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[G.R. No. 158540. August 3, 2005]

SOUTHERN CROSS CEMENT CORPORATION, *petitioner, vs.* **CEMENT MANUFACTURERS ASSOCIATION OF THE PHILIPPINES, THE SECRETARY OF THE DEPARTMENT OF TRADE AND INDUSTRY, THE SECRETARY OF THE DEPARTMENT OF FINANCE and THE COMMISSIONER OF THE BUREAU OF CUSTOMS,** *respondents.*

SYLLABUS

1. TAXATION; COURT OF TAX APPEALS (CTA); SECTION 29 OF THE SAFEGUARD MEASURES ACT (SMA); VESTS JURISDICTION ON THE COURT OF TAX APPEALS OVER PETITIONS QUESTIONING THE NON-IMPOSITION BY THE DEPARTMENT OF TRADE SECRETARY OF SAFEGUARD MEASURES.— It should be emphasized again that by utilizing the phrase "in connection with," it is the SMA that expressly vests jurisdiction on the CTA over petitions questioning the non-imposition by the DTI Secretary of safeguard measures. The Court is simply asserting, as it should, the clear intent of the legislature in enacting the SMA. Without "in connection with" or a synonymous phrase, the Court would be compelled to favor the respondents' position that only rulings imposing safeguard measures may be elevated on appeal to the CTA. But considering that the statute does make use of the phrase, there is little sense in delving into alternate scenarios. Respondents fail to convincingly address the absurd consequences pointed out by the *Decision* had their proposed interpretation been adopted. Indeed, suffocated beneath the respondents' legalistic tinsel is the elemental question — what sense is there in vesting jurisdiction on the CTA over a decision to impose a safeguard measure, but not on one choosing not to impose. Of course, it is not for the Court to inquire into the wisdom of legislative acts, hence the rule that jurisdiction must be expressly vested and not presumed. Yet ultimately, respondents muddle the issue by making it appear that the *Decision* has

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uniquely expanded the jurisdictional rules. For the respondents, the proper statutory interpretation of the crucial phrase "in connection with" is to pretend that the phrase did not exist at all in the statute. The Court, in taking the effort to examine the meaning and extent of the phrase, is merely giving breath to the legislative will.

2. ID.; ID.; ID.; QUESTION OF WHETHER OR NOT A TARIFF SHOULD BE IMPOSED IS AN ISSUE FRAUGHT WITH A TAX DIMENSION, DETERMINATION OF WHICH CALL UPON THE SAME KIND OF EXPERTISE THAT A SPECIALIZED BODY AS THE CTA PRESUMABLY POSSESSES.— Philcemcor imputes intelligent design behind the alleged intent of Congress to limit CTA review only to impositions of the general safeguard measures. It claims that there is a necessary tax implication in case of an imposition of a tariff where the CTA's expertise is necessary, but there is no such tax implication, hence no need for the assumption of jurisdiction by a specialized agency, when the ruling rejects the imposition of a safeguard measure. But of course, whether the ruling under review calls for the imposition or non-imposition of the safeguard measure, the common question for resolution still is whether or not the tariff should be imposed — an issue definitely fraught with a tax dimension. The determination of the question will call upon the same kind of expertise that a specialized body as the CTA presumably possesses.

3. ID.; ID.; ID.; CLAIM THAT THE COURT OF TAX APPEALS MAY NOT EXERCISE JUDICIAL REVIEW OVER A DECISION NOT TO IMPOSE A SAFEGUARD MEASURE FINDS NO STATUTORY SUPPORT.— In response to the Court's observation that the setup proposed by respondents was novel, unusual, cumbersome and unwise, public respondents invoke the maxim that courts should not be concerned with the wisdom and efficacy of legislation. But this prescinds from the bogus claim that the CTA may not exercise judicial review over a decision not to impose a safeguard measure, a prohibition that finds no statutory support. It is likewise settled in statutory construction that an interpretation that would cause inconvenience and absurdity is not favored. Respondents do not address the particular illogic that the Court pointed out would ensue if their position on judicial review were adopted. According to the

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respondents, while a ruling by the DTI Secretary imposing a safeguard measure may be elevated on review to the CTA and assailed on the ground of errors in fact and in law, a ruling denying the imposition of safeguard measures may be assailed only on the ground that the DTI Secretary committed grave abuse of discretion. As stressed in the *Decision*, "*[c]ertiorari* is a remedy narrow in its scope and inflexible in its character. It is not a general utility tool in the legal workshop**."**

4. ID.; ID.; ID.; INTERESTED PARTIES ARE NOT LEFT WITHOUT ANY EFFECTIVE REMEDY SHOULD THE TARIFF COMMISSION ACT OR CONCLUDE ERRONEOUSLY IN MAKING ITS DETERMINATION WHETHER THE FACTUAL CONDITIONS EXIST WHICH NECESSITATE THE IMPOSITION OF THE GENERAL SAFEGUARD MEASURE; AS AN INSTRUMENTALITY OF THE GOVERNMENT, THE ACTIONS OF THE TARIFF COMMISSION ARE NOT BEYOND THE PALE OF *CERTIORARI* JURISDICTION.— It is incorrect to say that the *Decision* bars any effective remedy should the Tariff Commission act or conclude erroneously in making its determination whether the factual conditions exist which necessitate the imposition of the general safeguard measure. If the Tariff Commission makes a negative final determination, the DTI Secretary, bound as he is by this negative determination, has to render a decision denying the application for safeguard measures citing the Tariff Commission's findings as basis. Necessarily then, such negative determination of the Tariff Commission being an integral part of the DTI Secretary's ruling would be open for review before the CTA, which again is especially qualified by reason of its expertise to examine the findings of the Tariff Commission. Moreover, considering that the Tariff Commission is an instrumentality of the government, its actions (as opposed to those undertaken by the DTI Secretary under the SMA) are not beyond the pale of *certiorari* jurisdiction. Unfortunately for Philcemcor, it hinged its cause on the claim that the DTI Secretary's actions may be annulled on *certiorari*, notwithstanding the explicit grant of judicial review over that cabinet member's actions under the SMA to the CTA.

5. ID.; ID.; ID.; SECTION 29 OF THE SAFEGUARD MEASURES ACT EXPRESSLY CONFERS CTA JURISDICTION OVER RULINGS IN CONNECTION WITH THE IMPOSITION OF

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THE SAFEGUARD MEASURE, AND THE REASSERTION OF THE SAID MATTER IN THE COURT'S DECISION WAS A MATTER OF EMPHASIS, NOT OF CONTRIVANCE.— Philcemcor argues that assuming this Court's interpretation of Section 29 is correct, such ruling should not be given retroactive effect, otherwise, a gross violation of the right to due process would be had. This erroneously presumes that it was this Court, and not Congress, which vested jurisdiction on the CTA over rulings of non-imposition rendered by the DTI Secretary. We have repeatedly stressed that Section 29 expressly confers CTA jurisdiction over rulings in connection with the imposition of the safeguard measure, and the reassertion of this point in the *Decision* was a matter of emphasis, not of contrivance. The due process protection does not shield those who remain purposely blind to the express rules that ensure the sporting play of procedural law. Besides, respondents' claim would also apply every time this Court is compelled to settle a novel question of law, or to reverse precedent. In such cases, there would always be litigants whose causes of action might be vitiated by the application of newly formulated judicial doctrines. Adopting their claim would unwisely force this Court to treat its dispositions in unprecedented, sometimes landmark decisions not as resolutions to the live cases or controversies, but as legal doctrine applicable only to future litigations.

6. POLITICAL LAW; LEGISLATIVE DEPARTMENT; POWER OF TAXATION; THE SAFEGUARD MEASURES IMPOSABLE UNDER THE SAFEGUARD MEASURES ACT FALL WITHIN THE AMBIT OF SECTION 28 (2), ARTICLE VI OF THE 1987 CONSTITUTION; BASIC POSTULATES INGRAINED IN THE PROVISION GOVERNING THE PRESENT CASE.— The safeguard measures imposable under the SMA generally involve duties on imported products, tariff rate quotas, or quantitative restrictions on the importation of a product into the country. Concerning as they do the foreign importation of products into the Philippines, these safeguard measures fall within the ambit of Section 28(2), Article VI of the Constitution, which states: *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

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development program of the Government. The Court acknowledges the basic postulates ingrained in the provision, and, hence, governing in this case. They are: (1) *It is Congress which authorizes the President to impose tariff rates, import and export quotas, tonnage and wharfage dues, and other duties or imposts.* Thus, the authority cannot come from the Finance Department, the National Economic Development Authority, or the World Trade Organization, no matter how insistent or persistent these bodies may be. (2) *The authorization granted to the President must be embodied in a law.* Hence, the justification cannot be supplied simply by inherent executive powers. It cannot arise from administrative or executive orders promulgated by the executive branch or from the wisdom or whim of the President. (3) *The authorization to the President can be exercised only within the specified limits set in the law and is further subject to limitations and restrictions which Congress may impose.* Consequently, if Congress specifies that the tariff rates should not exceed a given amount, the President cannot impose a tariff rate that exceeds such amount. If Congress stipulates that no duties may be imposed on the importation of corn, the President cannot impose duties on corn, no matter how actively the local corn producers lobby the President. Even the most picayune of limits or restrictions imposed by Congress must be observed by the President. There is one fundamental principle that animates these constitutional postulates. *These impositions under Section 28(2), Article VI fall within the realm of the power of taxation, a power which is within the sole province of the legislature under the Constitution.*

7. ID.; ID.; ID.; WITHOUT SECTION 28 (2), ARTICLE VI, OF THE 1987 CONSTITUTION, THE EXECUTIVE BRANCH HAS NO AUTHORITY TO IMPOSE TARIFFS AND OTHER SIMILAR TAX LEVIES INVOLVING THE IMPORTATION OF FOREIGN GOODS.— *Without Section 28(2), Article VI, the executive branch has no authority to impose tariffs and other similar tax levies involving the importation of foreign goods.* Assuming that Section 28(2) Article VI did not exist, the enactment of the SMA by Congress would be voided on the ground that it would constitute an undue delegation of the legislative power to tax. The constitutional provision shields such delegation from constitutional infirmity, and should be recognized as an exceptional grant of legislative power to the

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President, rather than the affirmation of an inherent executive power. This being the case, the qualifiers mandated by the Constitution on this presidential authority attain primordial consideration. First, there must be a law, such as the SMA. Second, there must be specified limits, a detail which would be filled in by the law. And further, Congress is further empowered to impose limitations and restrictions on this presidential authority. On this last power, the provision does not provide for specified conditions, such as that the limitations and restrictions must conform to prior statutes, internationally accepted practices, accepted jurisprudence, or the considered opinion of members of the executive branch.

8. ID.; ID.; ID.; THE TARIFF COMMISSION AND THE DEPARTMENT OF TRADE AND INDUSTRY SECRETARY MAY BE REGARDED AS AGENTS OF CONGRESS WITHIN THEIR LIMITED RESPECTIVE SPHERES, AS ORDAINED IN THE SAFEGUARD MEASURES ACT, IN THE IMPLEMENTATION OF THE LAW WHICH SIGNIFICANTLY DRAWS ITS STRENGTH FROM THE PLENARY LEGISLATIVE POWER OF TAXATION.— The Court recognizes that the authority delegated to the President under Section 28(2), Article VI may be exercised, in accordance with legislative sanction, by the *alter egos* of the President, such as department secretaries. Indeed, for purposes of the President's exercise of power to impose tariffs under Article VI, Section 28(2), it is generally the Secretary of Finance who acts as *alter ego* of the President. The SMA provides an exceptional instance wherein it is the DTI or Agriculture Secretary who is tasked by Congress, in their capacities as *alter egos* of the President, to impose such measures. Certainly, the DTI Secretary has no inherent power, even as *alter ego* of the President, to levy tariffs and imports. Concurrently, the tasking of the Tariff Commission under the SMA should be likewise construed within the same context as part and parcel of the legislative delegation of its inherent power to impose tariffs and imposts to the executive branch, subject to limitations and restrictions. In that regard, both the Tariff Commission and the DTI Secretary may be regarded as agents of Congress within their limited respective spheres, as ordained in the SMA, in the implementation of the said law which significantly draws its strength from the plenary legislative power of taxation. *Indeed, even the President may*

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be considered as an agent of Congress for the purpose of imposing safeguard measures. It is Congress, not the President, which possesses inherent powers to impose tariffs and imposts. Without legislative authorization through statute, the President has no power, authority or right to impose such safeguard measures because taxation is inherently legislative, not executive.

9. ID.; ID.; ID.; POSITIVE FINAL DETERMINATION BY TARIFF COMMISSION PLAINLY REQUIRED BY SECTION 5 OF THE SAFEGUARD MEASURES ACT.— There is no question that Section 5 of the SMA operates as a limitation validly imposed by Congress on the presidential authority under the SMA to impose tariffs and imposts. That the positive final determination operates as an indispensable requisite to the imposition of the safeguard measure, and that it is the Tariff Commission which makes such determination, are legal propositions plainly expressed in Section 5 for the easy comprehension for everyone but respondents.

10. ID.; ID.; ID.; THE CAUSAL CONNECTION IN SECTION 5 BETWEEN THE IMPOSITION BY THE DEPARTMENT OF TRADE SECRETARY OF THE GENERAL SAFEGUARD MEASURE AND THE POSITIVE FINAL DETERMINATION OF THE TARIFF COMMISSION IS PATENT; RESPONDENTS' PREFERRED INTERPRETATION IS NOT BASED ON THE EXPRESSED LANGUAGE OF THE LAW, BUT FROM IMPLICATIONS DERIVED IN A ROUNDABOUT MANNER.— It can be surmised at once that respondents' preferred interpretation is based not on the express language of the SMA, but from implications derived in a roundabout manner. Certainly, no provision in the SMA expressly authorizes the DTI Secretary to impose a general safeguard measure despite the absence of a positive final recommendation of the Tariff Commission. On the other hand, Section 5 expressly states that the DTI Secretary "shall apply a general safeguard measure upon a positive final determination of the [Tariff] Commission." The causal connection in Section 5 between the imposition by the DTI Secretary of the general safeguard measure and the positive final determination of the Tariff Commission is patent, and even respondents do not dispute such connection.

11. ID.; ID.; ID.; THE EXCERPTS OF DELIBERATIONS CITED BY RESPONDENTS ARE FAR MORE AMBIGUOUS THAN THE LANGUAGE OF THE ASSAILED PROVISION.—

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Respondents employed considerable effort to becloud Section 5 with undeserved ambiguity in order that a proper resort to the legislative deliberations may be had. Yet assuming that Section 5 deserves to be clarified through an inquiry into the legislative record, the excerpts cited by the respondents are far more ambiguous than the language of the assailed provision regarding the key question of whether the DTI Secretary may impose safeguard measures in the face of a negative determination by the Tariff Commission. Moreover, even Southern Cross counters with its own excerpts of the legislative record in support of their own view.

12. ID.; ID.; ID.; IT IS EVIDENT FROM SECTION 5 OF THE SMA THAT THERE MUST BE A POSITIVE FINAL DETERMINATION BY THE TARIFF COMMISSION THAT A PRODUCT IS BEING IMPORTED INTO THE COUNTRY IN INCREASED QUANTITIES AS TO BE A SUBSTANTIAL CAUSE OF SERIOUS INJURY OR THREAT TO THE DOMESTIC INDUSTRY; ANY DISPUTATION TO THE CONTRARY IS, AT BEST, THE PRODUCT OF WISHFUL THINKING.— It will not be difficult, especially as to heavily-debated legislation, for two sides with contrapuntal interpretations of a statute to highlight their respective citations from the legislative debate in support of their particular views. A futile exercise of second-guessing is happily avoided if the meaning of the statute is clear on its face. *It is evident from the text of Section 5 that 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.* Any disputation to the contrary is, at best, the product of wishful thinking.

13. ID.; ID.; ID.; THE DEPARTMENT OF TRADE AND INDUSTRY SECRETARY HAS NO POWER OF REVIEW OVER FINAL DETERMINATION OF THE TARIFF COMMISSION.— Congress in enacting the SMA and prescribing the roles to be played therein by the Tariff Commission and the DTI Secretary did not envision that the President, or his/her *alter ego*, could exercise supervisory powers over the Tariff Commission. If truly Congress intended to allow the traditional "*alter ego*" principle to come to fore in the peculiar setup

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established by the SMA, it would have assigned the role now played by the DTI Secretary under the law instead to the NEDA. The Tariff Commission is an attached agency of the National Economic Development Authority, which in turn is the independent planning agency of the government. The Tariff Commission does not fall under the administrative supervision of the DTI. On the other hand, the administrative relationship between the NEDA and the Tariff Commission is established not only by the Administrative Code, but similarly affirmed by the Tariff and Customs Code.

14. ID.; ID.; ID.; IF CONGRESS INTENDED TO ALLOW THE TRADITIONAL *ALTER EGO* PRINCIPLE TO COME TO FORE IN THE PECULIAR SETUP ESTABLISHED BY THE SMA, IT WOULD HAVE ASSIGNED THE ROLE NOW PLAYED BY THE DTI SECRETARY TO THE NATIONAL ECONOMIC DEVELOPMENT AUTHORITY, THE BODY WHICH THE TARIFF COMMISSION IS ATTACHED UNDER THE ADMINISTRATIVE CODE.— Congress in enacting the SMA and prescribing the roles to be played therein by the Tariff Commission and the DTI Secretary did not envision that the President, or his/her *alter ego* could exercise supervisory powers over the Tariff Commission. If truly Congress intended to allow the traditional *alter ego* principle to come to fore in the peculiar setup established by the SMA, it would have assigned the role now played by the DTI Secretary under the law instead to the NEDA, the body to which the Tariff Commission is attached under the Administrative Code. The Court has no issue with upholding administrative control and supervision exercised by the head of an executive department, but only over those subordinate offices that are attached to the department, or which are, under statute, relegated under its supervision and control. To declare that a department secretary, even if acting as *alter ego* of the President, may exercise such control or supervision over all executive offices below cabinet rank would lead to absurd results such as those adverted to above. As applied to this case, there is no legal justification for the DTI Secretary to exercise control, supervision, review or amendatory powers over the Tariff Commission and its positive final determination.

15. ID.; ID.; ID.; A DECLARATION THAT THE TARIFF COMMISSION POSSESES QUASI-JUDICIAL POWERS, EVEN IF ASCERTAINED FOR THE LIMITED PURPOSE

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OF EXERCISING ITS FUNCTIONS UNDER THE SMA, MAY HAVE THE UNFORTUNATE EFFECT OF EXPANDING THE COMMISSION'S POWERS BEYOND THAT CONTEMPLATED BY LAW.— A declaration that the Tariff Commission possesses quasi-judicial powers, even if ascertained for the limited purpose of exercising its functions under the SMA, may have the unfortunate effect of expanding the Commission's powers beyond that contemplated by law. After all, the Tariff Commission is by convention, a fact-finding body, and its role under the SMA, burdened as it is with factual determination, is but a mere continuance of this tradition. However, Congress through the SMA offers a significant deviation from this traditional role by tying the decision by the DTI Secretary to impose a safeguard measure to the required positive factual determination by the Tariff Commission. Congress is not bound by past traditions, or even by the jurisprudence of this Court, in enacting legislation it may deem as suited for the times. The sole benchmark for judicial substitution of congressional wisdom is constitutional transgression, a standard which the respondents do not even attempt to match.

16. ID.; ID.; ID.; RESPONDENT'S SUGGESTED INTERPRETATION OF THE SMA TRANSGRESSES FAIR PLAY.— Respondents have belabored the argument that the *Decision*'s interpretation of the SMA, particularly of the role of the Tariff Commission *vis-à-vis* the DTI Secretary, is noxious to traditional notions of administrative control and supervision. But in doing so, they have failed to acknowledge the congressional prerogative to redefine administrative relationships, a license which falls within the plenary province of Congress under our representative system of democracy. Moreover, respondents' own suggested interpretation falls wayward of expectations of practical fair play. Adopting respondents' suggestion that the DTI Secretary may disregard the factual findings of the Tariff Commission and investigatory process that preceded it, it would seem that the elaborate procedure undertaken by the Commission under the SMA, with all the attendant guarantees of due process, is but an inutile spectacle. As Justice Garcia noted during the oral arguments, why would the DTI Secretary bother with the Tariff Commission and instead conduct the investigation himself. Certainly, nothing in the SMA authorizes the DTI Secretary, after making the preliminary determination, to personally oversee

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the investigation, hear out the interested parties, or receive evidence. In fact, the SMA does not even require the Tariff Commission, which is tasked with the custody of the submitted evidence, to turn over to the DTI Secretary such evidence it had evaluated in order to make its factual determination. Clearly, as Congress tasked it to be, it is the Tariff Commission and not the DTI Secretary which acquires the necessary intimate acquaintance with the factual conditions and evidence necessary for the imposition of the general safeguard measure. Why then favor an interpretation of the SMA that leaves the findings of the Tariff Commission bereft of operative effect and makes them subservient to the wishes of the DTI Secretary, a personage with lesser working familiarity with the relevant factual milieu? In fact, the bare theory of the respondents would effectively allow the DTI Secretary to adopt, under the subterfuge of his "discretion," the factual determination of a private investigative group hired by the industry concerned, and reject the investigative findings of the Tariff Commission as mandated by the SMA. It would be highly irregular to substitute what the law clearly provides for a dubious setup of no statutory basis that would be readily susceptible to rank chicanery.

17. ID.; ID.; ID.; NO EVIDENT LEGISLATIVE INTENT BY AUTHORS OF THE SMA TO PROVIDE FOR A PROCEDURE OF ADMINISTRATIVE REVIEW; THE LAW IS SILENT ON WHETHER THE POSITIVE FINAL DETERMINATION MAY OTHERWISE BE SUBJECTED TO ADMINISTRATIVE REVIEW.— The Court has been emphatic that a positive final determination from the Tariff Commission is required in order that the DTI Secretary may impose a general safeguard measure, and that the DTI Secretary has no power to exercise control and supervision over the Tariff Commission and its final determination. These conclusions are the necessary consequences of the applicable provisions of the Constitution, the SMA, and laws such as the Administrative Code. However, the law is silent though on whether this positive final determination may otherwise be subjected to administrative review. There is no evident legislative intent by the authors of the SMA to provide for a procedure of administrative review. If ever there is a procedure for administrative review over the final determination of the Tariff Commission, such procedure must be done in a manner that does not contravene or disregard

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legislative prerogatives as expressed in the SMA or the Administrative Code, or fundamental constitutional limitations.

18. ID.; ID.; ID.; COURT'S INTERPRETATION OF SMA IN HARMONY WITH OTHER CONSTITUTIONAL PROVISIONS.— In response to our citation of Section 28(2), Article VI, respondents elevate two arguments grounded in constitutional law. One is based on another constitutional provision, Section 12, Article XIII, which mandates that "[t]he State shall promote the preferential use of Filipino labor, domestic materials and locally produced goods and adopt measures that help make them competitive." By no means does this provision dictate that the Court favor the domestic industry in all competing claims that it may bring before this Court. If it were so, judicial proceedings in this country would be rendered a mockery, resolved as they would be, on the basis of the personalities of the litigants and not their legal positions. Moreover, the duty imposed on by Section 12, Article XIII falls primarily with Congress, which in that regard enacted the SMA, a law designed to protect domestic industries from the possible ill-effects of our accession to the global trade order. Inconveniently perhaps for respondents, the SMA also happens to provide for a procedure under which such protective measures may be enacted. The Court cannot just impose what it deems as the spirit of the law without giving due regard to its letter.

19. ID.; ID.; ID.; ASSAILED DECISION IS CONSISTENT WITH THE RULING IN *TANADA VS. ANGARA*.— Public respondents allege that the *Decision* is contrary to our holding in *Tañada v. Angara*, since the Court noted therein that the GATT itself provides built-in protection from unfair foreign competition and trade practices, which according to the public respondents, was a reason "why the Honorable [Court] ruled the way it did." On the other hand, the *Decision* "eliminates safeguard measures as a mode of defense." This is balderdash, as with any and all claims that the *Decision* allows foreign industries to ride roughshod over our domestic enterprises. The *Decision* does not prohibit the imposition of general safeguard measures to protect domestic industries in need of protection. All it affirms is that the positive final determination of the Tariff Commission is first required before the general safeguard measures are imposed and implemented, a neutral proposition that gives no

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regard to the nationalities of the parties involved. A positive determination by the Tariff Commission is hardly the elusive *Shangri-la* of administrative law. If a particular industry finds it difficult to obtain a positive final determination from the Tariff Commission, it may be simply because the industry is still sufficiently competitive even in the face of foreign competition. These safeguard measures are designed to ensure salvation, not avarice.

20. REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; NOT WILLFUL AND DELIBERATE TO WARRANT DISMISSAL OF PETITION.— We remain convinced that there was no willful and deliberate forum-shopping in this case by Southern Cross. The causes of action that animate this present petition for review and the petition for review with the CTA are distinct from each other, even though they relate to similar factual antecedents. Yet it also appears that contrary to the undertaking signed by the President of Southern Cross, Hironobu Ryu, to inform this Court of any similar action or proceeding pending before any court, tribunal or agency within five (5) days from knowledge thereof, Southern Cross informed this Court only on 12 August 2003 of the petition it had filed with the CTA eleven days earlier. An appropriate sanction is warranted for such failure, but not the dismissal of the petition.

21. ID.; ID.; COURT REAFFIRMS NULLITY OF THE DEPARTMENT OF TRADE AND INDUSTRY SECRETARY'S DECISION, AND AS A NECESSARY CONSEQUENCE, NO FURTHER ACTION CAN BE TAKEN ON RESPONDENT'S PETITION FOR EXTENSION OF THE SAFEGUARD MEASURE.— The Court of Appeals' *Decision* was annulled precisely because the appellate court did not have the power to rule on the petition in the first place. Jurisdiction is necessarily the power to decide a case, and a court which does not have the power to adjudicate a case is one that is bereft of jurisdiction. We find no reason to disturb our earlier finding that the Court of Appeals' *Decision* is null and void. At the same time, the Court in its *Decision* paid particular heed to the peculiarities attaching to the 5 August 2003 *Decision* of the DTI Secretary. In the DTI Secretary's *Decision*, he expressly stated that as a result of the Court of Appeals' *Decision*, "there is no legal impediment for the Secretary to decide on the application." Yet the truth remained that there was a legal

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impediment, namely, that the decision of the appellate court was not yet final and executory. Moreover, it was declared null and void, and since the DTI Secretary expressly denominated the Court of Appeals' Decision as his basis for deciding to impose the safeguard measures, the latter decision must be voided as well. Otherwise put, without the Court of Appeals' *Decision*, the DTI Secretary's *Decision* of 5 August 2003 would not have been rendered as well. Accordingly, the Court reaffirms as a nullity the DTI Secretary's *Decision* dated 5 August 2003. As a necessary consequence, no further action can be taken on Philcemcor's *Petition for Extension of the Safeguard Measure*. Obviously, if the imposition of the general safeguard measure is void as we declared it to be, any extension thereof should likewise be fruitless. The proper remedy instead is to file a new application for the imposition of safeguard measures, subject to the conditions prescribed by the SMA. Should this step be eventually availed of, it is only hoped that the parties involved would content themselves in observing the proper procedure, instead of making a mockery of the rule of law.

PANGANIBAN, *C.J., separate opinion:*

1. TAXATION; COURT OF TAX APPEALS; HAS JURISDICTION TO REVIEW THE DEPARTMENT OF TRADE AND INDUSTRY SECRETARY'S RULINGS IN CONNECTION WITH THE IMPOSITION OF A SAFEGUARD MEASURE.— I agree with the Court's Resolution penned by Justice Tinga that the DTI secretary's decisions — whether imposing safeguard measures or not — are subject to review by the CTA, pursuant to Section 29 of RA 8800. The meaning of the phrase *in connection with the imposition of a safeguard measure* is not the same as *imposing a safeguard measure*; otherwise, the law would simply have sufficed without the qualifying connector. Consequently, all final rulings relating to an application for the measure — whether imposing, extending, terminating or disallowing one — are *in connection with the imposition of a safeguard measure,* and thus appealable to the CTA.

2. ID.; ID.; ID.; A HIGHLY SPECIALIZED COURT SPECIFICALLY CREATED FOR THE PURPOSE OF REVIEWING TAX AND CUSTOMS CASES.— I believe that

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the CTA is the proper and competent body to review the DTI secretary's decisions involving safeguard measures. By the very nature of its functions, the CTA is a highly specialized court specifically created for the purpose of reviewing tax and customs cases. It is dedicated exclusively to the study and consideration of revenue-related problems and has necessarily developed an expertise on the subject. Thus, as a general rule, its findings and conclusions are accorded great respect and are generally upheld by this Court, unless there is a clear showing of a reversible error or an improvident exercise of authority.

3. ID.; ID.; SAFEGUARD MEASURES; FACTORS CONSIDERED IN THE DETERMINATION THEREOF.— While primarily intended to protect domestic industries, safeguard measures are incidentally revenue-generating and generally in the nature of, though not always equivalent to, tariff impositions. They may consist of a tariff increase, duty, tariff-rate quota, quantitative restriction, adjustment measure or a combination of these. In the determination of their imposition, the following factors are to be taken into consideration: rate and amount of increase in the importation of the product concerned; share of the domestic market taken by the increased imports; and changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment. Most of these factors involve data analysis which, by virtue of the highly specialized technical expertise of the CTA, must be more familiar to it than to the CA. Thus, as between the two appellate courts, the CTA should have the jurisdiction to review decisions involving safeguard measures, whether imposed or not. In either case, a review will necessarily entail a reappraisal of the facts from which the decisions were based. In both instances, a factual reassessment would encompass the same kind of knowledge and technical expertise. Indeed, it would be absurd if only a positive decision is reviewable by the CTA, while a negative one is passed on to the CA.

4. POLITICAL LAW; LEGISLATIVE DEPARTMENT; POWER TO IMPOSE OR FIX TARRIFS IS ESSENTIALLY LEGISLATIVE AND CAN BE DELEGABLE ONLY TO THE PRESIDENT.— The application of safeguard measures, while primarily intended to protect domestic industries, is essentially in the nature of a tariff imposition. Pursuant to the Constitution, the imposition of tariffs and taxes is a highly prized

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legislative prerogative. Pursuant also to the Constitution, such power to fix tariffs may, as an exception, be delegated by Congress to *the President.* Under this constitutional provision, to no other official, except *the President*, is the authority to fix tariff rates, quotas, imposts and other duties allowed to be delegated. However, the Resolution authored by Justice Tinga theorizes that Congress may delegate such power to fix tariffs to both the Tariff Commission and the DTI secretary, "as agents of Congress." I believe that this theory plainly violates the aforequoted Section 28(2) of Article VI of the Constitution.

5. ID.; EXECUTIVE DEPARTMENT; THE ONLY CONSTITUTIONAL WAY TO UPHOLD THE DEPARTMENT OF TRADE AND INDUSTRY SECRETARY'S IMPOSITION OF TARIFFS UNDER RA 8800 IS TO APPLY THE *ALTER EGO* PRINCIPLE.— I respectfully submit that the only constitutional way to uphold the DTI secretary's imposition of tariffs under RA 8800 is to apply the alter ego principle. In other words, the DTI secretary imposes safeguard measures (like tariffs, import quotas, quantitative restriction, *etc*.) only in representation and as an alter ego of the President in the field of trade and investment matters. Thus, the law must be construed as delegating to the President — through the latter's *alter ego* on trade — the power to impose safeguard measures. Under the same Section 28(2) of Article VI of the Constitution, Congress may specify "limitations and restrictions" on the President's authority to impose tariff rates. However, such statutory limitations and restrictions must themselves conform to the fundamental law. They cannot infringe, restrict, limit, degrade or dilute the constitutional power of the President to control the entire Executive Department.

6. ID.; ID.; PLENARY POWER OF CONTROL INCLUDES THE RIGHT TO MODIFY OR SET ASIDE A DECISION OF A SUBORDINATE OFFICER AND CANNOT BE RESTRICTED BY A MERE STATUTE PASSED BY CONGRESS.— The power of control includes the right to modify or set aside a decision of a subordinate officer. Since the Tariff Commission is an agency in the Executive Department, it is necessarily subject to the control and supervision of the President. Hence, its decisions and recommendations cannot tie the hands of the Chief Executive with finality. Consequently, the DTI

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head, acting as the President's agent pursuant to RA 8800, may affirm, modify or reverse the Tariff Commission's recommendation. To repeat, such plenary power of control cannot be restricted by a mere statute passed by Congress.

7. ID.; ID.; TARIFF COMMISSION; PRIMARILY A FACT-FINDER; RA 8800 DOES NOT EXPLICITLY STATE THAT THE TARIFF COMMISSION'S REPORT OR CONCLUSIONS HAVE THE EFFECT OF FINALITY AND IRREFUTABILITY THAT SHALL BIND THE DEPARTMENT OF TRADE AND INDUSTRY HEAD, OR THE PRESIDENT.— Whereas the DTI secretary has to carry out a *policy mandate* for the President, the Tariff Commission is but an investigatory arm that submits reports of its investigations as provided under the law. Under RA 8800, it is tasked to conduct a formal investigation upon the DTI secretary's referral of an application/a petition for a safeguard measure. After completion of the investigation, it submits to the secretary a report that contains its findings and recommendations. Nothing in the law explicitly states that its report or conclusions have the effect of finality and irrefutability that shall bind the DTI head, or the President for that matter. As the cabinet official and alter ego of the President *on trade, industry and investment-related matters*, the DTI head necessarily has sufficient latitude and discretion in the pursuit of the Department's mandate. On the other hand, being primarily a fact-finder, the Tariff Commission is limited to submitting its report and recommendations to the referring agency. In this scheme of tasking, absent any clear and direct provision of the Constitution, the TC's mere recommendation cannot bind the cabinet official, much less the President. As the solicitor general aptly suggests, RA 8800 could not have intended that the alter ego of the President be a mere rubber stamp who would be compelled to enforce the recommendations of a purely investigatory agency in the Executive Department.

8. ID.; ID.; CONGRESS CANNOT ABOLISH OR RESTRICT THE PRESIDENT'S CONSTITUTIONAL POWER OF CONTROL OVER EXECUTIVE AGENCIES AND OFFICIALS.— The Tinga Resolution states — erroneously, I submit — that I advocate the President's exercise of absolute and plenary control over subordinates, such that the Chief Executive could order them to perform illegal or irregular acts.

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I do not, and I have made no such preposterous statement. Needless to state, the exercise of any power must be within the bounds of the Constitution and law. True, Congress may reorganize the offices under the Executive Department. It may even abolish or merge some of them. However, it cannot abolish or restrict the President's constitutional power of control over executive agencies and officials. The control power of the Chief Executive emanates from the Constitution; no act of Congress may validly curtail it.

9. ID.; ID.; CONGRESS COULD NOT HAVE DIRECTLY CONSTITUTED THE DEPARTMENT OF TRADE AND INDUSTRY SECRETARY AS ITS OWN AGENT AS THE CONSTITUTION CATEGORICALLY LIMITED THE DELEGATION OF SUCH AUTHORITY TO THE PRESIDENT.— To be consistent with the constitutional clause, the law must be understood to mean that in delegating the authority to impose safeguard measures, Congress designated the DTI secretary, being the President's sulbaltern or alter ego on trade matters. Again, Congress could not have directly constituted the cabinet official as its own agent, because the Constitution categorically limited the delegation of such authority to the President. The fundamental law expressly states that Congress may authorize the President (and names no other official) to impose (subject to limitations and restrictions that it may specify) tariffs, quotas, duties and other imposts. For the legislature to delegate the authority to another official or entity, such as the Tariff Commission, and to completely disregard or do away with the President would be a blatant contravention of the Constitution.

10. ID.; ID.; AS THE PRESIDENT'S ALTER EGO ON TRADE MATTERS, THE DTI SECRETARY EXERCISES, IN THE PRESIDENT'S STEAD, THE SAME PREROGATIVE OF AFFIRMATION, MODIFICATION OR REVERSAL OVER ANY ACTION OF THE TARIFF COMMISSION.— [I]n imposing a safeguard measure, the DTI secretary acts as the President's *alter ego*. Because the President's power of control over any office in the Executive Department cannot be restricted or degraded by Congress, by the same reasoning the exercise by the *alter ego* of such power of control over actions of the Tariff Commission cannot be constitutionally curtailed by

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Congress. Otherwise stated, the President — through the constitutional power of control over the Executive Department — has the prerogative to affirm, modify or reverse any action of the Tariff Commission. Thus, the DTI secretary — as the President's *alter ego* on trade matters — may exercise, in the President's stead, the same prerogative of affirmation, modification or reversal over any action of the Commission.

11. ID.; ID.; DECISION TO IMPOSE A SAFEGUARD MEASURE HINGES ON PUBLIC INTEREST, WHICH IS A POLITICAL QUESTION BEST ADDRESSED BY ELECTED OFFICIALS LED BY THE PRESIDENT.— [T]he congressional limitation on the exercise of the delegated authority to impose safeguards does NOT refer to the final determination or recommendation of the Tariff Commission that the first two factual conditions are present or absent. Of course, these are important considerations that are verifiable from the records of the proceedings undertaken by the Commission. These data must be weighed accordingly. In the same vein, many immeasurable and indirect variables have to be assessed in ensuring that public interest is subserved. In the final analysis, the decision to impose a safeguard measure hinges on public interest, which is a political question best addressed by our people's elected officials led by the President.

12. ID.; ID.; INTERPRETATION OF AN ADMINISTRATIVE GOVERNMENT AGENCY TASKED TO IMPLEMENT A STATUTE IS GENERALLY ACCORDED GREAT RESPECT AND ORDINARILY CONTROLS THE CONSTRUCTION OF THE COURTS.— The interpretation of an administrative government agency, which is tasked to implement a statute, is generally accorded great respect and ordinarily controls the construction of the courts. The crafting of the implementing rules and regulations (IRR) of RA 8800 was a joint undertaking of several executive agencies — the Departments of Agriculture, Trade and Industry, and Finance; the Bureau of Customs; the NEDA; and the *Tariff Commission* — after consultations with domestic industries. Rule 13.2 of the final IRR expressly states as follows: "Rule 13.2. *Final Determination by the Secretary* "Rule 13.2.a. Within fifteen (15) days from receipt of the Report of the Commission, the Secretary shall make a decision, taking into consideration the measures recommended by the Commission." x x x x x x x x x Indeed, the very administrative

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government agencies tasked under the same law to implement its provisions clearly understood that it is the DTI secretary who makes the final determination or decision. In making a decision, the secretary merely *takes into consideration* the recommendations of the Tariff Commission. On the other hand, the latter, in making its recommendations, does not determine in an adjudicative manner the rights, privileges and duties of private parties. Hence, its functions, even under RA 8800, cannot be classified as quasi-judicial.

13. ID.; ID.; ID.; THE PARAMETERS SET BY RA 8800 SHOULD ALLAY PETITIONER'S FEAR OF A VIOLATION OF DUE PROCESS IN CASE OF REVERSAL BY THE SECRETARY OF TRADE AND INDUSTRY OF THE NEGATIVE DETERMINATION BY THE TARIFF COMMISSION.— The DTI secretary could not issue a decision arbitrarily, without substantial factual and legal bases. In making a final decision — whether to impose or not to impose a safeguard measure — the secretary is still bound by the conditions laid down in Section 5 of RA 8800. As earlier mentioned, those limitations are as follows: the importation of a product in increased quantities, whether absolute or relative to the domestic production; an actual or a threatened serious injury to the domestic industry as a result of increased importation; and the application of the safeguard measure in the public interest. These parameters should allay petitioner's fear of a violation of due process in case of a reversal by the secretary of the negative determination by the Commission. Both may have the same factual moorings on the basis of which they may, however, have contrasting conclusions on the need for a safeguard measure.

14. ID.; ID.; ID.; THE SECRETARY OF TRADE AND INDUSTRY CAN REJECT BOTH A POSITIVE AND NEGATIVE FINAL DETERMINATION OF THE TARIFF COMMISSION.— [U]nder petitioner's submission (upheld by the Second Division) that the DTI secretary may impose the measure only upon a positive determination by the Tariff Commission, a violation of due process would be more probable in case of a negative determination by the latter. Following the *ponencia's* literal interpretation of the law, the aggrieved party (the applicant) in such a situation would be left with absolutely

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no recourse. A negative report will then be not reviewable by anyone — not by the DTI secretary who is bound by it; not by the President, who has no direct role in the proceeding defined under the law; and not by the courts, which may review only the DTI secretary's decisions. Such a scheme of things constitutes an utter disregard of the guarantee of due process under the Constitution. The *ponencia* even goes further by declaring that "nothing in the SMA obliges the DTI [s]ecretary to adopt the recommendations made by the Tariff Commission." If the trade secretary can reject a positive final determination of the Commission, what is the rationale behind binding him to a negative determination by the same body? I cannot think of more illogic.

15. ID.; ID.; ID.; OBJECT AND PURPOSE OF RA 8800 SHOULD BE GIVEN UTMOST CONSIDERATION AND EFFECT; IN THE IMPOSITION OF SAFEGUARD MEASURES, NOT ONLY THE ANALYSIS OF TECHNICAL DATA IS INVOLVED BUT LIKEWISE THE DETERMINATION THAT IT SERVES PUBLIC INTEREST.— [T]he object and purpose of RA 8800 should be given utmost consideration and effect. The law was enacted primarily to protect or safeguard local industries and producers from increased importation of foreign products, which cause or threaten to cause serious domestic injury. RA 8800 was intended to secure our local industry from the ill effects of global trade liberalization. It was aimed at protecting Filipino interests *vis-à-vis* international trade policies. Toward these ends, I believe this Court must give domestic industries every opportunity to seek redress through the most expeditious means possible. On matters concerning policy questions, it must allow the political departments ample chances to make the proper determinations within their respective spheres of competencies. *Be it remembered that in the imposition of safeguard measures, not only the analysis of technical data is involved but likewise, and perhaps in a more crucial sense, the determination that it serves the public interest.* The proceeding does not merely relate to the settlement of conflicting claims of private parties but, more important, the achievement of the national policy to promote the competitiveness of domestic industries as a whole. In short, we must give essence to the aim of the law to advance the industrial development of the country.

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16. ID.; ID.; ID.; DOCTRINE ON THE EXHAUSTION OF ADMINISTRATIVE REMEDIES SHOULD BE MADE TO WORK OUT.— [T]he doctrine on the exhaustion of administrative remedies should be made to work out. After all, the administrative agencies of the government, particularly the Department of Trade and Industry with respect to safeguard measures, possess the necessary knowledge and expertise linked up with policy concerns. The Department heads, especially because they serve as *alter egos* of the President, should not be needlessly restricted in the exercise of their discretion. It is they who best know how to address properly the nonjudicial interests of the people. Thus, before resorting to courts, all possible administrative means should be exhausted. While on the topic of exhaustion of administrative remedies, may I add my personal belief that the Decision of the secretary of trade should be appealable to the President. After all, the President cannot be deprived of the power to review, modify or reverse actions of his or her *alter egos.* In the present case, the Constitution expressly mentions the "President" as the official whom "Congress may, by law, authorize" to impose "tariff rates, import and export quotas, tonnage and wharfage dues, and other duties or imports." Thus, in the Executive Department, the President should have the *final* say on such matters. However, I shall not dwell at length on this point because it was not raised as an issue by the parties.

17. REMEDIAL LAW; ACTIONS; FORUM SHOPPING; PETITION DOES NOT DESERVE OUTRIGHT DISMISSAL, THERE BEING NO SHOWING OF WILLFUL AND DELIBERATE FORUM SHOPPING.— With respect to the question on forum shopping, I also agree with the Resolution of the Court that petitioner must answer for its failure to give timely information to the Court of the Petition for Review that the former filed with the CTA while the present case was pending here. But there being no showing of willful and deliberate forum shopping, the Petition does not deserve outright dismissal.

18. ID.; ID.; ID.; ID.; PETITIONER'S COUNSELS SHOULD BE SANCTIONED WITH SEVERE CENSURE.— Forum shopping has been characterized as an act of malpractice that is prohibited, and condemned as trifling with the courts and abusing their processes. It constitutes improper conduct, because it tends to degrade the administration of justice. It has also been aptly

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described as deplorable, because it adds to the congestion of the already heavily burdened court dockets. Failure to comply with the non-forum shopping requirements in Section 5 of Rule 7 does not, however, automatically warrant the dismissal of the case with prejudice. The Rule states that the dismissal is without prejudice; with prejudice, only upon motion and after hearing. And there must be evidence that the erring party and counsel committed willful and deliberate acts amounting to forum shopping as to warrant the summary dismissal of the case and the imposition of direct contempt and the appropriate administrative sanctions. In previous cases, the penalties imposed upon erring lawyers who engaged in forum shopping ranged from severe censure to suspension from the practice of law, in order to make them realize the seriousness of the consequences and implications of their abuse of the judicial process and disrespect for judicial authority. Based on the foregoing tenets, I believe that petitioner's counsels should be sanctioned with severe censure.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala & Cruz for petitioner.
Abundio D. Marapao, Jr. for V.T. Lao Construction.
Justice Florentino P. Feliciano, Maria Lourdes A. Sereno for CMAP.

R E S O L U T I O N

TINGA, *J.*:

Cement is hardly an exciting subject for litigation. Still, the parties in this case have done their best to put up a spirited advocacy of their respective positions, throwing in everything including the proverbial kitchen sink. At present, the burden of passion, if not proof, has shifted to public respondents Department of Trade and Industry (DTI) and private respondent Philippine Cement Manufacturers Corporation (Philcemcor),[1] who now seek

[1] Since renamed Cement Manufacturers Association of the Philippines. See *Rollo*, p. 1634. Considering that the Decision referred to the private respondents by their old name, this Resolution shall do so as well, for the sake of continuity.

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reconsideration of our *Decision* dated 8 July 2004 (*Decision*), which granted the petition of petitioner Southern Cross Cement Corporation (Southern Cross).

This case, of course, is ultimately not just about cement. For respondents, it is about love of country and the future of the domestic industry in the face of foreign competition. For this Court, it is about elementary statutory construction, constitutional limitations on the executive power to impose tariffs and similar measures, and obedience to the law. Just as much was asserted in the *Decision*, and the same holds true with this present *Resolution*.

An extensive narration of facts can be found in the *Decision*.[2] As can well be recalled, the case centers on the interpretation of provisions of Republic Act No. 8800, the Safeguard Measures Act ("SMA"), which was one of the laws enacted by Congress soon after the Philippines ratified 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]

A brief summary as to how the present petition came to be filed by Southern Cross. Philcemcor, an association of at least eighteen (18) domestic cement manufacturers filed with the DTI a petition, seeking the imposition of safeguard measures on gray Portland cement,[5] in accordance with the SMA. After the DTI issued a provisional safeguard measure,[6] the application

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[2] See *Southern Cross Cement Corporation v. Philippine Cement Manufacturers Corporation*, G.R. No. 158540, 8 July 2004, 434 SCRA 65, 69-80.

[3] See *Tañada v. Angara*, 338 Phil. 546, 556 (1997).

[4] *Supra* note 2 at 69.

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

[6] In an Order dated 7 November 2001. *Rollo*, p. 128.

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was referred to the Tariff Commission for a formal investigation pursuant to Section 9 of the SMA and its Implementing Rules and Regulations, in order to determine whether or not to impose a definitive safeguard measure on imports of gray Portland cement. The Tariff Commission held public hearings and conducted its own investigation, then on 13 March 2002, issued its Formal Investigation Report ("Report"). The Report determined as follows:

> 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.[7]

The DTI sought the opinion of the Secretary of Justice whether it could still impose a definitive safeguard measure notwithstanding the negative finding of the Tariff Commission. After the Secretary of Justice opined that the DTI could not do so under the SMA,[8] the DTI Secretary then promulgated a *Decision*[9] wherein he expressed the DTI's disagreement with the conclusions of the Tariff Commission, but at the same time, ultimately denying Philcemcor's application for safeguard measures on the ground that the he was bound to do so in light of the Tariff Commission's negative findings.[10]

Philcemcor challenged this *Decision* of the DTI Secretary by filing with the Court of Appeals a *Petition for Certiorari, Prohibition and Mandamus*[11] seeking to set aside the DTI *Decision*, as well as the Tariff Commission's 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

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[7] *Id*. at 303.

[8] *Id*. at 334-341.

[9] *Id*. at 343. Dated 5 April 2003.

[10] *Id*. at 343.

[11] *Id*. at 345-416.

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is void, as it is predicated on a flawed framework, inconsistent inferences and erroneous methodology.[12]

The Court of Appeals Twelfth Division, in a *Decision*[13] penned by Court of Appeals Associate Justice Elvi John Asuncion,[14] partially granted Philcemcor's petition. The appellate court ruled that it had jurisdiction over the petition for *certiorari* since it alleged grave abuse of discretion. While it refused to annul the findings of the Tariff Commission,[15] it also held that the DTI Secretary was 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.[16]

On 23 June 2003, Southern Cross filed the present petition, arguing that the Court of Appeals has no jurisdiction over Philcemcor's petition, as the proper remedy is 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 of conditions warranting the imposition of general safeguard measures are binding upon the DTI Secretary.

Despite the fact that the Court of Appeals' *Decision* had not yet become final, its binding force was cited by the DTI Secretary

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[12] 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.

[13] Dated 5 June 2003.

[14] *Rollo*, pp. 67-84. And concurred in by Justices P. Aliño-Hormachuelos and E. F. Sundiam.

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

[16] *Id*. at 82.

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when he issued a new *Decision* on 25 June 2003, wherein he ruled 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.[17] 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.[18] 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 ₱20.60/40 kg. bag for three years on imported gray Portland Cement.[19]

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. Yet Southern Cross did not promptly inform this Court about this filing. The first time the Court would learn about this *Petition* with the CTA was when Southern Cross mentioned such fact

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[17] *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 x x x" See *Rollo*, pp. 679-680.

[18] *Id*. at 688-690.

[19] *Id*. at 681-699.

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in a pleading dated 11 August 2003 and filed the next day with this Court.[20]

Philcemcor argued before this Court that Southern Cross had deliberately and willfully resorted to forum-shopping; 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.[21]

After giving due course to Southern Cross's *Petition*, the Court called the case for oral argument on 18 February 2004.[22] 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, whether a *Temporary Restraining Order* is warranted.[23]

After the parties had filed their respective memoranda, the Court's Second Division, to which the case had been assigned, promulgated its *Decision* granting Southern Cross's Petition.[24] The *Decision* was unanimous, without any separate or concurring opinion.

The Court ruled that the Court of Appeals had no jurisdiction over Philcemcor's *Petition*, the proper remedy under Section 29 of the SMA being a petition for review with the CTA; and that the Court of Appeals erred in ruling that the DTI Secretary

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[20] *Id*. at 775. The pleading's self-explanatory caption was "Reply to PHILCEMCOR's Opposition (to Petitioner's Application for a Temporary Restraining Order And/or Writ of Preliminary Injunction)."

[21] *Id*. at 952-1005.

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

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

[24] The Decision was penned by the author of this Resolution, and concurred in by Senior Associate Justice Reynato S. Puno (Chairman of the Second Division), Associate Justices Leonardo A. Quisumbing, Alicia Austria-Martinez and Romeo J. Callejo, Sr.

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was not bound by the negative determination of the Tariff Commission and could therefore impose the general safeguard measures, since Section 5 of the SMA precisely required that the Tariff Commission make a positive final determination before the DTI Secretary could impose these measures. Anent the argument that Southern Cross had committed forum-shopping, the Court concluded that there was no evident malicious intent to subvert procedural rules so as to match the standard under Section 5, Rule 7 of the Rules of Court of willful and deliberate forum shopping. Accordingly, the *Decision* of the Court of Appeals dated 5 June 2003 was declared null and void.

The Court likewise found it necessary to nullify the *Decision* of the DTI Secretary dated 25 June 2003, rendered after the filing of this present *Petition*. This *Decision* by the DTI Secretary had cited the obligatory force of the null and void Court of Appeals' *Decision*, notwithstanding the fact that the decision of the appellate court was not yet final and executory. Considering that the decision of the Court of Appeals was a nullity to begin with, the inescapable conclusion was that the new decision of the DTI Secretary, prescinding as it did from the imprimatur of the decision of the Court of Appeals, was a nullity as well.

After the *Decision* was reported in the media, there was a flurry of newspaper articles citing alleged negative reactions to the ruling by the counsel for Philcemcor, the DTI Secretary, and others.[25] Both respondents promptly filed their respective motions for reconsideration.

On 21 September 2004, the Court *En Banc* resolved, upon motion of respondents, to accept the petition and resolve the

[25] Southern Cross filed a Manifestation and Motion dated 20 July 2004, alleging a barrage of press releases by Philcemcor, the DTI and their allies critical of this Court's Decision, characterizing such as a "well-orchestrated and malevolent scheme obviously intended to coerce and pressure this Honorable Court to reverse the Decision and/or to influence its resolution." Without giving credence to these allegations, the Second Division of the Court found it prudent to issue a Resolution dated 15 September 2004 enjoining the parties and their counsels, whether directly or indirectly, from making any public comments in any public forum until the case was finally adjudicated. See *Rollo*, pp. 2582-2585.

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Motions for Reconsideration.[26] The case was then reheard[27] on oral argument on 1 March 2005. During the hearing, the Court elicited from the parties their arguments on the two central issues as discussed in the assailed *Decision*, pertaining to the jurisdictional aspect and to the substantive aspect of whether the DTI Secretary may impose a general safeguard measure despite a negative determination by the Tariff Commission. The Court chose not to hear argumentation on the peripheral issue of forum-shopping,[28] although this question shall be tackled herein shortly. Another point of concern emerged during oral arguments on the exercise of quasi-judicial powers by the Tariff Commission, and the parties were required by the Court to discuss in their respective memoranda whether the Tariff Commission could validly exercise quasi-judicial powers in the exercise of its mandate under the SMA.

The Court has likewise been notified that subsequent to the rendition of the Court's *Decision*, Philcemcor filed a *Petition for Extension of the Safeguard Measure* with the DTI, which has been referred to the Tariff Commission.[29] In an *Urgent Motion* dated 21 December 2004, Southern Cross prayed that Philcemcor, the DTI, the Bureau of Customs, and the Tariff Commission be directed to "cease and desist from taking any and all actions pursuant to or under the null and void CA Decision and DTI Decision, including proceedings to extend the safeguard measure.[30] In a *Manifestation and Motion* dated 23 June 2004, the Tariff Commission informed the Court that since no prohibitory injunction or order of such nature had been issued by any court against the Tariff Commission, the Commission proceeded to complete its investigation on the petition for extension, pursuant to Section 9 of the SMA, but opted to defer transmittal of its report to the DTI Secretary pending "guidance" from this Court

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[26] *Rollo*, p. 2587.

[27] See note 22.

[28] See TSN dated 1 March 2005, p. 5.

[29] A copy of this petition was attached as Annex "E" to Southern Cross's "Urgent Motion" dated 15 December 2004. *Rollo*, p. 2970.

[30] *Id*.

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on the propriety of such a step considering this pending *Motion for Reconsideration*. In a *Resolution* dated 5 July 2005, the Court directed the parties to maintain the status *quo* effective of even date, and until further orders from this Court. The denial of the pending motions for reconsideration will obviously render the pending petition for extension academic.

I. Jurisdiction of the Court of Tax Appeals Under Section 29 of the SMA

The first core issue resolved in the assailed *Decision* was whether the Court of Appeals had jurisdiction over the special civil action for *certiorari* filed by Philcemcor assailing the 5 April 2002 *Decision* of the DTI Secretary. The general jurisdiction of the Court of Appeals over special civil actions for *certiorari* is beyond doubt. The Constitution itself assures that judicial review avails to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. At the same time, the special civil action of *certiorari* is available only when there is no plain, speedy and adequate remedy in the ordinary course of law.[31] Philcemcor's recourse of special civil action before the Court of Appeals to challenge the *Decision* of the DTI Secretary not to impose the general safeguard measures is not based on the SMA, but on the general rule on *certiorari*. Thus, the Court proceeded to inquire whether indeed there was no other plain, speedy and adequate remedy in the ordinary course of law that would warrant the allowance of Philcemcor's special civil action.

The answer hinged on the proper interpretation of Section 29 of the SMA, which reads:

Section 29. *Judicial Review*. — Any interested party who is adversely affected by the *ruling of the Secretary in connection with*

[31] 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).

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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.[32] (Italics supplied)

The matter is crucial for if the CTA properly had jurisdiction over the petition challenging the DTI Secretary's ruling not to impose a safeguard measure, then the special civil action of *certiorari* resorted to instead by Philcemcor would not avail, owing to the existence of a plain, speedy and adequate remedy in the ordinary course of law. [33] The Court of Appeals, in asserting that it had jurisdiction, merely cited the general rule on *certiorari* jurisdiction without bothering to refer to, or possibly even study,

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[32] Before the passage of Republic Act No. 9282 on 30 March 2004, appeals from the decisions of the Court of Tax Appeals was to the Court of Appeals.

[33] Interestingly, while the Separate Opinion accedes to the majority ruling that the Court of Appeals had no jurisdiction over Philcemcor's petition considering the availability of appeal to the Court of Tax Appeals, it makes the curious statement that "[a]ccordingly, the present Petition, which seeks a review of a void Decision of the CA should, in the ordinary course, also be dismissed. Generally, this Court cannot review a legally inexistent judgment." Separate Opinion, *infra*. In support of this proposition, the case of *Velarde v. SJS*, G.R. No. 159357, 28 April 2004, 428 SCRA 283, is cited. However, a perusal of Velarde, which was penned by the Separate Opinion's author, reveals the Court's actual statement as follows: "Indeed, the assailed Decision was rendered in clear violation of the Constitution, because it made no findings of facts and final disposition. Hence, it is void and deemed legally inexistent. Consequently, there is nothing for this Court to review, affirm, reverse or even just modify." Velarde, *id*. Obviously, the averment in *Velarde* meant that the Court would be hard put to review a decision that had no finding of facts to evaluate, or a disposition to reverse, affirm or modify. However, as transmuted in the *Separate Opinion*, it would now conclude that a "legally inexistent" or void decision of the Court of Appeals, or any other court for that matter, cannot be reviewed by this Court.

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the import of Section 29. In contrast, this Court duly considered the meaning and ramifications of Section 29, concluding that it provided for a plain, speedy and adequate remedy that Philcemcor could have resorted to instead of filing the special civil action before the Court of Appeals.

Philcemcor still holds on to its hypothesis that the petition for review allowed under Section 29 lies only if the DTI Secretary's ruling imposes a safeguard measure. If, on the other hand, the DTI Secretary's ruling is not to impose a safeguard measure, judicial review under Section 29 could not be resorted to since the provision refers to rulings "in connection with *the imposition*" of the safeguard measure, as opposed to the non-imposition. Since the *Decision* dated 5 April 2002 resolved against imposing a safeguard measure, Philcemcor claims that the proper remedial recourse is a petition for *certiorari* with the Court of Appeals.

Interestingly, Republic Act No. 9282, promulgated 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 x x x involving x x x *safeguard measures under Republic Act No. 8800, where either party may appeal the decision to impose or not to impose said duties.*"[34] It is clear that any future attempts to advance the literalist position of the respondents would consequently fail. However, since Republic Act No. 9282 has no retroactive effect, this Court had to decide whether Section 29 vests jurisdiction on the CTA over rulings of the DTI Secretary not to impose a safeguard measure. And the Court, in its assailed *Decision*, ruled that the CTA is endowed with such jurisdiction.

Both respondents reiterate their fundamentalist reading that Section 29 authorizes the petition for review before the CTA only when the DTI Secretary decides to impose a safeguard measure, but not when he decides not to. In doing so, they fail to address what the Court earlier pointed out would be the absurd consequences if their interpretation is followed to its

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[34] See Section 7, Republic Act No. 9282 (2004).

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logical end. But in affirming, as the Court now does, its previous holding that the CTA has jurisdiction over petitions for review questioning the non-imposition of safeguard measures by the DTI Secretary, the Court relies on the plain reading that Section 29 explicitly vests jurisdiction over such petitions on the CTA.

Under Section 29, 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." Obviously, there are differences between "a ruling for the imposition of a safeguard measure," and one issued "in connection with the imposition of a safeguard measure." The first adverts to a singular type of ruling, namely one that imposes a safeguard measure. The second does not contemplate only one kind of ruling, but a myriad of rulings issued "in connection with the imposition of a safeguard measure."

Respondents argue that the Court has given an expansive interpretation to Section 29, contrary to the established rule requiring strict construction against the existence of jurisdiction in specialized courts.[35] *But it is the express provision of Section 29, and not this Court, that mandates CTA jurisdiction to be broad enough to encompass more than just a ruling imposing the safeguard measure.*

The key phrase remains "in connection with." It has connotations that are obvious even to the layman. A ruling issued "in connection with" the imposition of a safeguard measure would be one that bears some relation to the imposition of a safeguard measure. Obviously, a ruling imposing a safeguard measure is covered by the phrase "in connection with," but such ruling is by no means exclusive. Rulings which modify, suspend or terminate a safeguard measure are necessarily in connection with the imposition of a safeguard measure. So does a ruling allowing for a provisional safeguard measure. So too,

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[35] *Rollo*, p. 2435.

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a ruling by the DTI Secretary refusing to refer the application for a safeguard measure to the Tariff Commission. It is clear that there is an entire subset of rulings that the DTI Secretary may issue in connection with the imposition of a safeguard measure, including those that are provisional, interlocutory, or dispositive in character.[36] By the same token, a ruling not to impose a safeguard measure is also issued in connection with the imposition of a safeguard measure.

In arriving at the proper interpretation of "in connection with," the Court referred to the U.S. Supreme Court cases of *Shaw v. Delta Air Lines, Inc.*[37] and *New York State Blue Cross Plans v. Travelers Ins.*[38] Both cases considered the interpretation of the phrase "relates to" as used in a federal statute, the Employee Retirement Security Act of 1974. Respondents criticize the citations on the premise that the cases are not binding in our jurisdiction and do not involve safeguard measures. The criticisms are off-tangent considering that our ruling did not call for the application of the Employee Retirement Security Act of 1974 in the Philippine milieu. The American cases are not relied

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[36] The Separate Opinion characterizes this statement as "loose," citing the legal truism that interlocutory orders are not subject to an appeal or a petition for review until the main case is finally resolved on the merits. However, Section 29 does not qualify which rulings of the DTI Secretary are exempt from judicial review by the CTA. On the other hand, the provision states that all rulings of the DTI Secretary issued in connection with the imposition of a general safeguard measure, such as on whether provisional safeguard measures are warranted even before the matter is referred to the Tariff Commission. A ruling imposing a provisional safeguard measure is in a sense interlocutory, since such ruling does not finally dispose of the case. Although pending factual investigation by the Tariff Commission on referral by the DTI Secretary, the ruling could produce financial damage and by reason thereof, it is only fair that the party aggrieved may avail of judicial remedies even during the investigation. The language of Section 29, despite the loose use of the nomenclature "petition for review," allows such ruling on a provisional safeguard measure, "interlocutory" as it may be, to fall within the ambit of review of the CTA, which after all has the specialized competence to adjudge the propriety of the provisional measure.

[37] 463 U.S. 85 (1983).

[38] 514 U.S. 645 (1995).

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upon as precedents, but as guides of interpretation. Certainly, if there are applicable local precedents pertaining to the interpretation of the phrase "in connection with," then these certainly would have some binding force. But none avail, and neither do the respondents demonstrate a countervailing holding in Philippine jurisprudence.

Yet we should consider the claim that an "expansive interpretation" was favored in *Shaw* because the law in question was an employee's benefit law that had to be given an interpretation favorable to its intended beneficiaries.[39] In the next breath, Philcemcor notes that the U.S. Supreme Court itself was alarmed by the expansive interpretation in *Shaw* and thus in *Blue Cross*, the *Shaw* ruling was reversed and a more restrictive interpretation was applied based on congressional intent.[40]

Respondents would like to make it appear that the Court acted rashly in applying a discarded precedent in *Shaw*, a non-binding foreign precedent nonetheless. But the Court did make the following observation in its *Decision* pertaining to *Blue Cross*:

> 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 *U.S. Supreme Court in New York State Blue Cross Plans v. Travelers Ins.*[41] 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.[42] *Thus, in the case the U.S. 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." A similar inquiry into the other provisions of the SMA is in order to determine the scope of review accorded therein to the CTA.*[43]

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[39] *Rollo*, p. 2437.

[40] *Ibid*.

[41] 514 US 645 (1995).

[42] *Id*. at 656.

[43] *Southern Cross*, *supra* note 2, at 87.

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In the next four paragraphs of the *Decision*, encompassing four pages, the Court proceeded to inquire into the SMA and its objectives as a means to determine the scope of rulings to be deemed as "in connection with the imposition of a safeguard measure." Certainly, this Court did not resort to the broadest interpretation possible of the phrase "in connection with," but instead sought to bring it into the context of the scope and objectives of the SMA. The ultimate conclusion of the Court was that the phrase includes all rulings of the DTI Secretary which arise from the time an application or *motu proprio* initiation for the imposition of a safeguard measure is taken.[44] This conclusion was derived from the observation that the imposition of a general safeguard measure is a process, initiated *motu proprio* or through application, which undergoes several stages upon which the DTI Secretary is obliged or may be called upon to issue a ruling.

It should be emphasized again that by utilizing the phrase "in connection with," it is the SMA that expressly vests jurisdiction on the CTA over petitions questioning the non-imposition by the DTI Secretary of safeguard measures. The Court is simply asserting, as it should, the clear intent of the legislature in enacting the SMA. Without "in connection with" or a synonymous phrase, the Court would be compelled to favor the respondents' position that only rulings imposing safeguard measures may be elevated on appeal to the CTA. But considering that the statute does make use of the phrase, there is little sense in delving into alternate scenarios.

Respondents fail to convincingly address the absurd consequences pointed out by the *Decision* had their proposed interpretation been adopted. Indeed, suffocated beneath the respondents' legalistic tinsel is the elemental question — what sense is there in vesting jurisdiction on the CTA over a decision to impose a safeguard measure, but not on one choosing not to impose. Of course, it is not for the Court to inquire into the wisdom of legislative acts, hence the rule that jurisdiction must be expressly vested and not presumed. Yet ultimately,

[44] *Id*. at 88.

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respondents muddle the issue by making it appear that the *Decision* has uniquely expanded the jurisdictional rules. For the respondents, the proper statutory interpretation of the crucial phrase "in connection with" is to pretend that the phrase did not exist at all in the statute. The Court, in taking the effort to examine the meaning and extent of the phrase, is merely giving breath to the legislative will.

The Court likewise stated that the respondents' position calls for split jurisdiction, which is judicially abhorred. In rebuttal, the public respondents cite Sections 2313 and 2402 of the Tariff and Customs Code (TCC), which allegedly provide for a splitting of jurisdiction of the CTA. According to public respondents, under Section 2313 of the TCC, a decision of the Commissioner of Customs affirming a decision of the Collector of Customs adverse to the government is elevated for review to the Secretary of Finance. However, under Section 2402 of the TCC, a ruling of the Commissioner of the Bureau of Customs against a taxpayer must be appealed to the Court of Tax Appeals, and not to the Secretary of Finance.

Strictly speaking, the review by the Secretary of Finance of the decision of the Commissioner of Customs is not judicial review, since the Secretary of Finance holds an executive and not a judicial office. The contrast is apparent with the situation in this case, wherein the interpretation favored by the respondents calls for the exercise of judicial review by two different courts over essentially the same question — whether the DTI Secretary should impose general safeguard measures. Moreover, as petitioner points out, the executive department cannot appeal against itself. The Collector of Customs, the Commissioner of Customs and the Secretary of Finance are all part of the executive branch. If the Collector of Customs rules against the government, the executive cannot very well bring suit in courts against itself. On the other hand, if a private person is aggrieved by the decision of the Collector of Customs, he can have proper recourse before the courts, which now would be called upon to exercise judicial review over the action of the executive branch.

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More fundamentally, the situation involving split review of the decision of the Collector of Customs under the TCC is not apropos to the case at bar. The TCC in that instance is quite explicit on the divergent reviewing body or official depending on which party prevailed at the Collector of Customs' level. On the other hand, there is no such explicit expression of bifurcated appeals in Section 29 of the SMA.

Public respondents likewise cite *Fabian v. Ombudsman*[45] as another instance wherein the Court purportedly allowed split jurisdiction. It is argued that the Court, in ruling that it was the Court of Appeals which possessed appellate authority to review decisions of the Ombudsman in administrative cases while the Court retaining appellate jurisdiction of decisions of the Ombudsman in non-administrative cases, effectively sanctioned split jurisdiction between the Court and the Court of Appeals.[46]

Nonetheless, this argument is successfully undercut by Southern Cross, which points out the essential differences in the power exercised by the Ombudsman in administrative cases and non-administrative cases relating to criminal complaints. In the former, the Ombudsman may impose an administrative penalty, while in acting upon a criminal complaint what the Ombudsman undertakes is a preliminary investigation. Clearly, the capacity in which the Ombudsman takes on in deciding an administrative complaint is wholly different from that in conducting a preliminary investigation. In contrast, in ruling upon a safeguard measure, the DTI Secretary acts in one and the same role. The variance between an order granting or denying an application for a safeguard measure is polar though emanating from the same equator, and does not arise from the distinct character of the putative actions involved.

Philcemcor imputes intelligent design behind the alleged intent of Congress to limit CTA review only to impositions of the general safeguard measures. It claims that there is a necessary tax implication in case of an imposition of a tariff where the

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[45] Cited as 295 SCRA 470 (1998).

[46] Memorandum for Public Respondents dated 1 April 2005, p. 75.

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CTA's expertise is necessary, but there is no such tax implication, hence no need for the assumption of jurisdiction by a specialized agency, when the ruling rejects the imposition of a safeguard measure. But of course, whether the ruling under review calls for the imposition or non-imposition of the safeguard measure, the common question for resolution still is whether or not the tariff should be imposed — an issue definitely fraught with a tax dimension. The determination of the question will call upon the same kind of expertise that a specialized body as the CTA presumably possesses.

In response to the Court's observation that the setup proposed by respondents was novel, unusual, cumbersome and unwise, public respondents invoke the maxim that courts should not be concerned with the wisdom and efficacy of legislation.[47] But this prescinds from the bogus claim that the CTA may not exercise judicial review over a decision not to impose a safeguard measure, a prohibition that finds no statutory support. It is likewise settled in statutory construction that an interpretation that would cause inconvenience and absurdity is not favored. Respondents do not address the particular illogic that the Court pointed out would ensue if their position on judicial review were adopted. According to the respondents, while a ruling by the DTI Secretary imposing a safeguard measure may be elevated on review to the CTA and assailed on the ground of errors in fact and in law, a ruling denying the imposition of safeguard measures may be assailed only on the ground that the DTI Secretary committed grave abuse of discretion. As stressed in the *Decision*, "[c]*ertiorari* is a remedy narrow in its scope and inflexible in its character. It is not a general utility tool in the legal workshop."[48]

It is incorrect to say that the *Decision* bars any effective remedy should the Tariff Commission act or conclude erroneously in making its determination whether the factual conditions exist which necessitate the imposition of the general safeguard measure. If the Tariff Commission makes a negative final determination, the DTI Secretary, bound as he is by this negative determination,

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[47] *Rollo*, p. 2509.

[48] *Southern Cross*, *supra* note 2, at 91.

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has to render a decision denying the application for safeguard measures citing the Tariff Commission's findings as basis. Necessarily then, such negative determination of the Tariff Commission being an integral part of the DTI Secretary's ruling would be open for review before the CTA, which again is especially qualified by reason of its expertise to examine the findings of the Tariff Commission. Moreover, considering that the Tariff Commission is an instrumentality of the government, its actions (as opposed to those undertaken by the DTI Secretary under the SMA) are not beyond the pale of *certiorari* jurisdiction. Unfortunately for Philcemcor, it hinged its cause on the claim that the DTI Secretary's actions may be annulled on *certiorari*, notwithstanding the explicit grant of judicial review over that cabinet member's actions under the SMA to the CTA.

Finally on this point, Philcemcor argues that assuming this Court's interpretation of Section 29 is correct, such ruling should not be given retroactive effect, otherwise, a gross violation of the right to due process would be had. This erroneously presumes that it was this Court, and not Congress, which vested jurisdiction on the CTA over rulings of non-imposition rendered by the DTI Secretary. We have repeatedly stressed that Section 29 expressly confers CTA jurisdiction over rulings in connection with the imposition of the safeguard measure, and the reassertion of this point in the *Decision* was a matter of emphasis, not of contrivance. The due process protection does not shield those who remain purposely blind to the express rules that ensure the sporting play of procedural law.

Besides, respondents' claim would also apply every time this Court is compelled to settle a novel question of law, or to reverse precedent. In such cases, there would always be litigants whose causes of action might be vitiated by the application of newly formulated judicial doctrines. Adopting their claim would unwisely force this Court to treat its dispositions in unprecedented, sometimes landmark decisions not as resolutions to the live cases or controversies, but as legal doctrine applicable only to future litigations.

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II. Positive Final Determination By the Tariff Commission an Indispensable Requisite to the Imposition of General Safeguard Measures

The second core ruling in the *Decision* was that contrary to the holding of the Court of Appeals, the DTI Secretary was barred from imposing a general safeguard measure absent a positive final determination rendered by the Tariff Commission. The fundamental premise rooted in this ruling is based on the acknowledgment that the required positive final determination of the Tariff Commission exists as a properly enacted constitutional limitation imposed on the delegation of the legislative power to impose tariffs and imposts to the President under Section 28(2), Article VI of the Constitution.

Congressional Limitations Pursuant To Constitutional Authority on the Delegated Power to Impose Safeguard Measures

The safeguard measures imposable under the SMA generally involve duties on imported products, tariff rate quotas, or quantitative restrictions on the importation of a product into the country. Concerning as they do the foreign importation of products into the Philippines, these safeguard measures fall within the ambit of Section 28(2), Article VI of the Constitution, which states:

> *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.[49]

The Court acknowledges the basic postulates ingrained in the provision, and, hence, governing in this case. They are:

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[49] Article VI, Section 28 (2), 1987 Constitution. Italics supplied.

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(1) It is Congress which authorizes the President to impose tariff rates, import and export quotas, tonnage and wharfage dues, and other duties or imposts. Thus, the authority cannot come from the Finance Department, the National Economic Development Authority, or the World Trade Organization, no matter how insistent or persistent these bodies may be.

(2) *The authorization granted to the President must be embodied in a law.* Hence, the justification cannot be supplied simply by inherent executive powers. It cannot arise from administrative or executive orders promulgated by the executive branch or from the wisdom or whim of the President.

(3) *The authorization to the President can be exercised only within the specified limits set in the law and is further subject to limitations and restrictions which Congress may impose.* Consequently, if Congress specifies that the tariff rates should not exceed a given amount, the President cannot impose a tariff rate that exceeds such amount. If Congress stipulates that no duties may be imposed on the importation of corn, the President cannot impose duties on corn, no matter how actively the local corn producers lobby the President. Even the most picayune of limits or restrictions imposed by Congress must be observed by the President.

There is one fundamental principle that animates these constitutional postulates. *These impositions under Section 28(2), Article VI fall within the realm of the power of taxation, a power which is within the sole province of the legislature under the Constitution.*

Without Section 28(2), Article VI, the executive branch has no authority to impose tariffs and other similar tax levies involving the importation of foreign goods. Assuming that Section 28(2) Article VI did not exist, the enactment of the SMA by Congress would be voided on the ground that it would constitute an undue delegation of the legislative power to tax. The constitutional provision shields such delegation from constitutional infirmity, and should be recognized as an exceptional grant of legislative power to the President, rather than the affirmation of an inherent executive power.

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This being the case, the qualifiers mandated by the Constitution on this presidential authority attain primordial consideration. First, there must be a law, such as the SMA. Second, there must be specified limits, a detail which would be filled in by the law. And further, Congress is further empowered to impose limitations and restrictions on this presidential authority. On this last power, the provision does not provide for specified conditions, such as that the limitations and restrictions must conform to prior statutes, internationally accepted practices, accepted jurisprudence, or the considered opinion of members of the executive branch.

The Court recognizes that the authority delegated to the President under Section 28(2), Article VI may be exercised, in accordance with legislative sanction, by the *alter egos* of the President, such as department secretaries. Indeed, for purposes of the President's exercise of power to impose tariffs under Article VI, Section 28(2), it is generally the Secretary of Finance who acts as *alter ego* of the President. The SMA provides an exceptional instance wherein it is the DTI or Agriculture Secretary who is tasked by Congress, in their capacities as *alter egos* of the President, to impose such measures. Certainly, the DTI Secretary has no inherent power, even as *alter ego* of the President, to levy tariffs and imports.

Concurrently, the tasking of the Tariff Commission under the SMA should be likewise construed within the same context as part and parcel of the legislative delegation of its inherent power to impose tariffs and imposts to the executive branch, subject to limitations and restrictions. In that regard, both the Tariff Commission and the DTI Secretary may be regarded as agents of Congress within their limited respective spheres, as ordained in the SMA, in the implementation of the said law which significantly draws its strength from the plenary legislative power of taxation. *Indeed, even the President may be considered as an agent of Congress for the purpose of imposing safeguard measures. It is Congress, not the President, which possesses inherent powers to impose tariffs and imposts. Without legislative authorization through statute, the President has no power, authority or right to impose such safeguard measures because taxation is inherently legislative, not executive.*

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When Congress tasks the President or his/her alter egos to impose safeguard measures under the delineated conditions, the President or the alter egos may be properly deemed as agents of Congress to perform an act that inherently belongs as a matter of right to the legislature. It is basic agency law that the agent may not act beyond the specifically delegated powers or disregard the restrictions imposed by the principal. In short, Congress may establish the procedural framework under which such safeguard measures may be imposed, and assign the various offices in the government bureaucracy respective tasks pursuant to the imposition of such measures, the task assignment including the factual determination of whether the necessary conditions exists to warrant such impositions. Under the SMA, Congress assigned the DTI Secretary and the Tariff Commission their respective functions[50] in the legislature's scheme of things.

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[50] As delineated under the SMA, the DTI (for non-agricultural products) and Agriculture (for agricultural products) Secretaries are authorized under Section 5 to impose the general safeguard measures upon a positive final determination made by the Tariff Commission. Preliminary to such imposition, the secretaries are authorized under Section 6 to conduct an initial review of a petition for imposition of such measures, or *motu proprio* initiate a preliminary safeguard investigation, and to impose a provisional safeguard measure under Section 7 even before transmittal of the application to the Tariff Commission for investigation. Upon a positive final determination by the Tariff Commission, the Secretaries may, under Section 13, now choose which appropriate definitive safeguard measures to adopt. Under Sections 18 and 19, the DTI and Agriculture Secretaries are similarly tasked, in conjunction with the Tariff Commission, to act upon actions to reduce, modify or terminate the existing safeguard measures, and to extend or reapply such safeguard measures.

The Tariff Commission is empowered, upon referral of the application by the DTI or Agriculture Secretaries, to conduct its investigation pursuant to Sections 9 to 11 of the SMA, and to arrive at its final determination of the existence of the factual conditions listed under Section 5 and 12. It likewise is tasked to investigate the factual basis for actions to reduce, modify, terminate, extend or reapply the existing safeguard measures under Sections 18 and 19 of the SMA. Its findings are to be contained in a report submitted to the DTI or Agriculture Secretaries, under Section 14. Finally, pursuant to Section 20, it likewise conducts an evaluation of the effectiveness of the actions taken by the domestic industry after termination of the safeguard measures.

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There is only one viable ground for challenging the legality of the limitations and restrictions imposed by Congress under Section 28(2) Article VI, and that is such limitations and restrictions are themselves violative of the Constitution. Thus, no matter how distasteful or noxious these limitations and restrictions may seem, the Court has no choice but to uphold their validity unless their constitutional infirmity can be demonstrated.

What are these limitations and restrictions that are material to the present case? The entire SMA provides for a limited framework under which the President, through the DTI and Agriculture Secretaries, may impose safeguard measures in the form of tariffs and similar imposts. The limitation most relevant to this case is contained in Section 5 of the SMA, captioned "*Conditions for the Application of General Safeguard Measures*," and stating:

> 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.[51]

Positive Final Determination By Tariff Commission Plainly Required by Section 5 of SMA

There is no question that Section 5 of the SMA operates as a limitation validly imposed by Congress on the presidential[52] authority under the SMA to impose tariffs and imposts. That

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[51] Section 5, Rep. Act No. 8800. Italics supplied.

[52] While Section 5 denominates the DTI or Agriculture Secretary as the officer who imposes the safeguard measures, it should be understood that they do so as alter egos of the President, the person who is allowed by the Constitution to be delegated the authority to impose tariffs and restrictions. *Infra*.

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the positive final determination operates as an indispensable requisite to the imposition of the safeguard measure, and that it is the Tariff Commission which makes such determination, are legal propositions plainly expressed in Section 5 for the easy comprehension for everyone but respondents.

Philcemcor attributes this Court's conclusion on the indispensability of the positive final determination to flawed syllogism in that we read the proposition "if A then B" as if it stated "if A, and only A, then B."[53] Translated in practical terms, our conclusion, according to Philcemcor, would have only been justified had Section 5 read "shall apply a general safeguard measure upon, *and only upon*, a positive final determination of the Tariff Commission."

Statutes are not designed for the easy comprehension of the five-year old child. Certainly, general propositions laid down in statutes need not be expressly qualified by clauses denoting exclusivity in order that they gain efficacy. Indeed, applying this argument, the President would, under the Constitution, be authorized to declare martial law despite the absence of the invasion, rebellion or public safety requirement just because the first paragraph of Section 18, Article VII fails to state the magic word "only."[54]

But let us for the nonce pursue Philcemcor's logic further. It claims that since Section 5 does not allegedly limit the circumstances upon which the DTI Secretary may impose general safeguard measures, it is a worthy pursuit to determine whether the entire context of the SMA, as discerned by all the other familiar indicators of legislative intent supplied by norms of statutory interpretation, would justify safeguard measures absent a positive final determination by the Tariff Commission.

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[53] *Rollo*, p. 2398.

[54] See Section 18, Article VII, Constitution, the provision which authorizes the declaration of martial law. The only time the word "only" is used in the provision is in the context of limiting the extent of the suspension of the writ of *habeas corpus*. "The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or offenses inherent in or directly connected with invasion."

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The first line of attack employed is on Section 5 itself, it allegedly not being as clear as it sounds. It is advanced that Section 5 does not relate to the legal ability of either the Tariff Commission or the DTI Secretary to bind or foreclose review and reversal by one or the other. Such relationship should instead be governed by domestic administrative law and remedial law. Philcemcor thus would like to cast the proposition in this manner: Does it run contrary to our legal order to assert, as the Court did in its *Decision,* that a body of relative junior competence as the Tariff Commission can bind an administrative superior and cabinet officer, the DTI Secretary? It is easy to see why Philcemcor would like to divorce this DTI Secretary-Tariff Commission interaction from the confines of the SMA. Shorn of context, the notion would seem radical and unjustifiable that the lowly Tariff Commission can bind the hands and feet of the DTI Secretary.

It can be surmised at once that respondents' preferred interpretation is based not on the express language of the SMA, but from implications derived in a roundabout manner. Certainly, no provision in the SMA expressly authorizes the DTI Secretary to impose a general safeguard measure despite the absence of a positive final recommendation of the Tariff Commission. On the other hand, Section 5 expressly states that the DTI Secretary "shall apply a general safeguard measure upon a positive final determination of the [Tariff] Commission." The causal connection in Section 5 between the imposition by the DTI Secretary of the general safeguard measure and the positive final determination of the Tariff Commission is patent, and even respondents do not dispute such connection.

As stated earlier, the Court in its *Decision* found Section 5 to be clear, plain and free from ambiguity so as to render unnecessary resort to the congressional records to ascertain legislative intent. Yet respondents, on the dubitable premise that Section 5 is not as express as it seems, again latch on to the record of legislative deliberations in asserting that there was no legislative intent to bar the DTI Secretary from imposing the general safeguard measure anyway despite the absence of a positive final determination by the Tariff Commission.

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Let us take the bait for a moment, and examine respondents' commonly cited portion of the legislative record. One would presume, given the intense advocacy for the efficacy of these citations, that they contain a "smoking gun" — express declarations from the legislators that the DTI Secretary may impose a general safeguard measure even if the Tariff Commission refuses to render a positive final determination. Such "smoking gun," if it exists, would characterize our *Decision* as disingenuous for ignoring such contrary expression of intent from the legislators who enacted the SMA. But as with many things, the anticipation is more dramatic than the truth.

The excerpts cited by respondents are derived from the interpellation of the late Congressman Marcial Punzalan Jr., by then (and still is) Congressman Simeon Datumanong.[55] Nowhere in these records is the view expressed that the DTI Secretary may impose the general safeguard measures if the Tariff Commission issues a negative final determination or otherwise is unable to make a positive final determination. Instead, respondents hitch on the observations of Congressman Punzalan Jr., that "the results of the [Tariff] Commission's findings x x x is subsequently submitted to [the DTI Secretary] for the [DTI Secretary] to impose or not to impose"; and that "the [DTI Secretary] here is x x x who would make the final decision on the recommendation that is made by a more technical body [such as the Tariff Commission]."[56]

There is nothing in the remarks of Congressman Punzalan which contradict our *Decision*. His observations fall in accord with the respective roles of the Tariff Commission and the DTI Secretary under the SMA. Under the SMA, it is the Tariff Commission that conducts an investigation as to whether the conditions exist to warrant the imposition of the safeguard measures. These conditions are enumerated in Section 5, namely; that a product is being imported into the country in increased

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[55] Conducted on 28 September 1999. Punzalan, who died in May of 2001, was the author of House Bill No. 7613, which eventually became the SMA.

[56] *Rollo*, pp. 14-15.

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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. After the investigation of the Tariff Commission, it submits a report to the DTI Secretary which states, among others, whether the above-stated conditions for the imposition of the general safeguard measures exist. Upon a positive final determination that these conditions are present, the Tariff Commission then is mandated to recommend what appropriate safeguard measures should be undertaken by the DTI Secretary. Section 13 of the SMA gives five (5) specific options on the type of safeguard measures the Tariff Commission recommends to the DTI Secretary.

At the same time, nothing in the SMA obliges 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 upon its positive final determination. Thus, even if the Tariff Commission makes a positive final determination, the DTI Secretary may opt not to impose a general safeguard measure, or choose a different type of safeguard measure other than that recommended by the Tariff Commission.

Congressman Punzalan was cited as saying that the DTI Secretary makes the decision "to impose or not to impose," which is correct since the DTI Secretary may choose not to impose a safeguard measure in spite of a positive final determination by the Tariff Commission. Congressman Punzalan also correctly stated that it is the DTI Secretary who makes the final decision "on the recommendation that is made [by the Tariff Commission]," since the DTI Secretary may choose to impose a general safeguard measure different from that recommended by the Tariff Commission or not to impose a safeguard measure at all. Nowhere in these cited deliberations was Congressman Punzalan, or any other member of Congress for that matter, quoted as saying that the DTI Secretary may ignore a negative determination by the Tariff Commission as

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to the existence of the conditions warranting the imposition of general safeguard measures, and thereafter proceed to impose these measures nonetheless. It is too late in the day to ascertain from the late Congressman Punzalan himself whether he had made these remarks in order to assure the other legislators that the DTI Secretary may impose the general safeguard measures notwithstanding a negative determination by the Tariff Commission. But certainly, the language of Section 5 is more resolutory to that question than the recorded remarks of Congressman Punzalan.

Respondents employed considerable effort to becloud Section 5 with undeserved ambiguity in order that a proper resort to the legislative deliberations may be had. Yet assuming that Section 5 deserves to be clarified through an inquiry into the legislative record, the excerpts cited by the respondents are far more ambiguous than the language of the assailed provision regarding the key question of whether the DTI Secretary may impose safeguard measures in the face of a negative determination by the Tariff Commission. Moreover, even Southern Cross counters with its own excerpts of the legislative record in support of their own view.[57]

It will not be difficult, especially as to heavily-debated legislation, for two sides with contrapuntal interpretations of a statute to highlight their respective citations from the legislative debate in support of their particular views.[58] A futile exercise

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[57] Particularly telling are the remarks of then Senator Raul Roco: "But the Secretary does not act alone. There must be a positive finding by the Commission." *Rollo*, p. 2818, and that of then Congressman Sergio Apostol: "The final decision is in the choice of actions to impose rather than in the choice of whether to impose or not despite a positive determination of injury." *Rollo*, p. 2819. Interestingly, Southern Cross likewise cites the comments of Congressman Punzalan similarly relied on by the petitioner.

[58] As noted in the *Decision*, "it is easy to selectively cite passages, sometimes out of their proper context, in order to assert a misleading interpretation x x x 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." *Southern Cross, supra* note 2, at 95. U.S. Supreme

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of second-guessing is happily avoided if the meaning of the statute is clear on its face. *It is evident from the text of Section 5 that 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*. Any disputation to the contrary is, at best, the product of wishful thinking.

For the same reason that Section 5 is explicit as regards the essentiality of a positive final determination by the Tariff Commission, there is no need to refer to the Implementing Rules of the SMA to ascertain a contrary intent. If there is indeed a provision in the Implementing Rules that allows the DTI Secretary to impose a general safeguard measure even without the positive final determination by the Tariff Commission, said rule is void as it cannot supplant the express language of the legislature. Respondents essentially rehash their previous arguments on this point, and there is no reason to consider them anew. The *Decision* made it clear that nothing in Rule 13.2 of the Implementing Rules, even though captioned "Final Determination by the Secretary," authorizes the DTI Secretary to impose a general safeguard measure in the absence of a positive final determination by the Tariff Commission.[59] Similarly, the "Rules and Regulations to Govern the Conduct of Investigation by the Tariff Commission Pursuant to Republic Act No. 8800" now cited by the respondent does not contain any provision that the DTI Secretary may impose the general safeguard measures in the absence of a positive final determination by the Tariff Commission.

Section 13 of the SMA further bolsters the interpretation as argued by Southern Cross and upheld by the *Decision*. The

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Court Justice Antonin Scalia has been quoted as saying, "We are governed by laws, not the intention of legislators." *Conroy v. Aniskoff*, 507 U.S. 511, 519 (1993), Scalia *J*., concurring. He added that statements on the legislative floor even by the bill's author or sponsor are not ratified by the legislative body as a whole and thus do not reflect more than the individual desire of the person making the statement. *Ibid*.

[59] *Southern Cross*, *supra* note 2, at 99-104.

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first paragraph thereof states that "[u]pon its positive determination, the [Tariff] Commission shall recommend to the Secretary an appropriate definitive measure x x x," clearly referring to the Tariff Commission as the entity that makes the positive determination. On the other hand, the penultimate paragraph of the same provision states that "[i]n the event of a negative final determination," the DTI Secretary is to immediately issue through the Secretary of Finance, a written instruction to the Commissioner of Customs authorizing the return of the cash bonds previously collected as a provisional safeguard measure. Since the first paragraph of the same provision states that it is the Tariff Commission which makes the positive determination, it necessarily follows that it, and not the DTI Secretary, makes the negative final determination as referred to in the penultimate paragraph of Section 13.[60]

The *Separate Opinion* considers as highly persuasive of former Tariff Commission Chairman Abon, who stated that the Commission's findings are merely recommendatory.[61] Again, the considered opinion of Chairman Abon is of no operative effect if the statute plainly states otherwise, and Section 5 bluntly does require a positive final determination by the Tariff Commission before the DTI Secretary may impose a general safeguard measure.[62] Certainly, the Court cannot give controlling effect to the statements of any public officer in serious denial

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[60] See Section 13, Rep. Act No. 8800. Notably, the duty of the DTI Secretary to immediately issue through the Secretary of Finance, a written instruction to the Commissioner of Customs authorizing the return of the cash bonds is the only role allocated by the SMA to the DTI Secretary in the event of a negative final determination.

[61] Separate Opinion, *infra*.

[62] In fact, the remarks of Chairman Abon can even be construed the other way. He speaks of the Commission as making recommendations, and indeed the Tariff Commission is obliged to recommend what particular safeguard measures to implement. The advice of the Commission on this point may be highly persuasive, yet it does not bind the DTI Secretary. Nor would the Tariff Commission have the power to implement the general safeguard measures. However, the fact remains that the Tariff Commission must come out with a positive final determination before the DTI Secretary may impose the general safeguard measures.

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of his duties if the law otherwise imposes the duty on the public office or officer.

Nonetheless, if we are to render persuasive effect on the considered opinion of the members of the Executive Branch, it bears noting that the Secretary of the Department of Justice rendered an Opinion wherein he concluded that the DTI Secretary could not impose a general safeguard measure if the Tariff Commission made a negative final determination.[63] Unlike Chairman Abon's impromptu remarks made during a hearing, the DOJ Opinion was rendered only after a thorough study of the question after referral to it by the DTI. The DOJ Secretary is the *alter ego* of the President with a stated mandate as the head of the principal law agency of the government.[64] As the DOJ Secretary has no denominated role in the SMA, he was able to render his Opinion from the vantage of judicious distance. Should not his Opinion, studied and direct to the point as it is, carry greater weight than the spontaneous remarks of the Tariff Commission's Chairman which do not even expressly disavow the binding power of the Commission's positive final determination?

III. DTI Secretary has No Power of Review Over Final Determination of the Tariff Commission

We should reemphasize that it is only because of the SMA, a legislative enactment, that the executive branch has the power to impose safeguard measures. At the same time, by constitutional fiat, the exercise of such power is subjected to the limitations and restrictions similarly enforced by the SMA. In examining the relationship of the DTI and the Tariff Commission as established in the SMA, it is essential to acknowledge and consider these predicates.

It is necessary to clarify the paradigm established by the SMA and affirmed by the Constitution under which the Tariff Commission and the DTI operate, especially in light of the

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[63] *Southern Cross, supra* note 2 at 74.

[64] See Section 1, Chapter 1, Title III, Book IV, Administrative Code.

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suggestions that the Court's rulings on the functions of quasi-judicial power find application in this case. Perhaps the reflexive application of the quasi-judicial doctrine in this case, rooted as it is in jurisprudence, might allow for some convenience in ruling, yet doing so ultimately betrays ignorance of the fundamental power of Congress to reorganize the administrative structure of governance in ways it sees fit.

The *Separate Opinion* operates from wholly different premises which are incomplete. Its main stance, similar to that of respondents, is that the DTI Secretary, acting as *alter ego* of the President, may modify and alter the findings of the Tariff Commission, including the latter's negative final determination by substituting it with his own negative final determination to pave the way for his imposition of a safeguard measure.[65] Fatally, this conclusion is arrived at without considering the fundamental constitutional precept under Section 28(2), Article VI, on the ability of Congress to impose restrictions and limitations in its delegation to the President to impose tariffs and imposts, as well as the express condition of Section 5 of the SMA requiring a positive final determination of the Tariff Commission.

Absent Section 5 of the SMA, the President has no inherent, constitutional, or statutory power to impose a general safeguard measure. Tellingly, the *Separate Opinion* does not directly confront the inevitable question as to how the DTI Secretary may get away with imposing a general safeguard measure absent a positive final determination from the Tariff Commission without violating Section 5 of the SMA, which along with Section 13 of the same law, stands as the only direct legal authority for the DTI Secretary to impose such measures. This is a constitutionally guaranteed limitation of the highest order, considering that the presidential authority exercised under the SMA is inherently legislative.

Nonetheless, the *Separate Opinion* brings to fore the issue of whether the DTI Secretary, acting either as *alter ego* of the President or in his capacity as head of an executive department,

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[65] Separate Opinion, *infra*.

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may review, modify or otherwise alter the final determination of the Tariff Commission under the SMA. The succeeding discussion shall focus on that question.

Preliminarily, we should note that none of the parties question the designation of the DTI or Agriculture secretaries under the SMA as the imposing authorities of the safeguard measures, even though Section 28(2) Article VI states that it is the President to whom the power to impose tariffs and imposts may be delegated by Congress. The validity of such designation under the SMA should not be in doubt. We recognize that the authorization made by Congress in the SMA to the DTI and Agriculture Secretaries was made in contemplation of their capacities as *alter egos* of the President.

Indeed, in *Marc Donnelly & Associates v. Agregado*[66] the Court upheld the validity of a Cabinet resolution fixing the schedule of royalty rates on metal exports and providing for their collection even though Congress, under Commonwealth Act No. 728, had specifically empowered the President and not any other official of the executive branch, to regulate and curtail the export of metals. In so ruling, the Court held that the members of the Cabinet were acting as *alter egos* of the President.[67] In this case, Congress itself authorized the DTI Secretary as *alter ego* of the President to impose the safeguard measures. If the Court was previously willing to uphold the *alter ego's* tariff authority despite the absence of explicit legislative grant of such authority on the *alter ego*, all the more reason now when Congress itself expressly authorized the *alter ego* to exercise these powers to impose safeguard measures.

Notwithstanding, Congress in enacting the SMA and prescribing the roles to be played therein by the Tariff Commission and the

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[66] 95 Phil. 142 (1954).

[67] "The fact that the resolution was approved by the Cabinet and the collection of the royalty fees was not decreed by virtue of an order issued by the President himself does not, in our opinion, invalidate said resolution because it cannot be disputed that the act of the Cabinet is deemed to be, and essentially is, the act of the President." *Marc Donnelly v. Agregado, id.,* at 146-147.

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DTI Secretary did not envision that the President, or his/her *alter ego,* could exercise supervisory powers over the Tariff Commission. If truly Congress intended to allow the traditional "*alter ego*" principle to come to fore in the peculiar setup established by the SMA, it would have assigned the role now played by the DTI Secretary under the law instead to the NEDA. The Tariff Commission is an attached agency of the National Economic Development Authority,[68] which in turn is the independent planning agency of the government.[69]

The Tariff Commission does not fall under the administrative supervision of the DTI.[70] On the other hand, the administrative relationship between the NEDA and the Tariff Commission is established not only by the Administrative Code, but similarly affirmed by the Tariff and Customs Code.

Justice Florentino Feliciano, in his *ponencia* in *Garcia v. Executive Secretary*,[71] acknowledged the interplay between the NEDA and the Tariff Commission under the Tariff and Customs Code when he cited the relevant provisions of that law evidencing such setup. Indeed, under Section 104 of the Tariff and Customs Code, the rates of duty fixed therein are subject to periodic

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[68] *See* Section 16, Chapter 4, Subtitle C, Title II, Book V, Administrative Code of 1987.

[69] *See* Section 2, Chapter 1, Subtitle C, Title II, Book V, Administrative Code of 1987.

[70] Respondents point out that the DTI Secretary is a member of the NEDA Board, unto which the powers and functions of the NEDA are vested. *See* Section 3, Chapter 4, Subtitle C, Title II, *Book V, Administrative Code of 1987*. While this may be so, it cannot mean that the DTI Secretary, on his own, can exercise the powers and functions of the NEDA, such as administrative supervision over its attached agencies. The DTI Secretary is only one of eleven (11) members of the NEDA Board, and it is only in the capacity of NEDA Board member that the person of the DTI Secretary can execute any act that would be representative of the NEDA. In such case, such act would require either the concurrence of the other ten (10) members of the NEDA Board or under a valid delegation of authority by the NEDA Board. Certainly, the DTI Secretary cannot execute a unilateral act without prior delegated authority from the NEDA board and then claim that such act was executed by the NEDA or its Board.

[71] G.R. No. 101273, 3 July 1992, 211 SCRA 219.

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investigation by the Tariff Commission and may be revised by the President upon recommendation of the NEDA.[72] Moreover, under Section 401 of the same law, it is upon periodic investigations by the Tariff Commission and recommendation of the NEDA that the President may cause a gradual reduction of protection levels granted under the law.[73]

At the same time, under the Tariff and Customs Code, no similar role or influence is allocated to the DTI in the matter of imposing tariff duties. In fact, the long-standing tradition has been for the Tariff Commission and the DTI to proceed independently in the exercise of their respective functions. Only very recently have our statutes directed any significant interplay between the Tariff Commission and the DTI, with the enactment in 1999 of Republic Act No. 8751 on the imposition of countervailing duties and Republic Act No. 8752 on the imposition of anti-dumping duties, and of course the promulgation a year later of the SMA. In all these three laws, the Tariff Commission is tasked, upon referral of the matter by the DTI, to determine whether the factual conditions exist to warrant the imposition by the DTI of a countervailing duty, an anti-dumping duty, or a general safeguard measure, respectively. In all three laws, the determination by the Tariff Commission that these required factual conditions exist is necessary before the DTI Secretary may impose the corresponding duty or safeguard measure. And in all three laws, there is no express provision authorizing the DTI Secretary to reverse the factual determination of the Tariff Commission.[74]

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[72] See Section 104, *Tariff and Customs Code*. See also *Garcia v. Executive Secretary, id.* at 224.

[73] See Section 401, *id*.

[74] The similarities in the procedure as laid down in Rep. Act Nos. 8751, 8752 and 8800 are striking indeed, especially as they lay down the common limitation of a positive determination by the Tariff Commission as a requisite to the imposition of the corresponding duty or safeguard measures. From the beginning, *Southern Cross* has invoked the provisions Rep. Act No. 8751 and 8752 as applicable by analogy to the Safeguard Measures Act. The Court is not wont to rely on indirect analogical justifications if, as in this case, the law is explicit. Still, the analogy is apropos to the Safeguard Measures Act, and if anything, reveals a common track of mind on the part of the Tenth Congress which enacted all three laws.

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In fact, the SMA indubitably establishes that the Tariff Commission is no mere flunky of the DTI Secretary when it mandates that the positive final recommendation of the former be indispensable to the latter's imposition of a general safeguard measure. What the law indicates instead is a relationship of interdependence between two bodies independent of each other under the Administrative Code and the SMA alike. Indeed, even the ability of the DTI Secretary to disregard the Tariff Commission's recommendations as to the particular safeguard measures to be imposed evinces the independence from each other of these two bodies. This is properly so for two reasons — the DTI and the Tariff Commission are independent of each other under the Administrative Code; and impropriety is avoided in cases wherein the DTI itself is the one seeking the imposition of the general safeguard measures, pursuant to Section 6 of the SMA.

Thus, in ascertaining the appropriate legal milieu governing the relationship between the DTI and the Tariff Commission, it is imperative to apply foremost, if not exclusively, the provisions of the SMA. The argument that the usual rules on administrative control and supervision apply between the Tariff Commission and the DTI as regards safeguard measures is severely undercut by the plain fact that there is no long-standing tradition of administrative interplay between these two entities.

Within the administrative apparatus, the Tariff Commission appears to be a lower rank relative to the DTI. But does this necessarily mean that the DTI has the intrinsic right, absent statutory authority, to reverse the findings of the Tariff Commission? To insist that it does, one would have to concede for instance that, applying the same doctrinal guide, the Secretary of the Department of Science and Technology (DOST) has the right to reverse the rulings of the Civil Aeronautics Board (CAB) or the issuances of the Philippine Coconut Authority (PCA). As with the Tariff Commission-DTI, there is no statutory authority granting the DOST Secretary the right to overrule the CAB or the PCA, such right presumably arising only from the position of subordinacy of these bodies to the DOST. To insist on such

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a right would be to invite department secretaries to interfere in the exercise of functions by administrative agencies, even in areas wherein such secretaries are bereft of specialized competencies.

The *Separate Opinion* notes that notwithstanding above, the Secretary of Department of Transportation and Communication may review the findings of the CAB, the Agriculture Secretary may review those of the PCA, and that the Secretary of the Department of Environment and Natural Resources may pass upon decisions of the Mines and Geosciences Board.[75] These three officers may be *alter egos* of the President, yet their authority to review is limited to those agencies or bureaus which are, pursuant to statutes such as the Administrative Code of 1987, under the administrative control and supervision of their respective departments. Thus, under the express provision of the Administrative Code expressly provides that the CAB is an attached agency of the DOTC,[76] and that the PCA is an attached agency of the Department of Agriculture.[77] The same law establishes the Mines and Geo-Sciences Bureau as one of the Sectoral Staff Bureaus[78] that forms part of the organizational structure of the DENR.[79]

As repeatedly stated, the Tariff Commission does not fall under the administrative control of the DTI, but under the NEDA, pursuant to the Administrative Code. The reliance made by the *Separate Opinion* to those three examples are thus misplaced.

Nonetheless, the *Separate Opinion* asserts that the SMA created a functional relationship between the Tariff Commission

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[75] Separate Opinion, *infra*.

[76] See Section 23, Chapter 6, Title XV, Book IV, *Administrative Code of 1987*.

[77] See Section 47, Chapter 6, Title IV, Book IV, *Administrative Code of 1987*.

[78] See Section 16, Chapter 3, Title XIV, Book IV, Administrative Code of 1987, in relation to Chapter 3, Title XIV, Book IV of the same statute.

[79] See Section 5, Chapter 1, Title XIV, Book IV, Administrative Code of 1987.

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and the DTI Secretary, sufficient to allow the DTI Secretary to exercise *alter ego* powers to reverse the determination of the Tariff Commission. Again, considering that the power to impose tariffs in the first place is not inherent in the President but arises only from congressional grant, we should affirm the congressional prerogative to impose limitations and restrictions on such powers which do not normally belong to the executive in the first place. Nowhere in the SMA does it state that the DTI Secretary may impose general safeguard measures without a positive final determination by the Tariff Commission, or that the DTI Secretary may reverse or even review the factual determination made by the Tariff Commission.

Congress in enacting the SMA and prescribing the roles to be played therein by the Tariff Commission and the DTI Secretary did not envision that the President, or his/her *alter ego* could exercise supervisory powers over the Tariff Commission. If truly Congress intended to allow the traditional *alter ego* principle to come to fore in the peculiar setup established by the SMA, it would have assigned the role now played by the DTI Secretary under the law instead to the NEDA, the body to which the Tariff Commission is attached under the Administrative Code.

The Court has no issue with upholding administrative control and supervision exercised by the head of an executive department, but only over those subordinate offices that are attached to the department, or which are, under statute, relegated under its supervision and control. To declare that a department secretary, even if acting as *alter ego* of the President, may exercise such control or supervision over all executive offices below cabinet rank would lead to absurd results such as those adverted to above. As applied to this case, there is no legal justification for the DTI Secretary to exercise control, supervision, review or amendatory powers over the Tariff Commission and its positive final determination. In passing, we note that there is, admittedly, a feasible mode by which administrative review of the Tariff Commission's final determination could be had, but it is not the procedure adopted by respondents and now suggested for affirmation. This mode shall be discussed in a forthcoming section.

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The *Separate Opinion* asserts that the President, or his/her *alter ego* cannot be made a mere rubber stamp of the Tariff Commission since Section 17, Article VII of the Constitution denominates the Chief Executive exercises control over all executive departments, bureaus and offices.[80] But let us be clear that such "executive control" is not absolute. The definition of the structure of the executive branch of government, and the corresponding degrees of administrative control and supervision, is not the exclusive preserve of the executive. It may be effectively be limited by the Constitution, by law, or by judicial decisions.

The *Separate Opinion* cites the respected constitutional law authority Fr. Joaquin Bernas, in support of the proposition that such plenary power of executive control of the President cannot be restricted by a mere statute passed by Congress. However, the cited passage from Fr. Bernas actually states, "Since the Constitution has given the President the power of control, with all its awesome implications, it is the Constitution alone which can curtail such power."[81] Does the President have such tariff powers under the Constitution in the first place which may be curtailed by the executive power of control? At the risk of redundancy, we quote Section 28(2), Article VI: "*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." Clearly the power to impose tariffs belongs to Congress and not to the President.

It is within reason to assume the framers of the Constitution deemed it too onerous to spell out all the possible limitations and restrictions on this presidential authority to impose tariffs. Hence, the Constitution especially allowed Congress itself to prescribe such limitations and restrictions itself, a prudent move considering that such authority inherently belongs to Congress and not the President. Since Congress has no power to amend

[80] Separate Opinion, *infra*.

[81] See Separate Opinion, *infra*.

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the Constitution, it should be taken to mean that such limitations and restrictions should be provided "by mere statute." Then again, even the presidential authority to impose tariffs arises only "by mere statute." *Indeed, this presidential privilege is both contingent in nature and legislative in origin. These characteristics, when weighed against the aspect of executive control and supervision, cannot militate against Congress's exercise of its inherent power to tax.*

The bare fact is that the administrative superstructure, for all its unwieldiness, is mere putty in the hands of Congress. The functions and mandates of the particular executive departments and bureaus are not created by the President, but by the legislative branch through the Administrative Code.[82] The President is the administrative head of the executive department, as such obliged to see that every government office is managed and maintained properly by the persons in charge of it in accordance with pertinent laws and regulations, and empowered to promulgate rules and issuances that would ensure a more efficient management of the executive branch, for so long as such issuances are not contrary to law.[83] Yet the legislature has the concurrent power to reclassify or redefine the executive bureaucracy, including the relationship between various administrative agencies, bureaus and departments, and ultimately, even the power to abolish executive departments and their components, hamstrung only by constitutional limitations. The DTI itself can be abolished with ease by Congress through deleting Title X, Book IV of the Administrative Code. The Tariff Commission can similarly be abolished through legislative enactment.[84]

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[82] Notably, the *Administrative Code of 1987*, though embodied in an executive order, was promulgated by President Aquino in the exercise of her then extant legislative powers under the aegis of the 1987 Constitution. *See Phividec v. Capitol Steel*, G.R. No. 155692, 23 October 2003, 414 SCRA 327, 331; *citing* Sec. 7, Article XVIII, Constitution.

[83] *See Phividec v. Capitol Steel, id.*, at 332; *citing* VINCENT G. SINCO, *PHILIPPINE POLITICAL LAW* 234-235 (11th ed., 1962), as cited by *J.* Mendoza, dissenting, in *Ople v. Torres*, 354 Phil. 948, 1014-1015.

[84] Such abolitions of course subject through presidential approval or legislative override of a presidential veto.

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At the same time, Congress can enact additional tasks or responsibilities on either the Tariff Commission or the DTI Secretary, such as their respective roles on the imposition of general safeguard measures under the SMA. *In doing so, the same Congress, which has the putative authority to abolish the Tariff Commission or the DTI, is similarly empowered to alter or expand its functions through modalities, which do not align with established norms in the bureaucratic structure.* The Court is bound to recognize the legislative prerogative to prescribe such modalities, no matter how atypical they may be, in affirmation of the legislative power to restructure the executive branch of government.

There are further limitations on the "executive control" adverted to by the *Separate Opinion*. The President, in the exercise of executive control, cannot order a subordinate to disobey a final decision of this Court or any court's. If the subordinate chooses to disobey, invoking sole allegiance to the President, the judicial processes can be utilized to compel obeisance. Indeed, when public officers of the executive department take their oath of office, they swear allegiance and obedience not to the President, but to the Constitution and the laws of the land. The invocation of executive control must yield when under its subsumption includes an act that violates the law.

The *Separate Opinion* concedes that the exercise of executive control and supervision by the President is bound by the Constitution and law.[85] Still, just three sentences after asserting that the exercise of executive control must be within the bounds of the Constitution and law, the *Separate Opinion* asserts, "the control power of the Chief Executive emanates from the Constitution; no act of Congress may validly curtail it."[86] Laws are acts of Congress, hence valid confusion arises whether the *Separate Opinion* truly believes the first proposition that executive control is bound by law. This is a quagmire for the *Separate Opinion* to resolve for itself.

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[85] Separate Opinion, *infra*.

[86] *Ibid*.

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The *Separate Opinion* unduly considers executive control as the *ne plus ultra* constitutional standard which must govern in this case. But while the President may generally have the power to control, modify or set aside the actions of a subordinate, such powers may be constricted by the Constitution, the legislature, and the judiciary. This is one of the essences of the check-and-balance system in our tri-partite constitutional democracy. Not one head of a branch of government may operate as a Caesar within his/her particular fiefdom.

Assuming there is a conflict between the specific limitation in Section 28 (2), Article VI of the Constitution and the general executive power of control and supervision, the former prevails in the specific instance of safeguard measures such as tariffs and imposts, and would thus serve to qualify the general grant to the President of the power to exercise control and supervision over his/her subalterns.

Thus, if the Congress enacted the law so that the DTI Secretary is "bound" by the Tariff Commission in the sense the former cannot impose general safeguard measures absent a final positive determination from the latter the Court is obliged to respect such legislative prerogative, no matter how such arrangement deviates from traditional norms as may have been enshrined in jurisprudence. The only ground under which such legislative determination as expressed in statute may be successfully challenged is if such legislation contravenes the Constitution. No such argument is posed by the respondents, who do not challenge the validity or constitutionality of the SMA.

Given these premises, it is utterly reckless to examine the interrelationship between the Tariff Commission and the DTI Secretary beyond the context of the SMA, applying instead traditional precepts on administrative control, review and supervision. For that reason, the *Decision* deemed inapplicable respondents' previous citations of *Cariño v. Commissioner on Human Rights* and *Lamb v. Phipps*, since the executive power adverted to in those cases had not been limited by constitutional

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restrictions such as those imposed under Section 28(2), Article V1.[87]

A similar observation can be made on the case of *Sharp International Marketing v. Court of Appeals*,[88] now cited by Philcemcor, wherein the Court asserted that the Land Bank of the Philippines was required to exercise independent judgment and not merely rubber-stamp deeds of sale entered into by the Department of Agrarian Reform in connection with the agrarian reform program. Philcemcor attempts to demonstrate that the DTI Secretary, as with the Land Bank of the Philippines, is required to exercise independent discretion and is not expected to just merely accede to DAR-approved compensation packages. Yet again, such grant of independent discretion is expressly called for by statute, particularly Section 18 of Rep. Act No. 6657 which specifically requires the joint concurrence of "the landowner and the DAR and the [Land Bank of the Philippines]" on the amount of compensation. Such power of review by the Land Bank is a consequence of clear statutory language, as is our holding in the *Decision* that Section 5 explicitly requires a positive final determination by the Tariff Commission before a general safeguard measure may be imposed. Moreover, such limitations under the SMA are coated by the constitutional authority of Section 28(2), Article VI of the Constitution.

Nonetheless, is this administrative setup, as envisioned by Congress and enshrined into the SMA, truly noxious to existing legal standards? The *Decision* acknowledged the internal logic of the statutory framework, considering that the DTI cannot exercise review powers over an agency such as the Tariff Commission which is not within its administrative jurisdiction; that the mechanism employed establishes a measure of check and balance involving two government offices with different specializations; and that safeguard measures are the exception rather than the rule, pursuant to our treaty obligations.[89]

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[87] See *Southern Cross, supra* note 2, at 97-99.

[88] G.R. No. 93661, 4 September 1991, 201 SCRA 299.

[89] *Southern Cross, supra* note 2, at 105-106.

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We see no reason to deviate from these observations, and indeed can add similarly oriented comments. Corollary to the legislative power to decree policies through legislation is the ability of the legislature to provide for means in the statute itself to ensure that the said policy is strictly implemented by the body or office so tasked with the duty. As earlier stated, our treaty obligations dissuade the State for now from implementing default protectionist trade measures such as tariffs, and allow the same only under specified conditions.[90] The conditions enumerated under the GATT Agreement on Safeguards for the application of safeguard measures by a member country are the same as the requisites laid down in Section 5 of the SMA.[91] To insulate the factual determination from political pressure, and to assure that it be conducted by an entity especially qualified by reason of its general functions to undertake such investigation, Congress deemed it necessary to delegate to the Tariff Commission the function of ascertaining whether or not those factual conditions exist to warrant the atypical imposition of safeguard measures. After all, the Tariff Commission retains a degree of relative independence by virtue of its attachment to the National Economic Development Authority, "an independent planning agency of the government,"[92] and also owing to its vaunted expertise and specialization.

The matter of imposing a safeguard measure almost always involves not just one industry, but the national interest as it encompasses other industries as well. Yet in all candor, any decision to impose a safeguard measure is susceptible to all sorts of external pressures, especially if the domestic industry

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[90] *See* also *id*. at 106.

[91] *Ibid*. Philcemcor argues that the WTO Safeguards Agreement do not require that conclusive effect be given to the findings of a first-level fact finding body, or that the Philippines makes it difficult for domestic producers to obtain safeguard measures. Respondent's Memorandum dated 4 April 2005, p. 41. The effectiveness of that argument is undercut by the fact that even assuming that the Safeguards Agreement does not impose such requirements, the SMA enacted by Congress, the validity of which respondents do not question, may anyway require such impositions, as it does in this case, based on Section 28(2), Article VI of the Constitution.

[92] *Supra* note 69.

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concerned is well-organized. Unwarranted impositions of safeguard measures may similarly be detrimental to the national interest. Congress could not be blamed if it desired to insulate the investigatory process by assigning it to a body with a putative degree of independence and traditional expertise in ascertaining factual conditions. Affected industries would have cause to lobby for or against the safeguard measures. The decision-maker is in the unenviable position of having to bend an ear to listen to all concerned voices, including those which may speak softly but carry a big stick. Had the law mandated that the decision be made on the sole discretion of an executive officer, such as the DTI Secretary, it would be markedly easier for safeguard measures to be imposed or withheld based solely on political considerations and not on the factual conditions that are supposed to predicate the decision.

Reference of the binding positive final determination to the Tariff Commission is of course, not a fail-safe means to ensure a bias-free determination. But at least the legislated involvement of the Commission in the process assures some measure of *check and balance* involving two different governmental agencies with disparate specializations. There is no legal or constitutional demand for such a setup, but its wisdom as policy should be acknowledged. As prescribed by Congress, both the Tariff Commission and the DTI Secretary operate within limited frameworks, under which nobody acquires an undue advantage over the other.

We recognize that Congress deemed it necessary to insulate the process in requiring that the factual determination to be made by an ostensibly independent body of specialized competence, the Tariff Commission. This prescribed framework, constitutionally sanctioned, is intended to prevent the baseless, whimsical, or consideration-induced imposition of safeguard measures. It removes from the DTI Secretary jurisdiction over a matter beyond his putative specialized aptitude, the compilation and analysis of picayune facts and determination of their limited causal relations, and instead vests in the Secretary the broad choice on a matter within his unquestionable competence, the selection of what particular safeguard measure would assist

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the duly beleaguered local industry yet at the same time conform to national trade policy. Indeed, the SMA recognizes, and places primary importance on the DTI Secretary's mandate to formulate trade policy, in his capacity as the President's *alter ego* on trade, industry and investment-related matters.

At the same time, the statutory limitations on this authorized power of the DTI Secretary must prevail since the Constitution itself demands the enforceability of those limitations and restrictions as imposed by Congress. Policy wisdom will not save a law from infirmity if the statutory provisions violate the Constitution. But since the Constitution itself provides that the President shall be constrained by the limits and restrictions imposed by Congress and since these limits and restrictions are so clear and categorical, then the Court has no choice but to uphold the reins.

Even assuming that this prescribed setup made little sense, or seemed "uncommonly silly,"[93] the Court is bound by propriety not to dispute the wisdom of the legislature as long as its acts do not violate the Constitution. Since there is no convincing demonstration that the SMA contravenes the Constitution, the Court is wont to respect the administrative regimen propounded by the law, even if it allots the Tariff Commission a higher degree of puissance than normally expected. It is for this reason that the traditional conceptions of administrative review or quasi-judicial power cannot control in this case.

Indeed, to apply the latter concept would cause the Court to fall into a linguistic trap owing to the multi-faceted denotations the term "quasi-judicial" has come to acquire.

Under the SMA, the Tariff Commission undertakes formal hearings,[94] receives and evaluates testimony and evidence by interested parties,[95] and renders a decision is rendered on the basis of the evidence presented, in the form of the final

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[93] See J. Stewart, dissenting, *Griswold v Connecticut*, 381 U.S. 479 (1967); J. Thomas, dissenting, *Lawrence v. Texas*, 539 U.S. 558 (2003).

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

[95] *Id*.

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determination. The final determination requires a conclusion whether the importation of the product under consideration is causing serious injury or threat to a domestic industry producing like products or directly competitive products, while evaluating all relevant factors having a bearing on the situation of the domestic industry.[96] This process aligns conformably with definition provided by Black's *Law Dictionary* of "quasi-judicial" as the "action, discretion, *etc*., of public administrative officers or bodies, who are required to investigate facts, or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them, as a basis for their official action, and to exercise discretion of a judicial nature."[97]

However, the Tariff Commission is not empowered to hear actual cases or controversies lodged directly before it by private parties. It does not have the power to issue writs of injunction or enforcement of its determination. These considerations militate against a finding of quasi-judicial powers attributable to the Tariff Commission, considering the pronouncement that "quasi-judicial adjudication would mean a determination of rights privileges and duties resulting in a decision or order which applies to a specific situation."[98]

Indeed, a declaration that the Tariff Commission possesses quasi-judicial powers, even if ascertained for the limited purpose

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[96] Including, in particular, the rate and amount of the increase in imports of the products concerned in absolute and relative terms, the share of the domestic market taken by the increased imports, and changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment. See Section 12, Rep. Act No. 8800. Moreover, the Tariff Commission is precluded from making a positive determination unless the investigation demonstrates, on the basis of objective evidence, the existence of the causal link between the increased imports of the product under consideration and serious injury or threat thereof to the domestic industry. *Id*.

[97] BLACKS' *LAW DICTIONARY,* Sixth Edition (1990), at 1245. Accord H. de Leon & H. de Leon, Jr., *Administrative Law: Text and Cases, Third Edition* (1998) at 144.

[98] *See Lupangco v. Court of Appeals*, G.R. No. L-77372, 29 April 1988; 160 848, 856.

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of exercising its functions under the SMA, may have the unfortunate effect of expanding the Commission's powers beyond that contemplated by law. After all, the Tariff Commission is by convention, a fact-finding body, and its role under the SMA, burdened as it is with factual determination, is but a mere continuance of this tradition. However, Congress through the SMA offers a significant deviation from this traditional role by tying the decision by the DTI Secretary to impose a safeguard measure to the required positive factual determination by the Tariff Commission. Congress is not bound by past traditions, or even by the jurisprudence of this Court, in enacting legislation it may deem as suited for the times. The sole benchmark for judicial substitution of congressional wisdom is constitutional transgression, a standard which the respondents do not even attempt to match.

Respondents' Suggested Interpretation Of the SMA Transgresses Fair Play

Respondents have belabored the argument that the *Decision's* interpretation of the SMA, particularly of the role of the Tariff Commission *vis-à-vis* the DTI Secretary, is noxious to traditional notions of administrative control and supervision. But in doing so, they have failed to acknowledge the congressional prerogative to redefine administrative relationships, a license which falls within the plenary province of Congress under our representative system of democracy. Moreover, respondents' own suggested interpretation falls wayward of expectations of practical fair play.

Adopting respondents' suggestion that the DTI Secretary may disregard the factual findings of the Tariff Commission and investigatory process that preceded it, it would seem that the elaborate procedure undertaken by the Commission under the SMA, with all the attendant guarantees of due process, is but an inutile spectacle. As Justice Garcia noted during the oral arguments, why would the DTI Secretary bother with the Tariff Commission and instead conduct the investigation himself.[99]

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[99] *See* TSN dated 1 March 2005, p. 171.

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Certainly, nothing in the SMA authorizes the DTI Secretary, after making the preliminary determination, to personally oversee the investigation, hear out the interested parties, or receive evidence.[100] In fact, the SMA does not even require the Tariff Commission, which is tasked with the custody of the submitted evidence,[101] to turn over to the DTI Secretary such evidence it had evaluated in order to make its factual determination.[102] Clearly, as Congress tasked it to be, it is the Tariff Commission and not the DTI Secretary which acquires the necessary intimate acquaintance with the factual conditions and evidence necessary for the imposition of the general safeguard measure. Why then favor an interpretation of the SMA that leaves the findings of the Tariff Commission bereft of operative effect and makes them subservient to the wishes of the DTI Secretary, a personage with lesser working familiarity with the relevant factual milieu? In fact, the bare theory of the respondents would effectively allow the DTI Secretary to adopt, under the subterfuge of his "discretion," the factual determination of a private investigative group hired by the industry concerned, and reject the investigative findings of the Tariff Commission as mandated by the SMA. It would be highly irregular to substitute what the law clearly provides for a dubious setup of no statutory basis that would be readily susceptible to rank chicanery.

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[100] Expressly, the DTI Secretary's role as evaluator of evidence submitted by the concerned parties is limited to the review documentary evidence attached to the verified petition requesting for safeguard measures, but only for the purpose of determining whether the imposition of a provisional safeguard measure is warranted. See Section 7, Rep. Act No. 8800.

[101] See Section 10, Rep. Act No. 8800.

[102] Under Section 14, Rep. Act No. 8800, the enumerated contents of the Report by the Tariff Commission is limited to (a) the investigation report; (b) the proposed recommendations; (c) a copy of the submitted adjustment plan; and (d) the commitments made by the domestic industry to facilitate positive adjustment to import competition. This is not to mean that the Tariff Commission is absolutely barred from forwarding such evidence to the DTI Secretary, but the fact that there is no mandate under Rep. Act No. 8800 for it to do so further bolsters the apparent legislative intent that it is the Tariff Commission, and not the DTI Secretary, that is empowered to make the necessary factual determinations that precede the imposition of the general safeguard measures.

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Moreover, the SMA guarantees the right of all concerned parties to be heard, an elemental requirement of due process, by the Tariff Commission in the context of its investigation. The DTI Secretary is not similarly empowered or tasked to hear out the concerns of other interested parties, and if he/she does so, it arises purely out of volition and not compulsion under law.

Indeed, in this case, it is essential that the position of other than that of the local cement industry should be given due consideration, cement being an indispensable need for the operation of other industries such as housing and construction. While the general safeguard measures may operate to the better interests of the domestic cement industries, its deprivation of cheaper cement imports may similarly work to the detriment of these other domestic industries and correspondingly, the national interest. Notably, the Tariff Commission in this case heard the views on the application of representatives of other allied industries such as the housing, construction, and cement-bag industries, and other interested parties such as consumer groups and foreign governments.[103] It is only before the Tariff Commission that their views had been heard, and this is because it is only the Tariff Commission which is empowered to hear their positions. Since due process requires a judicious consideration of all relevant factors, the Tariff Commission, which is in a better position to hear these parties than the DTI Secretary, is similarly more capable to render a determination conformably with the due process requirements than the DTI Secretary.

In a similar vein, Southern Cross aptly notes that in instances when it is the DTI Secretary who initiates *motu proprio* the application for the safeguard measure pursuant to Section 6 of the SMA, respondents' suggested interpretation would result in the awkward situation wherein the DTI Secretary would rule upon his own application after it had been evaluated by the Tariff Commission. Pertinently cited is our ruling in *Corona v.*

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[103] See Footnotes No. 15 & 16, *Southern Cross, supra* note 2, at 71-72 for a list of the parties who participated in the investigation conducted by the Tariff Commission.

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Court of Appeals[104] that "no man can be at once a litigant and judge."[105] Certainly, this anomalous situation is avoided if it is the Tariff Commission which is tasked with arriving at the final determination whether the conditions exist to warrant the general safeguard measures. This is the setup provided for by the express provisions of the SMA, and the problem would arise only if we adopt the interpretation urged upon by respondents.

The Possibility for Administrative Review
Of the Tariff Commission's Determination

The Court has been emphatic that a positive final determination from the Tariff Commission is required in order that the DTI Secretary may impose a general safeguard measure, and that the DTI Secretary has no power to exercise control and supervision over the Tariff Commission and its final determination. These conclusions are the necessary consequences of the applicable provisions of the Constitution, the SMA, and laws such as the Administrative Code. However, the law is silent though on whether this positive final determination may otherwise be subjected to administrative review.

There is no evident legislative intent by the authors of the SMA to provide for a procedure of administrative review. If ever there is a procedure for administrative review over the final determination of the Tariff Commission, such procedure must be done in a manner that does not contravene or disregard legislative prerogatives as expressed in the SMA or the Administrative Code, or fundamental constitutional limitations.

In order that such procedure of administrative review would not contravene the law and the constitutional scheme provided by Section 28(2), Article VI, it is essential to assert that the positive final determination by the Tariff Commission is indispensable as a requisite for the imposition of a general

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[104] G.R. No. 97356, 30 September 1992; 214 SCRA 378.

[105] "The aggrieved party should not however, be one and the same official upon whose lap the complaint he has filed may eventually fall on appeal. *Nemo potest esse simul actor et Judex.* No man can be at once a litigant and judge." *Id.* at 389.

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safeguard measure. The submissions of private respondents and the *Separate Opinion* cannot be sustained insofar as they hold that the DTI Secretary can peremptorily ignore or disregard the determinations made by the Tariff Commission. However, if the mode of administrative review were in such a manner that the administrative superior of the Tariff Commission were to modify or alter its determination, then such "reversal" may still be valid within the confines of Section 5 of the SMA, for technically it is still the Tariff Commission's determination, administratively revised as it may be, that would serve as the basis for the DTI Secretary's action.

However, and fatally for the present petitions, such administrative review cannot be conducted by the DTI Secretary. Even if conceding that the Tariff Commission's findings may be administratively reviewed, the DTI Secretary has no authority to review or modify the same. We have been emphatic on the reasons — such as that there is no traditional or statutory basis placing the Commission under the control and supervision of the DTI; that to allow such would contravene due process, especially if the DTI itself were to apply for the safeguard measures *motu proprio*. To hold otherwise would destroy the administrative hierarchy, contravene constitutional due process, and disregard the limitations or restrictions provided in the SMA.

Instead, assuming administrative review were available, it is the NEDA that may conduct such review following the principles of administrative law, and the NEDA's decision in turn is reviewable by the Office of the President. The decision of the Office of the President then effectively substitutes as the determination of the Tariff Commission, which now forms the basis of the DTI Secretary's decision, which now would be ripe for judicial review by the CTA under Section 29 of the SMA. This is the only way that administrative review of the Tariff Commission's determination may be sustained without violating the SMA and its constitutional restrictions and limitations, as well as administrative law.

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In bare theory, the NEDA may review, alter or modify the Tariff Commission's final determination, the Commission being an attached agency of the NEDA. Admittedly, there is nothing in the SMA or any other statute that would prevent the NEDA to exercise such administrative review, and successively, for the President to exercise in turn review over the NEDA's decision.

Nonetheless, in acknowledging this possibility, the Court, without denigrating the bare principle that administrative officers may exercise control and supervision over the acts of the bodies under its jurisdiction, realizes that this comes at the expense of a speedy resolution to an application for a safeguard measure, an application dependent on fluctuating factual conditions. The further delay would foster uncertainty and insecurity within the industry concerned, as well as with all other allied industries, which in turn may lead to some measure of economic damage. Delay is certain, since judicial review authorized by law and not administrative review would have the final say. The fact that the SMA did not expressly prohibit administrative review of the final determination of the Tariff Commission does not negate the supreme advantages of engendering exclusive judicial review over questions arising from the imposition of a general safeguard measure.

In any event, even if we conceded the possibility of administrative review of the Tariff Commission's final determination by the NEDA, such would not deny merit to the present petition. It does not change the fact that the Court of Appeals erred in ruling that the DTI Secretary was not bound by the negative final determination of the Tariff Commission, or that the DTI Secretary acted without jurisdiction when he imposed general safeguard measures despite the absence of the statutory positive final determination of the Commission.

IV. Court's Interpretation of SMA In Harmony with Other Constitutional Provisions

In response to our citation of Section 28(2), Article VI, respondents elevate two arguments grounded in constitutional

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law. One is based on another constitutional provision, Section 12, Article XIII, which mandates that "[t]he State shall promote the preferential use of Filipino labor, domestic materials and locally produced goods and adopt measures that help make them competitive." By no means does this provision dictate that the Court favor the domestic industry in all competing claims that it may bring before this Court. If it were so, judicial proceedings in this country would be rendered a mockery, resolved as they would be, on the basis of the personalities of the litigants and not their legal positions.

Moreover, the duty imposed on by Section 12, Article XIII falls primarily with Congress, which in that regard enacted the SMA, a law designed to protect domestic industries from the possible ill-effects of our accession to the global trade order. Inconveniently perhaps for respondents, the SMA also happens to provide for a procedure under which such protective measures may be enacted. The Court cannot just impose what it deems as the spirit of the law without giving due regard to its letter.

In like-minded manner, the *Separate Opinion* loosely states that the purpose of the SMA is to protect or safeguard local industries from increased importation of foreign products.[106] This inaccurately leaves the impression that the SMA *ipso facto* unravels a protective cloak that shelters all local industries and producers, no matter the conditions. Indeed, our country has knowingly chosen to accede to the world trade regime, as expressed in the GATT and WTO Agreements, despite the understanding that local industries might suffer ill-effects, especially with the easier entry of competing foreign products. At the same time, these international agreements were designed to constrict protectionist trade policies by its member-countries. Hence, the median, as expressed by the SMA, does allow for the application of protectionist measures such as tariffs, but only after an elaborate process of investigation that ensures factual basis and indispensable need for such measures. More accurately, the purpose of the SMA is to provide a process for the protection or safeguarding of domestic industries that have

[106] Separate Opinion, *infra*.

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duly established that there is substantial injury or threat thereof directly caused by the increased imports. In short, domestic industries are not entitled to safeguard measures as a matter of right or influence.

Respondents also make the astounding argument that the imposition of general safeguard measures should not be seen as a taxation measure, but instead as an exercise of police power. The vain hope of respondents in divorcing the safeguard measures from the concept of taxation is to exclude from consideration Section 28(2), Article VI of the Constitution.

This argument can be debunked at length, but it deserves little attention. The motivation behind many taxation measures is the implementation of police power goals. Progressive income taxes alleviate the margin between rich and poor; the so-called "sin taxes" on alcohol and tobacco manufacturers help dissuade the consumers from excessive intake of these potentially harmful products. Taxation is distinguishable from police power as to the means employed to implement these public good goals. Those doctrines that are unique to taxation arose from peculiar considerations such as those especially punitive effects of taxation,[107] and the belief that taxes are the lifeblood of the state.[108] These considerations necessitated the evolution of taxation as a distinct legal concept from police power. Yet at the same time, it has been recognized that taxation may be made the implement of the state's police power.[109]

Even assuming that the SMA should be construed exclusively as a police power measure, the Court recognizes that police power is lodged primarily in the national legislature, though it

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[107] As U.S. Chief Justice Marshall once said, the power to tax involves the power to destroy. *McCulloch v. Maryland*, 4 Wheaton 316, cited in *Sison v. Ancheta*, G.R. No. L-59431, July 25, 1984.

[108] "[T]axes being the lifeblood of the government, their prompt and certain availability is of the essence." *Id*., citing *Vera v. Fernandez*, G.R. No. L31364, March 30, 1979, 89 SCRA 199.

[109] *Lutz v. Araneta*, 98 Phil. 148, 152 (1955); citing *Great Atl. & Pac. Tea Co. v. Grosjean*, 301 U.S. 412, *U.S. v. Butler*, 297 U.S. 1; *McCulloch v. Maryland, supra* note 96.

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may also be exercised by the executive branch by virtue of a valid delegation of legislative power.[110] Considering these premises, it is clear that police power, however "illimitable" in theory, is still exercised within the confines of implementing legislation. To declare otherwise is to sanction rule by whim instead of rule of law. The Congress, in enacting the SMA, has delegated the power to impose general safeguard measures to the executive branch, but at the same time subjected such imposition to limitations, such as the requirement of a positive final determination by the Tariff Commission under Section 5. For the executive branch to ignore these boundaries imposed by Congress is to set up an ignoble clash between the two co-equal branches of government. Considering that the exercise of police power emanates from legislative authority, there is little question that the prerogative of the legislative branch shall prevail in such a clash.

V. Assailed Decision Consistent With Ruling in Tañada v. Angara

Public respondents allege that the *Decision* is contrary to our holding in *Tañada v. Angara*,[111] since the Court noted therein that the GATT itself provides built-in protection from unfair foreign competition and trade practices, which according to the public respondents, was a reason "why the Honorable [Court] ruled the way it did." On the other hand, the *Decision* "eliminates safeguard measures as a mode of defense."

This is balderdash, as with any and all claims that the *Decision* allows foreign industries to ride roughshod over our domestic enterprises. The *Decision* does not prohibit the imposition of general safeguard measures to protect domestic industries in need of protection. All it affirms is that the positive final determination of the Tariff Commission is first required before the general safeguard measures are imposed and implemented, a neutral proposition that gives no regard to the nationalities of the parties involved. A positive determination by the Tariff

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[110] See I. Cruz, *Constitutional Law,* p. 46.

[111] *Supra* note 3.

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Commission is hardly the elusive *Shangri-la* of administrative law. If a particular industry finds it difficult to obtain a positive final determination from the Tariff Commission, it may be simply because the industry is still sufficiently competitive even in the face of foreign competition. These safeguard measures are designed to ensure salvation, not avarice.

Respondents well have the right to drape themselves in the colors of the flag. Yet these postures hardly advance legal claims, or nationalism for that matter. The fineries of the costume pageant are no better measure of patriotism than simple obedience to the laws of the Fatherland. And even assuming that respondents are motivated by genuine patriotic impulses, it must be remembered that under the setup provided by the SMA, it is the facts, and not impulse, that determine whether the protective safeguard measures should be imposed. As once orated, facts are stubborn things; and whatever may be our wishes, our inclinations, or the dictates of our passions, they cannot alter the state of facts and evidence.[112]

It is our goal as judges to enforce the law, and not what we might deem as correct economic policy. Towards this end, we should not construe the SMA to unduly favor or disfavor domestic industries, simply because the law itself provides for a mechanism by virtue of which the claims of these industries are thoroughly evaluated before they are favored or disfavored. What we must do is to simply uphold what the law says. Section 5 says that the DTI Secretary shall impose the general safeguard measures upon the positive final determination of the Tariff Commission. Nothing in the whereas clauses or the invisible ink provisions of the SMA can magically delete the words "positive final determination" and "Tariff Commission" from Section 5.

VI. On Forum-Shopping

We remain convinced that there was no willful and deliberate forum-shopping in this case by Southern Cross. The causes of action that animate this present petition for review and the petition for review with the CTA are distinct from each other, even

[112] Attributed to the American President John Adams.

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though they relate to similar factual antecedents. Yet it also appears that contrary to the undertaking signed by the President of Southern Cross, Hironobu Ryu, to inform this Court of any similar action or proceeding pending before any court, tribunal or agency within five (5) days from knowledge thereof, Southern Cross informed this Court only on 12 August 2003 of the petition it had filed with the CTA eleven days earlier. An appropriate sanction is warranted for such failure, but not the dismissal of the petition.

VII. Effects of Court's Resolution

Philcemcor argues that the granting of Southern Cross's *Petition* should not necessarily lead to the voiding of the *Decision* of the DTI Secretary dated 5 August 2003 imposing the general safeguard measures. For Philcemcor, the availability of appeal to the CTA as an available and adequate remedy would have made the Court of Appeals' *Decision* merely erroneous or irregular, but not void. Moreover, the said *Decision* merely required the DTI Secretary to render a decision, which could have very well been a decision not to impose a safeguard measure; thus, it could not be said that the annulled decision resulted from the judgment of the Court of Appeals.

The Court of Appeals' *Decision* was annulled precisely because the appellate court did not have the power to rule on the petition in the first place. Jurisdiction is necessarily the power to decide a case, and a court which does not have the power to adjudicate a case is one that is bereft of jurisdiction. We find no reason to disturb our earlier finding that the Court of Appeals' *Decision* is null and void.

At the same time, the Court in its *Decision* paid particular heed to the peculiarities attaching to the 5 August 2003 *Decision* of the DTI Secretary. In the DTI Secretary's *Decision*, he expressly stated that as a result of the Court of Appeals' *Decision,* "there is no legal impediment for the Secretary to decide on the application." Yet the truth remained that there was a legal impediment, namely, that the decision of the appellate court was not yet final and executory. Moreover, it was declared null

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and void, and since the DTI Secretary expressly denominated the Court of Appeals' Decision as his basis for deciding to impose the safeguard measures, the latter decision must be voided as well. Otherwise put, without the Court of Appeals' *Decision*, the DTI Secretary's *Decision* of 5 August 2003 would not have been rendered as well.

Accordingly, the Court reaffirms as a nullity the DTI Secretary's *Decision* dated 5 August 2003. As a necessary consequence, no further action can be taken on Philcemcor's *Petition for Extension of the Safeguard Measure*. Obviously, if the imposition of the general safeguard measure is void as we declared it to be, any extension thereof should likewise be fruitless. The proper remedy instead is to file a new application for the imposition of safeguard measures, subject to the conditions prescribed by the SMA. Should this step be eventually availed of, it is only hoped that the parties involved would content themselves in observing the proper procedure, instead of making a mockery of the rule of law.

WHEREFORE, respondents' *Motions for Reconsideration* are *DENIED WITH FINALITY*.

Respondent DTI Secretary is hereby ENJOINED from taking any further action on the pending *Petition for Extension of the Safeguard Measure*.

Hironobu Ryu, President of petitioner Southern Cross Cement Corporation, and Angara Abello Concepcion Regala & Cruz, counsel petitioner, are hereby given FIVE (5) days from receipt of this *Resolution* to EXPLAIN why they should not be meted disciplinary sanction for failing to timely inform the Court of the filing of Southern Cross's *Petition for Review* with the Court of Tax Appeals, as adverted to earlier in this *Resolution*.

SO ORDERED.

Puno, Quisumbing, Austria-Martinez, Callejo, Sr., Azcuna, Chico-Nazario, and *Garcia, JJ.,* concur.

Davide, Jr., C.J., joins Mr. Justice A. V. Panganiban in his separate opinion.

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Panganiban, J., please see Separate Opinion (concurring & dissenting).

Ynares-Santiago, Sandoval-Gutierrez, and *Carpio Morales, JJ.*, join J. Panganiban in his dissent.

Carpio, J., took no part. My former law office appeared before DTI for a party.

Corona, J., on official leave.

PANGANIBAN, *J., concurring and dissenting:*

"As a co-equal body, the judiciary has great respect for determinations of the Chief Executive or his subalterns, especially when the legislature itself has specifically given them enough room on how the law should be effectively enforced."[1]

Once again, this Court is faced with a controversy that ultimately affects the economic life of the country. While on its face, the problem appears to be merely one of legal construction of a statute, its consequences and implications dig deep into the ability and power of the Executive Department to protect domestic industries from injurious importations of foreign products.

Indeed, the main substantive issue of this case boils down to the dexterity of the secretary of trade — the government's principal official empowered to superintend the nation's commercial life and to promote investments — to impose safeguard measures to protect the local cement industry from the onslaught of *unfair* foreign competition.

I respectfully submit that, absent any *patent* violation of laws or *grave* abuse of discretion, the top trade official should be given the widest discretion to be able to promote the best interest of the country in the field of trade, industry and investments. I believe that this Court should not interfere unnecessarily in commercial and economic policies, but allow

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[1] *Philippine Association of Service Exporters; Inc. v. Drilon*, 163 SCRA 386, 393, June 30, 1988, per Sarmiento, *J.*

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our executive officials to meet head-on the vicissitudes of international trade competition spawned by globalization, deregulation and liberalization.

As will be demonstrated later on, I firmly submit that law, justice, equity, reason, logic, national interest and common sense impel the maintenance of this Court's policy of laissez-faire. *In short, the judiciary should be deferential to the powers residing in, and respectful of the actions taken by, the top government official who has primary responsibility for the commercial development of the nation.*

Background Information

Before the Court *en banc* are Motions for Reconsideration of the Decision[2] promulgated by this Court's Second Division, filed by 1) the Office of the Solicitor General (OSG) on behalf of public respondents and 2) the Philippine Cement Manufacturers Corporation (Philcemcor).[3] The assailed Decision disposed as follows:

"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."

In a Resolution dated September 15, 2004, the Special Second Division referred to the Court *en banc* the respective Motions to refer the case to the *banc*, filed by the solicitor general and private respondent. On September 21, 2004, the full Court resolved to accept the referral.

On March 1, 2005, the 15 members of the Court heard oral arguments on the two main issues involved: 1) whether a decision of the secretary of the Department of Trade and Industry (DTI) denying the imposition of a safeguard measure is appealable to the Court of Tax Appeals (CTA); and 2) whether the DTI secretary may impose a general safeguard measure,

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[2] 434 SCRA 65, July 8, 2004.

[3] Now the "Cement Manufacturers Association of the Philippines."

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only upon a positive final determination by the Tariff Commission (TC).

To recall, the assailed Decision answered both questions in the affirmative.[4] It held that the CTA, not the Court of Appeals

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[4] In brief, the antecedents of the Second Division's Decision are as follows:

1. May 22, 2001 — Private respondent Philcemcor filed before the DTI an application for the imposition of a safeguard measure on the importation of gray Portland cement.
2. Nov. 7, 2001 — DTI issued an Order imposing a provisional measure equivalent to ₱20.60 per 40-kg bag of imported gray Portland cement, effective for 200 days from issuance by the Bureau of Customs (BOC) of the implementing Customs Memorandum Order.
3. Dec. 10, 2001 — BOC issued the pertinent Customs Memorandum Order.
4. Mar. 13, 2002 — The Tariff Commission came out with its Formal Investigation Report, in which it concluded that "[t]he 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."
5. Apr. 5, 2002 — After noting that it was in disagreement with the TC's recommendation, the DTI issued its Decision denying the application for a safeguard measure, in accordance with that recommendation.
6. Apr. 22, 2002 — Philcemcor filed before the CA a Petition for *Certiorari*, Prohibition and *Mandamus*, praying that the DTI Decision and TC Report be set aside; and that the DTI secretary be directed to render an independent judgment.
7. June 5, 2003 — The CA promulgated its Decision holding that (a) it had jurisdiction over the Petition for *Certiorari*, allegedly because of grave abuse of discretion; and (b) the DTI secretary was not bound by the factual findings of the TC, which were merely recommendatory. The CA remanded the case to the DTI secretary for the latter to render a final decision in accordance with RA 8800 and the Implementing Rules.
8. June 23, 2003 — Southern Cross filed the present Petition, grounded on the following: (1) the CA had no jurisdiction, the proper remedy being a petition for review with the CTA; and (2) the TC's factual findings are binding upon the DTI secretary.

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(CA), had the jurisdiction to review the DTI secretary's decision, whether imposing a safeguard measure or not. It explained that the proviso "in connection with the imposition of a safeguard measure" in Section 29[5] of Republic Act (RA) 8800 pertained to "all rulings of the DTI [s]ecretary x x x which arise from the time an application or *motu proprio* initiation for the imposition of a safeguard measure is taken,"[6] including the final decision imposing or not imposing such measure. Because the law clearly provided aggrieved parties with a legal remedy (petition for review with the CTA), a special civil action for *certiorari* did not avail. Hence, the CA Decision was declared void and set aside.

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9. June 25, 2003 — the DTI secretary issued a new Decision, prescinding from the CA Decision that it was not bound by the TC recommendation imposing a safeguard duty of ₱20.60 per 40-kg bag of imported gray Portland cement for 3 years.
10. July 7, 2003 — Southern Cross filed with the SC a Very Urgent Application for a TRO or Writ of Preliminary Injunction, seeking to enjoin the DTI secretary from enforcing the Department's June 25, 2003 Decision, in view of the pending Petition before this Court.
11. Aug. 1, 2003 — Southern Cross filed with CTA a Petition for Review of the June 25, 2003 DTI Decision.
12. Subsequently, Philcemcor filed before this Court a Manifestation and Motion to Dismiss this Petition, on the ground of forum shopping.

[5] "SEC. 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 Court of Tax Appeals, 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."

[6] Emphasis in the original.

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The Decision of the Second Division also ruled that, pursuant to a literal interpretation of Section 5[7] of the law (RA 8800), the DTI secretary could impose a safeguard measure only upon a positive final determination by the Tariff Commission. The Decision differentiated between the *power to make a final determination of the presence of serious injury or threat to the domestic industry* and *the authority to impose the safeguard measure*. It held that the power to make a final determination was lodged in the Tariff Commission; and the authority to impose the safeguard, in the DTI secretary.

The present Resolution written by the esteemed Justice Dante O. Tinga upholds the assailed Decision *in toto*. I beg to differ.

While I agree that the CTA has jurisdiction to review the DTI secretary's decision either imposing or not imposing a safeguard measure, I respectfully disagree, however, that the said cabinet official is bound by the recommendations of the Tariff Commission and may thus impose a safeguard measure only when it so recommends. *I respectfully submit that the DTI secretary has the power to impose safeguard measures even if the TC does not recommend such imposition.*

The First Issue: *Jurisdiction to Review the Secretary's Decisions*

The OSG's Position

The OSG avers that the Decision, as far as it disposed of the first issue, "was based solely on an expansive interpretation of x x x Section 29 of [RA] No. 8800." This interpretation allegedly undermines the rule against the presumption of jurisdiction and

[7] "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 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."

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could bring about erroneous interpretations of provisions on jurisdiction that would result in fatal consequences for the parties or in endless litigation.[8]

Purportedly, Section 29 expressly limits CTA jurisdiction to cases in which a safeguard measure is imposed, not when the DTI secretary does not impose the measure. Thus, the OSG submits that the CTA had no jurisdiction over the April 5, 2002 Decision of the DTI secretary; and that it was proper for herein private respondent to have resorted to a special civil action for *certiorari* before the CA.

The government counsel further contends that RA 9282,[9] a new law that was enacted on March 30, 2004, now expressly confers upon the CTA jurisdiction over decisions "to impose or not to impose" safeguard measures. Supposedly, this new explicit provision only shows that RA 8800 did not intend to include a review of DTI decisions involving the non-imposition of the said measures.

Private Respondent's Contentions

Philcemcor similarly contends that Congress limited the power of review of the CTA to the "single situation of *an imposition* by the [s]ecretary of safeguard measures *to the exclusion of the situation of non-imposition* x x x."

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[8] Citing *Arevalo v. Benedicto*, 58 SCRA 186, July 31, 1974, the solicitor general claims as follows:

"x x x. For the want of jurisdiction by a court over the subject matter renders the judgment void and a mere nullity. Considering that a void judgment is in legal effect no judgment, by which no rights are divested, from which no rights can be obtained, which neither binds nor bars anyone, and under which all acts performed and all claims flowing out of are void, and considering, further, that the decision, for want of jurisdiction of the court, is not a decision in contemplation of law, and hence, can never become executory, it follows that such a void judgment cannot constitute a bar to another case by reason of *res judicata*. Not being barred by *res judicata*, there can be no end to litigation and thus, the administration of justice will severely be prejudiced." OSG's Motion for Reconsideration, p. 9.

[9] An Act Expanding the Jurisdiction of the CTA.

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Respondent also argues that the TC is not a quasi-judicial body; it neither determines private rights nor decides controversies. Thus, its acts "are *per se* administratively reviewable." Otherwise, an error on its part will have far-ranging consequences, "cut[ting] across sectoral boundaries in the national economy, and across industry boundaries within each sector of the economy. Thus, its recommendations should be subject to review by the DTI secretary whose mandate has a macroeconomic scope x x x and who has the statutory burden of promoting the development of industry and other sectors of the economy."[10] Corollarily, not being a quasi-judicial body, its reports are not appealable to either the CTA or the CA, according to Philcemcor.

Petitioner's Arguments

Petitioner, on the other hand, agrees with the assailed Decision holding that the DTI secretary's ruling in either instance is appealable to the CTA. Petitioner reiterates the interpretation that the phrase "in connection with" in Section 29 of RA 8800 means "if it has connection with or reference to." Thus, the DTI secretary's Decision not to impose a safeguard measure is reviewable by the CTA, because it relates or has reference to the imposition of that measure.

This interpretation is allegedly confirmed by RA 9282, Section 7(a)(7)[11] of which provides that the CTA has exclusive appellate jurisdiction over a decision of the DTI secretary "to impose or not to impose" safeguard measures. Petitioner posits that this

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[10] Philcemcor's Memorandum, p. 50.

[11] "SEC. 7. *Jurisdiction*. — The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

xxx xxx xxx

"(7) Decisions of the Secretary of Trade and Industry, in the case of nonagricultural product, commodity or article, and the Secretary of Agriculture in the case of agricultural product, commodity or article, involving dumping and counter vailing duties under Sections 301 and 302, respectively, of the Tariff and Customs Code, and safeguard measures under Republic Act No. 8800, where either party may appeal the decision to impose or not to impose said duties."

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provision merely reflects or reiterates Section 29 of RA 8800; it does not constitute an expansion of the CTA jurisdiction. Otherwise, an absurdity would arise: in case the DTI secretary imposes a definitive safeguard measure, the remedy of the aggrieved party would be to appeal to the CTA; but in case the decision is not to impose the measure, the remedy would be to appeal to the CA.[12]

My Submission*:*
The CTA Has Jurisdiction

A CTA Review of the DTI Secretary's Rulings Provided for by RA 8800

On the issue of jurisdiction, I agree with the Court's Resolution penned by Justice Tinga that the DTI secretary's decisions — whether imposing safeguard measures or not — are subject to review by the CTA, pursuant to Section 29[13] of RA 8800.

The meaning of the phrase *in connection with the imposition of a safeguard measure* is not the same as *imposing a safeguard measure*; otherwise, the law would simply have sufficed without the qualifying connector. Consequently, all final rulings relating to an application for the measure — whether imposing, extending, terminating or disallowing one — are *in connection with the imposition of a safeguard measure*, and thus appealable to the CTA.

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[12] The following reasons are mentioned. *First*, both instances involve a tax aspect or the propriety of enforcing a safeguard measure. *Second*, in either case, a private party will be aggrieved. *Third*, the same issues — the factual basis of and/or the methodology used in the determination — will be raised in either case. *Fourth*, the CTA has specialized expertise in tax and customs laws. *Fifth*, the parties' right to equal protection of the law would in effect be violated by the difference between the proceedings before the CTA, which are in the nature of trial *de novo*; and those in the CA, which are not. *Lastly*, there is no sound and cogent reason to split the jurisdiction over appeals from the DTI secretary's decision and, indeed, the legislature did not intend any distinction. Philcemcor's Memorandum, pp. 48-51.

[13] See footnote 5.

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Let me clarify, though, a rather loose statement in the Court's Resolution that the "entire subset of rulings that the DTI [s]ecretary may issue x x x, including those that are provisional, interlocutory x x x" are in connection with the imposition of a safeguard measure; and also "the phrase ['in connection with'] includes all rulings of the DTI [s]ecretary which arise from the time an application or *motu proprio* initiation for the imposition of a safeguard measure is taken." Both statements seem to imply that *all* aforementioned rulings are therefore appealable to the CTA pursuant to Section 29.

It is a legal truism, however, that interlocutory orders are not subject to an appeal or a petition for review until the main case is finally resolved on the merits.[14] RA 8800 does not explicitly state which rulings of the DTI secretary are reviewable by way of a petition for review with the CTA. However, the Rules of Court and settled jurisprudence provide that only judgments or final orders disposing of the merits of a case may be the subject of appeals or petitions for review.[15] Since RA 8800 does not amend the extant Rules (assuming *arguendo* that Congress had the power to amend the Rules of Court), they must be applied to the intended appeals.

In the present case, private respondent did not appeal the DTI secretary's Decision to either the CTA or the CA, but instead invoked the CA's *certiorari* power under Rule 65 of the Rules of Court, on the ground of grave abuse of discretion. But one of the requisites of a special civil action for *certiorari* is that there be no appeal; or any plain, speedy and adequate remedy in the ordinary course of law.[16] As discussed, RA 8800 expressly provides for a legal remedy to question the DTI secretary's decisions — that of filing a petition for review to the CTA. Given this expedient and adequate remedy in the

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[14] *Villegas v. Fernando*, 27 SCRA 1119, April 28, 1969; *Go v. Court of Appeals*, 358 Phil. 214, October 8, 1998; *Indiana Aerospace University v. Commission on Higher Education*, 356 SCRA 767, April 4, 2001.

[15] *Augusto v. Risos*, 417 SCRA 408, December 10, 2003.

[16] *Cuison v. Court of Appeals*, 351 Phil. 1089, April 15, 1998; *Del Mar v. Court of Appeals*, 429 Phil. 19, March 13, 2002.

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ordinary course as provided by law, private respondent's recourse to *certiorari* before the CA must necessarily fail. As a consequence, it has inopportunely lost its legal route for a judicial review of the DTI ruling.

In any event, as the determination of the case is dependent on *current* pertinent econometric data and their effects on the domestic industry, the peculiar circumstances make a ruling on the merits inadvisable at this time. The original application for a safeguard measure was filed way back in 2001, and it has been almost four years since the imposition of the provisional safeguard measure.[17] The cement import statistics on record may no longer be relevant at present. I agree with the Resolution that the available remedy at this time is to file a new application for the imposition of a definitive safeguard measure, if warranted under the present circumstances.

The CTA's Essential Technical Expertise

Moreover, I believe that the CTA is the proper and competent body to review the DTI secretary's decisions involving safeguard measures. By the very nature of its functions, the CTA is a highly specialized court specifically created for the purpose of reviewing tax and customs cases. It is dedicated exclusively to the study and consideration of revenue-related problems and has necessarily developed an expertise on the subject.[18] Thus, as a general rule, its findings and conclusions are accorded great respect and are generally upheld by this Court, unless

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[17] Under §15 of RA 8800, "[t]he duration of the period of an action taken under the General Safeguard Provisions of [the] Act shall not exceed four (4) years," including the period in which a provisional safeguard relief under Section 8 was in effect. In the present case, the provisional safeguard measure took effect on December 10, 2001.

[18] *Commissioner of Internal Revenue v. Court of Appeals*, 338 Phil. 322, April 18, 1997 (citing *Philippine Refining Company v. Court of Appeals*, 256 SCRA 667, May 8, 1996; *Commissioner of Internal Revenue v. Wander Philippines, Inc.*, 160 SCRA 573, April 15, 1988); *Commissioner of Internal Revenue v. General Foods (Phils.), Inc.*, 401 SCRA 545, April 24, 2003.

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there is a clear showing of a reversible error or an improvident exercise of authority.

While primarily intended to protect domestic industries, safeguard measures are incidentally revenue-generating and generally in the nature of, though not always equivalent to, tariff impositions. They may consist of a tariff increase, duty, tariff-rate quota, quantitative restriction, adjustment measure or a combination of these.[19] In the determination of their imposition, the following factors are to be taken into consideration: rate and amount of increase in the importation of the product concerned; share of the domestic market taken by the increased imports; and changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment.[20] Most of these factors involve data analysis which, by virtue of the highly specialized technical expertise of the CTA, must be more familiar to it than to the CA.

Thus, as between the two appellate courts, the CTA should have the jurisdiction to review decisions involving safeguard measures, whether imposed or not. In either case, a review will necessarily entail a reappraisal of the facts from which the decisions were based. In both instances, a factual reassessment would encompass the same kind of knowledge and technical expertise. Indeed, it would be absurd if only a positive decision is reviewable by the CTA, while a negative one is passed on to the CA.

Basic is the rule in statutory construction that laws should be given a sensible construction, so as to give effect to their rationale and intent and thus avoid an unjust or absurd interpretation.[21] *Interpretatio talis in ambiguis semper frienda est, ut evitatur inconveniens et absurdum*. When there is ambiguity, an interpretation that will avoid inconvenience and absurdity is to be adopted.[22] In other words, a rational interpretation must be effectuated.

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[19] See §§8 & 13, RA 8800.

[20] §12, *ibid*.

[21] *Cosico Jr. v. NLRC*, 338 Phil. 1080, May 23, 1997.

[22] *Ibid*. (citing *Commissioner of Internal Revenue v. TMX Sales, Inc.*, 205 SCRA 184, 187, January 15, 1992).

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Contrary to the contention of the solicitor general, Section 7(a)(7) of RA 9282 merely restates in clearer language Section 29 of RA 8800. Undeniably, the imperfect craftsmanship of the latter has spawned some ambiguity. I believe that Congress did not mean to add, *via* Section 7(a)(7) of RA 9282, a new matter to the jurisdiction of the CTA. For all along, the legislative intent has been to vest in the CTA the power to review the imposition or non-imposition of safeguard measures.

Between the enactment of RA 8800 in 2000 and RA 9282 in 2004, there has been no significant supervening change in circumstances in our economic or trade environments or even in our judicial structure, which would justify Congress to add to the jurisdiction of the CTA the review of the non-imposition of a safeguard measure. The only significant intervening event that seems worth considering is the present proceeding, which precisely reveals an ambiguity that Congress did not intend when it enacted RA 8800. Section 7(a)(7) of RA 9282 now explicitly expresses the law's intent.

Consequences of the CA Decision

Because the CA wrongly exercised its limited *certiorari* power, its June 5, 2003 Decision was rendered without jurisdiction and, hence, null and void.[23] Held to be dead limbs on the judicial tree are void judgments, which should be disregarded or ignored.[24]

Likewise, the DTI Decision dated June 25, 2003, issued pursuant to the void CA judgment, is necessarily invalid. A void judgment is worthless and has no legal effect.[25] It cannot be the source of any right or the creator of any obligation.

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[23] *Philippine-Singapore Ports Corp. v. NLRC*, 218 SCRA 77, January 29, 1993; *Velasco v. Ople*, 191 SCRA 636, November 26, 1990; *Solid Homes, Inc. v. Payawal*, 177 SCRA 72, August 29, 1989; *Republic of the Philippines v. Sangalang*, 159 SCRA 515, April 8, 1988; *Goodrich Employees Association v. Flores*, 73 SCRA 297, October 5, 1976.

[24] *Soliweg v. Workmen's Compensation Commission*, 88 SCRA 569, February 27, 1979.

[25] *Ibid*.

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Thus, all acts performed pursuant to it and all claims emanating from it have no legal effect.[26]

Accordingly, the present Petition, which seeks a review of a void Decision of the CA should, in the ordinary course, also be dismissed. Generally, this Court cannot review a legally inexistent judgment.[27]

Exceptions When Supreme Court May Exercise Jurisdiction

In not a few cases, though, this Court has exercised its discretionary power to take cognizance of a petition, if compelling reasons or the nature and importance of the issues raised warrant the immediate exercise of its jurisdiction.[28] For instance, in *Pilipinas Kao, Inc. v. Court of Appeals*,[29] while recognizing that the Board of Investments had primary jurisdiction over the merits of the case, this Court nevertheless proceeded to exercise its review powers. It justified its act on the basis of "procedural expediency and consideration of [the] public interest involved in the questions before us which bear on the certainty and stability of economic policies and proper implementation thereof."[30]

Also in *Chavez v. Presidential Commission on Good Government*,[31] the Court resolved to exercise primary jurisdiction, inasmuch as the petition involved only "constitutional and legal questions concerning public interest." It noted that cases that had to be remanded or referred to a lower body as the proper forum, or as the one that was better equipped to resolve the

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[26] *AFP Mutual Benefit Association, Inc. v. NLRC*, 267 SCRA 47, January 28, 1997.

[27] *Velarde v. Social Justice System*, 428 SCRA 283, April 28, 2004.

[28] *Del Mar v. Philippine Amusement and Gaming Corporation*, 346 SCRA 485, November 29, 2000 (citing *Fortich v. Corona*, 289 SCRA 624, April 24, 1998; *Tano v. Socrates*, 278 SCRA 154, August 21, 1997; *Ramos v. CA*, 269 SCRA 34, March 3, 1997).

[29] 372 SCRA 548, December 18, 2001.

[30] *Id*., p. 565, per Kapunan, *J*.

[31] 307 SCRA 394, May 19, 1999, per Panganiban, *J*.

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issues, generally involved factual questions. Such a remand is merely in accordance with the principle that the Supreme Court is not a trier of facts. But in taking jurisdiction over the petition, "unnecessary delays and expenses" would be avoided.

In the present case, it is indisputable that the only issues raised are legal in nature. They relate to the ability of the Executive Department to exercise its discretionary powers over an economic policy matter. At the core of the controversy is the correct interpretation of a law enacted to address a primordial concern of the State. That concern is to serve and protect the Filipino people[32] by developing a self-reliant and independent national economy effectively controlled by them,[33] in the face of global competition brought about by world trade liberalization. It should also be recalled that the State, in promoting industrialization, is constitutionally mandated to protect Filipino enterprises against unfair foreign competition and trade practices.[34] The Safeguard Measures Law was precisely enacted to give life to these constitutional policies.

In addition, if the issues before us are left unresolved, they will most likely crop up again in a similar application under the law. All the parties involved — the DTI, the Tariff Commission and the private entities — would then still be in a quandary with respect to whether the DTI head is bound by or may review (and modify or reverse) recommendations of the Commission; as well as whether the latter should make a final determination or simply submit its recommendations. These questions of law would ineludibly be brought before this Court again, creating unnecessary delays and expenses — the undesirable ills sought to be banished by the Court's oft-repeated policy of administering justice efficiently, effectively and promptly.

Thus, the Court is well within its powers to resolve the main substantive issue at this time, in view of higher public interests;

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[32] §4, Art. II of the Constitution.

[33] §19, *ibid*.

[34] §1, par. 2, Art. XII, *ibid*.

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and the speedy, efficient and proper administration of substantial justice.

The Second Issue*:*
Reviewability of the Tariff Commission's Report

The OSG's Position

With respect to the second main issue, the solicitor general avers that the DTI is not bound by the recommendation of the Tariff Commission. A careful scrutiny of Section 5 of RA 8800 allegedly reveals "no indication whatsoever that it is *only* upon a positive final determination by the Tariff Commission that a general safeguard may be imposed x x x. Thus, the law necessarily permits instances when general safeguard measures may be imposed despite the absence of such determination" by the Commission.[35]

The OSG also argues that RA 8800 must be interpreted in congruence with Section 28(2) of Article VI of the Constitution, which provides that Congress may delegate to the President the authority to impose tariff rates. Being a mere agency in the Executive Department whose officials serve at the pleasure of the President, the Tariff Commission could not have been authorized by the law to impose its views on the Chief Executive. Neither could the law have intended a situation in which "an *alter ego* of the President would be a mere rubber stamp that would be compelled to enforce the recommendations of a mere agency in the Executive Department."[36]

Furthermore, the OSG claims that under the charter[37] of the Commission (and likewise under RA 8800), the latter's functions are primarily investigatory and, at most, recommendatory. The TC has no power to decide or adjudicate. Hence, the Implementing Rules of RA 8800 required that, after concluding its formal investigation, the TC should submit a report to the DTI. "[T]he

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[35] OSG's Motion for Reconsideration, p. 27. Emphasis in the original.

[36] *Id*., p. 46. Original in boldface and underlined.

[37] *See* §505, Tariff and Customs Code.

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act of submitting documents to another body necessarily implies the power of the receiving body to review and [to] evaluate the submitted documents x x x."[38] Besides, legislative deliberations also reveal that "[t]he intent of Congress is to vest [the] DTI [s]ecretary with the final authority over recommendations of the Tariff Commission." Even the TC's own chairman[39] concedes that the Commission's report, made after public consultations, is only recommendatory.[40]

Finally, the intent and spirit of the law is purportedly to protect domestic industries from the ill effects of import surges.[41] According to the OSG, to hold the DTI secretary bound to the Tariff Commission's negative determination would deprive of any remedy a domestic industry suffering from serious injury.[42]

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[38] OSG's Motion for Reconsideration, p. 36 (citing *Sharp International Marketing v. Court of Appeals*, 201 SCRA 299, September 4, 1991). *See also* Philcemcor's Memorandum, p. 4.

[39] Then Chairman Edgardo Abon.

[40] OSG's Memorandum, p. 50.

[41] "SEC. 2. *Declaration of Policy*. — The State shall promote the competitiveness of domestic industries and producers based on sound industrial and agricultural development policies, and 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."

[42] Other reasons proffered by the OSG are the following. *First*, the Decision emasculates the principle behind safeguard measures; it violates the Constitution, specifically, Section 12 of Article XII, which exhorts the State to favor local labor, industries and products over foreign ones. RA 8800 gives local industries and the agricultural sector a temporary breathing space to adjust to imports; yet, the Decision "effectively creates higher, more stringent standards for the availment of safeguard measures x x x." This argument has also been raised by Philcemcor. (*See* its Motion for Reconsideration, pp. 41-44; and Memorandum, pp. 35-36.) *Second*, Section 13 of RA 8800 is the controlling provision with respect to "negative final determinations." Nowhere in this provision is it stated that the Tariff Commission would render such determinations; on the contrary, the provision mentions the DTI secretary only; hence, it is to the secretary that the law grants the power to render a final decision. *Third*, Section 19 of the law empowers the DTI head to extend the effectivity of a safeguard measure;

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Private Respondent's Arguments

Private Respondent Philcemcor essentially agrees with the OSG. The former claims that the Decision misreads Section 5 of RA 8800 when it interprets "the proposition *'if A, then B'* as if it stated that '*if A, and only A, then B.*'"[43] A textual and contextual analysis of related provisions[44] allegedly reveals otherwise. Even the record of legislative deliberations does not support the Second Division's reading of the term "final determination" by the Tariff Commission. Similarly, the SMA's implementing rules and regulations[45] and relevant administrative orders,[46] as well as the public statement made by the Commission chairman,[47] uniformly state that the TC's findings and determinations are not binding or conclusive on, but merely recommendatory to, the DTI secretary.

The relationship of the Commission and the DTI, according to Philcemcor, is that of recommending authority and decision-maker, respectively. Accordingly, the DTI secretary may adopt, modify or reject the TC's Report.

The Commission supposedly cannot make a determination, much less a decision, that would oust the secretary of jurisdiction over the application for safeguard measures. For "[t]he law has seen fit to give its findings no more than the legal effect of a report or recommendation."[48] In contrast, in the scheme of

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this power is merely incidental to the general power of making the final decision on whether to impose definitive safeguard measures. It would be illogical if the Department secretary were authorized to exercise only incidental functions, while another body possesses the general power over the same matter.

[43] Philcemcor's (or CMAP's) Motion for Reconsideration, p. 11; *rollo*, Vol. IV, p. 2398.

[44] §§5, 6, 7, 8, 13 & 17.

[45] Joint Administrative Order No. 3, Series of 2000, issued by the secretaries of Agriculture, Trade and Industry, and Finance; the Bureau of Customs commissioner and the Tariff Commission chair.

[46] *E.g.* TC Order No. 00-02.

[47] Philcemcor's Motion for Reconsideration, p. 17; *rollo*, Vol. IV, p. 2404.

[48] *Id.*, p. 16.

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government, the DTI secretary is allegedly the alter ego of the President in the implementation of the State's economic goals and is specifically mandated to achieve the constitutional goals on the national economy and patrimony.[49] As the President's alter ego in the discharge of the executive power to implement the SMA, the DTI secretary has the power of "supervision and control" over the Commission's functions under the law.

In Philcemcor's view, "it is unthinkable that the DTI secretary is not free to adopt his own independent judgment on" matters that "he considers as erroneous conclusions arising from a flawed framework and methodology."[50] The department head's function would then be reduced to performing purely ministerial acts rather than rendering decisions that require the exercise of discretion.[51]

Petitioner's Contentions

On the other side of the fence, petitioner insists that the DTI secretary is empowered to impose safeguard measures *only if*

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[49] §§1 & 2, Title X, Book IV of the Administrative Code; Article XII, Constitution.

[50] Philcemcor's Motion for Reconsideration, *supra*, pp. 34-35 (citing an official statement of the DTI secretary issued on April 1, 2002); *rollo*, pp. 2421-2422.

[51] Other arguments of Philcemcor include the following. *First*, Congress delegated to the DTI secretary the authority to prescribe safeguard measures, while assigning to the Commission the task of providing the necessary support for that function; but the ultimate responsibility for the proper exercise of the delegated authority is lodged in the DTI head. (Motion for Reconsideration, p. 24; *rollo*, Vol. IV, p. 2411; and Memorandum, p. 14;) *Second*, under the doctrine of implied grant of powers, "all powers necessary for the discharge of the express powers are also granted, unless expressly withheld." (Memorandum, p. 7.) The power of the DTI secretary to impose safeguard measures is not legally conditioned on a positive recommendation by the Commission; referral to the latter of the application and the holding of public hearings are only part of the due process guarantee. *Third*, the imposition of safeguard measures is primarily an exercise of the police power, not the taxing power, of the State. The law's singular objective is to protect local industries; thus, prior to the imposition of the measure by the DTI, the Tariff Commission is tasked to ascertain the existence of injury or serious threat to the local industry.

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the Tariff Commission makes a positive final determination of the existence of the "core elements of a safeguard situation."[52] Petitioner avers that the presence of those elements is a *conditio sine qua non* for the imposition of a safeguard measure. The final determination of their existence is allegedly conferred by law upon the Commission, which was established and exists mainly to evaluate and impose tariffs. In contrast, the DTI secretary has no competence or institutional experience in dealing with tariff-related matters.[53]

Petitioner also claims that the Tariff Commission exercises quasi-judicial powers, as RA 8800 requires it "to make the final *determination* of the presence or absence of the core elements for the imposition of a safeguard measure."[54] Such determination supposedly involves the application of the law to the facts and results in the adjudication of the rights and obligations of the affected parties.[55]

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[52] Petitioner quotes the following from private respondent Philcemcor's Memorandum:

> "The basic obligations of WTO Members under the Agreement on Safeguards are the *OBSERVANCE OF DUE PROCESS* in the adoption and application of any safeguard measure, AND THE **NECESSITY** *OF A PRINCIPLED FINDING ON THE PRESENCE OF THREE CORE ELEMENTS OF A SAFEGUARD SITUATION*. These core elements are the following: (a) that products from one Member (the exporting country) of the WTO are being imported into the territory of another Member of the WTO (the importing country) in such increased quantities, absolute or relative to domestic production, and (b) under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products; and (c) the causal link between increased imports and serious injury or threat thereof (Art. 2, para. 1, and Art. 4, para. 2(b), Agreement on Safeguards. x x x.)." (Emphasis supplied by petitioner.) Petitioner's Memorandum, p. 9.

[53] Petitioner's Memorandum, p. 16.

[54] *Id.*, p. 39. Underscoring in the original.

[55] Petitioner submits these other contentions:

1) To allow the DTI secretary to reject the positive final determination of the Commission would result in an anomalous situation when it is the former who initiates the proceeding pursuant to Section 6 of RA 8800. In

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My Submission:
DTI Secretary Not Bound by the TC's Recommendations

I agree with the OSG and private respondent.

The Power to Impose Tariffs Is Essentially Legislative; It is Delegable Only to the President

Briefly, my submission, which I shall expound on presently, is as follows. The application of safeguard measures, while primarily intended to protect domestic industries, is essentially in the nature of a tariff imposition. Pursuant to the Constitution, the imposition of tariffs and taxes is a highly prized legislative prerogative.[56] Pursuant also to the Constitution, such power to fix tariffs may, as an exception, be delegated by Congress to *the President*.

Section 28 of Article VI of the Constitution provides for that exception, as follows:

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that event, the secretary will become the complainant and reviewing body at the same time, a situation declared abhorrent by the Supreme Court. (Petitioner's Memorandum, p. 16 [citing *Corona v. Court of Appeals*, 214 SCRA 378, September 30, 1992]).

2) A modification or reversal by the DTI head of the Commission's final determination will be a deprivation of the due process rights of the concerned parties, who will not have the opportunity to be heard prior to the DTI's action.

3) Making a distinction as to whether the imposition of a safeguard measure is an exercise of police power or the power of taxation only serves to muddle the issues, "for it has been settled that the taxing power *may be used as an implement of police power.*" (*Id*., p. 22 [citing *Lutz v. Araneta*, 98 Phil. 148, December 22, 1955]. Emphasis in the original). In any event, "police power is *lodged primarily in Congress,* not the Executive, and x x x *it is only by virtue of a valid delegation by Congress that it may be exercised by the President* x x x." (*Id*., p. 28 [citing Cruz, Isagani A, *Constitutional Law*, 1995, p. 44]).

[56] *City Government of San Pablo, Laguna v. Reyes,* 305 SCRA 353, March 25, 1999; *Mactan Cebu International Airport Authority v. Marcos,* 261 SCRA 667, September 11, 1996.

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"Sec. 28. x x x

(2) 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."

Under this constitutional provision, to no other official, except *the President*, is the authority to fix tariff rates, quotas, imposts and other duties allowed to be delegated. However, the Resolution authored by Justice Tinga theorizes that Congress may delegate such power to fix tariffs to both the Tariff Commission and the DTI secretary, "as agents of Congress." I believe that this theory plainly violates the aforequoted Section 28(2) of Article VI of the Constitution.

I respectfully submit that the only constitutional way to uphold the DTI secretary's imposition of tariffs under RA 8800 is to apply the alter ego principle. In other words, the DTI secretary imposes safeguard measures (like tariffs, import quotas, quantitative restriction, *etc*.) only in representation and as an alter ego of the President in the field of trade and investment matters. Thus, the law must be construed as delegating to the President — through the latter's alter ego on trade — the power to impose safeguard measures.

Under the same Section 28(2) of Article VI of the Constitution, Congress may specify "limitations and restrictions" on the President's authority to impose tariff rates. However, such statutory limitations and restrictions must themselves conform to the fundamental law. They cannot infringe, restrict, limit, degrade or dilute the constitutional power of the President to control the entire Executive Department.

The power of control includes the right to modify or set aside a decision of a subordinate officer. Since the Tariff Commission is an agency in the Executive Department, it is necessarily subject to the control and supervision of the President. Hence, its decisions and recommendations cannot tie the hands of the Chief Executive with finality. Consequently, the DTI head, acting as the President's agent pursuant to RA 8800, may

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affirm, modify or reverse the Tariff Commission's recommendation. To repeat, such plenary power of control cannot be restricted by a mere statute passed by Congress.[57]

Let me now discuss my proposition in more detail.

Executive Power Vested Upon the President

For better clarity, there is a need to put our government's administrative structure in perspective. Section 1 of Article VII of the Constitution vests executive power upon the President, the highest official of the land. In the exercise of this power, the President, acting in many capacities, assumes a plenitude of authority.[58] Because of the sheer multitude of the tasks of the Chief Executive, however, the heads of the various executive agencies act as the former's alter egos or agents in the performance of multifarious executive and administrative functions.

In *Villena v. Secretary of Interior*,[59] this Court described the role of the President's top officials thus: "Without minimizing the importance of the heads of various departments, their personality is in reality but the projection of that of the President. x x x '[E]ach 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.' x x x [Thus,] their acts, performed and promulgated in the regular course of business, are, unless disapproved or reprobated by the Chief Executive, presumptively the acts of the Chief Executive."

The DTI Head as President's Alter Ego on Trade Matters

Executive Order 292 (the Administrative Code of 1987) outlines the administrative structure and functions of the national

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[57] Bernas, Joaquin G., SJ, *The Constitution of the Republic of the Philippines, A Commentary* (1988), Vol. II, p. 205. ("Since the Constitution has given the President the power of control, with all its awesome implications, it is the Constitution alone which can curtail such power.")

[58] Cruz, Isagani A, *Political Law* (1998), pp. 185-186.

[59] 67 Phil. 451, 463, 464, April 21, 1939, per Laurel, *J.*

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government. In the realm of trade, industry and investment-related matters, the President's alter ego is the DTI secretary, to whom is given the following mandate:

"Section 2. *Mandate*. — The Department of Trade and Industry shall be the primary coordinative, promotive, facilitative and regulatory arm of the Executive Branch of government in the area of trade, industry and investments. It shall promote and develop an industrialization program effectively controlled by Filipinos and shall act as catalyst for intensified private sector activity in order to accelerate and sustain economic growth through; (a) comprehensive industrial growth strategy, (b) a progressive and socially responsible liberalization program, (c) policies designed for the expansion and diversification of trade, and (d) policies to protect Filipino enterprises against unfair foreign competition and trade practices."[60]

In line with the above mandate, the DTI is tasked under RA 8800 to apply general safeguard measures, when warranted, to protect domestic industries and producers from increased imports.[61]

On the other hand, the Tariff Commission is primarily tasked to *investigate* "the administration of, and the fiscal and industrial effects of the tariff and customs laws of this country x x x [and,] in general, to *investigate* the operation of customs and tariff laws, including their relation to the national revenues, their effect upon the industries and labor of the country, and to *submit reports* of its investigations x x x."[62] It is also tasked to *investigate* "the tariff relations between the Philippines and foreign countries x x x the effect of export bounties and preferential transportation rates; x x x the volume of importations compared with domestic production and consumption; [as well as] conditions, causes and effects relating to competition of foreign industries with those of the Philippines, including dumping and cost of production."[63]

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[60] Title X, Chapter 1, Book IV of EO 292.

[61] §2, RA 8800.

[62] §505(a) & (h), Tariff and Customs Code. Italics supplied.

[63] §505(e), (f) & (g); *ibid*.

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Whereas the DTI secretary has to carry out a *policy mandate* for the President, the Tariff Commission is but an investigatory arm that submits reports of its investigations as provided under the law.[64] Under RA 8800, it is tasked to conduct a formal investigation upon the DTI secretary's referral of an application/ a petition for a safeguard measure.[65] After completion of the investigation, it submits to the secretary a report that contains its findings and recommendations.[66] Nothing in the law explicitly states that its report or conclusions have the effect of finality and irrefutability that shall bind the DTI head, or the President for that matter.

As the cabinet official and alter ego of the President *on trade, industry and investment-related matters*, the DTI head necessarily has sufficient latitude and discretion in the pursuit of the Department's mandate. On the other hand, being primarily a fact-finder, the Tariff Commission is limited to submitting its report and recommendations to the referring agency. In this scheme of tasking, absent any clear and direct provision of the Constitution, the TC's mere recommendation cannot bind the cabinet official, much less the President. As the solicitor general aptly suggests, RA 8800 could not have intended that the alter ego of the President be a mere rubber stamp who would be compelled to enforce the recommendations of a purely investigatory agency in the Executive Department.[67]

As Chief Executive of the Republic, the President exercises *control* over all executive departments, bureaus and offices.[68] *Control* is defined as "the power of an officer to alter or modify or nullify or set aside what a subordinate officer ha[s] done in

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[64] For instance, under Section 506 of the Tariff and Customs Code, the Commission is tasked to give information and assistance to the President and Congress; under Section 401, to recommend to the NEDA a tariff rate increase.

[65] §§7 & 9, RA 8800.

[66] §§9 & 14, *ibid*.

[67] OSG's Motion for Reconsideration, p. 46.

[68] §17, Art. VII of the Constitution.

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the performance of his duties and to substitute the judgment of the former for that of the latter."[69] The President's power extends to "all executive officers from cabinet member to the lowliest clerk. It is at the heart of the meaning of 'Chief Executive.'"[70]

Pursuant to the power of control over subalterns, the President may modify or set aside a recommended action of a subordinate office. Indeed, in accordance with its investigatory findings, the Tariff Commission may recommend to the National Economic Development Authority (NEDA) an increase in tariff rates *in general*; and the latter may in turn endorse the tariff increase to the President who, however, is not bound to impose such increase. The Chief Executive may, in the interest of the public, choose not to follow the recommended action. So, too, may the alter ego, who merely acts as an extension of the President.

The Tinga Resolution states — erroneously, I submit — that I advocate the President's exercise of absolute and plenary control over subordinates, such that the Chief Executive could order them to perform illegal or irregular acts. I do not, and I have made no such preposterous statement. Needless to state, the exercise of any power must be within the bounds of the Constitution and law. True, Congress may reorganize the offices under the Executive Department. It may even abolish or merge some of them. However, it cannot abolish or restrict the President's constitutional power of control over executive agencies and officials. The control power of the Chief Executive emanates from the Constitution; no act of Congress may validly curtail it.

Neither am I asserting that the President's subalterns may control actions of subordinate officials or agencies over which they have no direct functional relationship as established by law. Such outlandish proposition would truly produce absurd results. Indeed, the secretary of the Department of Science and Technology (DOST) has no right to reverse the rulings of the

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[69] Cruz, *supra* (citing *Mondano v. Silvosa*, 97 Phil. 143, May 30, 1955, per Padilla, *J.*).

[70] Bernas, *supra*, p. 204.

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Civil Aeronautics Board (CAB) or the issuances of the Philippine Coconut Authority (PCA), because there is no law granting the DOST secretary any power to do so.

But, it cannot be denied that the secretary of the Department of Transportation and Communications may review the rulings of the CAB; of the Department of Agriculture, those of the PCA; and of the Department of Environment and Natural Resources, the decisions of the Mines and Geosciences Bureau. In doing so, the heads of these departments act as the *agents* or *alter egos* of the President in their *respective spheres of authority*.

That the TC was placed under the administrative supervision of the NEDA does not give the latter the *sole* power to review the Commission's reports. Precisely, RA 8800 creates a functional relationship between the Commission and the DTI secretary. It provides for the administrative interplay between the two agencies — but only with regard to the application of general safeguard measures. More precisely, when the DTI secretary reviews (and ultimately affirms, modifies or reverses) the recommendation of the Commission, he or she does so, not as one who is higher than the Commission in the administrative stratum, but as the *alter ego* of the President who, by constitutional fiat, is the only official to whom the authority to impose such measures may be delegated by Congress.

Authority to Impose Tariffs Allowed to be Delegated Only to the President and Subalterns

Elementary is the rule that the power to tax is inherent upon the State, but can be exercised only by Congress, unless allowed by the Constitution to be conferred upon another qualified government instrumentality.[71] The power to fix tariff rates also lies in the legislature. However, the delegation of that power to the President is permissible, under Section 28 of Article VI of the Constitution, as earlier mentioned.

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[71] *City of Ozamiz v. Lumapas*, 65 SCRA 33, July 15, 1975. For instance, under §5, Art. X of the Constitution, on local governments are directly conferred the power of taxation within their respective area jurisdictions.

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RA 8800 must be construed in harmony with the said constitutional provision. In delegating to the DTI secretary the power to impose safeguard measures, Congress could have done so only within the constitutional restriction. The legislature could not have simply chosen the DTI secretary and the Tariff Commission as its agents in imposing the measure. Its delegation of the power to impose tariffs to whomsoever it chose (other than the President) was beyond its constitutional authority. To read the law in such a manner would inevitably result in the statute's unconstitutionality.

To be consistent with the constitutional clause, the law must be understood to mean that in delegating the authority to impose safeguard measures, Congress designated the DTI secretary, being the President's *subaltern or alter ego on trade matters.* Again, Congress could not have directly constituted the cabinet official as its own agent, because the Constitution categorically limited the delegation of such authority to the President. The fundamental law expressly states that Congress may authorize the President (and names no other official) to impose (subject to limitations and restrictions that it may specify) tariffs, quotas, duties and other imposts. For the legislature to delegate the authority to another official or entity, such as the Tariff Commission, and to completely disregard or do away with the President would be a blatant contravention of the Constitution.

The constitutionality of RA 8800 on this ground has, however, not been raised by the parties. Besides, courts should hesitate to rule upon a constitutional question if the controversy may be resolved on other justifiable grounds.[72] In any case, I submit that the law is susceptible of interpretation in such a manner as to remain consistent with the Constitution.

To reiterate, RA 8800 delegates to the trade secretary, as subaltern of the Chief Executive — not Congress' own agent — the power to prescribe safeguard measures.

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[72] *People v. Pinca*, 318 SCRA 270, November 17, 1999 (citing *Sotto v. Comelec*, 76 Phil 516, 522, April 16, 1946); *Pimentel Jr. v. House of Representatives Electoral Tribunal*, 393 SCRA 227, November 29, 2002.

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Clearly then, in imposing a safeguard measure, the DTI secretary acts as the President's *alter ego*. Because the President's power of control over any office in the Executive Department cannot be restricted or degraded by Congress, by the same reasoning the exercise by the *alter ego* of such power of control over actions of the Tariff Commission cannot be constitutionally curtailed by Congress. Otherwise stated, the President — through the constitutional power of control over the Executive Department — has the prerogative to affirm, modify or reverse any action of the Tariff Commission. Thus, the DTI secretary — as the President's *alter ego* on trade matters — may exercise, in the President's stead, the same prerogative of affirmation, modification or reversal over any action of the Commission.

Congress' Restrictions on the Imposition of Safeguards

Needless to state, the President's (and the subalterns') power of control surely cannot be exercised on mere whim or caprice. Indeed, in exercising the authority delegated to impose tariffs or other safeguard measures, the President (and the subalterns) may not do so without rhyme or reason or just to appease external pressures or political forces. The Chief Executive is indeed bound by the valid restrictions or limitations laid down in RA 8800.

Section 5 of that law specifies the conditions for the application of safeguard measures, as follows: (1) the importation of a product in increased quantities, whether absolute or relative to the domestic production; (2) an actual or a threatened serious injury[73] to the domestic industry as

[73] §4(o) of RA 8800 defines serious injury as "a significant impairment in the position of a domestic industry after evaluation by competent authorities of all relevant factors of an objective and quantifiable nature having a bearing on the situation of the industry concerned, in particular, the rate and amount of the increase of imports of the product concerned in absolute and relative terms, the share of the domestic market taken by increased imports, changes in levels of sales, production, productivity, capacity utilization, profit and losses, and employment."

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a result of increased importation; and, (3) most important, application of the safeguard measure to serve the public interest.

These are the substantial conditions or limitations specified by the law for the imposition by the DTI head (or, principally, the President) of a safeguard measure.[74] The Tariff Commission is tasked to determine the presence of the first two conditions — matters that may be ascertained by factual examination. The final factor is left to the discretion of the DTI secretary. *Public interest* is something in which the public or community at large has some pecuniary interest affecting their legal rights or liabilities.[75] Because it concerns the general public, its determination is not quantifiable in exact terms. There are no definite parameters by which it may be established solely by judicial authorities. Its determination is indubitably a political question; thus, it is addressed to a policy maker who is answerable to the people, not a fact finder or investigatory body that has no electoral mandate.

To emphasize, the congressional limitation on the exercise of the delegated authority to impose safeguards does NOT refer to the final determination or recommendation of the Tariff Commission that the first two factual conditions are present or absent. Of course, these are important considerations that are verifiable from the records of the proceedings undertaken by the Commission. These data must be weighed accordingly. In the same vein, many immeasurable and indirect variables have to be assessed in ensuring that public interest is subserved. In the final analysis, the decision to impose a safeguard measure hinges on public interest, which is a political question best addressed by our people's elected officials led by the President.

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[74] Procedure-wise, the requirements are stated in §§6, 7, 9 & 10. For other limitations, see §15.

[75] F.B. Moreno, *Philippine Legal Dictionary*, 3rd ed. (citing *Banco Filipino v. Monetary Board*, 142 SCRA 533, July 8, 1986).

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Contemporaneous Administrative Construction Prevailing

The interpretation of an administrative government agency, which is tasked to implement a statute, is generally accorded great respect and ordinarily controls the construction of the courts.[76]

The crafting of the implementing rules and regulations (IRR) of RA 8800 was a joint undertaking of several executive agencies — the Departments of Agriculture, Trade and Industry, and Finance; the Bureau of Customs; the NEDA; and the *Tariff Commission* — after consultations with domestic industries.[77] Rule 13.2 of the final IRR expressly states as follows:

"Rule 13.2. *Final Determination by the Secretary*

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

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Indeed, the very administrative government agencies tasked under the same law to implement its provisions clearly understood that it is the DTI secretary who makes the final determination or decision. In making a decision, the secretary merely *takes into consideration* the recommendations of the Tariff Commission. On the other hand, the latter, in making its recommendations, does not determine in an adjudicative manner the rights, privileges and duties of private parties. Hence, its functions, even under RA 8800, cannot be classified as quasi-judicial.[78]

If RA 8800 intended to transform the Tariff Commission into a quasi-judicial body, as private respondent asserts, I think

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[76] *Republic v. Sandiganbayan*, 355 Phil. 181, July 31, 1998.

[77] See §32, RA 8800.

[78] *See Cariño v. Commission on Human Rights*, 204 SCRA 483, December 2, 1991; *Presidential Anti-Dollar Salting Task Force v. Court of Appeals*, 171 SCRA 348, March 16, 1989.

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no less than the Commission would have been happiest to don the new vest. But, aptly, it has shown no such presumptuousness. In its own TC Order No. 00-02, it described its task as "fact-finding and administrative in nature."[79] In interpreting the requirement of the law, it fully understood that "[b]ased on its findings, the Commission shall submit to the [s]ecretary x x x [its] Investigation Report [and] proposed recommendations x x x," among others.

Commission Chairman Edgardo Abon was clearly cognizant of the TC's role in the proceedings on the original application for a safeguard measure. As the solicitor general submits, during the public consultation conducted by the Commission in relation to this case, its chairman categorically stated that their (TC members') "recommendation is but recommendatory. x x x That's why the Tariff Commission's investigation is called fact-finding. x x x [B]ut of course the recommendation can be persuasive because the [s]ecretary will have a strong argument, must really have a very, very strong arguments (sic) for him to overturn the recommendations. It has a persuasive effect, that's what [I'm] saying, but at the end of the day[,] you know x x x the [s]ecretary has, for reason I think in the law the matter of public interest is left to the discretion of the [s]ecretary x x x.[80]

Chairman Abon could not have been more precise. Indeed, 1) the role of the Commission is fact-finding and recommendatory; 2) its recommendation is persuasive (being based on public consultations); and 3) the secretary must have very strong and substantial reasons to overturn the Commission's proposed action.

The last item is important. The DTI secretary could not issue a decision arbitrarily, without substantial factual and legal bases. In making a final decision — whether to impose or not to impose a safeguard measure — the secretary is still bound by the conditions laid down in Section 5 of RA 8800. As earlier mentioned, those limitations are as follows: the importation of a product in increased quantities, whether absolute or relative

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[79] §2.

[80] The OSG's Memorandum, pp. 28-29. *See also* Philcemcor's Memorandum, pp. 21-22.

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to the domestic production; an actual or a threatened serious injury to the domestic industry as a result of increased importation; and the application of the safeguard measure in the public interest.

These parameters should allay petitioner's fear of a violation of due process in case of a reversal by the secretary of the negative determination by the Commission. Both may have the same factual moorings on the basis of which they may, however, have contrasting conclusions on the need for a safeguard measure.

In addition, the decision of the secretary, as I have stated at the outset and as provided under RA 8800, is reviewable by the CTA.

In contrast, under petitioner's submission (upheld by the Second Division) that the DTI secretary may impose the measure only upon a positive determination by the Tariff Commission, a violation of due process would be more probable in case of a negative determination by the latter. Following the *ponencia's* literal interpretation of the law, the aggrieved party (the applicant) in such a situation would be left with absolutely no recourse. A negative report will then be not reviewable by anyone — not by the DTI secretary who is bound by it; not by the President, who has no direct role in the proceeding defined under the law; and not by the courts, which may review only the DTI secretary's decisions. Such a scheme of things constitutes an utter disregard of the guarantee of due process under the Constitution.

The *ponencia* even goes further by declaring that "nothing in the SMA obliges the DTI [s]ecretary to adopt the recommendations made by the Tariff Commission."[81] If the trade secretary can reject a positive final determination of the Commission, what is the rationale behind binding him to a negative determination by the same body? I cannot think of more illogic.

Giving Meaning to the Intent and Purpose of the Law

Moreover, the object and purpose of RA 8800 should be given utmost consideration and effect. The law was enacted

[81] Resolution, p. 32.

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primarily to protect or safeguard local industries and producers from increased importation of foreign products, which cause or threaten to cause serious domestic injury. RA 8800 was intended to secure our local industry from the ill effects of global trade liberalization. It was aimed at protecting Filipino interests *vis-à-vis* international trade policies.

Toward these ends, I believe this Court must give domestic industries every opportunity to seek redress through the most expeditious means possible. On matters concerning policy questions, it must allow the political departments ample chances to make the proper determinations within their respective spheres of competencies. *Be it remembered that in the imposition of safeguard measures, not only the analysis of technical data is involved but likewise, and perhaps in a more crucial sense, the determination that it serves the public interest*. The proceeding does not merely relate to the settlement of conflicting claims of private parties but, more important, the achievement of the national policy to promote the competitiveness of domestic industries as a whole. In short, we must give essence to the aim of the law to advance the industrial development of the country.

In line with this aim, the doctrine on the exhaustion of administrative remedies should be made to work out. After all, the administrative agencies of the government, particularly the Department of Trade and Industry with respect to safeguard measures, possess the necessary knowledge and expertise linked up with policy concerns. The Department heads, especially because they serve as alter egos of the President, should not be needlessly restricted in the exercise of their discretion. It is they who best know how to address properly the nonjudicial interests of the people. Thus, before resorting to courts, all possible administrative means should be exhausted.

While on the topic of exhaustion of administrative remedies, may I add my personal belief that the Decision of the secretary of trade should be appealable to the President.[82] After all, the President cannot be deprived of the power to review, modify

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[82] See *Valencia v. Court of Appeals*, 401 SCRA 666, April 29, 2003.

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or reverse actions of his or her *alter egos*. In the present case, the Constitution expressly mentions the "President" as the official whom "Congress may, by law, authorize" to impose "tariff rates, import and export quotas, tonnage and wharfage dues, and other duties or imports." Thus, in the Executive Department, the President should have the *final* say on such matters. However, I shall not dwell at length on this point because it was not raised as an issue by the parties.

Peripheral Issue*:*
Forum Shopping

With respect to the question on forum shopping, I also agree with the Resolution of the Court that petitioner must answer for its failure to give timely information to the Court of the Petition for Review that the former filed with the CTA while the present case was pending here. But there being no showing of willful and deliberate forum shopping, the Petition does not deserve outright dismissal.

It should be recalled that pursuant to the June 5, 2003 Decision of the CA, the DTI secretary immediately issued on June 25, 2003, a new Decision (this time imposing a definitive safeguard measure), notwithstanding the Petition for Review filed just two days earlier by Southern Cross Cement before this Court. Hence, in view of its pending Petition here, petitioner filed with this Court on July 7, 2003, a Very Urgent Application for a Temporary Restraining Order or Writ of Preliminary Injunction, seeking to enjoin the DTI secretary from enforcing his new Decision. In addition, pursuant to Section 29 of RA 8800, petitioner filed before the CTA a Petition for Review of the June 25, 2003 DTI Decision. Petitioner did not, however, give timely information to this Court of the CTA Petition, in which the parties, causes of action, and reliefs sought were indeed the same as those in the instant Petition.[83] Hence, private

[83] "x x x [T]o determine whether a party violated the rule against forum shopping, the most important factor to ask is whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another. Otherwise stated, the test for determining forum shopping is whether in the two (or more) cases pending, there is identity of

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respondent filed a Manifestation and Motion to Dismiss this Petition, on the ground of forum shopping.

Section 5, Rule 7 of the Rules of Court, provides as follows:

"Sec. 5. Certification against forum shopping. — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

"Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions."

The foregoing Rule behooved petitioner to inform this Court of any similar action pending before any court, tribunal or agency within five days from knowledge of the proceeding. Yet, petitioner did so only after 11 days, without a satisfactory and justifiable explanation.

Forum shopping has been characterized as an act of malpractice that is prohibited, and condemned as trifling with the courts and abusing their processes. It constitutes improper conduct,

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parties, rights or causes of action, and reliefs sought." *Young v. Keng Seng*, 398 SCRA 629, March 5, 2003. See also *First Philippine International Bank v. Court of Appeals*, 252 SCRA 259, January 24, 1996.

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because it tends to degrade the administration of justice. It has also been aptly described as deplorable, because it adds to the congestion of the already heavily burdened court dockets.[84]

Failure to comply with the non-forum shopping requirements in Section 5 of Rule 7 does not, however, automatically warrant the dismissal of the case with prejudice. The Rule states that the dismissal is without prejudice;[85] with prejudice, only upon motion and after hearing. And there must be evidence that the erring party and counsel committed willful and deliberate acts amounting to forum shopping as to warrant the summary dismissal of the case and the imposition of direct contempt and the appropriate administrative sanctions.[86] In previous cases, the penalties imposed upon erring lawyers who engaged in forum shopping ranged from severe censure to suspension from the practice of law, in order to make them realize the seriousness of the consequences and implications of their abuse of the judicial process and disrespect for judicial authority.[87]

Based on the foregoing tenets, I believe that petitioner's counsels should be sanctioned with severe censure.

Summary

In sum, I submit that the CTA has jurisdiction over the DTI secretary's decisions issued pursuant to RA 8800. Accordingly, the CA acted arbitrarily in giving due course to private respondent's Petition for *Certiorari* seeking to set aside the

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[84] *Chemphil Export & Import Corp. v. Court of Appeals,* 251 SCRA 257, 291-292, December 12, 1995; *Ong v. Court of Appeals,* 384 SCRA 139, July 5, 2002.

[85] *Barroso v. Ampig Jr.,* 328 SCRA 530, March 17, 2000; *Sto. Domingo-David v. Guerrero,* 296 SCRA 277, September 25, 1998.

[86] *Barroso v. Ampig Jr., supra.*

[87] *Top Rate Construction & General Services, Inc. v. Paxton Development Corporation,* 410 SCRA 604, September 11, 2003 (citing *Benguet Electric Cooperative, Inc. v. National Electrification Administration,* 193 SCRA 250, January 23, 1991; *Villanueva v. Adre,* 172 SCRA 876, April 27, 1989; *Vda. de Tolentino v. De Guzman,* 172 SCRA 555, April 19, 1989.

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DTI secretary's April 5, 2002 Decision. Therefore, its June 5, 2003 Decision is void and has no legal effect.

Having ruled the CA Decision void, this Court should normally dismiss the present Petition. However, because the remaining issue before it is *purely legal and imbued with public interest* — touching as it does upon the economic security of our domestic industries — it is proper for the Court to resolve it once and for all, as an exception to the general rule. The resolution of this legal issue now would avoid unnecessary delays and costs, consistent with the Court's policy of prompt and proper administration of substantial justice.

The application of a safeguard measure, while primarily intended to protect domestic industries, is essentially in the nature of a tariff imposition. Pursuant to the Constitution, the imposition of tariffs and taxes may be exercised only by Congress. However, Section 28 of Article VI of the Constitution provides for an exception: it allows Congress to authorize the President to fix — subject to such limitations and restrictions as it may impose — tariff rates, quotas and other duties. To no official, other than the *President*, is that power allowed to be delegated.

Consistent with the foregoing principle, RA 8800 must be construed as having delegated the power to apply safeguard measures to the President, through the *alter ego* on trade and investment matters — the DTI secretary.

While Congress may specify limitations in the President's authority to impose tariffs, such legislative restrictions must operate within the bounds of the Constitution. These limitations cannot impinge upon, restrict or overturn the President's constitutional power of control over the entire Executive Department.

The power of control includes the right to modify or set aside a decision of a subordinate officer. The Tariff Commission, being a mere agency in the Executive Department, is necessarily subject to the control and supervision of the President. Hence, its decisions and recommendations cannot tie the hands of the Chief Executive with finality. Consequently, the DTI head, acting

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as the *President's alter ego* pursuant to RA 8800, may affirm, modify or reverse the Tariff Commission's recommendation.

As I have said at the outset, the DTI secretary, as the prime mover of the country's trade and commercial affairs, must be given broad latitude in the pursuit of the agency's mandate. The country's topmost trade official, handpicked by the President, is presumed to possess the competence and the erudition to steer the Department towards the achievement of State goals within the DTI's sphere. As the Chief Executive's alter ego in the area of trade, the secretary must be allowed to exercise ample discretion on matters vested in the position. And so long as the Department head's decisions are not reversed or modified by the President, they should be accorded the highest respect by the courts.

The principal duty of the judiciary is to adjudicate actual controversies involving rights and obligations of persons; it has no business interfering in the realm of policy making. Basic is the rule that courts should adopt a hands-off approach with respect to non-judicial concerns of government. The only ground upon which they can review apparently policy questions is when an act of an agency or instrumentality of government, including the Presidency and Congress, is blatantly contrary to law or the Constitution or clearly tainted with grave abuse of discretion.[88] In these exceptional instances, it becomes the bounden duty of the Court to nullify the act.[89]

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[88] There is grave abuse of discretion when an act is done contrary to the Constitution, the law or jurisprudence; or when it is executed whimsically, capriciously or arbitrarily out of malice, ill will or personal bias. *Information Technology Foundation of the Philippine v. Commission on Elections*, 419 SCRA 141, January 13, 2004 (citing *Republic v. Cocofed*, 372 SCRA 462, 493, December 14, 2001; and *Tañada v. Angara*, 272 SCRA 18, 79, May 2, 1997.

[89] See *Tatad v. Secretary of Energy*, 346 Phil 321, November 5, 1997; *Chavez v. Public Estates Authority*, 433 Phil. 506, July 9, 2002; *Agan v. Philippine International Air Terminals Co., Inc.*, 402 SCRA 84, May 5, 2003, and 420 SCRA 575, January 21, 2004; *Francisco Jr. v. House of Representatives*, 415 SCRA 45, November 10, 2003; *Information Technology Foundation of the Philippines v. Commission on Elections, supra.*

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Otherwise, the official acts of the Executive and the Legislative Departments are presumed to be regular and done in good faith. Unless clear and convincing proof is presented to overthrow such presumption, the Court will resolve every doubt in their favor.[90]

Whether such acts are beneficial or viable is outside the realm of judicial inquiry and review. That matter is between the elected policy makers and the people.[91] To repeat, the Court's judicial role comes into play only when those acts are clearly unlawful or unconstitutional or performed with grave abuse of discretion. In nullifying them, the Court does so merely to uphold the rule of law. For indeed there can be no meaningful economic and social progress without an effective rule of law in place.[92]

This Court should maintain its deferential stance respecting acts emanating from government agencies, especially those involving the economy. Far from being an unwanted interloper in economic matters not within its field of expertise, the Court, in recent Decisions nullifying government contracts,[93] steadfastly upholds one of the most revered policy axioms in the business community — the "leveling of the playing field."[94] To paraphrase what the Court said in a recent case,[95] the "Constitution and the law should be read in broad, life-giving strokes. They should not be used to strangulate economic growth or to serve narrow, parochial interests." Rather, they should be construed to grant the President and his or her alter egos sufficient discretion and

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[90] *Tañada v. Angara*, 338 Phil. 546, 604-605, May 2, 1997.

[91] *Ibid*.

[92] *See* Panganiban, *Liberty and Prosperity*, a speech delivered before the 10th National Convention of the Integrated Bar of the Philippines in Baguio City on April 20, 2005.

[93] *Chavez v. Public Estates Authority, supra; Agan v. Philippine International Air Terminals Co., Inc., supra; Information Technology Foundation of the Philippines v. Commission on Elections, supra.*

[94] *See* Panganiban, *Leveling the Playing Field*, 2004 ed., pp. 46-59.

[95] *La Bugal B'laan v. Ramos*, GR No. 127882, December 1, 2004, per Panganiban, *J.*

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reasonable leeway to enable them to secure for our people and our posterity the blessings of prosperity and peace.

WHEREFORE, I vote to ***GRANT*** the Motion in part and to ***REVERSE*** the assailed Decision, insofar as it held that the secretary of the Department of Trade and Industry (DTI) was bound by the recommendations of the Tariff Commission. More emphatically, I vote to ***UPHOLD*** the authority of the secretary to impose safeguard measures, even if the Tariff Commission does not recommend their imposition. I also vote that, for violation of the anti-forum shopping rule, petitioner's counsels should be sanctioned with ***SEVERE CENSURE.***

EN BANC

[G.R. No. 167147. August 3, 2005]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **GENARO CAYABYAB *y* FERNANDEZ,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; CREDIBILITY GIVEN BY THE TRIAL COURT TO THE RAPE VICTIM IS AN IMPORTANT ASPECT OF EVIDENCE WHICH APPELLATE COURTS CAN RELY ON BECAUSE OF ITS UNIQUE OPPORTUNITY TO OBSERVE THE WITNESSES, PARTICULARLY THEIR DEMEANOR, CONDUCT, AND ATTITUDE, DURING THE DIRECT AND CROSS-EXAMINATION BY COUNSEL.— We have painstakingly reviewed the evidence on record and found no cogent reason to disturb the findings of the trial court and the appellate court. There is no doubt that appellant raped AAA on August 7, 2001 inside their house at Villamor Airbase, Pasay City. This credibility given by the trial court to the rape victim is an important