

EN BANC

[G.R. NO. 164171, February 20, 2006]

HON. EXECUTIVE SECRETARY, HON. SECRETARY OF THE DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS (DOTC), COMMISSIONER OF CUSTOMS, ASSISTANT SECRETARY, LAND TRANSPORTATION OFFICE (LTO), COLLECTOR OF CUSTOMS, SUBIC BAY FREE PORT ZONE, AND CHIEF OF LTO, SUBIC BAY FREE PORT ZONE, PETITIONERS, VS. SOUTHWING HEAVY INDUSTRIES, INC., REPRESENTED BY ITS PRESIDENT JOSE T. DIZON, UNITED AUCTIONEERS, INC., REPRESENTED BY ITS PRESIDENT DOMINIC SYTIN, AND MICROVAN, INC., REPRESENTED BY ITS PRESIDENT MARIANO C. SONON, RESPONDENTS.

[G.R. NO. 164172]

HON. EXECUTIVE SECRETARY, SECRETARY OF THE DEPARTMENT OF TRANSPORTATION AND COMMUNICATION (DOTC), COMMISSIONER OF CUSTOMS, ASSISTANT SECRETARY, LAND TRANSPORTATION OFFICE (LTO), COLLECTOR OF CUSTOMS, SUBIC BAY FREE PORT ZONE AND CHIEF OF LTO, SUBIC BAY FREE PORT ZONE, PETITIONERS, VS. SUBIC INTEGRATED MACRO VENTURES CORP., REPRESENTED BY ITS PRESIDENT YOLANDA AMBAR, RESPONDENT.

[G.R. NO. 168741]

HON. EXECUTIVE SECRETARY, HON. SECRETARY OF FINANCE, THE CHIEF OF THE LAND TRANSPORTATION OFFICE, THE COMMISSIONER OF CUSTOMS, AND THE COLLECTOR OF CUSTOMS, SUBIC SPECIAL ECONOMIC ZONE, PETITIONERS, VS. MOTOR VEHICLE IMPORTERS ASSOCIATION OF SUBIC BAY FREEPORT, INC., REPRESENTED BY ITS PRESIDENT ALFREDO S. GALANG, RESPONDENT.

DECISION

YNARES-SANTIAGO, J.:

The instant consolidated petitions seek to annul and set aside the Decisions of the Regional Trial Court of Olongapo City, Branch 72, in Civil Case No. 20-0-04 and Civil Case No. 22-0-04, both dated May 24, 2004; and the February 14, 2005 Decision of the Court of Appeals in CA-G.R. SP. No. 83284, which declared Article 2, Section 3.1 of Executive Order No. 156 (EO 156) unconstitutional. Said executive issuance prohibits the importation into the country, inclusive of the Special Economic and Freeport Zone or the Subic Bay Freeport (SBF or Freeport), of used motor vehicles, subject to a few exceptions.

The undisputed facts show that on December 12, 2002, President Gloria Macapagal-Arroyo, through Executive Secretary Alberto G. Romulo, issued EO 156, entitled “PROVIDING FOR A COMPREHENSIVE INDUSTRIAL POLICY AND DIRECTIONS FOR THE MOTOR VEHICLE DEVELOPMENT PROGRAM AND ITS IMPLEMENTING GUIDELINES.” The challenged provision states:

3.1 The importation into the country, inclusive of the Freeport, of all types of used motor vehicles is prohibited, except for the following:

3.1.1 A vehicle that is owned and for the personal use of a returning resident or immigrant and covered by an authority to import issued under the No-dollar Importation Program. Such vehicles cannot be resold for at least three (3) years;

3.1.2 A vehicle for the use of an official of the Diplomatic Corps and authorized to be imported by the Department of Foreign Affairs;

3.1.3 Trucks excluding pickup trucks;

1. with GVW of 2.5-6.0 tons covered by an authority to import issued by the DTI.
2. With GVW above 6.0 tons.

3.1.4 Buses:

1. with GVW of 6-12 tons covered by an authority to import issued by DTI;
2. with GVW above 12 tons.

3.1.5 Special purpose vehicles:

1. fire trucks
2. ambulances
3. funeral hearse/coaches
4. crane lorries
5. tractor heads and truck tractors
6. boom trucks
7. tanker trucks
8. tank lorries with high pressure spray gun

9. refers or refrigerated trucks
10. mobile drilling derricks
11. transit/concrete mixers
12. mobile radiological units
13. wreckers or tow trucks
14. concrete pump trucks
15. aerial/bucket flat-form trucks
16. street sweepers
17. vacuum trucks
18. garbage compactors
19. self loader trucks
20. man lift trucks
21. lighting trucks
22. trucks mounted with special purpose equipment
23. all other types of vehicle designed for a specific use.

The issuance of EO 156 spawned three separate actions for declaratory relief before Branch 72 of the Regional Trial Court of Olongapo City, all seeking the declaration of the unconstitutionality of Article 2, Section 3.1 of said executive order. The cases were filed by herein respondent entities, who or whose members, are classified as Subic Bay Freeport Enterprises and engaged in the business of, among others, importing and/or trading used motor vehicles.

G.R. No. 164171:

On January 16, 2004, respondents Southwing Heavy Industries, Inc., (Southwing) United Auctioneers, Inc. (United Auctioneers), and Microvan, Inc. (Microvan), instituted a declaratory relief case docketed as Civil Case No. 20-0-04,^[1] against the Executive Secretary, Secretary of Transportation and Communication, Commissioner of Customs, Assistant Secretary and Head of the Land Transportation Office, Subic Bay Metropolitan Authority (SBMA), Collector of Customs for the Port at Subic Bay Freeport Zone, and the Chief of the Land Transportation Office at Subic Bay Freeport Zone.

SOUTHWING, UNITED AUCTIONEERS and MICROVAN prayed that judgment be rendered (1) declaring Article 2, Section 3.1 of EO 156 unconstitutional and illegal; (2) directing the Secretary of Finance, Commissioner of Customs, Collector of Customs and the Chairman of the SBMA to allow the importation of used motor vehicles; (2) ordering the Land Transportation Office and its subordinates inside the Subic Special Economic Zone to process the registration of the imported used motor vehicles; and (3) in general, to allow the unimpeded entry and importation of used motor vehicles subject only to the payment of the required customs duties.

Upon filing of petitioners' answer/comment, respondents SOUTHWING and MICROVAN filed a motion for summary judgment which was granted by the trial court. On May 24,

2004, a summary judgment was rendered declaring that Article 2, Section 3.1 of EO 156 constitutes an unlawful usurpation of legislative power vested by the Constitution with Congress. The trial court further held that the proviso is contrary to the mandate of Republic Act No. 7227 (RA 7227) or the Bases Conversion and Development Act of 1992 which allows the free flow of goods and capital within the Freeport. The dispositive portion of the said decision reads:

WHEREFORE, judgment is hereby rendered in favor of petitioner declaring Executive Order 156 [Article 2, Section] 3.1 for being unconstitutional and illegal; directing respondents Collector of Customs based at SBMA to allow the importation and entry of used motor vehicles pursuant to the mandate of RA 7227; directing respondent Chief of the Land Transportation Office and its subordinates inside the Subic Special Economic Zone or SBMA to process the registration of imported used motor vehicle; and in general, to allow unimpeded entry and importation of used motor vehicles to the Philippines subject only to the payment of the required customs duties.

SO ORDERED.^[2]

From the foregoing decision, petitioners sought relief before this Court *via* a petition for review on certiorari, docketed as G.R. No. 164171.

G.R. No. 164172:

On January 20, 2004, respondent Subic Integrated Macro Ventures Corporation (MACRO VENTURES) filed with the same trial court, a similar action for declaratory relief docketed as Civil Case No. 22-0-04,^[3] with the same prayer and against the same parties^[4] as those in Civil Case No. 20-0-04.

In this case, the trial court likewise rendered a summary judgment on May 24, 2004, holding that Article 2, Section 3.1 of EO 156, is repugnant to the constitution.^[5] Elevated to this Court via a petition for review on certiorari, Civil Case No. 22-0-04 was docketed as G.R. No. 164172.

G.R. No. 168741

On January 22, 2003, respondent Motor Vehicle Importers Association of Subic Bay Freeport, Inc. (Association), filed another action for declaratory relief with essentially the same prayer as those in Civil Case No. 22-0-04 and Civil Case No. 20-0-04, against the Executive Secretary, Secretary of Finance, Chief of the Land Transportation Office, Commissioner of Customs, Collector of Customs at SBMA and the Chairman of SBMA. This was docketed as Civil Case No. 30-0-2003,^[6] before the same trial court.

In a decision dated March 10, 2004, the court *a quo* granted the Association's prayer and

declared the assailed proviso as contrary to the Constitution, to wit:

WHEREFORE, judgment is hereby rendered in favor of petitioner declaring Executive Order 156 [Article 2, Section] 3.1 for being unconstitutional and illegal; directing respondents Collector of Customs based at SBMA to allow the importation and entry of used motor vehicles pursuant to the mandate of RA 7227; directing respondent Chief of the Land Transportation Office and its subordinates inside the Subic Special Economic Zone or SBMA to process the registration of imported used motor vehicles; directing the respondent Chairman of the SBMA to allow the entry into the Subic Special Economic Zone or SBMA imported used motor vehicle; and in general, to allow unimpeded entry and importation of used motor vehicles to the Philippines subject only to the payment of the required customs duties.

SO ORDERED.^[7]

Aggrieved, the petitioners in Civil Case No. 30-0-2003, filed a petition for certiorari^[8] with the Court of Appeals (CA-G.R. SP. No. 83284) which denied the petition on February 14, 2005 and sustained the finding of the trial court that Article 2, Section 3.1 of EO 156, is void for being repugnant to the constitution. The dispositive portion thereof, reads:

WHEREFORE, the instant petition for certiorari is hereby DENIED. The assailed decision of the Regional Trial Court, Third Judicial Region, Branch 72, Olongapo City, in Civil Case No. 30-0-2003, accordingly, STANDS.

SO ORDERED.^[9]

The aforementioned decision of the Court of Appeals was elevated to this Court and docketed as G.R. No. 168741. In a Resolution dated October 4, 2005,^[10] said case was consolidated with G.R. No. 164171 and G.R. No. 164172.

Petitioners are now before this Court contending that Article 2, Section 3.1 of EO 156 is valid and applicable to the entire country, including the Freeport. In support of their arguments, they raise procedural and substantive issues bearing on the constitutionality of the assailed proviso. The **procedural issues** are: the lack of respondents' *locus standi* to question the validity of EO 156, the propriety of challenging EO 156 in a declaratory relief proceeding and the applicability of a judgment on the pleadings in this case.

Petitioners argue that respondents will not be affected by the importation ban considering that their certificate of registration and tax exemption do not authorize them to engage in the importation and/or trading of **used cars**. They also aver that the actions filed by respondents do not qualify as declaratory relief cases. Section 1, Rule 63 of the Rules of Court provides that a petition for declaratory relief may be filed before there is a breach or violation of rights. Petitioners claim that there was already a breach of respondents' supposed right because the cases were filed more than a year after the issuance of EO 156.

In fact, in Civil Case No. 30-0-2003, numerous warrants of seizure and detention were issued against imported used motor vehicles belonging to respondent Association's members.

Petitioners' arguments lack merit.

The established rule that the constitutionality of a law or administrative issuance can be challenged by one who will sustain a direct injury as a result of its enforcement^[11] has been satisfied in the instant case. The broad subject of the prohibited importation is "**all types of used motor vehicles.**" Respondents would definitely suffer a direct injury from the implementation of EO 156 because their certificate of registration and tax exemption authorize them to trade and/or import new and used **motor vehicles and spare parts**, except "used cars."^[12] Other types of motor vehicles imported and/or traded by respondents and not falling within the category of **used cars** would thus be subjected to the ban to the prejudice of their business. Undoubtedly, respondents have the legal standing to assail the validity of EO 156.

As to the propriety of declaratory relief as a vehicle for assailing the executive issuance, suffice it to state that any breach of the rights of respondents will not affect the case. In *Commission on Audit of the Province of Cebu v. Province of Cebu*,^[13] the Court entertained a suit for declaratory relief to finally settle the doubt as to the proper interpretation of the conflicting laws involved, notwithstanding a violation of the right of the party affected. We find no reason to deviate from said ruling mindful of the significance of the present case to the national economy.

So also, summary judgments were properly rendered by the trial court because the issues involved in the instant case were pure questions of law. A motion for summary judgment is premised on the assumption that the issues presented need not be tried either because these are patently devoid of substance or that there is no genuine issue as to any pertinent fact. It is a method sanctioned by the Rules of Court for the prompt disposition of a civil action in which the pleadings raise only a legal issue, not a genuine issue as to any material fact.^[14]

At any rate, even assuming the procedural flaws raised by petitioners truly exist, the Court is not precluded from brushing aside these technicalities and taking cognizance of the action filed by respondents considering its importance to the public and in keeping with the duty to determine whether the other branches of the government have kept themselves within the limits of the Constitution.^[15]

We now come to the **substantive issues**, which are: (1) whether there is statutory basis for the issuance of EO 156; and (2) if the answer is in the affirmative, whether the application of Article 2, Section 3.1 of EO 156, reasonable and within the scope provided by law.

The main thrust of the petition is that EO 156 is constitutional because it was issued

pursuant to EO 226, the Omnibus Investment Code of the Philippines and that its application should be extended to the Freeport because the guarantee of RA 7227 on the free flow of goods into the said zone is merely an exemption from customs duties and taxes on items brought into the Freeport and not an open floodgate for all kinds of goods and materials without restriction.

In G.R. No. 168741, the Court of Appeals invalidated Article 2, Section 3.1 of EO 156, on the ground of lack of any statutory basis for the President to issue the same. It held that the prohibition on the importation of used motor vehicles is an exercise of police power vested on the legislature and absent any enabling law, the exercise thereof by the President through an executive issuance, is void.

Police power is inherent in a government to enact laws, within constitutional limits, to promote the order, safety, health, morals, and general welfare of society. It is lodged primarily with the legislature. By virtue of a valid delegation of legislative power, it may also be exercised by the President and administrative boards, as well as the lawmaking bodies on all municipal levels, including the barangay.^[16] Such delegation confers upon the President **quasi-legislative power** which may be defined as the authority delegated by the law-making body to the administrative body to adopt rules and regulations intended to carry out the provisions of the law and implement legislative policy.^[17] To be valid, an administrative issuance, such as an executive order, must comply with the following requisites:

- (1) Its promulgation must be authorized by the legislature;
- (2) It must be promulgated in accordance with the prescribed procedure;
- (3) It must be within the scope of the authority given by the legislature; and
- (4) It must be reasonable.^[18]

Contrary to the conclusion of the Court of Appeals, EO 156 actually satisfied the **first requisite** of a valid administrative order. It has both constitutional and statutory bases.

Delegation of legislative powers to the President is permitted in Section 28(2) of Article VI of the Constitution. It provides:

- (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.^[19] (Emphasis supplied)

The relevant statutes to execute this provision are:

- 1) The **Tariff and Customs Code** which authorizes the President, in the interest of national economy, general welfare and/or national security, to, *inter alia*, prohibit the importation of

any commodity. Section 401 thereof, reads:

Sec. 401. Flexible Clause. —

a. **In the interest of national economy, general welfare and/or national security, and subject to the limitations herein prescribed, the President, upon recommendation of the National Economic and Development Authority (hereinafter referred to as NEDA), is hereby empowered: x x x (2) to establish import quota or to ban imports of any commodity, as may be necessary; x x x** Provided, That upon periodic investigations by the Tariff Commission and recommendation of the NEDA, the President may cause a gradual reduction of protection levels granted in Section One hundred and four of this Code, including those subsequently granted pursuant to this section. (Emphasis supplied)

2) Executive Order No. 226, the Omnibus Investment Code of the Philippines which was issued on July 16, 1987, by then President Corazon C. Aquino, in the exercise of legislative power under the Provisional Freedom Constitution,^[20] empowers the President to approve or reject the prohibition on the importation of any equipment or raw materials or finished products. Pertinent provisions thereof, read:

ART. 4. Composition of the board. The Board of Investments shall be composed of seven (7) governors: The Secretary of Trade and Industry, three (3) Undersecretaries of Trade and Industry to be chosen by the President; and three (3) representatives from the government agencies and the private sector x x x.

ART. 7. Powers and duties of the Board.

x x x x

(12) Formulate and implement rationalization programs for certain industries whose operation may result in dislocation, overcrowding or inefficient use of resources, thus impeding economic growth. For this purpose, the Board may formulate guidelines for progressive manufacturing programs, local content programs, mandatory sourcing requirements and dispersal of industries. **In appropriate cases and upon approval of the President, the Board may restrict, either totally or partially, the importation of any equipment or raw materials or finished products involved in the rationalization program;** (Emphasis supplied)

3) Republic Act No. 8800, otherwise known as the “Safeguard Measures Act” (SMA), and entitled “An Act Protecting Local Industries By Providing Safeguard Measures To Be Undertaken In Response To Increased Imports And Providing Penalties For Violation Thereof,”^[21] designated the Secretaries^[22] of the Department of Trade and Industry (DTI) and the Department of Agriculture, in their capacity as alter egos of the President, as the

implementing authorities of the safeguard measures, which include, *inter alia*, modification or imposition of any quantitative restriction on the importation of a product into the Philippines. The purpose of the SMA is stated in the declaration of policy, thus:

SEC. 2. Declaration of Policy. – The State shall promote 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.

There are thus explicit constitutional and statutory permission authorizing the President to ban or regulate importation of articles and commodities into the country.

Anent the **second requisite**, that is, that the order must be issued or promulgated in accordance with the prescribed procedure, it is necessary that the nature of the administrative issuance is properly determined. As in the enactment of laws, the general rule is that, the promulgation of administrative issuances requires previous notice and hearing, the only exception being where the legislature itself requires it and mandates that the regulation shall be based on certain facts as determined at an appropriate investigation.

[23] This exception pertains to the issuance of **legislative rules** as distinguished from **interpretative rules** which give no real consequence more than what the law itself has already prescribed; [24] and are designed merely to provide guidelines to the law which the administrative agency is in charge of enforcing. [25] A **legislative rule**, on the other hand, is in the nature of subordinate legislation, crafted to implement a primary legislation.

In *Commissioner of Internal Revenue v. Court of Appeals*, [26] and *Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop, Inc.*, [27] the Court enunciated the doctrine that when an administrative rule goes beyond merely providing for the means that can facilitate or render less cumbersome the implementation of the law and substantially increases the burden of those governed, it behooves the agency to accord at least to those directly affected a chance to be heard and, thereafter, to be duly informed, before the issuance is given the force and effect of law.

In the instant case, EO 156 is obviously a legislative rule as it seeks to implement or execute primary legislative enactments intended to protect the domestic industry by imposing a ban on the importation of a specified product not previously subject to such prohibition. The due process requirements in the issuance thereof are embodied in Section 401 [28] of the Tariff and Customs Code and Sections 5 and 9 of the SMA [29] which essentially mandate the conduct of investigation and public hearings before the regulatory measure or importation ban may be issued.

In the present case, respondents neither questioned before this Court nor with the courts

below the procedure that paved the way for the issuance of EO 156. What they challenged in their petitions before the trial court was the absence of “substantive due process” in the issuance of the EO.^[30] Their main contention before the court a quo is that the importation ban is illogical and unfair because it unreasonably drives them out of business to the prejudice of the national economy.

Considering the settled principle that in the absence of strong evidence to the contrary, acts of the other branches of the government are presumed to be valid,^[31] and there being no objection from the respondents as to the procedure in the promulgation of EO 156, the presumption is that said executive issuance duly complied with the procedures and limitations imposed by law.

To determine whether EO 156 has complied with the third and fourth requisites of a valid administrative issuance, to wit, that it was issued within the scope of authority given by the legislature and that it is reasonable, an examination of the nature of a Freeport under RA 7227 and the primordial purpose of the importation ban under the questioned EO is necessary.

RA 7227 was enacted providing for, among other things, the sound and balanced conversion of the Clark and Subic military reservations and their extensions into alternative productive uses in the form of Special Economic and Freeport Zone, or the Subic Bay Freeport, in order to promote the economic and social development of Central Luzon in particular and the country in general.

The Rules and Regulations Implementing RA 7227 specifically defines the territory comprising the Subic Bay Freeport, referred to as the Special Economic and Freeport Zone in Section 12 of RA 7227 as "a separate customs territory consisting of the City of Olongapo and the Municipality of Subic, Province of Zambales, the lands occupied by the Subic Naval Base and its contiguous extensions as embraced, covered and defined by the 1947 Philippine-U.S. Military Base Agreement as amended and within the territorial jurisdiction of Morong and Hermosa, Province of Bataan, the metes and bounds of which shall be delineated by the President of the Philippines; provided further that pending establishment of secure perimeters around the entire SBF, the SBF shall refer to the area demarcated by the SBMA pursuant to Section 13^[32] hereof."

Among the salient provisions of RA 7227 are as follows:

SECTION 12. *Subic Special Economic Zone.* —

x x x x

The abovementioned zone shall be subject to the following policies:

x x x x

(a) Within the framework and subject to the mandate and limitations of the Constitution and the pertinent provisions of the Local Government Code, the Subic Special Economic Zone shall be developed into a self-sustaining, industrial, commercial, financial and investment center to generate employment opportunities in and around the zone and to attract and promote productive foreign investments;

(b) The Subic Special Economic Zone shall be operated and managed as a separate customs territory ensuring free flow or movement of goods and capital within, into and exported out of the Subic Special Economic Zone, as well as provide incentives such as tax and duty-free importations of raw materials, capital and equipment. However, exportation or removal of goods from the territory of the Subic Special Economic Zone to the other parts of the Philippine territory shall be subject to customs duties and taxes under the Customs and Tariff Code and other relevant tax laws of the Philippines;

The Freeport was designed to ensure free flow or movement of goods and capital within a portion of the Philippine territory in order to attract investors to invest their capital in a business climate with the least governmental intervention. The concept of this zone was explained by Senator Guingona in this wise:

Senator Guingona. Mr. President, the special economic zone is successful in many places, particularly Hong Kong, which is a free port. The difference between a special economic zone and an industrial estate is simply expansive in the sense that the commercial activities, including the establishment of banks, services, financial institutions, agro-industrial activities, maybe agriculture to a certain extent.

This delineates the activities that would have the least of government intervention, and the running of the affairs of the special economic zone would be run principally by the investors themselves, similar to a housing subdivision, where the subdivision owners elect their representatives to run the affairs of the subdivision, to set the policies, to set the guidelines.

We would like to see Subic area converted into a little Hong Kong, Mr. President, where there is a hub of free port and free entry, free duties and activities to a maximum spur generation of investment and jobs.

While the investor is reluctant to come in the Philippines, as a rule, because of red tape and perceived delays, we envision this special economic zone to be an area where there will be minimum government interference.

The initial outlay may not only come from the Government or the Authority as envisioned here, but from them themselves, because they would be encouraged to invest not only for the land but also for the buildings and factories. As long as they are convinced that in such an area they can do business and reap

reasonable profits, then many from other parts, both local and foreign, would invest, Mr. President.^[33] (Emphasis, added)

With minimum interference from the government, investors can, in general, engage in any kind of business as well as import and export any article into and out of the Freeport. These are among the rights accorded to Subic Bay Freeport Enterprises under Section 39 of the Rules and Regulations Implementing RA 7227, thus –

SEC. 39. Rights and Obligations.- SBF Enterprises shall have the following rights and obligations:

a. To freely engage in any business, trade, manufacturing, financial or service activity, and to import and export freely all types of goods into and out of the SBF, subject to the provisions of the Act, these Rules and other regulations that may be promulgated by the SBMA;

Citing, *inter alia*, the interpellations of Senator Enrile, petitioners claim that the “free flow or movement of goods and capital” only means that goods and material brought within the Freeport shall not be subject to customs duties and other taxes and should not be construed as an open floodgate for entry of all kinds of goods. They thus surmise that the importation ban on motor vehicles is applicable within the Freeport. Pertinent interpellations of Senator Enrile on the concept of Freeport is as follows:

Senator Enrile: Mr. President, I think we are talking here of sovereign concepts, not territorial concepts. The concept that we are supposed to craft here is to carve out a portion of our terrestrial domain as well as our adjacent waters and say to the world: “Well, you can set up your factories in this area that we are circumscribing, and bringing your equipment and bringing your goods, you are not subject to any taxes and duties because you are not within the customs jurisdiction of the Republic of the Philippines, whether you store the goods or only for purposes of transshipment or whether you make them into finished products again to be reexported to other lands.”

x x x x

My understanding of a “free port” is, we are in effect carving out a part of our territory and make it as if it were foreign territory for purposes of our customs laws, and that people can come, bring their goods, store them there and bring them out again, as long as they do not come into the domestic commerce of the Republic.

We do not really care whether these goods are stored here. The only thing that we care is for our people to have an employment because of the entry of these goods that are being discharged, warehoused and reloaded into the ships so that they can be exported. That will generate employment for us. For as long as that is done, we are saying, in effect, that we have the least contact with our tariff

and customs laws and our tax laws. Therefore, we consider these goods as outside of the customs jurisdiction of the Republic of the Philippines as yet, until we draw them from this territory and bring them inside our domestic commerce. In which case, they have to pass through our customs gate. I thought we are carving out this entire area and convert it into this kind of concept.^[34]

However, contrary to the claim of petitioners, there is nothing in the foregoing excerpts which absolutely limits the incentive to Freeport investors only to exemption from customs duties and taxes. Mindful of the legislative intent to attract investors, enhance investment and boost the economy, the legislature could not have limited the enticement only to exemption from taxes. The minimum interference policy of the government on the Freeport extends to the kind of business that investors may embark on and the articles which they may import or export into and out of the zone. A contrary interpretation would defeat the very purpose of the Freeport and drive away investors.

It does not mean, however, that the right of Freeport enterprises to import all types of goods and article is absolute. Such right is of course subject to the limitation that articles absolutely prohibited by law cannot be imported into the Freeport.^[35] Nevertheless, in determining whether the prohibition would apply to the Freeport, resort to the purpose of the prohibition is necessary.

In issuing EO 156, particularly the prohibition on importation under Article 2, Section 3.1, the President envisioned to rationalize the importation of used motor vehicles and to enhance the capabilities of the Philippine motor manufacturing firms to be globally competitive producers of completely build-up units and their parts and components for the local and export markets.^[36] In justifying the issuance of EO 156, petitioners alleged that there has been a decline in the sales of new vehicles and a remarkable growth of the sales of imported used motor vehicles. To address the same, the President issued the questioned EO to prevent further erosion of the already depressed market base of the local motor vehicle industry and to curtail the harmful effects of the increase in the importation of used motor vehicles.^[37]

Taking our bearings from the foregoing discussions, we hold that the importation ban runs afoul the **third requisite** for a valid administrative order. To be valid, an administrative issuance must not be *ultra vires* or beyond the limits of the authority conferred. It must not supplant or modify the Constitution, its enabling statute and other existing laws, for such is the sole function of the legislature which the other branches of the government cannot usurp. As held in *United BF Homeowner's Association v. BF Homes, Inc.*:^[38]

The rule-making power of a public administrative body is a delegated legislative power, which it may not use either to abridge the authority given it by Congress or the Constitution or to enlarge its power beyond the scope intended. Constitutional and statutory provisions control what rules and

regulations may be promulgated by such a body, as well as with respect to what fields are subject to regulation by it. It may not make rules and regulations which are inconsistent with the provisions of the Constitution or a statute, particularly the statute it is administering or which created it, or which are in derogation of, or defeat, the purpose of a statute.

In the instant case, the subject matter of the laws authorizing the President to regulate or forbid importation of used motor vehicles, is the **domestic industry**. EO 156, however, exceeded the scope of its application by extending the prohibition on the importation of used cars to the Freeport, which RA 7227, considers to some extent, a foreign territory. The **domestic industry** which the EO seeks to protect is actually the “**customs territory**” which is defined under the Rules and Regulations Implementing RA 7227, as follows:

“the portion of the Philippines outside the Subic Bay Freeport where the Tariff and Customs Code of the Philippines and other national tariff and customs laws are in force and effect.”^[39]

The proscription in the importation of used motor vehicles should be operative only outside the Freeport and the inclusion of said zone within the ambit of the prohibition is an invalid modification of RA 7227. Indeed, when the application of an administrative issuance modifies existing laws or exceeds the intended scope, as in the instant case, the issuance becomes void, not only for being *ultra vires*, but also for being unreasonable.

This brings us to the **fourth requisite**. It is an axiom in administrative law that administrative authorities should not act arbitrarily and capriciously in the issuance of rules and regulations. To be valid, such rules and regulations must be reasonable and fairly adapted to secure the end in view. If shown to bear no reasonable relation to the purposes for which they were authorized to be issued, then they must be held to be invalid.^[40]

There is no doubt that the issuance of the ban to protect the **domestic industry** is a reasonable exercise of police power. The deterioration of the local motor manufacturing firms due to the influx of imported used motor vehicles is an urgent national concern that needs to be swiftly addressed by the President. In the exercise of delegated police power, the executive can therefore validly proscribe the importation of these vehicles. Thus, in *Taxicab Operators of Metro Manila, Inc. v. Board of Transportation*,^[41] the Court held that a regulation phasing out taxi cabs more than six years old is a valid exercise of police power. The regulation was sustained as reasonable holding that the purpose thereof was to promote the convenience and comfort and protect the safety of the passengers.

The problem, however, lies with respect to the application of the importation ban to the Freeport. The Court finds no logic in the all encompassing application of the assailed provision to the Freeport which is outside the customs territory. As long as the used motor vehicles do not enter the customs territory, the injury or harm sought to be prevented or remedied will not arise. The application of the law should be consistent with the purpose of and reason for the law. *Ratione cessat lex, et cessat lex*. When the reason for the law

ceases, the law ceases. It is not the letter alone but the spirit of the law also that gives it life.^[42] To apply the proscription to the Freeport would not serve the purpose of the EO. Instead of improving the general economy of the country, the application of the importation ban in the Freeport would subvert the avowed purpose of RA 7227 which is to create a market that would draw investors and ultimately boost the national economy.

In similar cases, we also declared void the administrative issuance or ordinances concerned for being unreasonable. To illustrate, in *De la Cruz v. Paras*,^[43] the Court held as unreasonable and unconstitutional an ordinance characterized by overbreadth. In that case, the Municipality of Bocaue, Bulacan, prohibited the operation of all night clubs, cabarets and dance halls within its jurisdiction for the protection of public morals. As explained by the Court:

x x x It cannot be said that such a sweeping exercise of a lawmaking power by Bocaue could qualify under the term reasonable. The objective of fostering public morals, a worthy and desirable end can be attained by a measure that does not encompass too wide a field. Certainly the ordinance on its face is characterized by overbreadth. The purpose sought to be achieved could have been attained by reasonable restrictions rather than by an absolute prohibition. The admonition in *Salaveria* should be heeded: “The Judiciary should not lightly set aside legislative action when there is not a clear invasion of personal or property rights under the guise of police regulation.” It is clear that in the guise of a police regulation, there was in this instance a clear invasion of personal or property rights, personal in the case of those individuals desirous of patronizing those night clubs and property in terms of the investments made and salaries to be earned by those therein employed.

Lupangco v. Court of Appeals,^[44] is a case involving a resolution issued by the Professional Regulation Commission which prohibited examinees from attending review classes and receiving handout materials, tips, and the like three days before the date of examination in order to preserve the integrity and purity of the licensure examinations in accountancy. Besides being unreasonable on its face and violative of academic freedom, the measure was found to be more sweeping than what was necessary, viz:

Needless to say, the enforcement of Resolution No. 105 is not a guarantee that the alleged leakages in the licensure examinations will be eradicated or at least minimized. Making the examinees suffer by depriving them of legitimate means of review or preparation on those last three precious days — when they should be refreshing themselves with all that they have learned in the review classes and preparing their mental and psychological make-up for the examination day itself — would be like uprooting the tree to get rid of a rotten branch. What is needed to be done by the respondent is to find out the source of such leakages and stop it right there. If corrupt officials or personnel should be terminated from their loss, then so be it. Fixers or swindlers should be flushed out. Strict guidelines to be observed by examiners should be set up and if violations are

committed, then licenses should be suspended or revoked. x x x

In *Lucena Grand Central Terminal, Inc. v. JAC Liner, Inc.*,^[45] the Court likewise struck down as unreasonable and overbreadth a city ordinance granting an exclusive franchise for 25 years, renewable for another 25 years, to one entity for the construction and operation of one common bus and jeepney terminal facility in Lucena City. While professedly aimed towards alleviating the traffic congestion alleged to have been caused by the existence of various bus and jeepney terminals within the city, the ordinance was held to be beyond what is reasonably necessary to solve the traffic problem in the city.

By parity of reasoning, the importation ban in this case should also be declared void for its too sweeping and unnecessary application to the Freeport which has no bearing on the objective of the prohibition. If the aim of the EO is to prevent the entry of used motor vehicles from the Freeport to the customs territory, the solution is not to forbid entry of these vehicles into the Freeport, but to intensify governmental campaign and measures to thwart illegal ingress of used motor vehicles into the customs territory.

At this juncture, it must be mentioned that on June 19, 1993, President Fidel V. Ramos issued Executive Order No. 97-A, “Further Clarifying The Tax And Duty-Free Privilege Within The Subic Special Economic And Free Port Zone,” Section 1 of which provides:

SECTION 1. The following guidelines shall govern the tax and duty-free privilege within the *Secured Area* of the Subic Special Economic and Free Port Zone:

1.1. The *Secured Area* consisting of the presently fenced-in former Subic Naval Base shall be the only completely tax and duty-free area in the SSEFPZ. Business enterprises and individuals (Filipinos and foreigners) residing within the *Secured Area* are free to import raw materials, capital goods, equipment, and consumer items tax and duty-free. Consumption items, however, must be consumed within the *Secured Area*. Removal of raw materials, capital goods, equipment and consumer items out of the *Secured Area* for sale to non-SSEFPZ registered enterprises shall be subject to the usual taxes and duties, except as may be provided herein.

In *Tiu v. Court of Appeals*[46] as reiterated in *Coconut Oil Refiners Association, Inc. v. Torres*,^[47] this provision limiting the special privileges on tax and duty-free importation in the presently fenced-in former Subic Naval Base has been declared valid and constitutional and in accordance with RA 7227. Consistent with these rulings and for easier management and monitoring of activities and to prevent fraudulent importation of merchandise and smuggling, the free flow and importation of used motor vehicles shall be operative only within the “secured area.”

In sum, the Court finds that Article 2, Section 3.1 of EO 156 is void insofar as it is made applicable to the presently secured fenced-in former Subic Naval Base area as stated in

Section 1.1 of EO 97-A. Pursuant to the separability clause^[48] of EO 156, Section 3.1 is declared valid insofar as it applies to the customs territory or the Philippine territory outside the presently secured fenced-in former Subic Naval Base area as stated in Section 1.1 of EO 97-A. Hence, used motor vehicles that come into the Philippine territory via the secured fenced-in former Subic Naval Base area may be stored, used or traded therein, or exported out of the Philippine territory, but they cannot be imported into the Philippine territory outside of the secured fenced-in former Subic Naval Base area.

WHEREFORE, the petitions are **PARTIALLY GRANTED** and the May 24, 2004 Decisions of Branch 72, Regional Trial Court of Olongapo City, in Civil Case No. 20-0-04 and Civil Case No. 22-0-04; and the February 14, 2005 Decision of the Court of Appeals in CA-G.R. SP No. 63284, are **MODIFIED** insofar as they declared Article 2, Section 3.1 of Executive Order No. 156, void in its entirety.

Said provision is declared **VALID** insofar as it applies to the Philippine territory outside the presently fenced-in former Subic Naval Base area and **VOID** with respect to its application to the secured fenced-in former Subic Naval Base area.

SO ORDERED.

*Panganiban, C.J., Puno, Quisumbing, Sandoval-Gutierrez, Carpio, Austria-Martinez, Carpio-Morales, Azcuna, Tinga, Chico-Nazario and Garcia, JJ., concur.
Corona and Callejo, Sr., JJ. On leave.*

[1] *Rollo* (G.R. No. 164171), pp. 81-90.

[2] *Id.* at 68; *rollo* (G.R. No. 164172), p. 65. Penned by Judge Eliodoro G. Ubiadas.

[3] *Rollo* (G.R. No. 164172), pp. 78-86.

[4] The Executive Secretary, Secretary of Transportation and Communication, Commissioner of Customs, Assistant Secretary and Head of the Land Transportation Office, Subic Bay Metropolitan Authority (SBMA), Collector of Customs for the Port at Subic Bay Freeport Zone, and the Chief of the Land Transportation Office at Subic Bay Freeport Zone.

[5] The dispositive portion thereof is identically worded as the quoted decretal portion of the decision in Civil Case No. 20-0-04.

[6] *Rollo* (G.R. No. 168741), pp. 139-153.

[7] *Id.* at 264. Penned by Judge Eliodoro G. Ubiadas.

[8] Docketed as CA-G.R. SP. No. 83284.

[9] Dated February 14, 2005, *rollo* (G.R. No. 168741), p. 125. Penned by Associate Justice Perlita J. Tria Tirona and concurred in by Associate Justices Delilah Vidallon-Magtolis and Jose C. Reyes, Jr. Petitioners filed a motion for reconsideration but was denied by the Court of Appeals on June 28, 2004, *id.* at 126.

[10] *Id.* at 354.

[11] *Miranda v. Aguirre*, 373 Phil. 386, 397 (1999).

[12] *Rollo* (G.R. No. 164171), pp. 94-96 and *rollo* (G.R. No. 164172), p. 88.

[13] 422 Phil. 519, 531 (2001).

[14] *Republic v. Sandiganbayan*, G.R. No. 152154, November 18, 2003, 416 SCRA 133, 140.

[15] *Coconut Oil Refiners Association, Inc. v. Torres*, G.R. No. 132527, July 29, 2005, 465 SCRA 47, 62.

[16] *Camarines Norte Electric Cooperative, Inc. v. Torres*, 350 Phil. 315, 331 (1998).

[17] Cruz, *Philippine Administrative Law*, 2003 Edition, p. 24.

[18] *Id.* at 41.

[19] Essentially the same provision is embodied in the 1935 and 1973 Constitutions.

Constitution (1935), Art. VI, Sec 22, par. (2):

The Congress may by law authorize the President, subject to such limitations and restrictions as it may impose, to fix, within specified limits, tariff rates, import or export quotas, and tonnage and wharfage dues.

Constitution (1973), Art. VII, Sec 17, par. (2):

The Batasang Pambansa 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.

[20] Bernas, S.J., *The 1987 Constitution of the Philippines: A Commentary*, 1996 Edition,

p. 610.

[21] Enacted on July 17, 2000. See *Filipino Metals Corporation v. Secretary of Trade and Industry*, G.R. No. 157498, July 15, 2005, 463 SCRA 616, 619.

[22] “Secretary” as defined under Section 4 (n) of the SMA refers to either the Secretary of the Department of Trade and Industry in the case of non-agricultural products or the Secretary of the Department of Agriculture in the case of agricultural products.

[23] Cruz, *supra* note 17 at 53.

[24] *Commissioner of Internal Revenue v. Court of Appeals*, 329 Phil. 987, 1007 (1996).

[25] *Misamis Oriental Association of Coco Traders, Inc. v. Department of Finance Secretary*, G.R. No. 108524, November 10, 1994, 238 SCRA 63, 69.

[26] *Supra*.

[27] 453 Phil. 1043, 1058 (2003).

[28] Sec. 401. Flexible Clause. —

a. In the interest of national economy, general welfare and/or national security, and subject to the limitations herein prescribed, the President, upon recommendation of the National Economic and Development Authority (hereinafter referred to as NEDA), is hereby empowered: (1) to increase, reduce or remove existing protective rates of import duty (including any necessary change in classification). The existing rates may be increased or decreased but in no case shall the reduced rate of import duty be lower than the basic rate of ten (10) per cent ad valorem, nor shall the increased rate of import duty be higher than a maximum of one hundred (100) per cent ad valorem; (2) to establish import quota or to ban imports of any commodity, as may be necessary; and (3) to impose an additional duty on all imports not exceeding ten (10) per cent ad valorem whenever necessary; Provided, That upon periodic investigations by the Tariff Commission and recommendation of the NEDA, the President may cause a gradual reduction of protection levels granted in Section One Hundred and Four of this Code, including those subsequently granted pursuant to this section.

b. Before any recommendation is submitted to the President by the NEDA pursuant to the provisions of this section, except in the imposition of an additional duty not exceeding ten (10) per cent ad valorem, the Commission shall conduct an investigation in the course of which they shall hold public hearings wherein interested parties shall be afforded reasonable opportunity to be present, produce evidence and to be heard. The Commission shall also hear the views and recommendations of any government office, agency or instrumentality concerned. The Commission shall submit their findings and recommendations to the NEDA within thirty (30) days after the termination of the public

hearings.

[29] 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.

SEC. 9. Formal Investigation. – Within five (5) working days from receipt of the request from the Secretary, the Commission shall publish the notice of the commencement of the investigation, and public hearings which shall afford interested parties and consumers an opportunity to be present, or to present evidence, to respond to the presentation of other parties and consumers, and otherwise be heard. Evidence and positions with respect to the importation of the subject article shall be submitted to the Commission within fifteen (15) days after the initiation of the investigation by the Commission.

The Commission shall complete its investigation and submit its report to the Secretary within one hundred twenty (120) calendar days from receipt of the referral by the Secretary, except when the Secretary certifies that the same is urgent, in which case the Commission shall complete the investigation and submit the report to the Secretary within sixty (60) days.

[30] *Rollo* (G.R. No. 168741), pp. 144-145; *rollo* (G.R. No. 164172), pp. 205-206; *rollo* (G.R. No. 164171), pp. 87-86.

[31] *Coconut Oil Refiners Association, Inc. v. Torres*, *supra* note 15 at 62-63.

[32] Section 13 of the Rules and Regulations Implementing RA 7227 provides: Establishment of Secure Perimeters, Points of Entry and Duty and Tax Free Areas of the SBF. - Pending the establishment of secure perimeters around the entire SBF, the SBMA shall have the authority to establish and demarcate areas of the SBF with secure perimeters within which articles and merchandise free of duties and internal revenue taxes may be limited, without prejudice to the availment of other benefits conferred by the Act and these Rules in the SBF outside such areas. The SBMA shall furthermore have the authority to establish, regulate and maintain points of entry to the SBF or to any limited duty and tax-free areas of the SBF.

[33] Records, Senate 8th congress, Session (January 14, 1992).

[34] *Id.*

[35] SEC. 45. Importation of Articles. – In general, all articles may be imported by SBF Enterprises into the SBF free of customs and import duties and national internal revenue

taxes, except those articles prohibited by the SBMA and those absolutely prohibited by law. (Rules and Regulations Implementing RA 7227)

[36] Whereas clauses of EO 156.

[37] *Rollo* (G.R. No. 168741), pp. 77-79; *rollo* (G.R. No. 164172), p. 46; *rollo* (G.R. No. 164171), p. 48.

[38] 369 Phil. 568, 579-580 (1999).

[39] Definitions, Section 3 (n).

[40] *Lupangco v. Court of Appeals*, G.R. No. L-77372, April 29, 1988, 160 SCRA 848, 858-859.

[41] 202 Phil. 925, 935-936 (1982).

[42] *Vergara v. People*, G.R. No. 160328, February 4, 2005, 450 SCRA 495, 508.

[43] 208 Phil. 490, 499-500 (1983).

[44] *Supra* note 40 at 860.

[45] G.R. No. 148339, February 23, 2005, 452 SCRA 174.

[46] 361 Phil. 229 (1999).

[47] *Supra* note 15.

[48] Article 7, Section 3:

Sec. 3. Separability Clause. – The provisions of this Executive Order are hereby declared separable and in the event any of such provisions is declared unconstitutional, the other provisions, which are not affected, thereby remain in force and effect.