (Rep. Act) No. 8751 (on the imposition of countervailing duties), Rep. Act No. 8752 (on the imposition of anti-dumping duties) and, finally, Rep. Act No. 8800, also known as the Safeguard Measures Act (“SMA”)[2] soon after it joined the General Agreement on Tariff and Trade (GATT) and the World Trade Organization (WTO) Agreement.[3]

The SMA provides the structure and mechanics for the imposition of emergency measures, including tariffs, to protect domestic industries and producers from increased imports which inflict or could inflict serious injury on them.[4] The wisdom of the policies behind the SMA, however, is not put into question by the petition at bar. The questions submitted to the Court relate to the means and the procedures ordained in the law to ensure that the determination of the imposition or non-imposition of a safeguard measure is proper.

Antecedent Facts

Petitioner Southern Cross Cement Corporation (“Southern Cross”) is a domestic corporation engaged in the business of cement manufacturing, production, importation and exportation. Its principal stockholders are Taiheiyo Cement Corporation and Tokuyama Corporation, purportedly the largest cement manufacturers in Japan.[5]

Private respondent Philippine Cement Manufacturers Corporation[6] (“Philcemcor”) is an association of domestic cement manufacturers. It has eighteen (18) members,[7] per Record. While Philcemcor heralds itself to be an association of domestic cement manufacturers, it appears that considerable equity holdings, if not controlling interests in at least twelve (12) of its member-corporations, were acquired by the three largest cement manufacturers in the world, namely Financiere Lafarge S.A. of France, Cemex S.A. de C.V. of Mexico, and Holcim Ltd. of Switzerland (formerly Holderbank Financiere Glaris, Ltd., then Holderfin B.V.).[8]

On 22 May 2001, respondent Department of Trade and Industry (“DTI”) accepted an application from Philcemcor, alleging that the importation of gray Portland cement[9] in increased quantities has caused declines in domestic production, capacity utilization, market share, sales and employment; as well as caused depressed local prices. Accordingly, Philcemcor sought the imposition at first of provisional, then later, definitive safeguard measures on the import of cement pursuant to the SMA. Philcemcor filed the application in behalf of twelve (12) of its member-companies.[10]

After preliminary investigation, the Bureau of Import Services of the DTI, determined that critical circumstances existed justifying the imposition of provisional measures.[11] On 7 November 2001, the DTI issued an Order, imposing a provisional measure equivalent to Twenty Pesos and Sixty Centavos (P20.60) per forty (40) kilogram bag on all importations of gray Portland cement for a period not exceeding two hundred (200) days from the date of issuance by the Bureau of Customs (BOC) of the implementing Customs Memorandum Order.[12] The corresponding Customs Memorandum Order was issued on 10 December 2001, to take effect that same day and to remain in force for two hundred (200) days.[13]

In the meantime, the Tariff Commission, on 19 November 2001, received a request from the DTI for a formal investigation to determine whether or not to impose a definitive safeguard measure on imports of gray Portland cement, pursuant to Section 9 of the SMA and its Implementing Rules and Regulations. A notice of commencement of formal investigation was published in the newspapers on 21 November 2001. Individual notices were likewise sent to concerned parties, such as Philcemcor, various importers and exporters, the Embassies of Indonesia, Japan and Taiwan, contractors/builders associations, industry associations, cement workers' groups, consumer groups, non-government organizations and concerned government agencies.[14] A preliminary conference was held on 27 November 2001, attended by several concerned parties, including Southern Cross.[15] Subsequently, the Tariff Commission received several position papers both in support and against Philcemcor's application.[16] The Tariff Commission also visited the corporate offices and manufacturing facilities of each of the applicant companies, as well as that of Southern Cross and two other cement importers.[17]

On 13 March 2002, the Tariff Commission issued its Formal Investigation Report ("Report"). Among the factors studied by the Tariff Commission in its Report were the market share of the domestic industry,[18] production and sales,[19] capacity utilization,[20] financial performance and profitability,[21] and return on sales.[22] The Tariff Commission arrived at the following conclusions:

- The circumstances provided in Article XIX of GATT 1994 need not be demonstrated since the product under consideration (gray Portland cement) is not the subject of any Philippine obligation or tariff concession under the WTO Agreement. Nonetheless, such inquiry is governed by the national legislation (R.A. 8800) and the terms and conditions of the Agreement on Safeguards.
- The collective output of the twelve (12) applicant companies constitutes a major proportion of the total domestic production of gray Portland cement and blended Portland cement.
- Locally produced gray Portland cement and blended Portland cement (Pozzolan) are "like" to imported gray Portland cement.
- Gray Portland cement is being imported into the Philippines in increased quantities, both in absolute terms and relative to domestic production, starting in 2000. The increase in volume of imports is recent, sudden, sharp and significant.
- The industry has not suffered and is not suffering significant overall impairment in its condition, i.e., serious injury.
- There is no threat of serious injury that is imminent from imports of gray Portland cement.
- Causation has become moot and academic in view of the negative determination of the elements of serious injury and imminent threat of serious injury.[23]

Accordingly, the Tariff Commission made the following recommendation, to wit:

The elements of serious injury and imminent threat of serious injury not having been established, it is hereby

recommended that no definitive general safeguard measure be imposed on the importation of gray Portland cement.[24]

The DTI received the Report on 14 March 2002. After reviewing the report, then DTI Secretary Manuel Roxas II (“DTI Secretary”) disagreed with the conclusion of the Tariff Commission that there was no serious injury to the local cement industry caused by the surge of imports.[25] In view of this disagreement, the DTI requested an opinion from the Department of Justice (“DOJ”) on the DTI Secretary’s scope of options in acting on the Commission’s recommendations. Subsequently, then DOJ Secretary Hernando Perez rendered an opinion stating that Section 13 of the SMA precluded a review by the DTI Secretary of the Tariff Commission’s negative finding, or finding that a definitive safeguard measure should not be imposed.[26]

On 5 April 2002, the DTI Secretary promulgated a Decision. After quoting the conclusions of the Tariff Commission, the DTI Secretary noted the DTI’s disagreement with the conclusions. However, he also cited the DOJ Opinion advising the DTI that it was bound by the negative finding of the Tariff Commission. Thus, he ruled as follows:

The DTI has no alternative but to abide by the [Tariff] Commission’s recommendations.

IN VIEW OF THE FOREGOING, and in accordance with Section 13 of RA 8800 which states:

“In the event of a negative final determination; or if the cash bond is in excess of the definitive safeguard duty assessed, the Secretary shall immediately issue, through the Secretary of Finance, a written instruction to the Commissioner of Customs, authorizing the return of the cash bond or the remainder thereof, as the case may be, previously collected as provisional general safeguard measure within ten (10) days from the date a final decision has been made; Provided, that the government shall not be liable for any interest on the amount to be returned. The Secretary shall not accept for consideration another petition from the same industry, with respect to the same imports of the product under consideration within one (1) year after the date of rendering such a decision.”

The DTI hereby issues the following:

The application for safeguard measures against the importation of gray Portland cement filed by PHILCEMCOR (Case No. 02-2001) is hereby denied.[27] (Emphasis in the original)

Philcemcor received a copy of the DTI Decision on 12 April 2002. Ten days later, it filed with the Court of Appeals a Petition for Certiorari, Prohibition and Mandamus[28] seeking to set aside the DTI Decision, as well as the Tariff Commission’s Report. Philcemcor likewise applied for a Temporary Restraining Order/Injunction to enjoin the DTI and the BOC from implementing the questioned Decision and Report. It prayed that the Court of Appeals direct the DTI Secretary to disregard the Report and to render judgment independently of the Report. Philcemcor argued that the DTI Secretary, vested as he is under the law with the power of review, is not bound to adopt the recommendations of the Tariff Commission; and, that the Report is void, as it is predicated on a flawed framework, inconsistent inferences and erroneous methodology.[29]

On 10 June 2002, Southern Cross filed its Comment.[30] It argued that the Court of Appeals had no jurisdiction over Philcemcor’s Petition, for it is on the Court of Tax Appeals (“CTA”) that the SMA conferred jurisdiction to review rulings of the Secretary in connection with the imposition of a safeguard measure. It likewise argued that Philcemcor’s resort to the special civil action of certiorari is improper, considering that what Philcemcor sought to rectify is an error of judgment and not an error of jurisdiction or grave abuse of discretion, and that a petition for review with the CTA was available as a plain, speedy and adequate remedy. Finally, Southern Cross echoed the DOJ Opinion that Section 13 of the SMA precludes a review by the DTI Secretary of a negative finding of the Tariff Commission.

After conducting a hearing on 19 June 2002 on Philcemcor's application for preliminary injunction, the Court of Appeals' Twelfth Division^[31] granted the writ sought in its Resolution dated 21 June 2002.^[32] Seven days later, on 28 June 2002, the two-hundred (200)-day period for the imposition of the provisional measure expired. Despite the lapse of the period, the BOC continued to impose the provisional measure on all importations of Portland cement made by Southern Cross. The uninterrupted assessment of the tariff, according to Southern Cross, worked to its detriment to the point that the continued imposition would eventually lead to its closure.^[33]

Southern Cross timely filed a Motion for Reconsideration of the Resolution on 9 September 2002. Alleging that Philcemcor was not entitled to provisional relief, Southern Cross likewise sought a clarificatory order as to whether the grant of the writ of preliminary injunction could extend the earlier imposition of the provisional measure beyond the two hundred (200)-day limit imposed by law. The appeals' court failed to take immediate action on Southern Cross's motion despite the four (4) motions for early resolution the latter filed between September of 2002 and February of 2003. After six (6) months, on 19 February 2003, the Court of Appeals directed Philcemcor to comment on Southern Cross's Motion for Reconsideration.^[34] After Philcemcor filed its Opposition^[35] on 13 March 2003, Southern Cross filed another set of four (4) motions for early resolution.

Despite the efforts of Southern Cross, the Court of Appeals failed to directly resolve the Motion for Reconsideration. Instead, on 5 June 2003, it rendered a Decision,^[36] granting in part Philcemcor's petition. The appellate court ruled that it had jurisdiction over the petition for certiorari since it alleged grave abuse of discretion. It refused to annul the findings of the Tariff Commission, citing the rule that factual findings of administrative agencies are binding upon the courts and its corollary, that courts should not interfere in matters addressed to the sound discretion and coming under the special technical knowledge and training of such agencies.^[37] Nevertheless, it held that the DTI Secretary is not bound by the factual findings of the Tariff Commission since such findings are merely recommendatory and they fall within the ambit of the Secretary's discretionary review. It determined that the legislative intent is to grant the DTI Secretary the power to make a final decision on the Tariff Commission's recommendation.^[38] The dispositive portion of the Decision reads:

WHEREFORE, based on the foregoing premises, petitioner's prayer to set aside the findings of the Tariff Commission in its assailed Report dated March 13, 2002 is DENIED. On the other hand, the assailed April 5, 2002 Decision of the Secretary of the Department of Trade and Industry is hereby SET ASIDE. Consequently, the case is REMANDED to the public respondent Secretary of Department of Trade and Industry for a final decision in accordance with RA 8800 and its Implementing Rules and Regulations.

SO ORDERED.^[39]

On 23 June 2003, Southern Cross filed the present petition, assailing the appellate court's Decision for departing from the accepted and usual course of judicial proceedings, and not deciding the substantial questions in accordance with law and jurisprudence. The petition argues in the main that the Court of Appeals has no jurisdiction over Philcemcor's petition, the proper remedy being a petition for review with the CTA conformably with the SMA, and; that the factual findings of the Tariff Commission on the existence or non-existence conditions warranting the imposition of general safeguard measures are binding upon the DTI Secretary.

The timely filing of Southern Cross's petition before this Court necessarily prevented the Court of Appeals Decision from becoming final.^[40] Yet on 25 June 2003, the DTI Secretary issued a new Decision, ruling this time that that in light of the appellate court's Decision there was no longer any legal impediment to his deciding Philcemcor's application for definitive safeguard measures.^[41] He made a determination that, contrary to the findings of the Tariff Commission, the local cement industry had suffered serious injury as a result of the import surges.^[42] Accordingly, he imposed a definitive safeguard measure on the importation of gray Portland cement, in the form of a definitive safeguard duty in the amount of P20.60/40 kg. bag for three years on imported gray

Portland Cement.[43]

On 7 July 2003, Southern Cross filed with the Court a “Very Urgent Application for a Temporary Restraining Order and/or A Writ of Preliminary Injunction” (“TRO Application”), seeking to enjoin the DTI Secretary from enforcing his Decision of 25 June 2003 in view of the pending petition before this Court. Philcemcor filed an opposition, claiming, among others, that it is not this Court but the CTA that has jurisdiction over the application under the law.

On 1 August 2003, Southern Cross filed with the CTA a Petition for Review, assailing the DTI Secretary’s 25 June 2003 Decision which imposed the definite safeguard measure. Prescinding from this action, Philcemcor filed with this Court a Manifestation and Motion to Dismiss in regard to Southern Cross’s petition, alleging that it deliberately and willfully resorted to forum-shopping. It points out that Southern Cross’s TRO Application seeks to enjoin the DTI Secretary’s second decision, while its Petition before the CTA prays for the annulment of the same decision.[44]

Reiterating its Comment on Southern Cross’s Petition for Review, Philcemcor also argues that the CTA, being a special court of limited jurisdiction, could only review the ruling of the DTI Secretary when a safeguard measure is imposed, and that the factual findings of the Tariff Commission are not binding on the DTI Secretary.[45]

After giving due course to Southern Cross’s Petition, the Court called the case for oral argument on 18 February 2004.[46] At the oral argument, attended by the counsel for Philcemcor and Southern Cross and the Office of the Solicitor General, the Court simplified the issues in this wise: (i) whether the Decision of the DTI Secretary is appealable to the CTA or the Court of Appeals; (ii) assuming that the Court of Appeals has jurisdiction, whether its Decision is in accordance with law; and, (iii) whether a Temporary Restraining Order is warranted.[47]

During the oral arguments, counsel for Southern Cross manifested that due to the imposition of the general safeguard measures, Southern Cross was forced to cease operations in the Philippines in November of 2003.[48]

Propriety of the Temporary Restraining Order

Before the merits of the Petition, a brief comment on Southern Cross’s application for provisional relief. It sought to enjoin the DTI Secretary from enforcing the definitive safeguard measure he imposed in his 25 June 2003 Decision. The Court did not grant the provisional relief for it would be tantamount to enjoining the collection of taxes, a peremptory judicial act which is traditionally frowned upon,[49] unless there is a clear statutory basis for it.[50] In that regard, Section 218 of the Tax Reform Act of 1997 prohibits any court from granting an injunction to restrain the collection of any national internal revenue tax, fee or charge imposed by the internal revenue code.[51] A similar philosophy is expressed by Section 29 of the SMA, which states that the filing of a petition for review before the CTA does not stop, suspend, or otherwise toll the imposition or collection of the appropriate tariff duties or the adoption of other appropriate safeguard measures.[52] This evinces a clear legislative intent that the imposition of safeguard measures, despite the availability of judicial review, should not be enjoined notwithstanding any timely appeal of the imposition.

The Forum-Shopping Issue

In the same breath, we are not convinced that the allegation of forum-shopping has been duly proven, or that sanction should befall upon Southern Cross and its counsel. The standard by Section 5, Rule 7 of the 1997 Rules of Civil Procedure in order that sanction may be had is that “the acts of the party or his counsel clearly constitute willful and deliberate forum shopping.”[53] The standard implies a malicious intent to subvert procedural rules, and such state of mind is not evident in this case.

The Jurisdictional Issue

On to the merits of the present petition.

In its assailed Decision, the Court of Appeals, after asserting only in brief that it had jurisdiction over Philcemcor's Petition, discussed the issue of whether or not the DTI Secretary is bound to adopt the negative recommendation of the Tariff Commission on the application for safeguard measure. The Court of Appeals maintained that it had jurisdiction over the petition, as it alleged grave abuse of discretion on the part of the DTI Secretary, thus:

A perusal of the instant petition reveals allegations of grave abuse of discretion on the part of the DTI Secretary in rendering the assailed April 5, 2002 Decision wherein it was ruled that he had no alternative but to abide by the findings of the Commission on the matter of safeguard measures for the local cement industry. Abuse of discretion is admittedly within the ambit of certiorari.

Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. It is alleged that, in the assailed Decision, the DTI Secretary gravely abused his discretion in wantonly evading to discharge his duty to render an independent determination or decision in imposing a definitive safeguard measure.[54]

We do not doubt that the Court of Appeals' certiorari powers extend to correcting grave abuse of discretion on the part of an officer exercising judicial or quasi-judicial functions.[55] However, the special civil action of certiorari is available only when there is no plain, speedy and adequate remedy in the ordinary course of law.[56] Southern Cross relies on this limitation, stressing that Section 29 of the SMA is a plain, speedy and adequate remedy in the ordinary course of law which Philcemcor did not avail of. The Section reads:

Section 29. Judicial Review. – Any interested party who is adversely affected by the ruling of the Secretary in connection with the imposition of a safeguard measure may file with the CTA, a petition for review of such ruling within thirty (30) days from receipt thereof. Provided, however, that the filing of such petition for review shall not in any way stop, suspend or otherwise toll the imposition or collection of the appropriate tariff duties or the adoption of other appropriate safeguard measures, as the case may be.

The petition for review shall comply with the same requirements and shall follow the same rules of procedure and shall be subject to the same disposition as in appeals in connection with adverse rulings on tax matters to the Court of Appeals.[57] (Emphasis supplied)

It is not difficult to divine why the legislature singled out the CTA as the court with jurisdiction to review the ruling of the DTI Secretary in connection with the imposition of a safeguard measure. The Court has long recognized the legislative determination to vest sole and exclusive jurisdiction on matters involving internal revenue and customs duties to such a specialized court.[58] By the very nature of its function, the CTA is dedicated exclusively to the study and consideration of tax problems and has necessarily developed an expertise on the subject.[59]

At the same time, since the CTA is a court of limited jurisdiction, its jurisdiction to take cognizance of a case should be clearly conferred and should not be deemed to exist on mere implication.[60] Concededly, Rep. Act No. 1125, the statute creating the CTA, does not extend to it the power to review decisions of the DTI Secretary in connection with the imposition of safeguard measures.[61] Of course, at that time which was before the advent of trade liberalization the notion of safeguard measures or safety nets was not yet in vogue.

Undeniably, however, the SMA expanded the jurisdiction of the CTA by including review of the rulings of the DTI Secretary in connection with the imposition of safeguard measures. However, Philcemcor and the public respondents agree that the CTA has appellate jurisdiction over a decision of the DTI Secretary imposing a

safeguard measure, but not when his ruling is not to impose such measure.

In a related development, Rep. Act No. 9282, enacted on 30 March 2004, expressly vests unto the CTA jurisdiction over “[d]ecisions of the Secretary of Trade and Industry, in case of nonagricultural product, commodity or article xxx involving xxx safeguard measures under Republic Act No. 8800, where either party may appeal the decision to impose or not to impose said duties.”[62] Had Rep. Act No. 9282 already been in force at the beginning of the incidents subject of this case, there would have been no need to make any deeper inquiry as to the extent of the CTA’s jurisdiction. But as Rep. Act No. 9282 cannot be applied retroactively to the present case, the question of whether such jurisdiction extends to a decision not to impose a safeguard measure will have to be settled principally on the basis of the SMA.

Under Section 29 of the SMA, there are three requisites to enable the CTA to acquire jurisdiction over the petition for review contemplated therein: (i) there must be a ruling by the DTI Secretary; (ii) the petition must be filed by an interested party adversely affected by the ruling; and (iii) such ruling must be in connection with the imposition of a safeguard measure. The first two requisites are clearly present. The third requisite deserves closer scrutiny.

Contrary to the stance of the public respondents and Philcemcor, in this case where the DTI Secretary decides not to impose a safeguard measure, it is the CTA which has jurisdiction to review his decision. The reasons are as follows:

First. Split jurisdiction is abhorred.

Essentially, respondents’ position is that judicial review of the DTI Secretary’s ruling is exercised by two different courts, depending on whether or not it imposes a safeguard measure, and in either case the court exercising jurisdiction does so to the exclusion of the other. Thus, if the DTI decision involves the imposition of a safeguard measure it is the CTA which has appellate jurisdiction; otherwise, it is the Court of Appeals. Such setup is as novel and unusual as it is cumbersome and unwise. Essentially, respondents advocate that Section 29 of the SMA has established split appellate jurisdiction over rulings of the DTI Secretary on the imposition of safeguard measure.

This interpretation cannot be favored, as the Court has consistently refused to sanction split jurisdiction.[63] The power of the DTI Secretary to adopt or withhold a safeguard measure emanates from the same statutory source, and it boggles the mind why the appeal modality would be such that one appellate court is qualified if what is to be reviewed is a positive determination, and it is not if what is appealed is a negative determination. In deciding whether or not to impose a safeguard measure, provisional or general, the DTI Secretary would be evaluating only one body of facts and applying them to one set of laws. The reviewing tribunal will be called upon to examine the same facts and the same laws, whether or not the determination is positive or negative.

In short, if we were to rule for respondents we would be confirming the exercise by two judicial bodies of jurisdiction over basically the same subject matter³⁴precisely the split-jurisdiction situation which is anathema to the orderly administration of justice.[64] The Court cannot accept that such was the legislative motive especially considering that the law expressly confers on the CTA, the tribunal with the specialized competence over tax and tariff matters, the role of judicial review without mention of any other court that may exercise corollary or ancillary jurisdiction in relation to the SMA. The provision refers to the Court of Appeals but only in regard to procedural rules and dispositions of appeals from the CTA to the Court of Appeals.[65]

The principle enunciated in *Tejada v. Homestead Property Corporation*[66] is applicable to the case at bar:

The Court agrees with the observation of the [that] when an administrative agency or body is conferred quasi-judicial functions, all controversies relating to the subject matter pertaining to its specialization are

deemed to be included within the jurisdiction of said administrative agency or body. Split jurisdiction is not favored.[67]

Second. The interpretation of the provisions of the SMA favors vesting untrammelled appellate jurisdiction on the CTA.

A plain reading of Section 29 of the SMA reveals that Congress did not expressly bar the CTA from reviewing a negative determination by the DTI Secretary nor conferred on the Court of Appeals such review authority. Respondents note, on the other hand, that neither did the law expressly grant to the CTA the power to review a negative determination. However, under the clear text of the law, the CTA is vested with jurisdiction to review the ruling of the DTI Secretary “in connection with the imposition of a safeguard measure.” Had the law been couched instead to incorporate the phrase “the ruling imposing a safeguard measure,” then respondent’s claim would have indisputable merit. Undoubtedly, the phrase “in connection with” not only qualifies but clarifies the succeeding phrase “imposition of a safeguard measure.” As expounded later, the phrase also encompasses the opposite or converse ruling which is the non-imposition of a safeguard measure.

In the American case of *Shaw v. Delta Air Lines, Inc.*,[68] the United States Supreme Court, in interpreting a key provision of the Employee Retirement Security Act of 1974, construed the phrase “relates to” in its normal sense which is the same as “if it has connection with or reference to.”[69] There is no serious dispute that the phrase “in connection with” is synonymous to “relates to” or “reference to,” and that all three phrases are broadly expansive. This is affirmed not just by jurisprudential fiat, but also the acquired connotative meaning of “in connection with” in common parlance. Consequently, with the use of the phrase “in connection with,” Section 29 allows the CTA to review not only the ruling imposing a safeguard measure, but all other rulings related or have reference to the application for such measure.

Now, let us determine the maximum scope and reach of the phrase “in connection with” as used in Section 29 of the SMA. A literalist reading or linguistic survey may not satisfy. Even the US Supreme Court in *New York State Blue Cross Plans v. Travelers Ins.*[70] conceded that the phrases “relate to” or “in connection with” may be extended to the farthest stretch of indeterminacy for, universally, relations or connections are infinite and stop nowhere.[71] Thus, in the case the US High Court, examining the same phrase of the same provision of law involved in *Shaw*, resorted to looking at the statute and its objectives as the alternative to an “uncritical literalism.”[72] A similar inquiry into the other provisions of the SMA is in order to determine the scope of review accorded therein to the CTA.[73]

The authority to decide on the safeguard measure is vested in the DTI Secretary in the case of non-agricultural products, and in the Secretary of the Department of Agriculture in the case of agricultural products.[74] Section 29 is likewise explicit that only the rulings of the DTI Secretary or the Agriculture Secretary may be reviewed by the CTA.[75] Thus, the acts of other bodies that were granted some powers by the SMA, such as the Tariff Commission, are not subject to direct review by the CTA.

Under the SMA, the Department Secretary concerned is authorized to decide on several matters. Within thirty (30) days from receipt of a petition seeking the imposition of a safeguard measure, or from the date he made *motu proprio* initiation, the Secretary shall make a preliminary determination on whether the increased imports of the product under consideration substantially cause or threaten to cause serious injury to the domestic industry.[76] Such ruling is crucial since only upon the Secretary’s positive preliminary determination that a threat to the domestic industry exists shall the matter be referred to the Tariff Commission for formal investigation, this time, to determine whether the general safeguard measure should be imposed or not.[77] Pursuant to a positive preliminary determination, the Secretary may also decide that the imposition of a provisional safeguard measure would be warranted under Section 8 of the SMA.[78] The Secretary is also authorized to decide, after receipt of

the report of the Tariff Commission, whether or not to impose the general safeguard measure, and if in the affirmative, what general safeguard measures should be applied.[79] Even after the general safeguard measure is imposed, the Secretary is empowered to extend the safeguard measure,[80] or terminate, reduce or modify his previous rulings on the general safeguard measure.[81]

With the explicit grant of certain powers involving safeguard measures by the SMA on the DTI Secretary, it follows that he is empowered to rule on several issues. These are the issues which arise in connection with, or in relation to, the imposition of a safeguard measure. They may arise at different stages – the preliminary investigation stage, the post-formal investigation stage, or the post-safeguard measure stage – yet all these issues do become ripe for resolution because an initiatory action has been taken seeking the imposition of a safeguard measure. It is the initiatory action for the imposition of a safeguard measure that sets the wheels in motion, allowing the Secretary to make successive rulings, beginning with the preliminary determination.

Clearly, therefore, the scope and reach of the phrase “in connection with,” as intended by Congress, pertain to all rulings of the DTI Secretary or Agriculture Secretary which arise from the time an application or *motu proprio* initiation for the imposition of a safeguard measure is taken. Indeed, the incidents which require resolution come to the fore only because there is an initial application or action seeking the imposition of a safeguard measure. From the legislative standpoint, it was a matter of sense and practicality to lump up the questions related to the initiatory application or action for safeguard measure and to assign only one court and; that is the CTA to initially review all the rulings related to such initiatory application or action. Both directions Congress put in place by employing the phrase “in connection with” in the law.

Given the relative expanse of decisions subject to judicial review by the CTA under Section 29, we do not doubt that a negative ruling refusing to impose a safeguard measure falls within the scope of its jurisdiction. On a literal level, such negative ruling is “a ruling of the Secretary in connection with the imposition of a safeguard measure,” as it is one of the possible outcomes that may result from the initial application or action for a safeguard measure. On a more critical level, the rulings of the DTI Secretary in connection with a safeguard measure, however diverse the outcome may be, arise from the same grant of jurisdiction on the DTI Secretary by the SMA.[82] The refusal by the DTI Secretary to grant a safeguard measure involves the same grant of authority, the same statutory prescriptions, and the same degree of discretion as the imposition by the DTI Secretary of a safeguard measure.

The position of the respondents is one of “uncritical literalism”[83] incongruent with the animus of the law. Moreover, a fundamentalist approach to Section 29 is not warranted, considering the absurdity of the consequences.

Third. *Interpretatio Talis In Ambiguis Semper Fienda Est, Ut Evitetur Inconveniens Et Absurdum*. [84]

Even assuming *arguendo* that Section 29 has not expressly granted the CTA jurisdiction to review a negative ruling of the DTI Secretary, the Court is precluded from favoring an interpretation that would cause inconvenience and absurdity.[85] Adopting the respondents’ position favoring the CTA’s minimal jurisdiction would unnecessarily lead to illogical and onerous results.

Indeed, it is illiberal to assume that Congress had intended to provide appellate relief to rulings imposing a safeguard measure but not to those declining to impose the measure. Respondents might argue that the right to relief from a negative ruling is not lost since the applicant could, as *Philcemcor* did, question such ruling through a special civil action for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, in lieu of an appeal to the CTA. Yet these two reliefs are of differing natures and gravamen. While an appeal may be predicated on errors of fact or errors of law, a special civil action for certiorari is grounded on grave abuse of discretion or lack of or excess of jurisdiction on the part of the decider. For a special civil action for certiorari to succeed, it is not enough

that the questioned act of the respondent is wrong. As the Court clarified in *Sempio v. Court of Appeals*:

A tribunal, board or officer acts without jurisdiction if it/he does not have the legal power to determine the case. There is excess of jurisdiction where, being clothed with the power to determine the case, the tribunal, board or officer oversteps its/his authority as determined by law. And there is grave abuse of discretion where the tribunal, board or officer acts in a capricious, whimsical, arbitrary or despotic manner in the exercise of his judgment as to be said to be equivalent to lack of jurisdiction. Certiorari is often resorted to in order to correct errors of jurisdiction. Where the error is one of law or of fact, which is a mistake of judgment, appeal is the remedy.[86]

It is very conceivable that the DTI Secretary, after deliberate thought and careful evaluation of the evidence, may either make a negative preliminary determination as he is so empowered under Section 7 of the SMA, or refuse to adopt the definitive safeguard measure under Section 13 of the same law. Adopting the respondents' theory, this negative ruling is susceptible to reversal only through a special civil action for certiorari, thus depriving the affected party the chance to elevate the ruling on appeal on the rudimentary grounds of errors in fact or in law. Instead, and despite whatever indications that the DTI Secretary acted with measure and within the bounds of his jurisdiction are, the aggrieved party will be forced to resort to a gymnastic exercise, contorting the straight and narrow in an effort to discombobulate the courts into believing that what was within was actually beyond and what was studied and deliberate actually whimsical and capricious. What then would be the remedy of the party aggrieved by a negative ruling that simply erred in interpreting the facts or the law? It certainly cannot be the special civil action for certiorari, for as the Court held in *Silverio v. Court of Appeals*: "Certiorari is a remedy narrow in its scope and inflexible in its character. It is not a general utility tool in the legal workshop." [87]

Fortunately, this theoretical quandary need not come to pass. Section 29 of the SMA is worded in such a way that it places under the CTA's judicial review all rulings of the DTI Secretary, which are connected with the imposition of a safeguard measure. This is sound and proper in light of the specialized jurisdiction of the CTA over tax matters. In the same way that a question of whether to tax or not to tax is properly a tax matter, so is the question of whether to impose or not to impose a definitive safeguard measure.

On another note, the second paragraph of Section 29 similarly reveals the legislative intent that rulings of the DTI Secretary over safeguard measures should first be reviewed by the CTA and not the Court of Appeals. It reads:

The petition for review shall comply with the same requirements and shall follow the same rules of procedure and shall be subject to the same disposition as in appeals in connection with adverse rulings on tax matters to the Court of Appeals.

This is the only passage in the SMA in which the Court of Appeals is mentioned. The express wish of Congress is that the petition conform to the requirements and procedure under Rule 43 of the Rules of Civil Procedure. Since Congress mandated that the form and procedure adopted be analogous to a review of a CTA ruling by the Court of Appeals, the legislative contemplation could not have been that the appeal be directly taken to the Court of Appeals.

Issue of Binding Effect of Tariff
Commission's Factual Determination
on DTI Secretary.

The next issue for resolution is whether the factual determination made by the Tariff Commission under the SMA is binding on the DTI Secretary. Otherwise stated, the question is whether the DTI Secretary may impose general safeguard measures in the absence of a positive final determination by the Tariff Commission.

The Court of Appeals relied upon Section 13 of the SMA in ruling that the findings of the Tariff Commission do

not necessarily constitute a final decision. Section 13 details the procedure for the adoption of a safeguard measure, as well as the steps to be taken in case there is a negative final determination. The implication of the Court of Appeals' holding is that the DTI Secretary may adopt a definitive safeguard measure, notwithstanding a negative determination made by the Tariff Commission.

Undoubtedly, Section 13 prescribes certain limitations and restrictions before general safeguard measures may be imposed. However, the most fundamental restriction on the DTI Secretary's power in that respect is contained in Section 5 of the SMA³⁴ that there should first be a positive final determination of the Tariff Commission³⁴ which the Court of Appeals curiously all but ignored. Section 5 reads:

Sec. 5. Conditions for the Application of General Safeguard Measures. – The Secretary shall apply a general safeguard measure upon a positive final determination of the [Tariff] Commission that a product is being imported into the country in increased quantities, whether absolute or relative to the domestic production, as to be a substantial cause of serious injury or threat thereof to the domestic industry; however, in the case of non-agricultural products, the Secretary shall first establish that the application of such safeguard measures will be in the public interest. (emphasis supplied)

The plain meaning of Section 5 shows that it is the Tariff Commission that has the power to make a “positive final determination.” This power lodged in the Tariff Commission, must be distinguished from the power to impose the general safeguard measure which is properly vested on the DTI Secretary.[88]

All in all, there are two condition precedents that must be satisfied before the DTI Secretary may impose a general safeguard measure on grey Portland cement. First, there must be a positive final determination by the Tariff Commission that a product is being imported into the country in increased quantities (whether absolute or relative to domestic production), as to be a substantial cause of serious injury or threat to the domestic industry. Second, in the case of non-agricultural products the Secretary must establish that the application of such safeguard measures is in the public interest.[89] As Southern Cross argues, Section 5 is quite clear-cut, and it is impossible to finagle a different conclusion even through overarching methods of statutory construction. There is no safer nor better settled canon of interpretation that when language is clear and unambiguous it must be held to mean what it plainly expresses:[90] In the quotable words of an illustrious member of this Court, thus:

[I]f a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. The verba legis or plain meaning rule rests on the valid presumption that the words employed by the legislature in a statute correctly express its intent or will and preclude the court from construing it differently. The legislature is presumed to know the meaning of the words, to have used words advisedly, and to have expressed its intent by the use of such words as are found in the statute.[91]

Moreover, Rule 5 of the Implementing Rules and Regulations of the SMA,[92] which interprets Section 5 of the law, likewise requires a positive final determination on the part of the Tariff Commission before the application of the general safeguard measure.

The SMA establishes a distinct allocation of functions between the Tariff Commission and the DTI Secretary. The plain meaning of Section 5 shows that it is the Tariff Commission that has the power to make a “positive final determination.” This power, which belongs to the Tariff Commission, must be distinguished from the power to impose general safeguard measure properly vested on the DTI Secretary. The distinction is vital, as a “positive final determination” clearly antecedes, as a condition precedent, the imposition of a general safeguard measure. At the same time, a positive final determination does not necessarily result in the imposition of a general safeguard measure. Under Section 5, notwithstanding the positive final determination of the Tariff Commission, the DTI Secretary is tasked to decide whether or not that the application of the safeguard measures is in the public interest.

It is also clear from Section 5 of the SMA that the positive final determination to be undertaken by the Tariff Commission does not entail a mere gathering of statistical data. In order to arrive at such determination, it has to establish causal linkages from the statistics that it compiles and evaluates: after finding there is an importation in increased quantities of the product in question, that such importation is a substantial cause of serious threat or injury to the domestic industry.

The Court of Appeals relies heavily on the legislative record of a congressional debate during deliberations on the SMA to assert a purported legislative intent that the findings of the Tariff Commission do not bind the DTI Secretary.[93] Yet as explained earlier, the plain meaning of Section 5 emphasizes that only if the Tariff Commission renders a positive determination could the DTI Secretary impose a safeguard measure. Resort to the congressional records to ascertain legislative intent is not warranted if a statute is clear, plain and free from ambiguity. The legislature is presumed to know the meaning of the words, to have used words advisedly, and to have expressed its intent by the use of such words as are found in the statute.[94]

Indeed, the legislative record, if at all to be availed of, should be approached with extreme caution, as legislative debates and proceedings are powerless to vary the terms of the statute when the meaning is clear.[95] Our holding in *Civil Liberties Union v. Executive Secretary*[96] on the resort to deliberations of the constitutional convention to interpret the Constitution is likewise appropriate in ascertaining statutory intent:

While it is permissible in this jurisdiction to consult the debates and proceedings of the constitutional convention in order to arrive at the reason and purpose of the resulting Constitution, resort thereto may be had only when other guides fail as said proceedings are powerless to vary the terms of the Constitution when the meaning is clear. Debates in the constitutional convention "are of value as showing the views of the individual members, and as indicating the reasons for their votes, but they give us no light as to the views of the large majority who did not talk xxx. We think it safer to construe the constitution from what appears upon its face." [97]

Moreover, it is easy to selectively cite passages, sometimes out of their proper context, in order to assert a misleading interpretation. The effect can be dangerous. Minority or solitary views, anecdotal ruminations, or even the occasional crude witticisms, may improperly acquire the mantle of legislative intent by the sole virtue of their publication in the authoritative congressional record. Hence, resort to legislative deliberations is allowable when the statute is crafted in such a manner as to leave room for doubt on the real intent of the legislature.

Section 5 plainly evinces legislative intent to restrict the DTI Secretary's power to impose a general safeguard measure by preconditioning such imposition on a positive determination by the Tariff Commission. Such legislative intent should be given full force and effect, as the executive power to impose definitive safeguard measures is but a delegated power^¾the power of taxation, by nature and by command of the fundamental law, being a preserve of the legislature.[98] Section 28(2), Article VI of the 1987 Constitution confirms the delegation of legislative power, yet ensures that the prerogative of Congress to impose limitations and restrictions on the executive exercise of this power:

The Congress may, by law, authorize the President to fix within specified limits, and subject to such limitations and restrictions as it may impose, tariff rates, import and export quotas, tonnage and wharfage dues, and other duties or imposts within the framework of the national development program of the Government.[99]

The safeguard measures which the DTI Secretary may impose under the SMA may take the following variations, to wit: (a) an increase in, or imposition of any duty on the imported product; (b) a decrease in or the imposition of a tariff-rate quota on the product; (c) a modification or imposition of any quantitative restriction on the importation of the product into the Philippines; (d) one or more appropriate adjustment measures, including the provision of trade adjustment assistance; and (e) any combination of the above-described actions. Except for the

provision of trade adjustment assistance, the measures enumerated by the SMA are essentially imposts, which precisely are the subject of delegation under Section 28(2), Article VI of the 1987 Constitution.[100]

This delegation of the taxation power by the legislative to the executive is authorized by the Constitution itself.[101] At the same time, the Constitution also grants the delegating authority (Congress) the right to impose restrictions and limitations on the taxation power delegated to the President.[102] The restrictions and limitations imposed by Congress take on the mantle of a constitutional command, which the executive branch is obliged to observe.

The SMA empowered the DTI Secretary, as alter ego of the President,[103] to impose definitive general safeguard measures, which basically are tariff imposts of the type spoken of in the Constitution. However, the law did not grant him full, uninhibited discretion to impose such measures. The DTI Secretary authority is derived from the SMA; it does not flow from any inherent executive power. Thus, the limitations imposed by Section 5 are absolute, warranted as they are by a constitutional fiat.[104]

Philcemcor cites our 1912 ruling in *Lamb v. Phipps*[105] to assert that the DTI Secretary, having the final decision on the safeguard measure, has the power to evaluate the findings of the Tariff Commission and make an independent judgment thereon. Given the constitutional and statutory limitations governing the present case, the citation is misplaced. *Lamb* pertained to the discretion of the Insular Auditor of the Philippine Islands, whom, as the Court recognized, “[t]he statutes of the United States require[d] xxx to exercise his judgment upon the legality xxx [of] provisions of law and resolutions of Congress providing for the payment of money, the means of procuring testimony upon which he may act.”[106]

Thus in *Lamb*, while the Court recognized the wide latitude of discretion that may have been vested on the Insular Auditor, it also recognized that such latitude flowed from, and is consequently limited by, statutory grant. However, in this case, the provision of the Constitution in point expressly recognizes the authority of Congress to prescribe limitations in the case of tariffs, export/import quotas and other such safeguard measures. Thus, the broad discretion granted to the Insular Auditor of the Philippine Islands cannot be analogous to the discretion of the DTI Secretary which is circumscribed by Section 5 of the SMA.

For that matter, *Cariño v. Commissioner on Human Rights*,[107] likewise cited by Philcemcor, is also inapplicable owing to the different statutory regimes prevailing over that case and the present petition. In *Cariño*, the Court ruled that the constitutional power of the Commission on Human Rights (CHR) to investigate human rights’ violations did not extend to adjudicating claims on the merits.[108] Philcemcor claims that the functions of the Tariff Commission being “only investigatory,” it could neither decide nor adjudicate.[109]

The applicable law governing the issue in *Cariño* is Section 18, Article XIII of the Constitution, which delineates the powers and functions of the CHR. The provision does not vest on the CHR the power to adjudicate cases, but only to investigate all forms of human rights violations.[110] Yet, without modifying the thorough disquisition of the Court in *Cariño* on the general limitations on the investigatory power, the precedent is inapplicable because of the difference in the involved statutory frameworks. The Constitution does not repose binding effect on the results of the CHR’s investigation.[111] On the other hand, through Section 5 of the SMA and under the authority of Section 28(2), Article VI of the Constitution, Congress did intend to bind the DTI Secretary to the determination made by the Tariff Commission.[112] It is of no consequence that such determination results from the exercise of investigatory powers by the Tariff Commission since Congress is well within its constitutional mandate to limit the authority of the DTI Secretary to impose safeguard measures in the manner that it sees fit.

The Court of Appeals and Philcemcor also rely on Section 13 of the SMA and Rule 13 of the SMA’s Implementing Rules in support of the view that the DTI Secretary may decide independently of the determination

made by the Tariff Commission. Admittedly, there are certain infelicities in the language of Section 13 and Rule 13. But reliance should not be placed on the textual imprecisions. Rather, Section 13 and Rule 13 must be viewed in light of the fundamental prescription imposed by Section 5. [113]

Section 13 of the SMA lays down the procedure to be followed after the Tariff Commission renders its report. The provision reads in full:

SEC. 13. Adoption of Definitive Measures. — Upon its positive determination, the Commission shall recommend to the Secretary an appropriate definitive measure, in the form of:

- An increase in, or imposition of, any duty on the imported product;
- A decrease in or the imposition of a tariff-rate quota (MAV) on the product;
- A modification or imposition of any quantitative restriction on the importation of the product into the Philippines;
- One or more appropriate adjustment measures, including the provision of trade adjustment assistance;
- Any combination of actions described in subparagraphs (a) to (d).

The Commission may also recommend other actions, including the initiation of international negotiations to address the underlying cause of the increase of imports of the product, to alleviate the injury or threat thereof to the domestic industry, and to facilitate positive adjustment to import competition.

The general safeguard measure shall be limited to the extent of redressing or preventing the injury and to facilitate adjustment by the domestic industry from the adverse effects directly attributed to the increased imports: Provided, however, That when quantitative import restrictions are used, such measures shall not reduce the quantity of imports below the average imports for the three (3) preceding representative years, unless clear justification is given that a different level is necessary to prevent or remedy a serious injury.

A general safeguard measure shall not be applied to a product originating from a developing country if its share of total imports of the product is less than three percent (3%): Provided, however, That developing countries with less than three percent (3%) share collectively account for not more than nine percent (9%) of the total imports.

The decision imposing a general safeguard measure, the duration of which is more than one (1) year, shall be reviewed at regular intervals for purposes of liberalizing or reducing its intensity. The industry benefiting from the application of a general safeguard measure shall be required to show positive adjustment within the allowable period. A general safeguard measure shall be terminated where the benefiting industry fails to show any improvement, as may be determined by the Secretary.

The Secretary shall issue a written instruction to the heads of the concerned government agencies to implement the appropriate general safeguard measure as determined by the Secretary within fifteen (15) days from receipt of the report.

In the event of a negative final determination, or if the cash bond is in excess of the definitive safeguard duty assessed, the Secretary shall immediately issue, through the Secretary of Finance, a written instruction to the Commissioner of Customs, authorizing the return of the cash bond or the remainder thereof, as the case may be, previously collected as provisional general safeguard measure within ten (10) days from the date a final decision has been made: Provided, That the government shall not be liable for any interest on the amount to be returned. The Secretary shall not accept for consideration another petition from the same industry, with respect to the same imports of the product under consideration within one (1) year after the date of rendering such a decision.

When the definitive safeguard measure is in the form of a tariff increase, such increase shall not be subject or limited to the maximum levels of tariff as set forth in Section 401(a) of the Tariff and Customs Code of the Philippines.

To better comprehend Section 13, note must be taken of the distinction between the investigatory and recommendatory functions of the Tariff Commission under the SMA.

The word “determination,” as used in the SMA, pertains to the factual findings on whether there are increased imports into the country of the product under consideration, and on whether such increased imports are a substantial cause of serious injury or threaten to substantially cause serious injury to the domestic industry.[114] The SMA explicitly authorizes the DTI Secretary to make a preliminary determination,[115] and the Tariff Commission to make the final determination.[116] The distinction is fundamental, as these functions are not interchangeable. The Tariff Commission makes its determination only after a formal investigation process, with such investigation initiated only if there is a positive preliminary determination by the DTI Secretary under Section 7 of the SMA.[117] On the other hand, the DTI Secretary may impose definitive safeguard measure only if there is a positive final determination made by the Tariff Commission.[118]

In contrast, a “recommendation” is a suggested remedial measure submitted by the Tariff Commission under Section 13 after making a positive final determination in accordance with Section 5. The Tariff Commission is not empowered to make a recommendation absent a positive final determination on its part.[119] Under Section 13, the Tariff Commission is required to recommend to the [DTI] Secretary an “appropriate definitive measure.”[120] The Tariff Commission “may also recommend other actions, including the initiation of international negotiations to address the underlying cause of the increase of imports of the products, to alleviate the injury or threat thereof to the domestic industry and to facilitate positive adjustment to import competition.”[121]

The recommendations of the Tariff Commission, as rendered under Section 13, are not obligatory on the DTI Secretary. Nothing in the SMA mandates the DTI Secretary to adopt the recommendations made by the Tariff Commission. In fact, the SMA requires that the DTI Secretary establish that the application of such safeguard measures is in the public interest, notwithstanding the Tariff Commission’s recommendation on the appropriate safeguard measure based on its positive final determination.[122] The non-binding force of the Tariff Commission’s recommendations is congruent with the command of Section 28(2), Article VI of the 1987 Constitution that only the President may be empowered by the Congress to impose appropriate tariff rates, import/export quotas and other similar measures.[123] It is the DTI Secretary, as alter ego of the President, who under the SMA may impose such safeguard measures subject to the limitations imposed therein. A contrary conclusion would in essence unduly arrogate to the Tariff Commission the executive power to impose the appropriate tariff measures. That is why the SMA empowers the DTI Secretary to adopt safeguard measures other than those recommended by the Tariff Commission.

Unlike the recommendations of the Tariff Commission, its determination has a different effect on the DTI Secretary. Only on the basis of a positive final determination made by the Tariff Commission under Section 5 can the DTI Secretary impose a general safeguard measure. Clearly, then the DTI Secretary is bound by the determination made by the Tariff Commission.

Some confusion may arise because the sixth paragraph of Section 13[124] uses the variant word “determined” in a different context, as it contemplates “the appropriate general safeguard measure as determined by the Secretary within fifteen (15) days from receipt of the report.” Quite plainly, the word “determined” in this context pertains to the DTI Secretary’s power of choice of the appropriate safeguard measure, as opposed to the Tariff Commission’s power to determine the existence of conditions necessary for the imposition of any safeguard measure. In relation to Section 5, such choice also relates to the mandate of the DTI Secretary to establish that the

application of safeguard measures is in the public interest, also within the fifteen (15) day period. Nothing in Section 13 contradicts the instruction in Section 5 that the DTI Secretary is allowed to impose the general safeguard measures only if there is a positive determination made by the Tariff Commission.

Unfortunately, Rule 13.2 of the Implementing Rules of the SMA is captioned “Final Determination by the Secretary.” The assailed Decision and Philcemcor latch on this phraseology to imply that the factual determination rendered by the Tariff Commission under Section 5 may be amended or reversed by the DTI Secretary. Of course, implementing rules should conform, not clash, with the law that they seek to implement, for a regulation which operates to create a rule out of harmony with the statute is a nullity.^[125] Yet imperfect draftsmanship aside, nothing in Rule 13.2 implies that the DTI Secretary can set aside the determination made by the Tariff Commission under the aegis of Section 5. This can be seen by examining the specific provisions of Rule 13.2, thus:

RULE 13.2. Final Determination by the Secretary

RULE 13.2.a. Within fifteen (15) calendar days from receipt of the Report of the Commission, the Secretary shall make a decision, taking into consideration the measures recommended by the Commission.

RULE 13.2.b. If the determination is affirmative, the Secretary shall issue, within two (2) calendar days after making his decision, a written instruction to the heads of the concerned government agencies to immediately implement the appropriate general safeguard measure as determined by him. Provided, however, that in the case of non-agricultural products, the Secretary shall first establish that the imposition of the safeguard measure will be in the public interest.

RULE 13.2.c. Within two (2) calendar days after making his decision, the Secretary shall also order its publication in two (2) newspapers of general circulation. He shall also furnish a copy of his Order to the petitioner and other interested parties, whether affirmative or negative. (Emphasis supplied.)

Moreover, the DTI Secretary does not have the power to review the findings of the Tariff Commission for it is not subordinate to the Department of Trade and Industry (“DTI”). It falls under the supervision, not of the DTI nor of the Department of Finance (as mistakenly asserted by Southern Cross),^[126] but of the National Economic Development Authority, an independent planning agency of the government of co-equal rank as the DTI.^[127] As the supervision and control of a Department Secretary is limited to the bureaus, offices, and agencies under him,^[128] the DTI Secretary generally cannot exercise review authority over actions of the Tariff Commission. Neither does the SMA specifically authorize the DTI Secretary to alter, amend or modify in any way the determination made by the Tariff Commission. The most that the DTI Secretary could do to express displeasure over the Tariff Commission’s actions is to ignore its recommendation, but not its determination.

The word “determination” as used in Rule 13.2 of the Implementing Rules is dissonant with the same word as employed in the SMA, which in the latter case is undeviatingly in reference to the determination made by the Tariff Commission. Beyond the resulting confusion, however, the divergent use in Rule 13.2 is explicable as the Rule textually pertains to the power of the DTI Secretary to review the recommendations of the Tariff Commission, not the latter’s determination. Indeed, an examination of the specific provisions show that there is no real conflict to reconcile. Rule 13.2 respects the logical order imposed by the SMA. The Rule does not remove the essential requirement under Section 5 that a positive final determination be made by the Tariff Commission before a definitive safeguard measure may be imposed by the DTI Secretary.

The assailed Decision characterizes the findings of the Tariff Commission as merely recommendatory and points to the DTI Secretary as the authority who renders the final decision.^[129] At the same time, Philcemcor asserts that the Tariff Commission’s functions are merely investigatory, and as such do not include the power to decide

or adjudicate. These contentions, viewed in the context of the fundamental requisite set forth by Section 5, are untenable. They run counter to the statutory prescription that a positive final determination made by the Tariff Commission should first be obtained before the definitive safeguard measures may be laid down.

Was it anomalous for Congress to have provided for a system whereby the Tariff Commission may preclude the DTI, an office of higher rank, from imposing a safeguard measure? Of course, this Court does not inquire into the wisdom of the legislature but only charts the boundaries of powers and functions set in its enactments. But then, it is not difficult to see the internal logic of this statutory framework.

For one, as earlier stated, the DTI cannot exercise review powers over the Tariff Commission which is not its subordinate office.

Moreover, the mechanism established by Congress establishes a measure of check and balance involving two different governmental agencies with disparate specializations. The matter of safeguard measures is of such national importance that a decision either to impose or not to impose then could have ruinous effects on companies doing business in the Philippines. Thus, it is ideal to put in place a system which affords all due deliberation and calls to fore various governmental agencies exercising their particular specializations.

Finally, if this arrangement drawn up by Congress makes it difficult to obtain a general safeguard measure, it is because such safeguard measure is the exception, rather than the rule. The Philippines is obliged to observe its obligations under the GATT, under whose framework trade liberalization, not protectionism, is laid down. Verily, the GATT actually prescribes conditions before a member-country may impose a safeguard measure. The pertinent portion of the GATT Agreement on Safeguards reads:

- A Member may only apply a safeguard measure to a product only if that member has determined, pursuant to the provisions set out below, that such product is being imported into its territory in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products.[130]
- (a) A Member may apply a safeguard measure only following an investigation by the competent authorities of that Member pursuant to procedures previously established and made public in consonance with Article X of the GATT 1994. This investigation shall include reasonable public notice to all interested parties and public hearings or other appropriate means in which importers, exporters and other interested parties could present evidence and their views, including the opportunity to respond to the presentations of other parties and to submit their views, inter alia, as to whether or not the application of a safeguard measure would be in the public interest. The competent authorities shall publish a report setting forth their findings and reasoned conclusions reached on all pertinent issues of fact and law.[131]

The SMA was designed not to contradict the GATT, but to complement it. The two requisites laid down in Section 5 for a positive final determination are the same conditions provided under the GATT Agreement on Safeguards for the application of safeguard measures by a member country. Moreover, the investigatory procedure laid down by the SMA conforms to the procedure required by the GATT Agreement on Safeguards. Congress has chosen the Tariff Commission as the competent authority to conduct such investigation. Southern Cross stresses that applying the provision of the GATT Agreement on Safeguards, the Tariff Commission is clearly empowered to arrive at binding conclusions.[132] We agree: binding on the DTI Secretary is the Tariff Commission's determinations on whether a product is imported in increased quantities, absolute or relative to domestic production and whether any such increase is a substantial cause of serious injury or threat thereof to the domestic industry.[133]

Satisfied as we are with the proper statutory paradigm within which the SMA should be analyzed, the flaws in the

reasoning of the Court of Appeals and in the arguments of the respondents become apparent. To better understand the dynamics of the procedure set up by the law leading to the imposition of definitive safeguard measures, a brief step-by-step recount thereof is in order.

- After the initiation of an action involving a general safeguard measure,[134] the DTI Secretary makes a preliminary determination whether the increased imports of the product under consideration substantially cause or threaten to substantially cause serious injury to the domestic industry,[135] and whether the imposition of a provisional measure is warranted under Section 8 of the SMA.[136] If the preliminary determination is negative, it is implied that no further action will be taken on the application.
- When his preliminary determination is positive, the Secretary immediately transmits the records covering the application to the Tariff Commission for immediate formal investigation.[137]
- The Tariff Commission conducts its formal investigation, keyed towards making a final determination. In the process, it holds public hearings, providing interested parties the opportunity to present evidence or otherwise be heard.[138] To repeat, Section 5 enumerates what the Tariff Commission is tasked to determine: (a) whether a product is being imported into the country in increased quantities, irrespective of whether the product is absolute or relative to the domestic production; and (b) whether the importation in increased quantities is such that it causes serious injury or threat to the domestic industry.[139] The findings of the Tariff Commission as to these matters constitute the final determination, which may be either positive or negative.
- Under Section 13 of the SMA, if the Tariff Commission makes a positive determination, the Tariff Commission “recommends to the [DTI] Secretary an appropriate definitive measure.” The Tariff Commission “may also recommend other actions, including the initiation of international negotiations to address the underlying cause of the increase of imports of the products, to alleviate the injury or threat thereof to the domestic industry, and to facilitate positive adjustment to import competition.”[140]
- If the Tariff Commission makes a positive final determination, the DTI Secretary is then to decide, within fifteen (15) days from receipt of the report, as to what appropriate safeguard measures should he impose.
- However, if the Tariff Commission makes a negative final determination, the DTI Secretary cannot impose any definitive safeguard measure. Under Section 13, he is instructed instead to return whatever cash bond was paid by the applicant upon the initiation of the action for safeguard measure.

The Effect of the Court’s Decision

The Court of Appeals erred in remanding the case back to the DTI Secretary, with the instruction that the DTI Secretary may impose a general safeguard measure even if there is no positive final determination from the Tariff Commission. More crucially, the Court of Appeals could not have acquired jurisdiction over Philcemcor’s petition for certiorari in the first place, as Section 29 of the SMA properly vests jurisdiction on the CTA. Consequently, the assailed Decision is an absolute nullity, and we declare it as such.

What is the effect of the nullity of the assailed Decision on the 5 June 2003 Decision of the DTI Secretary imposing the general safeguard measure? We have recognized that any initial judicial review of a DTI ruling in connection with the imposition of a safeguard measure belongs to the CTA. At the same time, the Court also recognizes the fundamental principle that a null and void judgment cannot produce any legal effect. There is sufficient cause to establish that the 5 June 2003 Decision of the DTI Secretary resulted from the assailed Court of Appeals Decision, even if the latter had not yet become final. Conversely, it can be concluded that it was because of the putative imprimatur of the Court of Appeals’ Decision that the DTI Secretary issued his ruling imposing the safeguard measure. Since the 5 June 2003 Decision derives its legal effect from the void Decision of the Court of Appeals, this ruling of the DTI Secretary is consequently void. The spring cannot rise higher than the source.

The DTI Secretary himself acknowledged that he drew stimulating force from the appellate court's Decision for in his own 5 June 2003 Decision, he declared:

From the aforementioned ruling, the CA has remanded the case to the DTI Secretary for a final decision. Thus, there is no legal impediment for the Secretary to decide on the application.[141]

The inescapable conclusion is that the DTI Secretary needed the assailed Decision of the Court of Appeals to justify his rendering a second Decision. He explicitly invoked the Court of Appeals' Decision as basis for rendering his 5 June 2003 ruling, and implicitly recognized that without such Decision he would not have the authority to revoke his previous ruling and render a new, obverse ruling.

It is clear then that the 25 June 2003 Decision of the DTI Secretary is a product of the void Decision, it being an attempt to carry out such null judgment. There is therefore no choice but to declare it void as well, lest we sanction the perverse existence of a fruit from a non-existent tree. It does not even matter what the disposition of the 25 June 2003 Decision was, its nullity would be warranted even if the DTI Secretary chose to uphold his earlier ruling denying the application for safeguard measures.

It is also an unfortunate spectacle to behold the DTI Secretary, seeking to enforce a judicial decision which is not yet final and actually pending review on appeal. Had it been a judge who attempted to enforce a decision that is not yet final and executory, he or she would have readily been subjected to sanction by this Court. The DTI Secretary may be beyond the ambit of administrative review by this Court, but we are capacitated to allocate the boundaries set by the law of the land and to exact fealty to the legal order, especially from the instrumentalities and officials of government.

WHEREFORE, the petition is GRANTED. The assailed Decision of the Court of Appeals is DECLARED NULL AND VOID and SET ASIDE. The Decision of the DTI Secretary dated 25 June 2003 is also DECLARED NULL AND VOID and SET ASIDE. No Costs.

SO ORDERED.

Puno, (Chairman), Quisumbing, Austria-Martinez, and Callejo, Sr., JJ., concur.

[1] Globalization is "the removal of barriers to free trade and the closer integration of national economies." In recent times, protests against globalization have entered a new stage. Riots and demonstrations against the policies of and actions by institutions of globalization have become commonplace even in developed countries. France's Jacques Chirac has expressed concern that globalization is not making life better for those most in need of its promised benefits. J. Stiglitz, , Globalization and Its Discontents, pp. 1-4 (2002).

[2] The policy objective that guides the General Safeguard Measures Act is enunciated in Section 2 thereof, which reads: "Section 2. Declaration of Policy. – The State shall promote the competitiveness of domestic industries and producers based on sound industrial and agricultural development policies, and the efficient use of human, natural and technical resources. In pursuit of this goal and in the public interest, the State shall provide safeguard measures to protect domestic industries and producers from increased imports which cause or threaten to cause serious injury to those domestic industries and producers."

[3] GATT was a collection of treaties governing access to the economics of treaty adherents with no institutionalized body administering the agreements or dependable system of dispute settlement. (See Tañada v. Angara, 338 Phil. 546, 556 (1997)) Originally formulated in 1947, the GATT was updated in 1994 to take into account substantive and institutional changes negotiated in the Uruguay Round. A comprehensive history of the

GATT is recounted in Footnote No. 1 of *Tañada v. Angara*, id. at 557-561.

[4] *Supra* note 2.

[5] *Rollo*, p. 14.

[6] Philcemcor has since renamed itself the Cement Manufacturers Association of the Philippines. *Rollo*, p. 1364.

[7] Union Cement Corporation, Northern Cement Corporation, Limay Grinding Mill Corporation, Republic Cement Corporation, Continental Operating Corporation, Rizal Cement Company, Inc., Solid Cement Corporation, FR Cement Corporation, Union Cement Corporation, Fortune Cement Corporation, Apo Cement Corporation, Lloyds-Richfield Industrial Corporation, Grand Cement Manufacturing Corporation, Alsons Cement Corporation, Iligan Cement Corporation, Mindanao Portland Cement Corporation, Pacific Cement Company, Inc., and Union Cement Corporation. Vide “Staff Report on Formal Investigation of Safeguard Measures Case Against Importations of Gray Portland Cement.” *Rollo*, p. 132.

[8] Vide “Staff Report on Formal Investigation of Safeguard Measures Case Against Importations of Gray Portland Cement.” *Rollo* at 133. This fact was confirmed by counsel for Philcemcor during the oral argument before this Court on 18 February 2004. See TSN, pp. 157-158, 18 February 2004.

[9] Philcemcor’s application covered gray Portland cement of all types and excluded white Portland cement, aluminous cement, and masonry cement. *Rollo*, p. 127.

[10] Namely, Philcemcor in behalf of twelve (12) of its member-companies, as follows: Alsons Cement Corporation; Apo Cement Corporation; Continental Operating Corporation, Fortune Cement Corporation; FR Cement Corporation; Iligan Cement Corporation; Lloyds Richfield Industrial Corporation; Mindanao Portland Cement Corporation; Republic Cement Corporation; Rizal Cement Company, Inc.; Solid Cement Corporation; and Union Cement Corporation. The other cement producers (i.e., Limay Grinding Mill Corporation and Pacific Cement Philippines, Inc.) that did not join the application nevertheless supported the application for the imposition of the safeguard measures. *Rollo*, p. 127. Limay Grinding Mill Corporation and Pacific Cement Philippines, Inc. did not join the application yet nevertheless supported the same. *Id.*

[11] *Ibid.*

[12] *Id.* at 128.

[13] *Ibid.* Customs Memorandum Order No. 38-2001 directed that all importations from all countries of gray Portland cement, including blended Portland cement that contains pozzolan, slag or other additives, whether in bulk or bags, classified under HS Codes 2523.29 00 and 2523.90 00, shall be imposed, in addition to taxes and duties and other charges, a cash bond amounting to P20.60 per 40-kg. bag or its equivalent in bulk.

[14] *Id.* at 129.

[15] Also in attendance were representatives from Philcemcor, Lafarge, Cemex, TCC Cement Corporation, Southern Cross Cement Corporation, PriceWaterhouse Coopers, Samstone Infra-Construction Supply, Westpoint Industrial Sales Company, Cohaco Trading Corporation, Philippine Constructors Association, Confederation of Homeowners Association for Reforms on Governance and Environment, Ssangyong Corporation, National Constructors Association of the Philippines, Private Sector Consultative Council for Shelter, Fair Trade Alliance, Philippine Cement Workers’ Council, Refractories Corporation of the Philippines, Embassy of Japan, Embassy of Indonesia, the House of Representatives, and Arellano Law School. *Id.* at 130.

[16] *Ibid.* Position papers supporting the application were received from: Philcemcor; Refractories Corporation of

the Philippines; Tiger Machinery and Industrial Corporation; Cembag Plastic Industries, Ltd.; Union Lock Industrial and Trading Corporation; Refratrade Industrial Resources, Inc., CAPP Industries, Inc.; Noble Energy; Arcman Corporation; United Bag Manufacturing Corporation; IGNIS Ltd., Accufloor, Inc.; Primex International Philippines, Inc.; and Allied Distributor. On the other hand, position papers/manifestations opposing the application were submitted by: Southern Cross; Taiheiyo Cement Corporation; TCC Cement Corporation; Taiwan Cement Corporation; Cohaco Trading Corporation; Samstone Infra-Construction Supply; Consumers Union of the Philippines; Confederation of Homeowners Association for Reforms on Governance and Environment; Philippine Constructors Association; and the Embassy of Indonesia.

[17] The visits were conducted during the period of 10 December 2001 to 17 January 2002. The information gathered or verified during the visits pertained to such matters as the production process, production lines, machinery and equipment, quality test results, plant capacities, production levels, production cost, sales, selling prices, loans, employment, inventory levels, company ownership, and plant shutdowns or mothballing plans. Id. at 131.

[18] The Tariff Commission concluded that while the market share of the domestic industry (i.e., the applicant-companies) had declined from almost 99% in 1998 to 80% in 2001, the local industry remained the significantly dominant market player. Id. at 290-291.

[19] The Report determined that while domestic sales of the applicant-companies had declined since 1998, such decline was offset by an increase in export sales volume. The domestic industry likewise suffered a decline in production in the year 2000, when imports started to surge, at a rate of 5% from the previous year, yet such decline was not sharp nor significant enough relative to the years prior to the surge to constitute serious impairment in the production and sales of the industry. Id. at 292.

[20] Anent the applicant-companies, it was found that while industry capacity utilization declined from 1996 to 1999, the decline was actually arrested in 2000, the year imports surged. Capacity utilization did decline in the first three quarters of 2001 relative to the same period in 2000, yet such decline was not sudden, sharp, nor significant enough in the contemplation of the law as to constitute serious impairment of the industry's overall condition. Id. at 294.

[21] It was determined that total sales revenues of the applicant companies in the year 2000, when imports surged, had actually peaked at P25.97 billion pesos, the highest level in at least five years. The applicant-companies' income from operations had likewise registered a profit of P1.98 billion in 2000, representing an upturn of 175.51% from 1999, before imports surged, when a total loss of P2.62 billion was incurred by these companies. Id. at 296.

[22] According to the Tariff Commission, a negative return on sales of the applicant-companies was registered in 1999, when imports had not yet surged, due to a deficit from operations of P2.62 billion in 1999. However, as imports surged in 2000, the applicant-companies had registered a positive return of 7.62%, as operating income of P1.98 billion was realized for that year. Id. at 298.

[23] Id. at 302.

[24] Id. at 303.

[25] Rollo, p. 343.

[26] Id. at 334-341.

[27] Rollo, pp. 343-345.

[28] Id. at 345-416.

[29] Among other claims, Philcemcor alleged that the Tariff Commission arbitrarily ignored the nature of the cement industry in evaluating the injury factors. Rollo, p. 394.

[30] Rollo, pp. 418-490.

[31] Chaired by Associate Justice Portia Aliño-Hormachuelos, and with Justices Elvi John S. Asuncion and Edgardo F. Sundiam as members.

[32] Rollo, pp. 492-493. Penned by Justice E.J.S. Asuncion, concurred in by Justices P. Aliño-Hormachuelos and E.F. Sundiam. The dispositive portion of the Writ of Preliminary Injunction reads as follows:

“NOW, THEREFORE, You, the public respondents, the Hon. Secretary of the Dept. of Trade & Industry, the Tariff Commission, the Hon. Commissioner of the Bureau of Customs, and the Hon. Secretary of the Dept. of Finance or any of your agents or representatives, are hereby restrained and prohibited from enforcing the decision dated April 5, 2002 of the Hon. Secretary Manuel A. Roxas II of the Dept. of Trade & Industry in DTI SG No. 02-2001.

SO ORDERED.” (Rollo, p. 496)

[33] Rollo, p. 24.

[34] Id. at p. 594. The 19 February 2003 Resolution of the Court of Appeals also granted the Motion for Intervention filed by Vicente T. Lao. However, despite due notice, Lao failed to file his comment in intervention. See Rollo, p. 72.

[35] In the meantime, frustrated by the failure of the Court of Appeals to resolve Southern Cross’s Motion for Reconsideration, Southern Cross filed a Petition for Certiorari with this Court on 12 March 2003. See Rollo, pp. 596-654. Owing to the pending Motion for Reconsideration before the Court of Appeals, the Supreme Court First Division dismissed Southern Cross’s first Petition for Certiorari as premature in a Resolution dated 17 March 2003. Rollo, p. 655.

[36] Rollo, pp. 67-84. Penned by Justice E.J.S. Asuncion, concurred in by Justices P. Aliño-Hormachuelos and E.F. Sundiam.

[37] Rollo, pp. 75-76, citing *Litonjua v. Court of Appeals*, 286 SCRA 136 (1998) and *Sta. Ines Melale Forest Products Corporation v. Macaraig*, 299 SCRA 491 (1998).

[38] Id. at 82.

[39] Id. at 83.

[40] See Section 2, Rule 36, 1997 Rules of Civil Procedure.

[41] Rollo, p. 685. Prior to the promulgation of this new Decision, Southern Cross was already apprehensive that the DTI Secretary might act favorably on Philcemcor’s petition in light of the Court of Appeals ruling. Southern Cross sent a letter dated 19 June 2003 to DTI Secretary Roxas, informing him that Southern Cross would be appealing the Court of Appeals Decision to the Supreme Court, and that “[w]e trust that, in accordance with the Rules of Court, you will refrain from assuming jurisdiction or from taking any action on the Application for Safeguard Measures filed by Philcemcor until after the Supreme Court shall have finally decided on our appeal xxx.” See Rollo, pp. 679-680.

[42] Among the factors cited by the DTI as basis for holding that there was serious injury was the decline in sales

volumes during the period of the import surge, sales volume decreasing by 11.72% in 2000, and by 13.28% during the first three quarters of 2001. It also cited the decline in the domestic industry's market share from 98.60% in 1998 to 79.23% in 2001, representing a 20% drop. The import surge had also caused the idling of seven (7) dry kilns, a decline in actual production of the domestic industry by 7.2% from 1998 to 2001; a decrease in capacity utilization; and net losses to the domestic industry amounting to around P7.7 billion in 1999 and P5.5 billion in 2000. See Rollo, pp. 688-690.

[43] Rollo, pp. 681-699.

[44] There is a certain novelty to Philcemcor's claim, considering that the purported common identity of causes of action arose not with the filing of the initiatory pleading, but with the ancillary action for injunction. We do not doubt that forum-shopping can be committed even if the identical relief or cause of action is sought or asserted before a different forum not in the initiatory pleading, but in an application for provisional relief. Forum-shopping is frowned upon as it affords the litigant the opportunity to avail of the same relief based on the same cause of action before different jurisdictions. For so long as the courts or tribunals are capacitated to grant the reliefs sought, the mode through which the redress is sought becomes immaterial.

[45] Rollo, pp. 952-1005.

[46] In a Resolution dated 4 February 2004. See Rollo, p. 1191.

[47] TSN, 18 February 2004, p. 3.

[48] Ibid.

[49] See e.g., *Churchill v. Rafferty*, 32 Phil. 580, 582-583 (1915); *David v. Hon. Ramos*, 90 Phil. 351, 354-356 (1951).

[50] See e.g., Section 11, Rep. Act No. 1125.

[51] See Section 218, Rep. Act No. 8424.

[52] See Section 29, Rep. Act No. 8800.

[53] See Section 5, Rule 7, 1997 Rules of Civil Procedure.

[54] Rollo, p. 74.

[55] See Section 1, Rule 65 in relation to Section 4, Rule 65, 1997 Rules of Civil Procedure. "The original jurisdiction of the Court of Appeals over special civil actions for, inter alia, certiorari, is vested upon it in Section 9(l) of B.P. Blg. 129. This jurisdiction is concurrent with the Supreme Court and the Regional Trial Court." *Atty. Paa v. Court of Appeals*, 347 Phil. 122, 137 (1997).

[56] See Section 1, Rule 65, 1997 Rules of Civil Procedure. See also *Building Care Corp. v. NLRC*, 335 Phil. 1131, 1138 (1997); *Bernardo v. Court of Appeals*, 341 Phil. 413, 425 (1997); *BF Corporation v. Court of Appeals*, 351 Phil. 507, 519 (1998); *Tan v. Sandiganbayan*, 354 Phil. 463, 469 (1998).

[57] Before the passage of RA No. 9282 on 30 March 2004, appeal from the decisions of the Court of Tax Appeals was to the Court of Appeals.

[58] *Secretary of Finance v. Agana*, G.R. No. L-36276, 17 January 1975, 62 SCRA 68, 73. "The CTA is a highly specialized body specifically created for the purpose of reviewing tax cases," *Phil. Refining Co. v. CA*, 326 Phil. 680, 689 (1996); *CIR v. CA*, 338 Phil. 322, 336 (1997).

[59] Commissioner of Internal Revenue v. CA, 363 Phil. 239, 246 (1999).

[60] Philippine Ports Authority v. Fuentes, G.R. No. 91259, 16 April 1991, 195 SCRA 790, 796.

[61] See Section 7, Rep. Act No. 1125. But see also Section 7, Rep. Act No. 9282.

[62] See Section 7, Rep. Act No. 9282 (2004).

[63] See, e.g., ALU v. Gomez, 125 Phil. 717, 722 (1967).

[64] ALU v. Gomez, supra note 60; Atlas Consolidated v. Court of Appeals, G.R. No. 54305, February 14, 1990, 182 SCRA 166, 181.

[65] Supra note 55. Also, before the enactment of R.A. No. 9282, decisions of the CTA were appealable to the Court of Appeals.

[66] G.R. No. 79622, 29 September 1989, 178 SCRA 164.

[67] Tejada v. Homestead Property Corporation, id. at 168.

[68] 463 US 85 (1983).

[69] Id. at 96-97 (1983), citing Sinclair Refining Co. v. Jenkins Petroleum Process Co., 289 US 689, 695 (1933); and Black's Law Dictionary 1158 (5th ed 1979), which states "Relate. To stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with."

[70] 514 US 645 (1995).

[71] Id. at 656.

[72] Id. at 656. See also Egelhoff v. Egelhoff, 000 U.S. 99-1529 (2001).

[73] "Courts must give effect to the general legislative intent that can be discovered from or is unraveled by the four corners of the statute, and in order to discover said intent, the whole statute, and not only a particular provision thereof, should be considered." CIR v. TMX Sales, G.R. No. 83736, 15 January 1992, 205 SCRA 184, 188, citing Manila Lodge No. 761, et al. vs. Court of Appeals, et al., 73 SCRA 162 (1976).

[74] See Section 4(n), Chapter I, Rep. Act No. 8800.

[75] See Section 29, Rep. Act No. 8800, infra, in relation to Section 4(n), Chapter I, Rep. Act No. 8800.

[76] Section 7, Rep. Act No. 8800.

[77] Ibid.

[78] Section 8, Rep. Act No. 8800.

[79] Id. at Sec. 13.

[80] Id. at Sec. 19.

[81] Id. at Sec. 18.

[82] Accord Tejada, supra note 61.

[83] Supra note 66.

[84] “Where there is ambiguity, such interpretation as will avoid inconvenience and absurdity is to be adopted.”

[85] CIR v. TMX Sales, *supra* note 66.

[86] Sempio v. Court of Appeals, 331 Phil. 912, 922-923 (1996).

[87] Silverio v. Court of Appeals, 225 Phil. 459, 474 (1986), citing *State v. Dawson*, 325 S.W. 97. 99. See also *San Miguel Foods, Inc. v. Hon. Laguesma*, 331 Phil. 356, 376 (1996).

[88] The distinction must also be laid between the power of the DTI Secretary to impose a provisional safeguard measure under Section 8 of the SMA and a general safeguard measure under Section 13. Under Section 8, the decision to impose a provisional safeguard measure is clearly within the sole discretion of the DTI Secretary, without need to take into account what other governmental agencies may say. Yet under Section 13, in relation to Section 8 of the SMA, the decision by the DTI Secretary to impose the general safeguard measure is indubitably predicated on a positive final determination by the Tariff Commission.

[89] Section 5, Rep. Act No. 8800.

[90] Sutherland, *Statutes and Statutory Construction*, Vol. 2A, 5th ed., p. 81 (1973).

[91] *Republic v. Court of Appeals*, G.R. Nos. 103882 & 105276, 25 November 1998, 299 SCRA 199, 270-271, J. Puno, concurring. See also *Globe-Mackay Cable and Radio Corp. v. NLRC*, G.R. No. 82511, 3 March 1992, 206 SCRA 701, 711, citing R. Agpalo, *Statutory Construction*, p. 94 (1990); *Victoria v. COMELEC*, G.R. No. 109005, 10 January 1994, 229 SCRA 269, 273; *Supt. Fianza v. PLEB*, G.R. Nos. 109638 & 109639, 31 March 1995, 243 SCRA 165, 178.

[92] Joint Administrative Order No. 03-00, promulgated on 9 August 2000, and signed by the then Secretaries of Trade and Industry, Agriculture and Finance, as well as the Commissioner of the Bureau of Customs and the Chairman of the Tariff Commission.

[93] See *Rollo*, pp. 81-82.

[94] *Supra* note 91.

[95] See *Civil Liberties Union v. Executive Secretary*, G.R. Nos. 83896 & 83815; 22 February 1991, 194 SCRA 317, 337.

[96] *Ibid.*

[97] *Id.* at 337.

[98] See Section 24, Article VI, Constitution. "The power of taxation being legislative, all the incidents are within the control of the Legislature." *Sarasola v. Trinidad*, 40 Phil. 252, 263 (1919), citing *Genet v. City of Brooklyn* [1885], 99 N.Y., 296. See also *National Dental Supply v. Meer*, 90 Phil. 265, 268-269 (1951); *Pepsi-Cola Bottling Company of the Philippines, Inc. v. Municipality of Tanauan, et. al.*, 161 Phil. 591, 600 (1976).

[99] Article VI, Section 28 (2), 1987 Constitution. See Section 13, Rep. Act No. 8800.

[100] “Thus, our fundamental also distinguishes between taxes, on the one hand, and “imposts” – that is to say, tariff rates or duties imposed for the importation of goods – on the other.” *Procter & Gamble Phil. Mfg. Corp. v. Comm. of Customs*, 132 Phil. 169, 175 (1968).

[101] As opined by Justice Irene Cortes, the indubitable authority in Administrative Law, “Where the Constitution itself authorizes the delegation there can obviously be no objection to it provided the constitutional

conditions are met.” I. Cortes, Philippine Administrative Law: Cases and Materials 12 (1963).

[102] Supra note 99.

[103] “Without minimizing the importance of the heads of the various departments, their personality is in reality but the projection of that of the President. Stated otherwise, and as forcibly characterized by Chief Justice Taft of the Supreme Court of the United States, ‘each head of a department is, and must be, the President’s alter ego in the matters of that department where the President is required by law to exercise authority’” Villena v. Secretary of Interior, 67 Phil. 451, 464 (1939).

[104] Supra note 89.

[105] 22 Phil. 456 (1912).

[106] Lamb v. Phipps, 22 Phil. 456, 480 (1912). The statutory authority cited by the Court in Lambs is Rev. Stat. of U.S., secs. 184, 187, 269, 277.

[107] G.R. No. 96681, 2 December 1991, 204 SCRA 483.

[108] Id. at 496.

[109] The functions of the Tariff Commission are traditionally investigatory. For example, both the law that created the Tariff Commission and the Tariff and Customs Code mandate the Commission to investigate, among others, the administration, fiscal and industrial effects of the tariff laws of this country. See Section 5, Rep. Act No. 911 & Section 505, Rep. Act No. 1937. Even in the SMA, the process by which the Tariff Commission arrives at its determination is denominated as a “formal investigation.”

[110] See Section 18 (1), Article XIII, Constitution.

[111] Constitutional Commissioner Fr. Joaquin Bernas, citing the Record of the 1986 Constitutional Commission, says that for the prosecution of human rights violations, the CHR would have to rely on the appropriate government agencies such as the Fiscal’s Office. J. Bernas, The Intent of the 1986 Constitution Writers 1014 (1995), citing IV Record of the Constitutional Commission: Proceedings and Debates 712.

[112] Supra notes 89 and 99.

[113] Ironically, the Court of Appeals invokes the doctrine that “a statute must be construed as to harmonize and give effect to all its provisions whenever possible,” see rollo, p. 79, while failing to take into account Section 5 of Rep. Act No. 8800.

[114] See Sections 5, 7, 8, 12 & 13, Rep. Act No. 8800.

[115] Section 7, Rep. Act No. 8800.

[116] Section 5, Rep. Act No. 8800.

[117] See also Section 9, Rep. Act No. 8800.

[118] Supra note 89.

[119] Section 13, Rep. Act No. 8800.

[120] “Upon its positive determination, the Commission shall recommend to the Secretary an appropriate definitive measure xxx.” Supra note 89.

[121] Section 13, Rep. Act No. 8800.

[122] See Section 5, Rep. Act No. 8800, in relation to Section 13, Rep. Act No. 8800.

[123] Supra note 99.

[124] “The Secretary shall issue a written instruction to the heads of the concerned government agencies to implement the appropriate general safeguard measure as determined by the Secretary within fifteen (15) days from receipt of the report.”

[125] *Regidor v. Chiongbian*, G.R. No. 85815, 19 May 1989, 173 SCRA 507, 512; citing *Commissioner of Internal Revenue v. Vda. de Prieto*, L-13912, September 30, 1950. “A rule or regulation that was issued to implement a law may not go beyond the terms and provisions of the law.” *Regidor v. Chiongbian*, id.; citing *People v. Lim*, 108 Phil. 1091.

[126] Rollo, p. 1323, citing a provision of the repealed Revised Administrative Code.

[127] See Sections 2 & 16, Chapter I, Subtitle C, Title II, Book V, Administrative Code of 1987. The supervision exercised by the NEDA over the Tariff Commission is administrative in nature. See Section 38(2), Chapter 7, Book IV, Administrative Code of 1987.

[128] Section 39, Chapter 8, Book IV, Administrative Code of 1987.

[129] Rollo, p. 80.

[130] Section II(2), GATT Agreement on Safeguards.

[131] Section II(3)(a), GATT Agreement on Safeguards.

[132] Rollo, p. 1321.

[133] Supra note 89.

[134] See Section 5, Rep. Act No. 8800.

[135] Supra note 70.

[136] Section 6, Rep. Act No. 8800.

[137] Section 7, Rep. Act No. 8800.

[138] See Section 9, Rep. Act No. 8800.

[139] Supra note 89.

[140] Section 13, Rep. Act No. 8800.

[141] Rollo, p. 682.

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