Republic of the Philippines
Supreme Court
Baguio City

EN BANC

SECRETARY PROCESO J. ALCALA, AS SECRETARY OF THE DEPARTMENT OF AGRICULTURE, AND AS CHAIRMAN OF THE NATIONAL FOOD AUTHORITY COUNCIL, AND THE BUREAU OF CUSTOMS, REPRESENTED BY COMMISSIONER JOHN PHILLIP P. SEVILLA, Petitioners, *- versus -* **HONORABLE JUDGE EMMANUEL C. CARPIO, IN HIS CAPACITY AS PRESIDING JUDGE OF BRANCH 16, REGIONAL TRIAL COURT IN DAVAO CITY, AND JOSEPH MANGUPAG NGO,** Respondents. x----------x	**G.R. No. 211146**
SECRETARY PROCESO J. ALCALA, AS SECRETARY OF THE DEPARTMENT OF AGRICULTURE, AND AS CHAIRMAN OF THE NATIONAL FOOD AUTHORITY COUNCIL, AND THE BUREAU OF CUSTOMS, REPRESENTED BY COMMISSIONER JOHN PHILLIP P. SEVILLA, Petitioners, *- versus -* **HONORABLE JUDGE CICERO D. JURADO, JR., IN HIS CAPACITY AS PRESIDING JUDGE OF BRANCH 11, REGIONAL TRIAL COURT IN MANILA, DANILO G. GALANG, DOING BUSINESS UNDER THE NAME AND STYLE ST.**	**G.R. No. 211375** **Present:** GESMUNDO, *CJ.*, LEONEN, CAGUIOA, HERNANDO, LAZARO-JAVIER, INTING, ZALAMEDA, LOPEZ, M., GAERLAN, ROSARIO, LOPEZ, J., DIMAAMPAO, MARQUEZ, KHO, Jr., and

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HILDEGARD GRAINS ENTERPRISES, AND IVY M. SOUZA, DOING BUSINESS UNDER THE NAME AND STYLE BOLD BIDDER MARKETING AND GENERAL MERCHANDISE,
Respondent.

SINGH, *JJ.*

Promulgated:

April 11, 2023

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DECISION

LOPEZ, J., *J.*:

The issuance of a Writ of Preliminary Injunction is considered an extraordinary event, being a strong arm of equity or a transcendent remedy,[1] and must be grounded on the existence of a clear and unmistakable right. Thus, the power to issue the writ "should be exercised sparingly, with utmost care, and with great caution and deliberation."[2] The failure to observe these safeguards constitutes grave abuse of discretion.

This Court are two consolidated Petitions for *Certiorari* with Applications for Injunctive Relief,[3] which (1) assail various orders issued by respondent Regional Trial Court (RTC) judges, preliminarily enjoining various district collectors from seizing, holding, and detaining private respondents' rice shipments, due to lack of National Food Authority (NFA) import licenses, and (2) seek to restrain the RTC judges from proceeding with full-blown injunction hearings on the district collectors' NFA to seize, hold, and detain the imports.

The Antecedents

Sometime in 2013, private respondent Joseph Mangupag Ngo (Ngo) entered into an agreement to buy imported rice from Starcraft International Trading Corp. (Starcraft), a corporation registered under Philippine laws. The shipments from Thailand were covered by 15 bills of lading and were set to arrive at the port of Davao City on various dates in October 2013 and November 2013. Based on the agreement between Ngo and Starcraft, the ownership over the Rice Shipments will be transferred to Ngo upon payment of the amount stipulated as the down payment therein. Accordingly, Ngo made

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1 *Evy Construction and Dev't. Corp. v. Valiant Roll Forming Sales Corp.*, 820 Phil. 123, 135 (2017) [Per J. Leonen, Third Division]. (Citation omitted)

2 *Id.*

3 *Rollo* (G.R. No. 211146), pp. 3–77; *rollo* (G.R. No. 211375), pp. 3–82. Similarly captioned Petition for *Certiorari* (With Application for Temporary Restraining Order, *Status Quo Ante* Order and/or Writ of Preliminary Injunction).

payments in the aggregate amount of PHP 21,132,000.00 representing the down payment for the rice shipments in the Bills of Lading.[4] In the process of the release of the rice shipments from customs custody, Ngo was informed that the rice shipments could be released by the Bureau of Customs (BOC)—District Collector because they were imported without the necessary import permits from the NFA.[5] Ngo reasoned with the BOC that an import permit was not necessary for rice shipments because such was considered a quantitative restriction[6] on the import of agricultural products, which was prohibited under the World Trade Organization (WTO)—Agreement on Agriculture.

Historical background on the WTO Agreement on agriculture and the Philippines' special treatment for rice

The Philippines became a founding Member of the WTO as the Marrakesh Agreement entered into force on January 1, 1995.[7] The WTO provides a common institutional framework for the conduct of trade relations in matters related to multilateral and plurilateral trade agreements annexed thereto.[8] It spells out the principles of liberalization and permitted exceptions thereto, sets out Members' commitment to lower customs tariffs and trade barriers, and outlines dispute settlement procedures.[9]

It was on the same year that the Uruguay Round of the General Agreement on Tariffs and Trade was negotiated, culminating in the subject Agreement on Agriculture. Notably, one of the preambulatory clauses of the Agreement on Agriculture declared its "regard to non-trade concerns, including food security and the need to protect the environment; having regard to the agreement that special and differential treatment for developing countries is an integral element of the negotiations, and taking into account the possible negative effects of the implementation of the reform program on least-developed and net food-importing developing countries."[10]

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4 *Id.* at 297.

5 *Id.*

6 Quantitative restrictions are defined as specific limits on the quantity or value of goods that can be imported (or exported) during a specific time period. An example is an import quota, where a quantitative restriction on the level of imports is imposed by a country. *See* Organization for Economic Cooperation and Development, *available at* https://stats.oecd.org/glossary/detail.asp?ID=4991 (last accessed on September 25, 2022).

7 World Trade Organization, Trade Policy reviews, The Philippines: September 1999, *available at* https://www.wto.org/english/tratop_e/tpr_e/tp114_e.htm#:~:text=In%20December%201994%2C%20the%20Philippine,force%20on%201%20January%201995 (last accessed on September 25, 2022).

8 *Mirpuri v. Court of Appeals*, 376 Phil. 628, 666 (1999).

9 World Trade Organization (*WTO*), Overview: a navigational guide, WTO Website, *available at* https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm1_e.htm. (last accessed on September 25, 2022)

10 WTO, Agreement on Agriculture, *available at* https://www.wto.org/english/docs_e/legal_e/14-ag_01_e.htm (last accessed on September 25, 2022).

Annex 5, Part B of the Agreement on Agriculture allowed special treatment for a primary agricultural product that is a predominant staple in the country's traditional diet—and following the Uruguay Round of trade negotiations, the Philippine government obtained a special treatment for rice in 1995 ("Special Treatment"), set to expire on December 31, 2004[11] (first concession). This first concession was extended to July 30, 2012, through a Certification of Modifications and Rectifications[12] of the Philippines' schedule of commitments (second concession). Paragraph 5.1 of this second concession stated that "[a]ny continuation of special treatment for rice shall be contingent on the outcome of the [Doha Development Agenda] negotiations[.]"[13]

On March 20, 2012—seeing as the Doha Development Agenda negotiations would not be completed before the second concession would lapse—the Philippine government submitted a Request for Waiver on Special Treatment for Rice of the Philippines (Request for Waiver),[14] including a Draft Decision[15] seeking a third concession proposed to expire on June 30, 2017. The Request for Waiver submitted to WTO stated the following justifications for this request:

> Pursuant to Article IX:3 of the Marrakesh Agreement Establishing the World Trade Organization ("the WTO Agreement"), the Philippines hereby submits for the consideration of the Council on Trade in Goods a request for a waiver within the meaning of Article IX:3 of the WTO Agreement from its obligations under Articles 4.2 and Section B of Annex 5 of the Agreement on Agriculture *to continue the Philippines' special treatment for rice* . . .
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> . . . .
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> The Philippines has been in the forefront of trade reforms in the WTO to support economic development. Its WTO simple average bound tariff is 35 percent in agriculture, which is just over half of the average bound tariff for all WTO developing Members of 60 percent. The Philippines has virtually no trade-distorting domestic support or export subsidies. The Philippines' agriculture sector therefore can be considered as one of the most open agricultural trading regimes in the WTO.
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> *The Philippines notes that food security is a non-trade concern according to paragraph 6 of the preamble of the Agreement on Agriculture and the special treatment provision under paragraph 1(d) of Annex 5 of the Agreement seeks to address this concern through a temporary exemption from the agricultural reform process.*
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> Food security and poverty in the Philippines are directly linked with livelihood security. Rice is a predominant staple in the Philippines, which has about 2.4 million rice farmers. These farmers account for 34[%] of the

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11 *Rollo* (G.R. No. 211146), pp. 11, 89. Schedule LXXV – Philippines.
12 *Id.* at 254–259.
13 *Id.* at 258.
14 *Id.* at 264–266.
15 *Id.* at 267–269.

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> Philippines' labor force; however, agriculture contributed less that 15[%] of the GDP in 2008. . . .
>
> While the Philippines is committed to improving market access for rice imports, the displacement effects of the expected surge in rice imports following the expiration of special treatment is expected to have large negative effects on income and livelihood security for farming household groups where the problem of poverty is already severe. This could also result in diverting resources from rice production, thereby compromising the food security of the country. The Philippines is also concerned that a sudden surge in rice imports following the expiration of special treatment could lead to greater social problems including political and economic stability.
>
> Nevertheless, since 2001, the Philippines has encouraged greater participation by the private sector in the importation of rice to complement the role of the National Food Authority (the government with the sole authority to import rice) in ensuring food security, and also to stimulate gradual and healthy competition in the domestic rice production as it becomes more market-oriented.
>
> In these exceptional circumstances, the Philippines requests this waiver from the obligations contained in Article 4.2 and paragraphs 8 and 10 of Section B of Annex 5 of the Agreement on Agriculture to permit the Philippines to increase its market access for rice . . . during the period 01 July 2012 – 30 June 2017.[16] (Emphasis supplied)

In the ensuing WTO sessions, the Council for Trade in Goods simply noted the Request for Waiver, and the Philippine government reported on ongoing negotiations and consultations with other interested members.[17] At the time these Petitions were filed, the Request for Waiver had yet to be definitely resolved.[18] It was only on July 24, 2014, pending these *certiorari* proceedings, that the WTO released a Decision on Waiver Relating to Special Treatment for Rice of the Philippines,[19] allowing a third concession until June 30, 2017 for the special treatment of rice.

Domestic laws governing rice importation

On the domestic plane, as early as 1972, then-President Ferdinand Marcos passed Presidential Decree No. 4, later amended by Presidential Decree Nos. 699 and 1485, "Proclaiming the Creation of the National Grains Authority and Providing Funds Therefor." Under Section 6(a)(xii) thereof, the

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16 *Id.* at 264–265.

17 *Id.* at 370–377. WTO, Committee on Agriculture, Summary Report of the Meeting Held on November 17, 2011, dated February 3, 2012, G/AG/R/65; *id.* at 378–402. WTO, Council for Trade in Goods, Minutes of the Meeting of the Council for Trade in Goods held on June 22, 2012, dated October 3, 2012, G/C/M/111; *id.* at 403–425. WTO, Council for Trade in Goods, Minutes of the Meeting of the Council for Trade in Goods held on November 26, 2012, dated October 3, 2012, G/C/M/112; *id.* at 426–449. WTO, Council for Trade in Goods, Minutes of the Meeting of the Council for Trade in Goods held on July 11, 2013, dated October 7, 2013, G/C/M/114.

18 *Id.* at 13.

19 *Rollo* (G.R. No. 211146), pp. 1203–1206.

National Grains Authority, the predecessor of the NFA,[20] was authorized to establish rules and regulations on the importation of rice, and to license, impose, and collect fees and charges for said importation.

In 1996, Republic Act No. 8178, or "An Act Replacing Quantitative Import Restrictions on Agricultural Products, Except Rice, With Tariffs, Creating the Agricultural Competitiveness Enhancement Fund, And For Other Purposes" was passed. With the explicit exception of rice, Section 2 of the law mandated the use of tariffs in lieu of non-tariff import restrictions to protect local producers of agricultural products, and Section 4 repealed various laws or provisions prescribing quantitative import restrictions or those empowering government bodies to impose such restrictions.

The powers of the NFA, formerly the National Grains Authority (NGA) included the following:

> (xii) to establish rules and regulations *governing the importation of rice and to license*, impose and collect fees and charges for said importation for the purpose of equalizing the selling price of such imported rice with normal prevailing domestic prices. (Emphasis supplied)

On March 22, 2013, the NFA issued Memorandum Circular No. AO-2K13-03-003 with the subject "General Guidelines in the Importation of Well-Milled Rice Under the Country Specific Quota (CSQ) of 163, 000 MT for the Year 2013" ("2013 NFA Rice Importation Guidelines").[21] In line with the government's policy of allowing the private sector to participate in rice importation when needed, the NFA allocated a total import volume of 163, 000 metric tons of rice from the stated source countries of Thailand, China, India, and Australia. The import volume was to be allocated to importers on a first come, first served basis, at a minimum of 2,000 metric tons and a maximum of 5,000 metric tons per importer for the year 2013. The 2013 NFA Rice Importation Guidelines provided that all interested NFA-licensed importers may apply to import by submitting the enumerated company documents, obtaining a Certificate of Eligibility, payment of duties/tariffs, obtaining a Notice of Allocation, submitting the enumerated shipment documents, and ultimately obtaining the Import Permit on a per bill of lading basis.[22]

The Injunction proceedings before the RTC

On December 5, 2013, Ngo filed a Complaint for Permanent Injunction with Prayer for a Temporary Restraining Order (TRO) and/or Preliminary

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20 Presidential Decree No. 1770 (1981).
21 *Rollo* (G.R. No. 211146), pp. 286–291.
22 *Id.*

Injunction[23] before Branch 16, RTC, Davao City, docketed as Civil Case No. 35,354-2013. He asserted in his complaint that although the Philippines filed a request with the WTO for a 5-year extension of the Special Treatment, such extension was not yet granted as of the date of his complaint. He alleged that the withholding of his rice shipments cost him expenses with respect to demurrage and storage fees, among others.[24] Ngo asserted that he had a legal right over the rice shipments pursuant to his agreement with Starcraft. He became the owner of the rice shipments upon payment of the down payment and had the right to cause the release of the rice shipments and to take possession and custody thereof.[25]

Significantly, Ngo claimed that the WTO Special Treatment was the only source of the Philippines' right to impose quantitative restrictions by way of import permits and import quotas.[26] Claiming irreparable injury as the further detention of the rice shipments can cause to his good business reputation, Ngo prayed that the district collector lift the restrictions on his imports and be preliminarily and permanently enjoined from seizing or holding these from implementing any hold orders, and doing any act that would prejudice Ngo while the propriety and validity of its actions are still subject to judicial determination.[27]

On January 14, 2015, private respondent Danilo G. Galang (Galang), filed a similar Complaint[28] making identical allegations and praying for substantially similar reliefs as Ngo. Galang alleged that during the course of his business, he had dealings with Ivy M. Souza (Souza) who was a rice trader, importer and sole proprietor of Bold Bidder Marketing and General Merchandise. In December 2013, Galang entered into an agreement with Souza, with the latter agreeing to sell Galang the rice shipments imported by her and were to be discharged in the Port of Manila. Ownership was allegedly transferred to Galang upon his payment for the rice shipments. The BOC refused to release Souza's rice importations because they were made without import permits from the NFA, hence, illegal under the 2013 NFA Rice Importation Guidelines. The Complaint filed by Galang was directed against the District Collector of the Port of Manila and filed before Branch 11, RTC, Manila City, docketed as Civil Case No. CV-14-131261.

In Civil Case No. 35,354-2013, Judge Emmanuel C. Carpio (Judge Carpio) found that, considering the expiry of the second concession on June 30, 2012, the District Collector of the Port of Davao's authority to seize and detain Ngo's shipments was disputable, which was an issue that required a

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23 *Id.* at 296–311. For: Permanent Injunction with Prayer for a Temporary Restraining Order and/or Preliminary Injunction.
24 *Id.* at 301–307.
25 *Id.* at 302.
26 *Id.* at 305.
27 *Id.* at 308–309.
28 *Rollo* (G.R. No. 211375), pp. 138–181. Captioned Complaint for Permanent Injunction with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction.

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full-blown hearing. Granting the preliminary injunction,[29] Judge Carpio disposed in his assailed Order[30] in this wise:

> Since the determination on whether or not the NFA can still exercise its authority to restrict the quantity of rice coming in the Philippines under the WTO Special Treatment after the expiration of said authority on June 30, 2012, needs full blown trial, the Court pending said trials finds the need to grant the injunctive relief sought for, because plaintiff has sufficiently established in his favor the requisites of the preliminary mandatory injunction, i.e. "xxx (a) the invasion of right sought to be protected is material and substantial; (b) the right of the complainant is clear and unmistakable; and (c) there is an urgent and paramount necessity for the writ to prevent serious damage, (citations omitted), as supported by the following:
>
> 1) Plaintiff's right of ownership of the imported rice because of:
>
> (a) the agreement between the Starcraft International Trading Corp. and plaintiff Joseph Mangupag Ngo; (Exhibit "D") and
> (b) his down payment of the value of the goods, payment of cost of shipment and demurrage;
>
> . . . .
>
> 2) Tariffs and customs duties were already paid by the Plaintiff, which payment was not contested by defendants' counsel, Atty. Dy Buco;
> 3) There is an urgent and paramount necessity for the writ to issue to prevent irreparable damage, because the goods subject matter of the instant case are perishable as acknowledged by counsel of the defendants.[31]
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> . . . .
>
> **FOR REASONS STATED**, pending trial, let a Writ of Preliminary Mandatory Injunction issue, upon Plaintiff's posting a bond in the amount of [PHP] 5,000,000.00 and upon payment of the required fees, ***enjoining and restraining defendant, all those acting for and in their behalf, and all their agents and responsible officers, from***:
>
> a. Seizing, alerting, and/or holding Plaintiff's rice shipments (***under House Bill of Lading Nos. MCPU 561501576; MCPU 561530836; MCPU MCC372735; MCPU MCC372738; MCPU MCC 381399; MCPU MCC372721; APLU074794947; APLU074794965; APLU0748005528)*** whose tariffs and customs duties are duly paid;
> b. Implementing any Alert Orders, Hold Orders, and issuances in relation to Plaintiff's rice shipments and/or refusing to lift any such orders or issuances;

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29 *Rollo* (G.R. No. 211146), p. 85. December 13, 2013 Order, directing the issuance of the writ of preliminary injunction; *id.* at 86–87. December 13, 2013 Writ of Preliminary Injunction.

30 *Id.* at 78–84. The December 12, 2013 Decision was penned by Presiding Judge Emmanuel C. Carpio of Branch 16, Regional Trial Court, Davao City.

31 *Id.* at 83–84.

c. Doing any act that would prejudice Plaintiff while the propriety and validity of its actions as enumerated in the preceding paragraphs, are still at issue and subject to judicial determination.

SO ORDERED.[32] (Emphasis in the original)

Meanwhile, in Civil Case No. CV-14-131261, following the approved bond of 10 Million Pesos posted through Visayan Surety and Insurance Corporation, Judge Cicero D. Jurado, Jr. (Judge Jurado) deemed a preliminary injunction necessary since the District Collector of the Port of Manila's continued detention of Galang's rice shipments constituted a material invasion of the latter's rights.[33] In the Amended Order,[34] Judge Jurado ordered the issuance of a writ of preliminary injunction:

The evidence presented by herein applicant displays that he has a clear and unmistakable right over the 480 container vans of sacks of rice now being withheld at the Bureau of Customs compound. Also, there is material and substantial invasion of such right considering the non-release of the said items, is a clear violation of such right. Third, there is an urgent and permanent necessity for the writ to prevent serious damage. The Court takes judicial notice that in the grains or rice industry once rice exceeds a certain period of time and not released to the market it becomes spoiled. Thus, the further retention of the said 480 container vans of sacks of rice would only result in its spoilage.

The Court is persuaded that a writ of preliminary injunction must therefore be issued.

WHEREFORE, foregoing premises considered, let a writ of preliminary injunction be issued in favor of BOLD BIDDER MARKETING AND GENERAL MERCHANDISE, from whom plaintiff Danilo G. Galang doing business under the name and style St. Hildegard Grains Enterprises, bought the rice shipments subject matter of this case, enjoining and restraining defendants Bureau of Customs, the District Collectors of the Ports of Manila, North Harbor and South Harbor, in their capacities as the incumbent District Collectors for the Ports of Manila, North and South Harbor and all persons acting for and in their behalf and all their agents from a) implementing NFA Memorandum Circular No. AO-2K13-03-003; b) seizing, alerting, and/or holding BOLD BIDDER MARKETING AND GENERAL MERCHANDISE and/or plaintiff's rice shipment referred in this petition, which the plaintiff may acquire by sale or by importation after the filing of this Petition; c) implementing any Alert Orders, Hold Orders, and issuances and/or refusing to lift any such orders or issuances in relation to BOLD BIDDER MARKETING AND GENERAL MERCHANDISE and/or plaintiff's rice shipments referred in this Petition and those shipments, similarly situated as those in the Petition, which the plaintiff may acquire by sale or by importation after the filing of this Petition; and d) doing any act that would prejudice BOLD BIDDER MARKETING AND GENERAL MERCHANDISE and/or plaintiff while

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32 *Id.* at 84.

33 *Rollo* (G.R. No. 211375), pp. 83–85. The January 23, 2014 Order in Civil Case No. CV-14-131261 was penned by Presiding Judge Cicero D. Jurado, Jr. of Branch 11, Regional Trial Court, Manila.

34 *Id.* at 89–91. The February 28, 2014 Amended Order in Civil Case No. CV-14-131261 was penned by Presiding Judge Cicero D. Jurado, Jr. of Branch 11, Regional Trial Court, Manila.

> the propriety and validity of its actions as enumerated in the preceding paragraphs, are still at issue and subject to judicial determination.
>
> The bond for the Issuance of a Writ of Preliminary Injunction Is set at TEN MILLION PESOS.[35] (Emphasis in the original)

The proceedings before this Court

On February 24, 2014, Secretary Proceso J. Alcala (Alcala), as Secretary of the Department of Agriculture (DA) and Chairperson of the NFA, as well as the BOC, represented by Commissioner John Phillip P. Sevilla (Sevilla) (petitioners), filed a Petition for *Certiorari* with application for TRO, *Status Quo Ante* Order and/or Writ of Preliminary Injunction before this Court. Upon the filing of the petition in G.R. No. 211146, this Court issued a Resolution[36] temporarily restraining Judge Carpio from implementing the assailed issuances and from further proceeding with the injunction hearing.[37] Following this Court's directive, Judge Carpio issued a March 18, 2014 Order suspending the proceedings in Civil Case No. 35,354-2013.

Thereafter, this Court issued a Resolution,[38] consolidating the petition in G.R. No. 211375 with G.R. No. 211146, and likewise preventing Judge Jurado from implementing his assailed orders and from continuing with the injunction proceedings.[39]

Following the above issuances, Ngo and Galang each filed an Urgent Motion and/or Manifestation for the Release of Perishable Goods (Rice) Under Bond,[40] stressing that the prolonged detention by the BOC of the rice

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35 *Id.* at 90–91.

36 *Rollo* (G.R. No. 211146), pp. 453–454. This Court's Resolution, February 25, 2014 (Notice) [*En Banc*].

37 ". . . Acting on the Petition for Certiorari (with Application for Temporary Restraining Order, Status Quo Ante Order and/or Writ of Preliminary Injunction), the Court Resolved, without giving due course to the petition, to:

. . . .

(b) **ISSUE** the **TEMPORARY RESTRAINING ORDER** prayed for, effective immediately and continuing until further orders from this Court, enjoining the (1) court *a quo* from implementing the assailed Orders dated December 12, 2013 and December 13, 2013, and Writ of Preliminary Injunction dated December 13, 2013; (2) court *a quo* from proceeding with the case *a quo* (Civil Case No. 35,354-13); and (3) private respondent Joseph Mangupag Ngo from undertaking any and all action with respect to the subject rice shipments."

38 *Rollo* (G.R. No. 211146), pp. 996-A to 996-C. This Court's Resolution, March 18, 2014 (Notice) [*En Banc*].

39 ". . . Acting on the Petition for Certiorari with Application for Temporary Restraining Order, Status Quo Ante Order and/or Writ of Preliminary Injunction, the Court Resolved, without giving due course to the petition, to:

. . . .

(b) **ISSUE** the **TEMPORARY RESTRAINING ORDER** prayed for, effective immediately and continuing until further orders from this Court, enjoining the (1) court *a quo* from implementing the assailed Orders dated January 23, 2014 and February 27, 2014, Amended Order dated February 28, 2014, and Writ of Preliminary Injunction dated January 24, 2014, as amended by the Order dated February 27, 2014; (2) court *a quo* from proceeding with the case *a quo* (Civil Case No. CV-14-131261); and (3) private respondents Danilo G. Galang and Ivy M. Souza from undertaking any and all action with respect to the subject rice shipments and any rice shipments similarly situated as those in the case *a quo* which they may acquire by sale or by importation after the filing of the case *a quo*;"

40 *Rollo* (G.R. No. 211146), pp. 463–471; *rollo* (G.R. No. 211375), pp. 288–297.

shipments will result to their deterioration, spoilage, and wastage. This Court denied these urgent motions in its Resolution as follows:[41]

> The Court resolves to DENY the said motions.
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> It must be emphasized that the BOC is not covered by temporary restraining orders issued in these cases. Hence, the said agency may proceed, as it may deem proper to the best advantage of the government, and undertake such procedures with regard to the subject rice shipments in its custody pursuant to the Tariff and Customs Code, as amended, including Sec. 2301 thereof, and other relevant laws, statutes, and regulations. Moreover, the Court cannot *a fortiori* now allow the release of the rice shipments to the said respondents because the Office of the Solicitor General disputes their ownership of the same.
>
> WHEREFORE, the separate Urgent Motions and/or Manifestations for the Release of Perishable Goods (Rice) Under Bond filed by respondent Joseph Mangupag Ngo in G.R. No. 211146 and respondent Danilo [G.] Galang in G.R. No. 211375, are DENIED for lack of merit.[42]

Private respondents Ngo, Galang, and Souza all sought the reconsideration of the Resolution.[43] However, in another Resolution,[44] this Court denied reconsideration, ruling that they merely appealed to equity while the law clearly directs the BOC to proceed with its mandate, and that they had not even clearly shown their legal right to the rice shipments. This Court expressed its inclination to rule on the main Petitions only after exhaustively going through the parties' submissions.

On September 30, 2014, petitioners filed with this Court a Manifestation stating[45] that the WTO had released a Decision on Waiver Relating to Special Treatment for Rice of the Philippines,[46] allowing a third concession from July 1, 2012 until June 30, 2017.

Much later in the proceedings, after this Court required the parties to move in the premises,[47] petitioners filed a Compliance and Manifestation,[48] pointing out that, on February 14, 2019, President Rodrigo Duterte signed into law Republic Act No. 11203, entitled "An Act Liberalizing the Importation, Exportation and Trading of Rice, Lifting for the Purpose the Quantitative Restriction on Rice, and for Other Purposes." Petitioners conceded that Republic Act No. 11203 amended Republic Act No. 8178, thus no longer subjecting rice imports to quantitative restrictions, and instead allowing only

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41 *Rollo* (G.R. No. 211146), pp. 996-N to 996-Q. This Court's Resolution, April 22, 2014 (Notice) [*En Banc*].
42 *Id.* at 996-O to 996-P.
43 *Rollo* (G.R. No. 211375), pp. 693–725.
44 *Rollo* (G.R. No. 211146), pp. 1344–1350. This Court's Resolution, June 23, 2015 (Notice) [*En Banc*].
45 *Id.* at 1186–1195.
46 *Id.* at 1203–1206.
47 *Id.* at 2192–2193. This Court's Resolution, October 15, 2019 (Notice) [*En Banc*].
48 *Id.* at 2204–2221.

tariffication of such commodity. This development notwithstanding, petitioners emphasized that these petitions must still be resolved since Republic Act No. 11203 took effect on March 5, 2019, whereas the subject rice shipments were imported sometime in 2013, when Republic Act No. 8178 had not yet been amended, and the 2013 NFA Rice Importation Guidelines was in full effect, where NFA import licenses were still required. Thus, although Republic Act No. 11203 had already superseded the 2013 NFA Rice Importation Guidelines,[49] if only to properly scrutinize the assailed orders, this Court should appreciate the implications of this issuance during the time it was in effect.

Summary of arguments

Petitioners primarily assert that public respondents Judge Carpio and Judge Galang committed grave abuse of discretion in upholding private respondents' argument that no NFA import permits were necessary for the subject rice shipments. Petitioners claim that they had the requisite standing to file such petitions as they were real parties in interest in the case. They claim that public respondents committed grave abuse of discretion in granting the writ of preliminary injunction despite the private respondents' failure to demonstrate a clear and unmistakable legal right that ought to be protected by the courts, and the failure to establish an injury that is irreparable, which is understood in jurisprudence as unquantifiable. Additionally, they contended that public respondents, in granting the said injunctions, effectively allowed a collateral attack on the 2013 NFA Rice Importation Guidelines, contravening the presumption of regularity accorded to it. They claim that the private respondents cannot anchor their claim of rights on the WTO agreements as only member states may bring suits in relation to any violation thereof. On the procedural aspect, petitioners claim that direct resort to this Court's jurisdiction was proper because of the urgent matters of national interest involved.[50]

In contradicting the instant Petitions, private respondents Galang and Souza raised several procedural concerns. They assert that DA Secretary Alcala and Bureau Commissioner Sevilla were not original parties against whom the civil cases were filed and against whom the Preliminary Injunction subject of this case was issued. They also question the propriety of filing a Petition for *Certiorari* before this Court, for alleged failure to demonstrate grave abuse of discretion on the part of public respondents and for disregard of the hierarchy of courts. They further assert that petitioners were not deprived of due process as the district collectors of the ports of Manila, north harbor and south harbor, were duly notified of the complaint and the hearings on the application for the issuance of a TRO and preliminary injunction.

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[49] Republic Act No. 11203, sec. 19: "*Repealing Clause.* — All laws, decrees, executive issuances, rules and regulations inconsistent with this Act are hereby repealed or modified accordingly."

[50] *Rollo* (G.R. No. 211146), pp. 1054–1072. *See also* petitioners' Reply dated July 28, 2014; *id.* at 1578–1679. Consolidated Memorandum dated July 25, 2016.

Finally, they insist that the imminent damage or injury caused to them is irreparable. Additionally, in their Joint Memorandum,[51] they appended the WTO's Introduction of Harmonized System Changes into WTO Schedules of Tariff Concessions on January 1, 1996, which demonstrates that retroactive effects of waiver decisions must be explicitly provided for, while the WTO's waiver decision on rice imports provided no such retroactivity.[52]

Ngo raised substantially the same arguments as Galang and Souza. He argued in his Comment[53] that the 2013 NFA Rice Importation Guidelines was invalid at the time the District Collector enforced it, as it was not filed with the University of the Philippines Office of the National Administrative Register; and that then-Justice Secretary Leila De Lima actually issued a legal opinion to Secretary Alcala, upon the latter's request, advising that the NFA could no longer require import licenses as the June 30, 2012 waiver extension had lapsed.

In his Comment,[54] Judge Carpio proffered that in determining whether the writ of preliminary injunction was properly issued, the fundamental issue is whether, after the June 30, 2012 deadline of the waiver extension, the NFA still had the authority to require licenses for rice imports.

Issues

On the procedural aspect, we determine the salient issues to be addressed as:

I.

Whether the instant case is rendered moot and academic with the enactment of Republic Act No. 11203; and

II.

Whether Secretary Proceso Alcala and Commissioner John Philip Sevilla have legal standing to institute the instant petitions for *certiorari* despite the fact that they were not original parties in the civil cases at the court *a quo*.

On the substantive aspect, the central issue for this case is whether public respondents acted with grave abuse of discretion in issuing the writs of preliminary injunction against the District Collectors' seizure and detention of private respondents' rice shipments. This can be resolved by threshing out the

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51 *Id.* at 1680–1813.
52 *Id.* at 1960.
53 *Id.* at 496–594.
54 *Id.* at 821–834.

sub-issue of whether private respondents have established a clear legal right *in esse* to import rice at the time of this controversy.

This Court's Ruling

We are well aware of the multifarious legal interests involved in the instant factual milieu and its entanglement between several timeless concerns such as the nation's food security and international free trade *vis-à-vis* protectionist policies.

We make explicit, however, that it is not within the province of this Court to comment on the benefits and disadvantages of either of the above economic policies as these are dynamic issues that is better left to the wisdom of the Executive branch, headed by the Chief Executive, who likewise stands as the country's chief architect for foreign policy.[55]

This Court has no intention of venturing outside the narrow path of determining the existence of a grave abuse of discretion. Any extensive and substantive discussion herein—on the nature of the WTO Agreement, its differentiated treatment between developed and developing countries, and its dispute settlement mechanisms; the principle of *pacta sunt servanda*; the political question doctrine; the President's plenary power to manage international relations; fundamental rights and property rights; statutory construction of Republic Act No. 9178—is deemed necessary *only* because of the deep sub-issue as to whether private respondents met the requirement of having a clear and unmistakable right.

The enactment of Republic Act No. 11203 does not render the instant case moot and academic

The rule is that a case becomes moot when the resolution of the issue would no longer serve a practical value. This was explained in *Express Telecommunications Co. Inc. v. AZ Communications, Inc.*[56] as follows:

> A case is moot when a supervening event has terminated the legal issue between the parties, such that this Court is left with nothing to resolve. It can no longer grant any relief or enforce any right, and anything it says on the matter will have no practical use or value. In *Peñafrancia Sugar Mill, Inc. v. Sugar Regulatory Administration:*
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> > A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of

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55 *Senator Aquilino Pimentel, Jr., et al. v. Office of the Executive Secretary, et al.*, 501 Phil. 303, 313 (2005).

56 877 Phil. 44 (2020) [Per J. Leonen, Third Division].

> supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use. In such instance, there is no actual substantial relief which a petitioner would be entitled to, and which would be negated by the dismissal of the petition. Courts generally decline jurisdiction over such case or dismiss it on the ground of mootness. This is because the judgment will not serve any useful purpose or have any practical legal effect because, in the nature of things, it cannot be enforced.
>
> In this case, the supervening issuance of Sugar Order No. 5, s. 2013-2014 which revoked the effectivity of the Assailed Sugar Orders has mooted the main issue in the case *a quo* - that is the validity of the Assailed Sugar Orders. Thus, in view of this circumstance, resolving the procedural issue on forum-shopping as herein raised would not afford the parties any substantial relief or have any practical legal effect on the case. (Citations omitted)
>
> Without any legal relief that may be granted, courts generally decline to resolve moot cases, lest the ruling result in a mere advisory opinion. This rule stems from this Court's judicial power, which is limited to settling actual cases and controversies involving legally demandable and enforceable rights. There must be a judicially resolvable conflict involving legal rights, with one party asserting a claim and the other opposing it.[57] (Citations omitted)

At first glance, it would appear that the instant Petitions may have already been mooted by the enactment of Republic Act No. 11203, as well as the issuance of the Resolution,[58] which held that the BOC, not being covered by the injunctions issued by this Court, may proceed with the exercise of its mandate in accordance with law.

Nonetheless, courts will decide cases, otherwise moot and academic if: *first*, there is a grave violation of the Constitution; *second*, the exceptional character of the situation and the paramount public interest is involved; *third*, when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar and the public; and *fourth*, the case is capable of repetition yet evading review.[59]

The instant case falls under the fourth exception. The Philippines' second concession expired on June 30, 2012, while a third concession was granted only on July 24, 2014. Consequently, an interval occurred within which the Philippines was not covered by an exemption from the pertinent provisions of the WTO. During this period, several rice shipments would have to pass by the District Collectors who may have relied on the provisions of

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57 *Id.* at 53–54.

58 *Rollo* (G.R. No. 211146), pp. 996-N to 996-Q.

59 *Int'l. Service for the Acquisition of Agri-Biotech Applications, Inc. v. Greenpeace Southeast Asia (Phils.), et al.*, 791 Phil. 243, 259 (2016) [Per J. Perlas-Bernabe, *En Banc*].

2013 NFA Guidelines on Rice Importation. As such, it is reasonable to believe that those similarly situated will bring a similar action as in the instant case. There is thus, a necessity to resolve the instant case and lay to rest the pending issues.

Petitioners Alcala and Sevilla have legal standing to institute the instant petitions for certiorari

Private respondents aver that petitioners do not have legal standing to initiate the instant Petitions for *Certiorari*, in view of the fact that the only parties impleaded in the original complaints were the District Collector of the Port of Manila for Civil Case No. CV-14-131261; and the District Collector of the Port of Davao for Civil Case No. 35,354-2013.

They are misguided.

First, the Rule 3, Section 2 of the Rules of Civil Procedure provides who may be considered as parties in interest:

> Section 2. *Parties in interest.* — A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest. (2a)

We agree with the position of the petitioners that both District Collectors impleaded in the injunction proceedings are officers within the BOC, one of the petitioners in this case. The injury to be suffered by the BOC is the infringement of its mandate to "implement an effective revenue collection by preventing and suppressing smuggling and the entry of prohibited imported goods."[60] The BOC was appropriately represented in the present case by its Commissioner, Sevilla.

The other petitioner, Alcala, was the former Secretary of DA. Given that the complaint for injunction clearly questioned the requirement of import permits under the 2013 NFA Guidelines on Imported Rice, the mandate of the NFA was likewise attacked. As the Chairperson of the NFA Council pursuant to Section 4 of Presidential Decree No. 4, Alcala was an appropriate representative for the filing of this case.

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[60] General Appropriations Act FY 2015, Section B: Bureau of Customs, *available at* https://www.dbm.gov.ph/wpcontent/uploads/GAA/GAA2015/GAA%202015%20Volume%20I/DOF/B.pdf (last accessed on September 25, 2022).

The grounds for preliminary injunction

In order to determine the propriety of the issued preliminary injunction, it is imperative to begin with Rule 58, Section 3 of the Rules of Civil Procedure, as amended:

> Section 3. *Grounds for issuance of preliminary injunction.* — A preliminary injunction may be granted when it is established:
>
> (a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;
>
> (b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or
>
> (c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

Jurisprudence parses out this provision into four requisites:

> (1) the applicant must have a clear and unmistakable right, that is a right *in esse;*
>
> (2) there is a material and substantial invasion of such right;
>
> (3) there is an urgent need for the writ to prevent irreparable injury to the applicant; and
>
> (4) no other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury.[61]

On the procedural aspect, Section 4 of the same Rule indicates, among others, that a preliminary injunction or temporary restraining order may be granted only when the application shows facts entitling the applicant to the relief demanded, and a bond is executed to the party or person enjoined, in an amount to be fixed by the court, to the effect that the applicant will pay to such party or person all damages which he may sustain by reason of the injunction or temporary restraining order if the court should finally decide that the applicant was not entitled thereto.

I. There is no right in esse to import goods

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[61] *Amalgamated Motors Philippines, Inc. v. Secretary of the Department of Transportation and Communications*, G.R. No. 206042, July 4, 2022 [Per J. J. Lopez, Second Division], citing *Marquez v. Sanchez*, 544 Phil. 507, 517–518 (2007) [Per J. Veloso, Jr., Second Division].

The existence of a right *in esse* is the first requisite. Case law provides that a right *in esse* is one that is clear and unmistakable, and one clearly founded on or granted by law, or is enforceable as a matter of law.[62] It is not enough to merely allege a right. The existence of a right to be protected, as well as the violative acts against which the writ is sought to be issued, must be established.[63]

At the outset, it bears stating that private respondents did not in fact possess the import permit as required by the NFA. Ngo admitted this in his Judicial Affidavit[64] before the permanent injunction case in the RTC:

> Q16: If you know, what is the basis of the BOC District Collector of the Port of Davao in refusing to release the Rice Shipments?
>
> A: The Rice Shipments have no import permit.
>
> Q17: What actions did you take, if any, when the BOC District Collector of the Port of Davao refused to release the Rice Shipments?
>
> A: The BOC District Collector of the Port of Davao was informed that no import permit is required or needed for the Rice Shipments because the country no longer has any right to impose quantitative restrictions on the importation of rice in the Philippines due to the expiration of the special treatment granted to the Philippines by the World Trade Organization (WTO) – General Agreement on Tariffs and Trade (GATT) allowing it to impose quantitative restrictions on rice, by way of import permits, on June 30, 2012.[65]

The same is true for Galang, who admitted in his testimony before the trial court[66] that the reason given by the Bureau of Customs for refusing to release his rice shipments was the absence of the NFA import permit.[67]

Given these facts, did private respondents have a clear and unmistakable right in law to import rice regardless of the knowledge, assessment, and approval of the NFA which results in its issuance of an import permit?

We rule in the negative.

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62 *Lim v. BPI Agricultural Development Bank*, 628 Phil. 601, 607 (2010) [Per J. Carpio-Morales, First Division].
63 See *Duvaz Corporation v. Export and Industry Bank*, 551 Phil. 382, 391 (2007).
64 *Rollo* (G.R. 211146), pp. 615–621.
65 *Id.* at 619.
66 *Rollo* (G.R. No. 211375), pp. 664–686.
67 *Id.* at 681.

Importation is defined as the act of bringing in of goods from a foreign territory into Philippine territory, whether for consumption, warehousing, or admission.[68]

Based on the above definition, there is nothing about importation that will justify its classification as a clear and unmistakable right that is clearly founded on or granted by law, much less as a fundamental right.

No clear and unmistakable right established under the law

A review of the laws involved—including, under the doctrine of incorporation,[69] the WTO and its appendices—would also negate the establishment of such right.

We emphasize that the issue before this Court is narrowly drawn on the propriety of the public respondents' issuances of writs of preliminary injunction and the factual and legal bases relied upon in doing so.

To be clear, it has never been the mandate of the judicial department to grant rights to individuals. Especially in injunctive proceedings, plaintiffs must be able to prove that such right already exists. With regard to the deregulated importation of rice, private respondents posit that the WTO serves as their source of rights. We hold, however, that questions pertaining to import quotas, would fit into practically all the identifiers of a political question under the classic case of *Baker v. Carr*,[70] namely:

> a) A textually demonstrable constitutional commitment of the issue to a coordinate political department;
> b) A lack of judicially discoverable and manageable standards for resolving it;
> c) The impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion;
> d) The impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government;
> e) An unusual need for unquestioning adherence to a political decision already made; or
> f) The potentiality of embarrassment from multifarious pronouncements made by various departments on the one question.[71] (Citation omitted)

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[68] Republic Act No. 10863, "An Act Modernizing the Customs and Tariff Administration," sec. 102(z).

[69] The doctrine of incorporation, as expressed in Article II, Section 2 of the Constitution, provides that the Philippines adopts the generally accepted principles of international law and international jurisprudence as part of the law of the land and adheres to the policy of peace, cooperation, and amity with all nations. See *Bayan Muna v. Romulo, et al.*, 656 Phil. 246, 267–268 (2011) [Per J. Velasco, Jr., *En Banc*].

[70] 369 U.S. 186, cited in *Congressman Garcia v. The Executive Secretary, et al.*, 602 Phil. 64 (2009) [Per J. Brion, *En Banc*].

[71] *Id.* at 74.

This case concerns the subject matter of import quotas. Central to the 2013 NFA Guidelines for Rice Importation was the NFA's establishment of a Country Specific Quota (CSQ) of 163, 000 MT, where the import volume was to be allocated to importers on a first-come, first-served basis. No less than the Constitution provides a textually demonstrable constitutional commitment of the issue of import quotas to a coordinate political department:

> ARTICLE VI
>
> The Legislative Department
>
> x x x x
>
> Section 28. . . .
>
> (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.[72] (Emphasis supplied)

This provision had been the subject of a previous controversy before this Court. In the 2005 case of *Southern Cross Cement Corp. v. Cement Manufacturers Association of the Phils.*,[73] this Court emphasized the inherent power of the legislature over the subject matter of import quotas of foreign goods:

> (1) **It is Congress which authorizes the President to impose tariff rates, import and export quotas, tonnage and wharfage dues, and other duties or imports.** 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.

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[72] CONST., art. VI., sec. 28, par. 2. (Emphasis supplied)
[73] 503 Phil. 485 (2005) [Per J. Tinga, *En Banc*].

> 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 good x x x.** 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.[74] (Emphasis in the original)

Needless to say, it is not within the province of this Court to accord rights—such rights must be clearly provided by Congress, and proven to apply to the claimant.

Presidential Decree No. 4, later amended by Presidential Decree Nos. 699 and 1485, created the National Grains Authority, predecessor of the NFA[75] which was authorized to establish rules and regulations on the importation of rice, and to license, impose, and collect fees and charges for said importation.

The enactment of Republic Act No. 8178 on March 28, 1996 provided a regime of quantitative restriction for rice imports despite the mandatory tariffication of other agricultural products:

> Section 2. *Declaration of Policy.* — It is the policy of the State to make the country's agricultural sector viable, efficient and globally competitive. The State adopts the use of tariffs in lieu of non-tariff import restrictions to protect local producers of agricultural products, *except in the case of rice, which will continue to have quantitative import restrictions.* (Emphasis supplied)

Further, Republic Act No. 8178 expanded the powers of the NFA to include the establishment of rules for licensing, importing and collection of fees and charges for rice importation:

> Sec. 6(a) *Powers.* —
>
> (xii) To establish rules and regulations governing the importation of rice and to license, impose and collect fees and charges for said importation for the purpose of equalizing the selling price of such imported rice with normal prevailing domestic prices.
>
> In the exercise of this power, the Council after consultation with the Office of the President shall first certify to a shortage of rice that may occur as a result of a short-fall in production, a critical demand-supply gap, a state of calamity or other verified reasons that may warrant the need for importation: *Provided*, that this requirement shall not apply to the importation of rice

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74 *Id.* at 527.

75 Reconstituted pursuant to Presidential Decree No. 1770, January 14, 1981.

> equivalent to the Minimum Access Volume obligation of the Philippines under the WTO. The Authority shall undertake direct importation of rice or it may allocate import quotas among certified and licensed importers, and the distribution thereof through cooperatives and other marketing channels, at prices to be determined by the Council regardless of existing floor prices and the subsidy thereof, if any, shall be borne by the National Government.

A review of Republic Act No. 8178, enacted after the Philippines' concession to the WTO Agreement, reveals that it does not contain any sunset clause to indicate that the effectivity of the quantitative restrictions on rice were contingent on external events outside the scope of the text of the law, i.e., the grant or denial by the WTO of the Philippines' requests for special treatment. To hold the contrary—that an expiry date on the effectivity of laws may be based on external, global events—would produce a significant amount of instability to the State.

It was on the basis of this authority that the NFA issued the subject 2013 NFA Rice Importation Guidelines, which provided that all interested NFA-licensed importers may apply to import by submitting the enumerated company documents, obtaining a Certificate of Eligibility, payment of duties/tariffs, obtaining a Notice of Allocation, submitting the enumerated shipment documents, and ultimately obtaining the Import Permit on a per bill of lading basis.

Given legal foundations behind the NFA's requirements, this Court would be hard-pressed to declare the existence of a clear and unmistakable right to import rice regardless of adherence to the guidelines set by the NFA, which acted according to its mandate.

To be clear, in upholding the requirement of having an import license permit, as supported by Republic Act No. 8178, this Court is in no way intending to violate our obligations under the doctrine of *pacta sunt servanda* which mandates that "international agreements must be performed in good faith."[76] As Associate Justice Maria Filomena D. Singh astutely stated—in ruling that the NFA had such authority, this Court does not seek to embarrass the Philippines in the international stage. Rather, it must reframe its perspective as a domestic court, resolving domestic issues, taking into consideration the country's international commitments.[77]

Associate Justice Amy C. Lazaro-Javier emphasized that the President's power in dealing with international relations is plenary in the sense

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[76] *Manila International Airport Authority v. Commission on Audit*, 865 Phil. 526, 567 (2019) [Per C.J. Bersamin, *En Banc*].

[77] *See* Opinion of Associate Justice Maria Filomena D. Singh in *Alcala v. Jurado and Carpio*, April 18, 2023, p. 15.

that only express limitations circumscribe this power.[78] To cite the recent case of *Esmero v. Duterte*:[79]

> *As the sole organ of our foreign relations and the constitutionally assigned chief architect of our foreign policy, the President is vested with the exclusive power to conduct and manage the country's interface with other states and governments*. Being the principal representative of the Philippines, the Chief Executive speaks and listens for the nation; initiates, maintains, and develops diplomatic relations with other states and governments; negotiates and enters into international agreements; promotes trade, investments, tourism and other economic relations; and settles international disputes with other states.[80] (Emphasis supplied and citation omitted)

We cannot overlook the fact that negotiations were initiated by the Executive branch *before* the lapse of the second concession and were pending approval during the same period. As Justice Lazaro-Javier further remarked, the injunctive orders issued by Judge Carpio and Judge Jurado were clearly out-of-step with the legal doctrine that textually commits foreign relations exclusively to the President and his or her subalterns.[81]

Between the power of the executive department to negotiate with the WTO as they deem fit, and the power of the judicial department to affirm the existence of rights based on the WTO instruments, there is no reason in this case to unduly aggrandize the latter, and in effect, diminish the former.

In any case, the WTO Agreement itself provides justification for the executive's course of action in maintaining status quo while awaiting the decision on their request for a third concession, *a request which was made before the lapse of the second concession.* For example, consideration given by the WTO Agreement to developing companies has already been the subject of discourse by this Court, which, in the case of *Tañada v. Angara*,[82] cited the practice of "decision-making by consensus"[83] in the WTO Agreement and the availability of waivers for obligations under Article IX, Sections 1 and 3 thereof. As discussed by this Court:

> Upon the other hand, respondents maintain that the WTO itself has *some built-in advantages to protect weak and developing economies, which comprise the vast majority of its members*. Unlike in the UN where major states have permanent seats and veto powers in the Security Council, in the WTO, decisions are made on the basis of sovereign equality, with each

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78 *See* Opinion of Associate Justice Amy C. Lazaro-Javier in *Alcala v. Jurado and Carpio*, April 18, 2023, p. 5.

79 G.R. No. 256288, July 29, 2021 [Per J. Zalameda, *En Banc*].

80 *Id.*

81 *See* Opinion of Associate Justice Amy C. Lazaro-Javier in *Alcala v. Jurado and Carpio*, April 18, 2023, p. 11.

82 338 Phil. 546 (1997).

83 *See* Marrakesh Agreement Establishing the World Trade Organization or "WTO Agreement", *available at* https://www.wto.org/english/docs_e/legal_e/04-wto_e.htm> (last accessed on September 19, 2022).

member's vote equal in weight to that of any other. There is no WTO equivalent of the UN Security Council.

> "WTO decides by consensus whenever possible, otherwise, decisions of the Ministerial Conference and the General Council shall be taken by the majority of the votes cast, except in cases of interpretation of the Agreement or waiver of the obligation of a member which would require three fourths vote. Amendments would require two thirds vote in general. Amendments to MFN provisions and the Amendments provision will require assent of all members. Any member may withdraw from the Agreement upon the expiration of six months from the date of notice of withdrawals."

Hence, poor countries can protect their common interests more effectively through the WTO than through one-on-one negotiations with developed countries. Within the WTO, developing countries can form powerful blocs to push their economic agenda more decisively than outside the Organization. This is not merely a matter of practical alliances but a negotiating strategy rooted in law. *Thus, the basic principles underlying the WTO Agreement recognize the need of developing countries like the Philippines to "share in the growth in international trade commensurate with the needs of their economic development."* These basic principles are found in the preamble of the WTO Agreement as follows:

> The Parties to this Agreement,
>
> Recognizing that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so *in a manner consistent with their respective needs and concerns at different levels of economic development*,
>
> Recognizing further that there is need for positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a *share in the growth in international trade commensurate with the needs of their economic development.*[84] (Emphasis supplied and citation omitted)

In said case, this Court proceeded to enumerate examples of the built-in mechanisms in the WTO that protect developing countries with regard to tariff reductions, domestic subsidies, export subsidies, and unfair foreign competition by member states, thus:

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[84] *Tañada v. Angara, supra* note 82, at 585-586.

Specific WTO Provisos Protect Developing Countries

So too, the Solicitor General points out that pursuant to and consistent with the foregoing basic principles, the WTO Agreement grants developing *countries a more lenient treatment, giving their domestic industries some protection from the rush of foreign competition.* Thus, with respect to tariffs in general, preferential treatment is given to developing countries in terms of the amount of tariff reduction and the period within which the reduction is to be spread out. Specifically, GATT requires an average tariff reduction rate of 36% for *developed countries* to be effected within a period of six (6) years while *developing countries* — including the Philippines — are required to effect an average tariff reduction of only 24% within ten (10) years.

In respect to *domestic* subsidy, GATT requires *developed countries* to reduce domestic support to agricultural products by 20% over six (6) years, as compared to only 13% *for developing* countries to be effected within ten (10) years.

In regard to export subsidy for agricultural products, GATT requires *developed countries* to reduce their budgetary outlays for export subsidy *by* 36% and export volumes receiving export subsidy by 21% within a period of six (6) years. For *developing countries*, however, the reduction rate is only two-third*s* of that prescribed for developed countries and a longer period of ten (10) years within which to effect such reduction.

Moreover, GATT itself has provided built-in protection from unfair foreign competition and trade practices including anti-dumping measures, countervailing measures and safeguards against import surges. Where local businesses are jeopardized by unfair foreign competition, the Philippines can avail of these measures. There is hardly therefore any basis for the statement that under the WTO, local industries and enterprises will all be wiped out and that Filipinos will be deprived of control of the economy. *Quite the contrary, the weaker situations of developing nations like the Philippines have been taken into accoun*t[.][85] (Emphasis supplied)

In the same way that the WTO provides assurances to developing countries in the aspects of tariff reductions, domestic subsidies, export subsidies, and unfair foreign competition, there are special considerations with regard to the rules on market access,[86] which is the pertinent issue in this case. The Agreement on Agriculture provides the following general rule and exception with regard to market access:

Part III. Article 4. Market Access

1. Market access concessions contained in Schedules relate to bindings and reductions of tariffs, and to other market access commitments as specified therein.

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[85] *Id.* at 587–588.

[86] Market access for goods in the WTO means *the conditions, tariff and non-tariff measures, agreed by members for the entry of specific goods into their markets.* Tariff commitments for goods are set out in each member's schedules of concessions on goods, *available at* https://www.wto.org/english/tratop_e/markacc_e/markacc_e.htm#:~:text=Market%20access%20for%20goods%20in,schedules%20of%20concessions%20on%20goods. (last accessed on September 19, 2022) (Emphasis supplied)

> 2. Members shall not maintain, resort to, or revert to any measures of the kind which have been required to be converted into ordinary customs duties, **except** as otherwise provided for in Article 5 and Annex 5.[87]

The second paragraph recognizes instances where market access may be increased, effectively restricting the importation of certain goods, and refers to Annex 5 of the same document. The relevant Section under Annex 5, in turn, explicitly provides an exception for agricultural products which are considered as a predominant staple in the traditional diet in developing countries, following certain conditions as stated. We reproduce the Section extensively in order to demonstrate the complex and collegial nature of the negotiations and decision-making processes which result in the grant of a special treatment:

> Section B
>
> 7. The provisions of paragraph 2 of Article 4 **shall also not apply with effect from the entry into force of the WTO Agreement to a primary agricultural product that is the predominant staple in the traditional diet of a developing country Member** and in respect of which the following conditions, in addition to those specified in paragraph 1(a) through 1(d), as they apply to the products concerned, are complied with:
>
> x x x x
>
> 8. **Any negotiation on the question of whether there can be a continuation of the special treatment** as set out in paragraph 7 after the end of the 10th year following the beginning of the implementation period **shall be initiated and completed within the time-frame of the 10th year itself following the beginning of the implementation period.**
>
> 9. If it is agreed as a result of the negotiation referred to in paragraph 8 that a Member may continue to apply the special treatment, such Member shall confer additional and acceptable concessions as determined in that negotiation.
>
> 10. In the event that special treatment under paragraph 7 is not to be continued beyond the 10th year following the beginning of the implementation period, the products concerned shall be subject to ordinary customs duties, established on the basis of a tariff equivalent to be calculated in accordance with the guidelines prescribed in the attachment hereto, which shall be bound in the Schedule of the Member concerned. In other respects, the provisions of paragraph 6 shall apply as modified by the relevant special and differential treatment accorded to developing country Members under this Agreement.[88] (Emphasis in the original)

Paragraph 8 of Annex 5, Section B in the provision quoted above mentions a timeline for the initiation and completion for negotiations regarding the special agreement. It bears noting, however, that when the

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[87] World Trade Organization, *available at* https://www.wto.org/english/docs_e/legal_e/14-ag_01_e.htm#fnt-1. (last accessed on September 19, 2022)

[88] *Id.*

Philippines was granted an extension of seven years, or until 2012, it was also bound by the provisions of the Extension Agreement which stated that "any continuation of special treatment for rice shall be contingent on the outcome of the Doha Development Agenda (DDA)."[89] As it turned out, however, the Doha Development Agenda negotiations were not completed before June 30, 2012. The Philippines' concurrence to the seven-year extension was likewise premised on the understanding that the outcome of the Doha Development Agenda negotiations would provide an alternative special mechanism that would cushion any negative impacts of liberalization on rice on its food and livelihood security.[90] This prompted the Philippines to submit a request to the WTO Council on Trade in Goods for the continuation of its special treatment for rice[91] and to continue its talks with the other countries to support its request for a waiver, resulting in the eventual Decision on Waiver Relating to Special Treatment for Rice of the Philippines,[92] allowing a third concession until June 30, 2017.[93]

Certainly, the simplistic approach by private respondents to the Philippines' relationship with the WTO and its member countries was a disregard of the complexities and intricacies that accompany trade and international relations.

As aptly observed by Senior Associate Justice Marvic M. V. F. Leonen, the WTO, its Agreement on Agriculture and its Annexes, do not provide unilateral fines or penalties to be meted out by the WTO or other member countries for any derogation therefrom.

Further, the WTO follows a dispute settlement mechanism, as detailed in Annex 2 of the WTO Agreement for[94] the Dispute Settlement Understanding which covers disputes concerning the violation of trade rules, i.e., "situations in which a Member considers that any benefits accruing to it directly or indirectly under the covered agreements are being impaired by measures taken by another Member[.]"[95] The Dispute Settlement Understanding provides for a supranational dispute settlement mechanism, under which Member-States are the interested parties precisely because the disputes pertain to official actions by other Member-States that detract from their undertakings under the WTO Agreement and related instruments. The WTO itself gives an overview of this framework in this manner:

> Dispute settlement is the central pillar of the multilateral trading system, and the WTO's unique contribution to the stability of the global

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89 *Rollo* (G.R. No. 211146), p. 264.
90 *Id.*
91 *Id.*
92 *Id.* at 1203–1206.
93 *Id.*
94 World Trade Organization, *available at* https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm (last accessed on September 19, 2022).
95 Dispute Settlement Understanding, art. III(3).

> economy. Without a means of settling disputes, the rules-based system would be less effective because the rules could not be enforced. The WTO's procedure underscores the rule of law, and it makes the trading system more secure and predictable. The system is based on clearly-defined rules, with timetables for completing a case. First rulings are made by a panel and endorsed (or rejected) by the WTO's full membership. Appeals based on points of law are possible.
>
> *However, the point is not to pass judgement. The priority is to settle disputes, through consultations if possible. By January 2008, only about 136 of the nearly 369 cases had reached the full panel process. Most of the rest have either been notified as settled "out of court" or remain in a prolonged consultation phase — some since 1995.*
>
> . . . .
>
> Although much of the procedure does resemble a court or tribunal, the preferred solution is for the countries concerned to discuss their problems and settle the dispute by themselves. *The first stage is therefore consultations between the governments concerned, and even when the case has progressed to other stages, consultation and mediation are still always possible.*[96] (Emphasis supplied)

It can be gleaned from above that the trade rules provided in the WTO Agreement are highly contextualized, qualified, and consultative. This is further compounded by the inherent dynamic nature of trade agreements, ever evolving according to multifarious factors such as geopolitics, local productivity, exchange rates, inflation, and demand. When understood in this context, private respondents' brazen act of importation without a permit during the gap of the second concession's expiry and the grant for the third concession was clearly a gamble that they made at their own risk.

It is likewise important to understand the key principles[97] of the WTO which specifically include "support for less developed countries" in the recognition that over three-quarters of WTO members are developing economies or in transition to market economies.[98]

Not an unqualified property right

Private respondents assert that by virtue of their ownership of the subject rice shipments, they have a clear legal right to the injunctive relief.

Assailing this, petitioners highlight the fact that the bills of lading were in the name of Starcraft instead of Ngo in Civil Case No. 35,354-2013; whereas in Civil Case No. CV-14-131261, the bills are named under Bold

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96 World Trade Organization, *available at* https://www.wto.org/english/thewto_e/whatis_e/tif_e/disp1_e.htm (last accessed on September 19, 2022).

97 World Trade Organization, *available at* https://www.wto.org/english/thewto_e/whatis_e/what_stand_for_e.htm> (last accessed on September 19, 2022).

98 *Id.*

Bidder Marketing and General Merchandising instead of Galang. Both sets of bills are marked "non-negotiable."

We clarify this point. A bill of lading operates both as a receipt, reciting the details of the goods shipped; and as a contract, naming the contracting parties, including the consignee, and fixing the rights and obligations assumed.[99] It operates as an agreement to transport and deliver the goods at a specified place to a person named or on his or her order.[100] As such, it is merely a convenient commercial instrument designed to protect the importer or consignee.[101]

The non-negotiability of the bills of lading is material only for purposes of identifying to whom the shipper will release the cargo. It becomes relevant particularly in instances of multiple claimants of the shipments. In no way does it preclude the consignee from transferring ownership over the shipments, even prior to delivery, as Ngo and Starcraft did pursuant to their Agreement, and as Galang and Souza likewise transacted. In resolving ownership, non-negotiability of a bill of lading does not defeat private respondents' rights.

In this case, the Agreement in Civil Case No. 35,354-2013 pertains to a sale by Starcraft and purchase by Ngo of rice shipments. Pursuant to Article 4 therein, "[t]itle to the Goods shall be transferred from the Seller to the Buyer upon payment of the down payment for the Goods on a per sales order/shipment basis." Meanwhile, Article 5 therein indicates that, while Starcraft is authorized to process the release of the shipments from the BOC, Ngo, as the owner, is not precluded from taking initiative in the manner he deems appropriate to secure such release. Undisputed from the records of Civil Case No. 35,354-2013 are Ngo's testimony and exhibits[102] showing that he had already paid for the rice shipments, prompting the transfer of title to him.

Nevertheless, while the private respondents may have established their ownership, such right remains subject to the limitations of public law or, in the private sphere, the rights of other individuals. Time and again, we have pronounced that the right to property has a social dimension, allowing the State to step in for general welfare. This was eloquently explained by this Court in *Southern Luzon Drug Corporation v. The Department of Social Welfare and Development*[103] concerning State-mandated senior citizen discounts:

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99 *Phoenix Assurance Co., Ltd. v. United States Lines*, 130 Phil. 698, 702 (1968) [Per J. J.P. Bengzon].

100 *Philam Insurance Co., Inc. v. Heung-A Shipping Corp., et al.*, 739 Phil. 450, 470 (2014) [Per J. Reyes, First Division].

101 *Macondray and Co., Inc. v. Acting Commissioner of Customs*, 159 Phil. 484, 490 (1975) [Per J. Esguerra, First Division].

102 *Rollo* (G.R. No. 211146), pp. 618–619.

103 809 Phil. 315 (2017) [Per J. Reyes, *En Banc*].

> The law is a legitimate exercise of police power which, similar to the power of eminent domain, has general welfare for its object. Police power is not capable of an exact definition, but has been purposely veiled in general terms to underscore its comprehensiveness to meet all exigencies and provide enough room for an efficient and flexible response to conditions and circumstances, thus assuring the greatest benefits. Accordingly, it has been described as "the most essential, insistent and the least limitable of powers, extending as it does to all the great public needs." It is "[t]he power vested in the legislature by the constitution to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, and ordinances, either with penalties or without, not repugnant to the constitution, as they shall judge to be for the good and welfare of the commonwealth, and of the subjects of the same."
>
> *For this reason, when the conditions so demand as determined by the legislature, property rights must bow to the primacy of police power because property rights, though sheltered by due process, must yield to general welfare.*
>
> x x x x
>
> *Moreover, the right to property has a social dimension.* While Article XIII of the Constitution provides the precept for the protection of property, various laws and jurisprudence, particularly on agrarian reform and the regulation of contracts and public utilities, continuously serve as a reminder that the right to property can be relinquished upon the command of the State for the promotion of public good.
>
> Undeniably, the success of the senior citizens program rests largely on the support imparted by petitioners and the other private establishments concerned. This being the case, the means employed in invoking the active participation of the private sector, in order to achieve the purpose or objective of the law, is reasonably and directly related. Without sufficient proof that Section 4(a) of R.A. No. 9257 is arbitrary, and that the continued implementation of the same would be unconscionably detrimental to petitioners, the Court will refrain from quashing a legislative act.[104] (Emphasis supplied)

The policy goals as stated in Presidential Decree No. 4, and subsequently, Republic Act 8178, refer to the promotion of the integrated growth and development of the grains industry, for the end of continuous food supply to the nation.[105] The actions of the District Collectors under the BOC therefore cannot be impeded as these were well aligned with the mandate of the NFA, pursuant to Presidential Decree No. 4, Republic Act No. 8178.

Not a fundamental right

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[104] *Id.* at 327–328, citing *Carlos Superdrug Corporation v. Department of Social Welfare and Development*, 553 Phil. 120 (2007) [Per J. Azcuna, *En Banc*].

[105] Presidential Decree No. 4 as Amended by Presidential Decree Nos. 699 and 1485, Proclaiming the Creation of the National Grains Authority and Providing Funds Therefor, *available at* https://nfa.gov.ph/images/files/archive/PD-04.pdf (last accessed on September 19, 2022).

Fundamental rights are those that serve as a pre-requisite for the exercise of other rights. A perusal of the United Nations Universal Declaration of Human Rights would reveal that such determined fundamental rights refer to those that edify the dignity and worth of the human person. Basic examples for this include the right to life, liberty, and security of the person, as well as the right to be free from slavery or the right to be free from cruel punishment. Certainly, the importation of rice does not fall within this classification requiring a higher degree of protection from government encroachment.

Thus, where the right asserted by a plaintiff in an injunction complaint is doubtful or disputed, a preliminary injunction is not proper.[106] With the failure of Ngo and Galang to establish a right in *esse*, it becomes clear that they are not entitled to a writ of preliminary injunction.

II. The respondent judges acted with grave abuse of discretion

In the issuance of writs of preliminary injunction, jurisprudence provides the threshold of grave abuse of discretion:

> Grave abuse of discretion in the issuance of writs of preliminary injunction implies a capricious and whimsical exercise of judgment that is equivalent to lack of jurisdiction, or where the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice or personal aversion amounting to an evasion of positive duty or to a virtual refusal to perform the duty enjoined, or to act at all in contemplation of law.[107] (Citation omitted)

Utmost prudence is required in the issuance of a writ of preliminary injunction. As established by this Court, the issuance of a writ of preliminary injunction is considered an "extraordinary event," being a "strong arm of equity or a transcendent remedy."[108] Thus, the power to issue the writ "should be exercised sparingly, with utmost care, and with great caution and deliberation."[109] The failure to observe these safeguards constitutes grave abuse of discretion.

In light of the nature of the case, public respondents gravely abused their discretion by relying solely on Ngo and Galang's proof of ownership over the shipments. It is difficult to overlook how public respondents issued these assailed orders *in the face of subsisting laws and regulations*:

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106 *Sps. Nisce v. Equitable PCI Bank, Inc.*, 545 Phil. 138, 160 (2007) [Per J. Callejo, Sr., Third Division].
107 *Cahambing v. Espinosa, et al.*, 804 Phil. 412, 421 (2017) [Per J. Peralta, Second Division].
108 *Evy Construction and Dev't. Corp. v. Valiant Roll Forming Sales Corp.*, 820 Phil. 123, 135 (2017) [Per J. Leonen, Third Division].
109 *Id.*

1) Primarily, Article VI of the Constitution which assigns the subject matter of import quotas to the Legislative Department;
2) Republic Act No. 8178 which was still in effect at that time;
3) The NFA 2013 Guidelines for the Importation of Rice which the District Collectors in this case abided by.

While this begs the counter-argument that the WTO's free-trade policies should have reigned, it is reasonable to expect public respondents to have considered the following legal principles involved in Ngo and Galang's complaint:

1) The political nature of the issue of the rice importation regimes in the Philippines, especially with the explicit statements in Ngo and Galang's complaints that "[t]he Philippine government is still appealing to WTO for such extension of the Special Treatment for rice[.]"[110]
2) The established doctrine that the President is the sole organ of our foreign relations and the constitutionally assigned chief architect of our foreign policy.[111]
3) The presumption of regularity in the district collectors' performance of official duties. This principle is stated in jurisprudence as "an aid to the effective and unhampered administration of government functions. Without such benefit, every official action could be negated with minimal effort from litigants, irrespective of merit or sufficiency of evidence to support such challenge."[112]

In light of the above analysis, there being no clear and unmistakable right *in esse* that was invaded resulting in an irreparable injury, it behooves this Court to **dissolve** the writs of injunction granted by the RTC in Civil Case No. 35,354-2013 and CV-14-131261. We reiterate *Olalia v. Hizon*[113] with regard to the issuance of preliminary injunctions:

> It has been consistently held that there is no power the exercise of which is more delicate, which requires greater caution, deliberation and sound discretion, or more dangerous in a doubtful case, than the issuance of an injunction. It is the strong arm of equity that should never be extended unless to cases of great injury, where courts of law cannot afford an adequate or commensurate remedy in damages.
>
> Every court should remember that an injunction is a limitation upon the freedom of action of the defendant and should not be granted lightly or precipitately. It should be granted only when the court is fully satisfied that the law permits it and the emergency demands it.[114]

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110 *Rollo* (G.R. No. 211146), p. 301.
111 *Esmero v. Duterte*, G.R. No. 256288, July 29, 2021 [Per J. Zalameda, *En Banc*].
112 *Yap v. Lagtapon*, 803 Phil. 652 (2017) [Per J. Caguioa, First Division].
113 274 Phil. 66 (1991) [Per J. Cruz, First Division].
114 *Id.* at 75.

ACCORDINGLY, the Petitions for *Certiorari* in both G.R. Nos. 211146 and 211375 are hereby **GRANTED**. This Court **REVERSES**:

1. The December 12, 2013 and December 13, 2013 Orders, as well as the December 13, 2013 Writ of Preliminary Injunction issued by respondent Judge Emmanuel C. Carpio in Civil Case No. 35,354-2013; and

2. The January 23, 2014 and February 27, 2014 Orders, the February 28, 2014 Amended Order, and the January 24, 2014 Writ of Preliminary Injunction issued by respondent Judge Cicero D. Jurado, Jr. in Civil Case No. CV-14-131261.

Consequently, the Writ of Preliminary Injunction issued in favor of Danilo G. Galang and Joseph Mangupag Ngo in Civil Case No. CV-14-131261 and Civil Case No. 35,354-2013, respectively, are **DISSOLVED**.

SO ORDERED.

JHOSEP Y. LOPEZ
Associate Justice

WE CONCUR:

See concurring opinion
ALEXANDER G. GESMUNDO
Chief Justice

See Dissent
MARVIC M.V.F. LEONEN
Senior Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

Pls. see Concurring
AMY C. LAZARO-JAVIER
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

MARIO V. LOPEZ
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JAPAR B. DIMAAMPAO
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

ANTONIO T. KHO, JR.
Associate Justice

MARIA FILOMENA D. SINGH
Associate Justice

CERTIFICATION

I certify that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court's En Banc.

ALEXANDER G. GESMUNDO
Chief Justice

EN BANC

G.R. No. 211146 – SECRETARY PROCESO J. ALCALA, AS SECRETARY OF THE DEPARTMENT OF AGRICULTURE, AND AS CHAIRMAN OF THE NATIONAL FOOD AUTHORITY COUNCIL, AND THE BUREAU OF CUSTOMS, REPRESENTED BY COMMISSIONER JOHN PHILLIP P. SEVILLA, Petitioners, **v. HONORABLE JUDGE EMMANUEL C. CARPIO, IN HIS CAPACITY AS PRESIDING JUDGE OF BRANCH 16, REGIONAL TRIAL COURT IN DAVAO CITY, AND JOSEPH MANGUPAG NGO,** Respondents.

G.R. No. 211375 – SECRETARY PROCESO J. ALCALA, AS SECRETARY OF THE DEPARTMENT OF AGRICULTURE, AND AS CHAIRMAN OF THE NATIONAL FOOD AUTHORITY COUNCIL, AND THE BUREAU OF CUSTOMS, REPRESENTED BY COMMISSIONER JOHN PHILLIP P. SEVILLA, Petitioners, **v. HONORABLE JUDGE CICERO D. JURADO, JR., IN HIS CAPACITY AS PRESIDING JUDGE OF BRANCH 11, REGIONAL TRIAL COURT IN MANILA, DANILO G. GALANG, DOING BUSINESS UNDER THE NAME AND STYLE ST. HILDEGARD GRAINS ENTERPRISES, AND IVY M. SOUZA, DOING BUSINESS UNDER THE NAME AND STYLE BOLD BIDDER MARKETING AND GENERAL MERCHANDISE,** Respondents.

Promulgated:
April 11, 2023

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CONCURRING OPINION

LEONEN, *J.*:

The trial courts' injunction against the customs collector and in favor of the illegal rice shipment, favored rice smugglers to the detriment of the Filipino farmer and sets to zero the country's tariffs on our most essential agricultural and food product, rice.

This Court exercises caution from making pronouncements which may undermine the various protections given to a developing country such as ours, under the principle of special and differential treatment, won through several rounds of negotiations that culminated in trade agreements and special exemptions.

As the *ponencia* aptly discussed, the international plane has generally accorded the Philippines protection and repeatedly granted the country special exemptions on treaty obligations concerning our staple commodity.[1] Accordingly, courts should not stand in the way and strip us of this protection, especially when the domestic plane likewise implements protectionist policies.

For this Court's resolution are consolidated petitions challenging Regional Trial Court Orders[2] which issued a writ of preliminary injunction that enjoined Bureau of Customs District Collectors from seizing illegal rice shipments and directing their release to respondents.

In 2014, when petitioners brought these cases before this Court, we issued a Temporary Restraining Order, restraining the concerned judges from implementing their orders to release the rice shipment, even if the seized goods were perishable.

I join the majority in maintaining this position, granting the petitions, and upholding the restraining order we previously issued. Appreciating the import of domestic regulations, this Court, through the esteemed Justice Jhosep Y. Lopez, resolved to dissolve the writ of preliminary injunction that the courts below issued.

I

Rule 58, Section 3 of the Rules of Court lists the grounds when a writ of preliminary injunction may be granted:

> SECTION 3. *Grounds for issuance of preliminary injunction.* — A preliminary injunction may be granted when it is established:
>
> (a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring performance of an act or acts, either for a limited period or perpetually;
>
> (b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or
>
> (c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

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1 Decision, pp. 3–5, 23–27.
2 *Id.* at 2.

The following requisites must be established for a writ of preliminary injunction to be issued:

> (1) The applicant must have a clear and unmistakable right to be protected, that is a right *in esse*;
>
> (2) There is a material and substantial invasion of such right;
>
> (3) There is an urgent need for the writ to prevent irreparable injury to the applicant; and
>
> (4) No other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury.[3]

When deliberating on the issuance of a writ of preliminary injunction, trial courts must exercise great caution.[4] "A court should, as much as possible, avoid issuing the writ, which would effectively dispose of the main case without trial and/or due process."[5] When trial courts fail to do so, and gravely abuse their discretion, this Court may intervene.

Grave abuse of discretion is the "arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or a capricious exercise of power that amounts to an evasion or a refusal to perform a positive duty enjoined by law or to act at all in contemplation of law."[6]

Spouses Nisce v. Equitable PCI Bank[7] explained that parties applying for injunctive relief must show their "present and unmistakable right to be protected; that the facts against which injunction is directed violate such right; and there is a special and paramount necessity for the writ to prevent serious damages."[8] Litigants must justify their prayer for an injunction pending final judgment, and it should not be issued "if there is no clear legal right materially and substantially breached from a *prima facie* evaluation of the evidence of the complainant."[9]

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3 *Bicol Medical Center v. Botor*, 819 Phil. 447, 458 (2017) [Per J. Leonen, Third Division] *citing St. James College of Parañaque v. Equitable PCI Bank*, 641 Phil. 452, 466 (2010) [Per J. Velasco, Jr., First Division]. *See also Biñan Steel Corporation v. Court of Appeals*, 439 Phil. 688, 703–704 (2002) [Per J. Corona, Third Division]; and *Hutchison Ports Philippines Ltd. v. Subic Bay Metropolitan Authority*, 393 Phil. 843, 859 (2000) [Per J. Ynares-Santiago, First Division].

4 *Spouses Nisce v. Equitable PCI Bank*, 545 Phil. 138, 160 (2007) [Per J. Callejo, Sr., Third Division].

5 *Boncodin v. National Power Corp. Employees Consolidated Union*, 534 Phil. 741, 759 (2006) [Per C.J. Panganiban, *En Banc*], *citing* 1 F. REGALADO, REMEDIAL LAW COMPENDIUM, 639 (7th revised ed., 1999); *Bayanihan Music Phil., Inc. v. BMG Records (Pilipinas)*, GR No. 166337, March 7, 2005, [Notice, Third Division]; *Ortigas & Company Limited Partnership v. Court of Appeals*, 688 Phil. 367 [Per J. Abad, Third Division].

6 *Ong Lay Hin v. Court of Appeals*, 752 Phil. 15, 22 (2015) [Per J. Leonen, Second Division], *citing Lagua v. The Hon. Court of Appeals*, 689 Phil. 452 (2012) [Per J. Sereno, Second Division].

7 545 Phil. 138 (2007) [Per J. Callejo, Sr., Third Division].

8 *Id.* at 160 *citing Searth Commodities Corporation v. Court of Appeals*, G.R. No. 64220, March 31, 1992 [Per J. Gutierrez, Jr., Third Division].

9 *Bicol Medical Center v. Botor*, 819 Phil. 447, 457 (2017) [Per J. Leonen, Third Division].

Boncodin v. National Power Corp. Employees Consolidated Union[10] explained:

> A *clear legal right* means one clearly founded in or granted by law or is enforceable as a matter of law.
>
> Absent any *clear and unquestioned legal right*, the issuance of an injunctive writ would constitute grave abuse of discretion. Injunction is not designed to protect contingent, abstract or future rights whose existence is doubtful or disputed. It cannot be grounded on the possibility of irreparable damage without proof of an actual existing right. Sans that proof, equity will not take cognizance of suits to establish title or lend its preventive aid by injunction.[11] (Citations omitted)

Here, I agree with the majority that private respondents failed to establish their clear and unmistakable right to be protected by the injunction they sought.

There is no inherent right that allows an individual or enterprise to import rice. It is not a fundamental right, nor is it found in law. On the contrary, the government has been implementing protectionist policies where the State grants licenses, *a mere privilege*, to permit limited importation of rice, clearly imposing restrictions.

We recall the antecedents.

In 1972, Presidential Decree No. 4, later amended by Presidential Decree Nos. 699 and 1485, created the National Grains Authority. In implementing government policies and regulations on grains, including rice, it was empowered to institute a licensing mechanism for their importation:

> Sec. 6. Administration Powers, Organization, Management and Exemptions. . . .
> (xii) *to establish rules and regulations governing the importation of rice,* corn and other grains and their substitutes and/or by-products/end products *and to license, impose and collect fees and charges for said importation* for the purpose of equalizing the selling price and such imported grains and their substitutes and/or their by-products/end products with the normal prevailing domestic prices. (Emphasis supplied)

In 1981, Presidential Decree No. 1770 reconstituted the agency to the National Food Authority, broadened its scope to other basic food commodities, and increased its powers.

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[10] 534 Phil. 741 (2006) [Per C.J. Panganiban, *En Banc*].
[11] *Id.* at 754.

In 1995, the Philippines joined the World Trade Organization. Republic Act No. 8178, or the "Agricultural Tariffication Act of 1996," was enacted to comply with the country's treaty obligations. It declares:

> Section 2. *Declaration of Policy.* – It is the policy of the State to make the country's agricultural sector viable, efficient and globally competitive. The State adopts the use of tariffs in lieu of non-tariff import restrictions to protect local producers of agricultural products, *except in the case of rice, which will continue to have quantitative import restrictions.* (Emphasis supplied)

Pursuant to these enabling laws, the National Food Authority has since been regulating the importation of rice into the country through various issuances which impose restrictions. When the smuggled rice subject of the cases were seized, Memorandum Circular No. AO-2K13-03-003 was in effect. This outlines the guidelines for the issuance of an import permit for enterprises, their allocation, and the countries from which we may import rice.

It is undisputed that private respondents had no permit to import the rice that they had shipped into the country, which is in clear violation of the rule. While respondents sought to establish their supposed rights over the goods, they missed the point that rice importation is heavily regulated, and their shipment was illegal without the license required by law. It is irrelevant whether they owned, or eventually gained ownership of the goods.

Respondents hinge their right on the shipped goods based on the pending request of the Philippines for an extension of its special treatment and exemptions before the World Trade Organization. "The WTO Special Treatment was the only source of the Philippines' right to impose quantitative restrictions by way of import permits and permit quotas."[12] This is wrong, as likewise clarified in the *ponencia*. I appreciate the *ponencia's* framework in resolving the issue:

> A review of R.A. No. 8178, enacted after the Philippines' concession to the WTO Agreement, reveals that it does not contain any sunset clause to indicate that the effectivity of the quantitative restrictions on rice were contingent on external events outside the scope of the text of the law, i.e., the grant or denial by the WTO of the Philippines' requests for special treatment. To hold the contrary that an expiry date on the effectivity of laws may be based on external, global events would produce a significant amount of instability to the State.
>
> It was on the basis of this authority that the NFA issued the subject 2013 NFA Rice Importation Guidelines, which provided that all interested NFA-licensed importers may apply to import by submitting the enumerated company documents, obtaining a Certificate of Eligibility, payment of

[12] Decision, p. 7.

> duties/tariffs, obtaining a Notice of Allocation, submitting the enumerated shipment documents, and ultimately obtaining the Import Permit on a per bill of lading basis.
>
> Given legal foundations behind the NFA's requirements, this Court would be hard-pressed to declare the existence of a clear and unmistakable right to import rice regardless of adherence to the guidelines set by the NFA, which acted according to its mandate.[13]

A supposed conflict between the administrative regulations' requirement of a rice import license and the Philippine free trade commitments before the World Trade Organization unnecessarily muddled the issue. The district collectors were well within their authority when they seized the smuggled goods in violation of the provisions of Memorandum Circular No. AO-2K13-03-003.

Thus, private respondents' allegations did not warrant the issuance of a preliminary injunction, failing to prove any right to import. "A court may issue a writ or preliminary injunction only when the respondent has made out a case of invalidity or irregularity. *That case must be strong enough to overcome, in the mind of the judge, the presumption of validity*; and it must show a clear legal right to the remedy sought."[14] Respondent judges gravely abused their discretion when they issued the writ of preliminary injunction.

Republic Act No. 8178 and Memorandum Circular No. AO-2K13-03-003 enjoy the presumption of validity. The mere expiration of the special waivers extended to a developing country to implement tariffs on essential staples, like rice, under the Agreement on Agriculture does not *ipso facto* mean that our courts are under obligation to immediately allow unbridled importation of those goods without an enabling law imposing the tariff. It requires Congressional imprimatur to remove the exemption on rice tariffication, specifically imposing tariffs on rice importation, to amend these laws. The Agreement on Agriculture, while a source of international law, does not form part of the "generally accepted principles of international law"[15] that are automatically adopted as part of the law of the land.

Were it the opposite, this would effectively set to zero the tariff on our staple agricultural and food product.

II

Under Annex 2 of the World Trade Organization agreement governing settlement of disputes, the Dispute Settlement Understanding requires that any

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[13] *Id.* at 22.

[14] *Boncodin v. National Power Corp. Employees Consolidated Union*, 534 Phil. 741, 759–760 (2006).

[15] CONST., art. II, sec. 2. *See also Pangilinan v. Cayetano*, G.R. Nos. 238875, 239483 and 240954, March 16, 2021 [Per J. Leonen, *En Banc*].

state party, aggrieved by the alleged non-compliance with any of the annexed agreements—such as the Agreement on Agriculture—are to commence arbitration and establish dispute panels.[16] Indeed, this is the track of large developing countries like India as well as countries such as the United States and China.

Private respondents, who are individuals and business enterprises, have no personality to assail our supposed non-compliance with the World Trade Organization agreement, or invoke their provisions against the State. Dispute Settlement Understanding aims to promptly settle "situations in which a Member considers that any benefits accruing to it directly or indirectly under the covered agreements are being impaired by measures taken by another Member[.]"[17] This is "essential to the effective functioning of the [World Trade Organization] and the maintenance of a proper balance between the rights and obligations of Members."[18]

Noncompliance with trade rules is not a criminal act or a violation of international law per se. Rather, it can be the subject of acquiescence especially for markets that are as small as the Philippines,[19] and for products which are essential for our food security.

Nonetheless, even when the country is the subject of a complaint under the Dispute Settlement Understanding, there is no imposable penalty for noncompliance.[20] Under the treaty, the State will be asked to comply "within a reasonable period of time."[21]

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16 World Trade Organization, *Understanding on Rules and Procedures Governing the Settlement of Disputes*, Annex 2, arts. 6–12. *Available at* https://www.wto.org/english/docs_e/legal_e/28-dsu_e.htm (last accessed on December 12, 2023). Article 17 provides for appellate review by a standing Appellate Body.

17 World Trade Organization, *Understanding on Rules and Procedures Governing the Settlement of Disputes*, Annex 2, art. 3. *Available at* https://www.wto.org/english/docs_e/legal_e/28-dsu_e.htm (last accessed on December 12, 2023).

18 World Trade Organization, *Understanding on Rules and Procedures Governing the Settlement of Disputes*, Annex 2, art. 3. *Available at* https://www.wto.org/english/docs_e/legal_e/28-dsu_e.htm (last accessed on December 12, 2023).

19 World Trade Organization, *Understanding on Rules and Procedures Governing the Settlement of Disputes*, Annex 2, arts. 7–8. *Available at* https://www.wto.org/english/docs_e/legal_e/28-dsu_e.htm (last accessed on December 12, 2023). Provide concessions for developing countries.
If the matter is one which has been raised by a developing country Member, the DSB shall consider what further action it might take which would be appropriate to the circumstances.
If the case is one brought by a developing country Member, in considering what appropriate action might be taken, the DSB shall take into account not only the trade coverage of measures complained of, but also their impact on the economy of developing country Members concerned.

20 World Trade Organization, *Understanding on Rules and Procedures Governing the Settlement of Disputes*, Annex 2, arts. 21–22. *Available at* https://www.wto.org/english/docs_e/legal_e/28-dsu_e.htm (last accessed on December 12, 2023).

21 Annex 2 of the World Trade Organization Agreement, Dispute Settlement Understanding, article 21 provides:
Article 21, Surveillance of Implementation of Recommendations and Rulings
....
3. At a DSB meeting held within 30 days (11) after the date of adoption of the panel or Appellate Body report, the Member concerned shall inform the DSB of its intentions in respect of implementation of the recommendations and rulings of the DSB. If it is impracticable to comply immediately with the recommendations and rulings, the Member concerned shall have a reasonable period of time in which to do so. The reasonable period of time shall be:

Issuing the writs of preliminary injunctions against the customs district collectors, absent an order from the WTO Dispute Settlement Bodies (Panel or Appellate Body) grossly fails in fully appreciating the nature of trade agreements under international law, the dynamics of relationships of trading countries, and will put the Philippines at an unnecessary disadvantage in trade especially when it comes to our critical and essential food products.

Courts misunderstanding their judicial role as regarding trade agreements may potentially cause economic ruin and food insecurity, without the benefit of scrutiny by the political bodies. That is not an understatement.

ACCORDINGLY, I vote to **GRANT** the consolidated petitions, and vacate the assailed Regional Trial Court Orders issued in grave abuse of discretion.

MARVIC M.V.F. LEONEN
Senior Associate Justice

(a) the period of time proposed by the Member concerned, provided that such period is approved by the DSB; or, in the absence of such approval,
(b) a period of time mutually agreed by the parties to the dispute within 45 days after the date of adoption of the recommendations and rulings; or, in the absence of such agreement,
(c) a period of time determined through binding arbitration within 90 days after the date of adoption of the recommendations and rulings (12). In such arbitration, a guideline for the arbitrator (13) should be that the reasonable period of time to implement panel or Appellate Body recommendations should not exceed 15 months from the date of adoption of a panel or Appellate Body report. However, that time may be shorter or longer, depending upon the particular circumstances.

EN BANC

G.R. No. 211146 – SECRETARY PROCESO J. ALCALA, AS SECRETARY OF THE DEPARTMENT OF AGRICULTURE, AND AS CHAIRMAN OF THE NATIONAL FOOD AUTHORITY COUNCIL, AND THE BUREAU OF CUSTOMS, REPRESENTED BY COMMISSIONER JOHN PHILLIP P. SEVILLA, *petitioners*, ***versus*** **HONORABLE JUDGE EMMANUEL C. CARPIO, IN HIS CAPACITY AS PRESIDING JUDGE OF BRANCH 16, REGIONAL TRIAL COURT IN DAVAO CITY, AND JOSEPH MANGUPAG NGO**, *respondents*.

G.R. No. 211375 - SECRETARY PROCESO J. ALCALA, AS SECRETARY OF THE DEPARTMENT OF AGRICULTURE, AND AS CHAIRMAN OF THE NATIONAL FOOD AUTHORITY COUNCIL, AND THE BUREAU OF CUSTOMS, REPRESENTED BY COMMISSIONER JOHN PHILLIP P. SEVILLA, *petitioners,* ***versus*** **HONORABLE JUDGE CICERO D. JURADO, JR., IN HIS CAPACITY AS PRESIDING JUDGE OF BRANCH 11, REGIONAL TRIAL COURT IN MANILA, DANILO G. GALANG, DOING BUSINESS UNDER THE NAME AND STYLE ST. HILDEGARD GRAINS ENTERPRISES, AND IVY M. SOUZA, DOING BUSINESS UNDER THE NAME AND STYLE BOLD BIDDER MARKETING AND GENERAL MERCHANDISE**, *respondents*.

Promulgated:

April 11, 2023

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CONCURRING OPINION

SINGH, *J.*:

In these consolidated cases, the petitioners Secretary Proceso J. Alcala, as Secretary of the Department of Agriculture (**DA**) and Chairperson of the National Food Authority (**NFA**), together with Bureau of Customs, represented by Commissioner John Phillip P. Sevilla (collectively, **the petitioners**) challenge:

1. the Order,[1] dated December 12, 2013, and the Order,[2] dated December 13, 2013, as well as the December 13, 2013 Writ of Preliminary Injunction[3] issued by the public respondent Judge Emmanuel C. Carpio (**Judge Carpio**) of the Regional Trial Court, Branch 16, Davao City, in Civil Case No. 35,354-2013, in favor of private respondent Joseph M. Ngo (**Ngo**); and

2. the Order,[4] dated January 23, 2014, the Order[5] dated February 27, 2014, and the Amended Order,[6] dated February 28, 2014, together with the January 24, 2014 Writ of Preliminary Injunction[7] issued by the public respondent Judge Cicero D. Jurado, Jr. (**Judge Jurado**) of the Regional Trial Court, Branch, Manila, in Civil Case No. CV-14-131261, in favor of the private respondent Danilo G. Galang (**Galang**), owner of the sole proprietorship St. Hildegard Grains Enterprises, and the private respondent Ivy M. Souza (**Souza**), proprietor of the Bold Bidder Marketing and General Merchandise.

In the *ponencia*, the Court granted the separate Petitions for *Certiorari*[8] of the petitioners and nullified the assailed Orders.[9] The Court found that none of the private respondents Ngo, Galang, and Souza (collectively, **the private respondents**) had any right in *esse* to import goods.[10] There being no clear and unmistakable right to protect via the relief of injunction, the complaint for injunction of the private respondents cannot prosper.[11] The Court also ruled that the private respondents do not stand to suffer any irreparable injury, as contemplated by the Rules of Court.[12] As such, the assailed Orders of both Judge Carpio and Judge Jurado were null and void for having been issued with grave abuse of discretion.[13]

I concur.

For preliminary injunctive relief to issue, the Court must find the concurrence of the following requisites: (1) the applicant must have a clear and unmistakable right to be protected, that is a right in *esse*; (2) there is a

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1 *Rollo* (G.R. No. 211146), Vol. I, pp. 78-84.
2 Id. at 85.
3 Id. at 86-87.
4 *Rollo* (G.R. No. 211375), Vol. I, pp. 83-85.
5 Id. at 86-88.
6 Id. at 89-91.
7 Id.
8 *Rollo* (G.R. No. 211146), Vol. 1, pp. 3-73; *rollo* (G.R. No. 211375), Vol. 1, pp. 3-77.
9 Revised *Ponencia*, p. 31.
10 Id. at 16.
11 Id. at 27.
12 Id. at 27-28.
13 Id. at 29.

material and substantial invasion of such right; (3) there is an urgent need for the writ to prevent irreparable injury to the applicant; and (4) no other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury.[14]

While admittedly the private respondents established the presence of the second and fourth requisites, the presence of the first and third requisites appears doubtful, at most.

To establish the existence of the first requisite, the claimant must prove a clear right that is both grounded on and enforceable by law. The Court defined this requisite in the case of *Lim v. BPI Agricultural Development Bank*:[15]

> One of the requisites for the issuance of a writ of preliminary injunction is that the applicant must have a right in *esse*. A right in *esse* is a clear and unmistakable right to be protected, one clearly founded on or granted by law or is enforceable as a matter of law. The existence of a right to be protected, and the acts against which the writ is to be directed are violative of said right must be established.[16] (Underscoring omitted)

In this case, the private respondents may have established their ownership over the seized rice shipments, but they failed to establish the fact that they secured the necessary licenses to possess the same.

Presidential Decree (**P.D.**) No. 4, as amended by P.D. Nos. 699 and 1485,[17] vested the NFA with various functions relating to food security, which includes ensuring the stability of the supply and prices of rice. On March 28, 1996, Republic Act (**R.A.**) No. 8178[18] was passed, which expanded the powers of the NFA to establish rules for licensing, importing, and collection of fees and charges for rice importation:

> Sec. 5. *Amendment.* – Subparagraph (xii), paragraph (1) Section 6 of Presidential Decree No. 4 (National Grains Authority Act), as amended, is hereby further amended to read as follows:
>
> Sec. 6. (a) *Powers.* –

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14 *Sumifru (Philippines) Corporation v. Spouses Cereño*, 825 Phil. 743, 750 (2018).

15 628 Phil. 601 (2010).

16 Id. at 607.

17 Entitled "PROCLAIMING THE CREATION OF THE NATIONAL GRAINS AUTHORITY AND PROVIDING FUNDS THEREFOR," approved on September 26, 1972. Reconstituted from the now defunct National Grains Authority after the issuance and effectivity of Presidential Decree No. 1770.

18 Entitled "AN ACT REPLACING QUANTITATIVE IMPORT RESTRICTIONS ON AGRICULTURAL PRODUCTS, EXCEPT RICE, WITH TARIFFS, CREATING THE AGRICULTURAL COMPETITIVENESS ENHANCEMENT FUND, AND FOR OTHER PURPOSES," approved on March 28, 1996.

> (xii) to establish rules and regulations governing the importation of rice and to license, impose and collect fees and charges for said importation for the purpose of equalizing the selling price of such imported rice with normal prevailing domestic prices.
>
> In the exercise of this power, the Council after consultation with the Office of the President shall first certify to a shortage of rice that may occur as a result of a short-fall in production, a critical demand-supply gap, a state of calamity or other verified reasons that may warrant the need for importation: Provided, That this requirement shall not apply to the importation of rice equivalent to the Minimum Access Volume obligation of the Philippines under the WTO. The Authority shall undertake direct importation of rice or it may allocate import quotas among certified and licensed importers, and the distribution thereof through cooperatives and other marketing channels, at prices to be determined by the Council regardless of existing floor prices and the subsidy thereof, if any, shall be borne by the National Government.[19] (Underscoring supplied)

With this express rule-making power, the NFA issued the questioned Memorandum Circular (**MC**), NFA MC No. AO-2K13-03-003, which requires rice importers to secure rice import permits before importation. This rice import permit must be distinguished from the Grains Business License, a license required under Regulation II of the Revised Rules and Regulations of the National Food Authority in Grains Businesses,[20] the pertinent provisions of which provides:

> Section 1. *Grains Business License and/or Grains Business Registration*
>
> All persons, natural or juridical, who are engaged or are intending to engage in the rice and/or corn industry shall apply for a grains business license and/or grains business registration with the Authority.
>
> A license is an authority or a privilege granted to a qualified applicant to engage in a particular line of activity in the rice and/or corn industry. It is issued by the Authority in the exercise of its police power for purposes of regulation. A registration is issued by the Authority to grains businessman engaged in certain activities in the rice and/or corn industry for purposes of monitoring only.
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> x x x x
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> Section 3. *Lines of Activity Covered by a License*

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19 Id.

20 Approved on November 23, 2006.

> The following lines of activities shall require an application for a license:
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> 1. Retailing
> 2. Wholesaling
> 3. Milling
> 4. Warehousing
> 5. Threshing
> 6. Corn Shelling
> 7. Processing/Manufacturing
> 8. Exporting
> 9. Importing
> 10. Indenting
> 11. Packaging
> 12. Mechanical Drying
> 13. Mist Polishing
> 14. Manufacturing/ Processing; Distribution of Iron Rice Premix
>
> (Underscoring supplied)

Here, the private respondents failed to show that they possessed either of these requirements. These are conditions *sine qua non* to the importation of rice in our country. That the private respondents performed acts relating to importation without the requisite authority squarely contradicts the finding that they proved their "clear and unmistakable right" to the rice shipments.

For the third requisite, the operative phrase is "irreparable injury." As this Court has repeatedly defined, injury is considered irreparable if there is no standard by which the same can be measured with reasonable accuracy. The injury must be such that its pecuniary value cannot be estimated, and thus, cannot fairly compensate for the loss.[21] As held in the case of *SM Investments Corporation v. Mac Graphics Carranz International Corp.*:[22]

> It is settled that a writ of preliminary injunction should be issued only to prevent grave and irreparable injury, that is, injury that is actual, substantial, and demonstrable. Here, there is no "irreparable injury" as understood in law. Rather, the damages alleged by the petitioner, namely, "immense loss in profit and possible damage claims from clients" and the cost of the billboard which is "a considerable amount of money" is easily quantifiable, and certainly does not fall within the concept of irreparable damage or injury as described in *Social Security Commission v. Bayona*:
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> > Damages are irreparable within the meaning of the rule relative to the issuance of injunction where there is no standard by which their amount can be measured with reasonable accuracy. "An irreparable injury which a court of equity will enjoin includes that degree of wrong of a repeated

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[21] *Evy Construction and Development Corporation v. Valiant Roll Forming Sales Corporation*, 820 Phil. 123, 139 (2017).

[22] 834 Phil. 106 (2018).

> and continuing kind which produce hurt, inconvenience, or damage that can be estimated only by conjecture, and not by any accurate standard of measurement." An irreparable injury to authorize an injunction consists of a serious charge of, or is destructive to, the property it affects, either physically or in the character in which it has been held and enjoined, or when the property has some peculiar quality or use, so that its pecuniary value will not fairly recompense the owner of the loss thereof.

Here, any damage petitioner may suffer is easily subject to mathematical computation and, if proven, is fully compensable by damages. Thus, a preliminary injunction is not warranted. As previously held in *Golding v. Balatbat*, the writ of injunction —

> should never issue when an action for damages would adequately compensate the injuries caused. The very foundation of the jurisdiction to issue the writ rests in the probability of irreparable injury, the inadequacy of pecuniary compensation, and the prevention of the multiplicity of suits, and where facts are not shown to bring the case within these conditions, the relief of injunction should be refused.[23]

In this case, while the private respondents Ngo and Galang established that they were at risk of losing the rice shipments, the amount corresponding to the seized goods could be easily calculated. As a matter of fact, Ngo testified during the proceedings in the RTC as to the amount not only of the rice shipment, but also of the demurrage and storage costs.[24]

The burden to prove his or her right to injunctive relief is always with the claimant. Hence, if the claimant cannot discharge this burden, then it should not receive judicial relief. It cannot be overemphasized that injunction is an extraordinary remedy.[25]

Therefore, I fully agree with the revised *ponencia* that the private respondents failed to establish their entitlement to the writ issued by the RTC.

I respectfully **CONCUR** and vote to **GRANT** the Petitions for *Certiorari* filed by the petitioners Secretary Proceso J. Alcala, as Secretary of the Department of Agriculture and Chairperson of the National Food Authority, together with Bureau of Customs, represented by Commissioner John Phillip P. Sevilla. The assailed Order, dated December 12, 2013, and

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23 Id. at 122-123.

24 *Rollo* (G.R. No. 211146), Vol. I, p. 83. In the Order dated December 12, 2013, it was reflected in the record that Ngo testified that he paid ₱21,300,000.00 for the seized rice shipment, and paid ₱8,335,000.00 for the demurrage and storage costs as of December 11, 2013.

25 *Sumifru (Philippines) Corporation v. Spouses Cereño,* supra note 14, at 743.

the Order, dated December 13, 2013, as well as the December 13, 2013 Writ of Preliminary Injunction issued by the public respondent Judge Emmanuel C. Carpio of the Regional Trial Court, Branch 16, Davao City, in Civil Case No. 35,354-2013, in favor of private respondent Joseph M. Ngo; and the Order,[26] dated January 23, 2014, the Order[27] dated February 27, 2014, and the Amended Order,[28] dated February 28, 2014, together with the January 24, 2014 Writ of Preliminary Injunction[29] issued by the public respondent Judge Cicero D. Jurado, Jr. of the Regional Trial Court, Branch, Manila, in Civil Case No. CV-14-131261, in favor of the private respondent Danilo G. Galang, owner of the sole proprietorship St. Hildegard Grains Enterprises, and the private respondent Ivy M. Souza, proprietor of the Bold Bidder Marketing and General Merchandise are **REVERSED.**

MARIA FILOMENA D. SINGH
Associate Justice

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[26] *Rollo* (G.R. No. 211375), Vol. I, pp. 83-85.
[27] Id. at 86-88.
[28] Id. at 89-91
[29] Id. at 92-93.

EN BANC

G.R. No. 211146 (Secretary Proceso J. Alcala, et al. v. Judge Emmanuel C. Carpio, et al. and G.R. No. 211375 (Secretary Proceso J. Alcala, et al. v. Judge Cicero D. Jurado, et al.)

Promulgated:
April 11, 2023

CONCURRENCE

LAZARO-JAVIER, *J.*:

These consolidated Petitions for *Certiorari* with prayer for injunction assail the Orders issued by respondents Regional Trial Court Judges Emmanuel Carpio (Judge Carpio) and Cicero Jurado (Judge Jurado) enjoining the District Collectors from seizing, holding, and detaining the rice shipments of private respondents Joseph Ngo (Ngo) and Danilo Galang (Galang) due to lack of import license from the National Food Authority (NFA).

As a member of the World Trade Organization (WTO),[1] the Philippines obtained its *first concession* or special treatment for rice. A special treatment or concession means that the country may impose trade restrictions as exemption from its free trade commitments in the global agricultural market. The *first concession* expired on December 31, 2004 but was extended to July 30, 2012. This extension was the country's *second concession.* Pursuant to paragraph 5.1 of the *second concession,* "any continuation of **special treatment** for rice shall be **contingent on** the outcome of the Doha Development Agenda (DDA) **negotiations**."

On March 20, 2012, the Philippines submitted a Request for Waiver on Special Treatment for Rice. This in effect sought a *third concession* which was proposed to expire on June 30, 2017.

Meantime, on March 22, 2013, pursuant to **Republic Act No. 8178** (1996) and **Presidential Decree No. 4** (1972), the NFA issued **Memorandum Circular (M.C.) No. AO-2K13-03-003** which (a) set a quota of 163,000 metric tons of rice imports from specified source countries for 2013; (b) provided guidelines by which NFA-licensed importers may apply when importing rice; and (c) indicated the requisites for the issuance of Certificate of Eligibility to import.

On December 5, 2013, private respondent Ngo filed a complaint for permanent injunction with prayer for temporary restraining order and/or

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[1]Member since January 1, 1995. Accessed at https://www.wto.org/english/thewto_e/countries_e/philippines_e.htm on August 14, 2022.

preliminary injunction docketed as Civil Case No. 35,354-2013 against the District Collector of the Port of Davao for alleged unlawful seizure of his rice shipments due to lack of import license as required under M.C. No. AO-2K13-03-003. The case was then raffled to Judge Carpio.

On January 14, 2014, private respondent Galang filed a similar complaint docketed as Civil Case No. CV-14-131261 with the same allegations and prayer as those of Ngo. The case was raffled to Judge Jurado.

Judge Carpio and Judge Jurado ruled in favor of Ngo and Galang, respectively, and ordered the issuance of a writ of preliminary injunction, *viz.*:

December 12, 2013 Order of Judge Carpio:

> FOR REASONS STATED, pending trial, let a Writ of Preliminary Mandatory Injunction issue, upon Plaintiff's posting a bond in the amount of P5,000,000.00 and upon payment of the required fees, enjoining and restraining defendant, all those acting for and in their behalf, and all their agents and responsible officers from:
>
> a. Seizing, alerting, and/or holding Plaintiff's rice shipments xxx;
> b. **Implementing** any Alert Orders, Hold Orders, and **issuances** in relation to Plaintiff's rice shipments and/or refusing to lift any such orders or issuances; and
> c. Doing any act that would prejudice Plaintiff while the propriety and validity of its actions as enumerated in the preceding paragraphs, are still at issue and subject to judicial determination.
>
> SO ORDERED. (Emphasis supplied)

February 27, 2014 Order of Judge Jurado:

> WHEREFORE, foregoing premises considered, let a writ if preliminary injunction be issued in favor of BOLD BIDDER MARKETING AND GENERAL MERCHANDISE, from whom plaintiff Danilo G. Galang doing business under the name and style St. Hildegard Grains Enterprises, bought the rice shipments subject matter of this case enjoining and restraining defendants Bureau of Customs, the District Collectors of the Ports of Manila, North Harbor and South Harbor, in their capacities as the incumbent District Collectors for the Ports of Manila, North and South Harbor and all persons acting for and in their behalf and all their agents from a) **implementing NFA Memorandum Circular No. AO-2K13-03-003**; b) seizing, alerting, and/or holding BOLD BIDDER MARKETING AND GENERAL MERCHANDISE and/or plaintiff's rice shipment referred in this petition, which the plaintiff may acquire by sale or by importation after the filing of this Petition; c) **implementing** any Alert Orders, Hold Orders, and **issuances** and/or refusing to lift any such orders or issuances in relation to BOLD BIDDER MARKETING AND GENERAL MERCHANDISE and/or plaintiff's rice shipments referred in this Petition and those shipments, similarly situated as those in the Petition, which the plaintiff may acquire by sale or by importation after the filing of this Petition; and d) doing any act that would prejudice BOLD BIDDER MARKETING AND GENERAL MERCHANDISE and/or plaintiff while

> the propriety and validity of its actions as enumerated in the preceding paragraphs are still at issue and subject to judicial determination. (Emphasis supplied)

On July 24, 2014, or pending these *certiorari* proceedings, the WTO released a Decision allowing a *third concession* effective until June 30, 2017.

I thank my good friend the esteemed Associate Justice Jhosep Y. Lopez for now taking a position consistent with my position to dissolve the writs of injunction granted by Judges Carpio and Jurado in Civil Case Nos. 35,354-2013, and CV-14-131261, respectively. At the outset, Justice Lopez emphasized that private respondents Ngo and Galang failed to establish a right *in esse* to engage in the importation of rice, the first element for the issuance of an injunction. Judges Carpio and Jurado, therefore, committed grave abuse of discretion when they issued the subject writs of injunction.[2]

May I, nonetheless, humbly add to the discussion why respondent Judges committed grave abuse of discretion when they granted injunctive relief relative to the subject rice importations.

Private respondents had no clear and unmistakable legal right that would have warranted protection by preliminary injunction

Though not articulated in the draft *ponencia*, there were 189,540[3] bags of rice that arrived at the Port of Manila in 2013 **without proper documents.** To echo the draft *ponencia,* Ngo and Galang possessed **no clear and unmistakable legal rights** over these **undocumented** rice shipments that would have merited protection via the courts' writs of preliminary injunction.[4]

In *Ocampo v. Sison*,[5] the Court held that to be entitled to the injunctive writ, the applicant **must show** that there exists a **right to be protected** which **must** be **clear** and **unmistakable.** Where the applicant's **right** or **title** is **doubtful** or **disputed,** injunction is **not proper**. The Court further elucidated, *viz.*:

> **In the absence of a clear legal right, the issuance of the writ constitutes grave abuse of discretion.** Where the applicant's right or title is doubtful or disputed, injunction is not proper. The possibility of irreparable damage without proof of an actual existing right is not a ground for injunction.

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2 Decision of J. J. Lopez, pp. 17-18; p. 32.

3 Tetch Tupas, 2014. Supreme Court Stops Release of Illegally Imported Rice. Accessed at https://newsinfo.inquirer.net/587022/supreme-court-stops-release-of-illegally-imported-rice on August 14, 2022.

4 *See Philippine Amusement and Gaming Corp. v. Thunderbird Pilipinas Hotels & Resorts, Inc.*, 730 Phil. 543, 559 (2014) [Per J. Reyes, First Division].

5 552 Phil. 166 (2007) [Per J. Chico-Nazario, Third Division], as cited in *Roman Catholic Archbishop of San Fernando v. Soriano, Jr.*, 671 Phil. 308, 319 (2011) [Per J. Villarama, Jr., First Division].

> A clear and positive right especially calling for judicial protection must be shown. **Injunction is not a remedy to protect or enforce contingent, abstract, or future rights**; it will not issue to protect a right not *in esse* and which may never arise, or to restrain an act which does not give rise to a cause of action. There must exist an actual right. There must be a patent showing by the applicant that there exists a right to be protected and that the acts against which the writ is to be directed are violative of said right. (Emphasis and underscoring supplied)

Sumifru Philippines Corp. v. Spouses Cereño[6] discussed the concept of a **clear** and **unmistakable right** that could be protected by a writ of preliminary injunction, thus:

> A writ of preliminary injunction, being an extraordinary event, one deemed as a strong arm of equity or a transcendent remedy, must be granted only in the face of injury to actual and existing substantial rights. A right to be protected by injunction means a right clearly founded on or granted by law or is enforceable as a matter of law. An injunction is not a remedy to protect or enforce contingent, abstract, or future rights; it will not issue to protect a right not *in esse*, and which may never arise, or to restrain an act which does not give rise to a cause of action. **When the complainant's right is doubtful or disputed, he does not have a clear legal right and, therefore, injunction is not proper. While it is not required that the right claimed by the applicant, as basis for seeking injunctive relief, be conclusively established, it is still necessary to show, at least tentatively, that the right exists and is not vitiated by any substantial challenge or contradiction.** (Emphasis supplied)

The Court cannot act contrary to the exercise of the exclusive authority of the President and his subalterns at the Department of Foreign Affairs to conduct and determine the outcome of the country's foreign relations, including their interpretation of international instruments in the course of such exclusive authority.

The conduct and outcome of international relations have always been part and parcel of the President's **residual** or *prerogative powers* since time immemorial, which has also been codified in Book IV, Title I, Chapter 1, Sections 1 to 3 of the ***Administrative Code of 1987*** as amended.

Residual or prerogative powers are those unspoken powers but exist as a matter of national survival. As held in *Marcos v. Manglapus*:[7]

> **To the President, the problem is one of balancing the general welfare and the common good against the exercise of rights of certain**

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6 825 Phil. 743, 750-751 (2018) [Per J. Carpio, Second Division], as cited in *Bureau of Customs v. Court of Appeals-Cagayan de Oro Station*, G.R. Nos. 192809, 193588, 193590-91 & 201650, April 26, 2021 [Per J. Hernando, Third Division].

7 258 Phil. 479 (1989) [Per J. Cortes, En Banc].

> **individuals.** The power involved is the President's **residual power to protect the general welfare of the people.** It is founded on **the duty of the President, as steward of the people**. To paraphrase Theodore Roosevelt, it is **not only the power of the President but also his duty to do anything not forbidden by the Constitution or the laws** that the needs of the nation demand [See Corwin, supra, at 153]. It is a power borne by the President's duty to preserve and defend the Constitution. It also may be viewed as a power implicit in the President's duty to take care that the laws are faithfully executed [see Hyman, The American President, where the author advances the view that an allowance of discretionary power is unavoidable in any government and is best lodged in the President].
>
> More particularly, this case calls for the exercise of the President's powers as protector of the peace. [Rossiter, The American Presidency]. The **power of the President to keep the peace is not limited merely to exercising the commander-in-chief powers in times of emergency** or to leading the State against external and internal threats to its existence. The President is **not only clothed with extraordinary powers in times of emergency, but is also tasked with attending to the day-to-day problems of maintaining peace and order and ensuring domestic tranquility** in times when no foreign foe appears on the horizon. Wide discretion, within the bounds of law, in fulfilling presidential duties in times of peace is not in any way diminished by the relative want of an emergency specified in the commander-in-chief provision. For in making the President commander-in-chief the enumeration of powers that follow cannot be said to exclude the President's exercising as Commander-in-Chief powers short of the calling of the armed forces, or suspending the privilege of the writ of habeas corpus or declaring martial law, in order to keep the peace, and maintain public order and security. (Emphasis supplied)

The President's *prerogative* consists of the residue of miscellaneous powers, rights, privileges, immunities, and duties accepted under our law as vested in and exercised by him or her, including his or her subalterns. The prerogative power is subject to the doctrine of constitutional supremacy, and to a certain degree, Congress, by statute, may regulate the exercise of this power. It has also been codified in Section 20, Chapter 7, Title I, Book III of the *Administrative Code of 1987* which expresses it in this manner:

> Unless Congress provides otherwise, the President shall exercise such other powers and functions vested in the President which are provided for under the laws and which are not specifically enumerated above, or which are not delegated by the President in accordance with law.

The President's power in dealing with international relations is plenary in the sense that only express limitations circumscribe this power. This legal principle is too basic to be ignored. Its latest iteration in *Esmero v. Duterte*[8] did not diminish its nature as a legal doctrine:

> Indeed, the President is the guardian of the Philippine archipelago, including all the islands and waters embraced therein and all other territories over which it has sovereignty or jurisdiction. **By constitutional fiat and the**

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[8] G.R. No. 256288. July 29, 2021 [Per J. Zalameda, En Banc].

intrinsic nature of his office, the President is also the sole organ and authority in the external affairs of the country.

In *Saguisag v. Ochoa, Jr.*, this Court had occasion to discuss the President's foreign affairs power:

> **As the sole organ of our foreign relations and the constitutionally assigned chief architect of our foreign policy, the President is vested with the exclusive power to conduct and manage the country's interface with other states and governments.** Being the principal representative of the Philippines, the Chief Executive speaks and listens for the nation; initiates, maintains, and develops diplomatic relations with other states and governments; negotiates and enters into international agreements; promotes trade, investments, tourism and other economic relations; and settles international disputes with other states.
>
> xxx xxx xxx
>
> This rule does not imply, though, that the President is given carte blanche to exercise this discretion. Although **the Chief Executive wields the exclusive authority to conduct our foreign relations**, this power must still be **exercised within the context and the parameters set by the Constitution, as well as by existing domestic and international laws**.

The Court thereafter proceeded to list the following **constitutional restrictions to the President's foreign affairs powers**:

> a. The policy of freedom from nuclear weapons within Philippine territory;
>
> b. The fixing of tariff rates, import and export quotas, tonnage and wharfage dues, and other duties or imposts, which must be pursuant to the authority granted by Congress;
>
> c. The grant of any tax exemption, which must be pursuant to a law concurred in by a majority of all the Members of Congress;
>
> d. The contracting or guaranteeing, on behalf of the Philippines, of foreign loans that must be previously concurred in by the Monetary Board;
>
> e. The authorization of the presence of foreign military bases, troops, or facilities in the country must be in the form of a treaty duly concurred in by the Senate; and
>
> f. For agreements that do not fall under paragraph 5, the concurrence of the Senate is required, should the form of the government chosen be a treaty.
>
> In addition to treaty-making, the President also has the power to appoint ambassadors, other public ministers, and consuls; receive ambassadors and other public ministers duly accredited to the Philippines; and deport aliens. (Emphasis supplied)

Hence, when the President and his subalterns asked for the extension of the rice *concession*, they in effect were **imposing the rules to be followed** so

far as the country's **participation in the international regimes** of the World Trade Organization and the Agreement of Agriculture ought to be. That these were in fact the rules of international law to which we as a country were bound in the course of conducting foreign relations was confirmed and made definite and categorical by the **domestic laws** then in place, namely, **Memorandum Circular (M.C.) No. AO-2K13-03-003**, **Republic Act No. 8178** and **Presidential Decree 4**, as amended, which all support the *concession* for the imposition of quantitative restrictions then being requested. As we held in ***Esmero***:

> If President Duterte now sees fit to take a different approach with China despite said ruling, this does not by itself mean that he has, as petitioner suggests, unlawfully abdicated his duty to protect and defend our national territory, correctible with the issuance by this Court of the extraordinary writ of mandamus. **Being the Head of State, he is free to use his own discretion in this matter, accountable only to his country in his political character and to his own conscience.**
>
> **Ultimately, the decision of how best to address our disputes with China (be it militarily, diplomatically, legally) rests on the political branches of government.** While we are loath to give a "blank check" especially where the risk of grave abuse of discretion may be high, **we cannot have an "entrammeled executive" who will be ill-equipped to face the "amorphous threat[s] and perpetrators whose malign intent may be impossible to know until they strike." The Constitution vests executive power, which includes the duty to** execute the law, protect the Philippines, and **conduct foreign affairs, in the President – not this Court. Barring violations of the limits provided by law and the Constitution, we should take care not to substitute our exercise of discretion for his**. As **"the branch that knows least about the national security concerns that the subject entails," we cannot**, in the words of Justice Scalia, **just simply "blunder in."** (Emphasis supplied)

The **legalization of international relations** did not give rise to supranational institutions of law and order that operates over and above traditional state apparatuses of law and justice. International law remains for the greater part to be a matter of **soft law**.[9] Traditionally, investment rules or agreements amongst states were enforced through **diplomacy** and **parley**. States would pursue the causes and cases of its nationals.[10] While convenience and deficiencies in diplomatic procedures resulted in the evolution of commissions allowing for direct investor participation and the system of investment arbitration is now widespread, and thus, standing is provided to a state's investors, nonetheless, the obligations enforced continue to be **those of the states themselves** which are parties to the international agreements

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9 Kenneth W. Abbott and Duncan Snidal, "Hard and Soft Law in International Governance," Researchgate at https://www.researchgate.net/publication/4770665_Hard_and_Soft_Law_in_International_Governance/link/5611bf7b08aec422d1171340/download (last accessed on August 20, 2022).

10 Kenneth W. Abbott and Duncan Snidal, "Hard and Soft Law in International Governance," Researchgate at https://www.researchgate.net/publication/4770665_Hard_and_Soft_Law_in_International_Governance/link/5611bf7b08aec422d1171340/download (last accessed on August 20, 2022).

entered into.[11] This means that the evolution of even well-defined rules and clear-cut modes of enforcement **did not supersede** the *real politik* of international relations where diplomacy and parley, the self-serving interests of states, and the hierarchy of world order determined *how states should behave* and *what international rules governed.*[12]

As one article puts it, "[c]ontemporary international relations are legalized to an impressive extent, yet international legalization displays great variety. A few international institutions and issue areas approach the theoretical ideal of hard legalization, but most international law is 'soft' in distinctive ways."[13]

Executive Order No. 459 (1997), *Providing for the Guidelines in the Negotiation of International Agreements and its Ratification,* has categorically identified the talking heads and thinking minds when dealing with international law as soft law. Executive Order No. 459 mandates:

> WHEREAS, the negotiations of international agreements are made in pursuance of the foreign policy of the country;
>
> WHEREAS, Executive Order No. 292, otherwise known as the Administrative Code of 1987, provides that the Department of Foreign Affairs shall be the lead agency that shall advise and assist the President in planning, organizing, directing, coordinating and evaluating the total national effort in the field of foreign relations;
>
> WHEREAS, Executive Order No. 292 further provides that the Department of Foreign Affairs shall negotiate treaties and other agreements pursuant to the instructions of the President, and in coordination with other government agencies;
>
> WHEREAS, there is a need to establish guidelines to govern the negotiation and ratification of international agreements by the different agencies of the government;
>
> ....
>
> SECTION 1. Declaration of Policy. — It is hereby declared the policy of the State that the negotiations of all treaties and executive agreements, or any amendment thereto, shall be coordinated with, and made only with the participation of, the Department of Foreign Affairs in accordance with Executive Order No. 292. It is also declared the policy of the State that the composition of any Philippine negotiation panel and the designation of the chairman thereof shall be made in coordination with the Department of Foreign Affairs.

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[11] Kenneth W. Abbott and Duncan Snidal, "Hard and Soft Law in International Governance," Researchgate at https://www.researchgate.net/publication/4770665_Hard_and_Soft_Law_in_International_Governance/link/5611bf7b08aec422d1171340/download (last accessed on August 20, 2022).

[12] Kenneth W. Abbott and Duncan Snidal, "Hard and Soft Law in International Governance," Researchgate at https://www.researchgate.net/publication/4770665_Hard_and_Soft_Law_in_International_Governance/link/5611bf7b08aec422d1171340/download (last accessed on August 20, 2022).

[13] Kenneth W. Abbott and Duncan Snidal, "Hard and Soft Law in International Governance," Researchgate at https://www.researchgate.net/publication/4770665_Hard_and_Soft_Law_in_International_Governance/link/5611bf7b08aec422d1171340/download (last accessed on August 20, 2022).

...

SECTION 3. Authority to Negotiate. — Prior to any international meeting or negotiation of a treaty or executive agreement, authorization must be secured by the lead agency from the President through the Secretary of Foreign Affairs. The request for authorization shall be in writing, proposing the composition of the Philippine delegation and recommending the range of positions to be taken by that delegation. In case of negotiations of agreements, changes of national policy or those involving international arrangements of a permanent character entered into in the name of the Government of the Republic of the Philippines, the authorization shall be in the form of Full Powers and formal instructions. In cases of other agreements, a written authorization from the President shall be sufficient.

SECTION 4. Full Powers. — The issuance of Full Powers shall be made by the President of the Philippines who may delegate this function to the Secretary of Foreign Affairs.

The following persons, however, shall not require Full Powers prior to negotiating or signing a treaty or an executive agreement, or any amendment thereto, by virtue of the nature of their functions:

a. Secretary of Foreign Affairs;

b. Heads of Philippine diplomatic missions, for the purpose of adopting the text of a treaty or an agreement between the Philippines and the State to which they are accredited;

c. Representatives accredited by the Philippines to an international conference or to an international organization or one of its organs, for the purpose of adopting the text of a treaty in that conference, organization or organ.

SECTION 5. Negotiations. —

a. In cases involving negotiations of agreements, the composition of the Philippine panel or delegation shall be determined by the President upon the recommendation of the Secretary of Foreign Affairs and the lead agency if it is not the Department of Foreign Affairs.

b. The lead agency in the negotiation of a treaty or an executive agreement, or any amendment thereto, shall convene a meeting of the panel members prior to the commencement of any negotiations for the purpose of establishing the parameters of the negotiating position of the panel. No deviation from the agreed parameters shall be made without prior consultations with the members of the negotiating panel.

....

Clearly, when we talk about international law that is developed through negotiations and parleys, the talking heads and thinking minds are the President and his or her subalterns.

It is therefore easy to discern **why the domestic courts of states, including the highest courts of their lands, are not expert purveyors of**

what international law is and what it means, when the *interpretations of international law arise in the context of the conduct of foreign relations and the determination of their outcomes vis-à-vis other states and international organizations*. In this situation, **we are not experts** in discovering and discerning the mold of international law. This is especially true in areas where, as in the request for rice *concessions* under the Agreement on Agriculture, **diplomacy and parley remain to be the accurate measure of outcomes**.

Hence, in situations where international negotiations are taking place *or* where the Executive Branch is pre-occupied with parallel involvement in foreign relations, *Pangilinan v. Cayetano*[14] correctly cautioned:

> In any case, this Court has **no competence to interpret with finality – let alone bind** the International Criminal Court, the Assembly of States Parties, individual state parties, and the entire international community – what this provision means, and conclude that undoing a withdrawal is viable. In the face of how the Rome Statute enables withdrawal but does not contemplate the undoing of a withdrawal, **this Court cannot compel external recognition of any prospective undoing which it shall order**. To do so could even mean **courting international embarrassment**.
>
> Just the same, **any such potential embarrassment or other unpalatable consequences are risks that we, as a country, are willing to take is better left to those tasked with crafting foreign policy**. (Emphasis supplied)

As explained elsewhere,[15] echoing the principle expressed in *Esmero* and *Pangilinan* as stressed above:

> [24] The basic principles regarding treaty interpretation are summarized by Lord Oliver of Aylmerton in the case of *JH Rayner Ltd. vs. Dept. of Trade, [1989] 3 WLR 969 (HL)*, at pp. 1001 and 1002:
>
> "It is **axiomatic that municipal courts have not and cannot have the competence to adjudicate upon or to enforce the rights arising out of transactions entered into by independent sovereign states between themselves on the plane of international law**. That was firmly established by this House in *Cook v. Sprigg*, [1899] AC 572, 578, and was succinctly and convincingly expressed in the opinion of the Privy Council delivered by Lord Kingsdown in *Secretary of State in Council of India v. Kamachee Boye Sahaba (1859)*, 13 Moo. CCP 22, 75:
>
> **'The *transactions of independent states between each other* are governed by other laws than those which municipal courts administer; such courts have neither the means of deciding what is right, nor the power of enforcing any decision which they may make.'**
>
> "On the **domestic plane**, the power of the Crown to conclude treaties with other sovereign states is an exercise of the Royal Prerogative, **the validity of which cannot be challenged in municipal law**: see

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[14] G.R. No. 238875. March 16, 2021 [Per J. Leonen, En Banc].
[15] R. v. Vincent, 12 OR (3d) 427 (1993) (Ontario Court of Appeal).

Blackburn v. Attorney General, [1971] 1 WLR 1037. **The Sovereign acts 'throughout the making of the treaty and in relation to each and every of its stipulations in her sovereign character, and by her own inherent authority; and, as in making the treaty, so in performing the treaty, she is beyond the control of municipal law, and her acts are not to be examined in her own courts:'** *Rustomjee v. The Queen* (1876), 2 QBD 69, 74, by Lord Coleridge, CJ.

"That is the first of the underlying principles....

[25] These principles are very well summarized by Lord Diplock in *British Airways v. Laker Airways*, [1985] AC 58 (HL), at pp. 85 and 86:

"The **interpretation of treaties** to which the United Kingdom is a party but **the terms of which have not either expressly or by reference been incorporated in** English **domestic law by legislation** is **not a matter that falls within the interpretative jurisdiction of** an English **court of law**." (Emphasis and underscoring supplied)

This is *not to say* that our courts are forever unskilled at interpreting international law. As again explained elsewhere,[16] local courts may interpret international law in the following instances:

[26] However, **these principles have exceptions**, as noted by Lord Oliver of Aylmerton in Rayner, supra, at p. 1002:

"These **propositions do not, however, involve as a corollary that the court must never look at or construe a treaty**. Where, for instance, a **treaty is directly incorporated into** English **law by Act of the legislature, its terms become subject to the interpretative jurisdiction of the court in the same way as any other Act** of the legislature. *Fothergil v. Monarch Airlines Ltd.*, [1981] AC 251is a recent example. Again, it is well established that **where a statute is enacted in order to give effect to the** United Kingdom's **obligations under a treaty, the terms of the treaty may have to be considered and, if necessary, construed in order to resolve any ambiguity or obscurity** as to the meaning or scope of the statute. Clearly, also, **where parties have entered into a domestic contact in which they have chosen to incorporate the terms of the treaty**, the **court may be called upon to interpret the treaty for the purposes of ascertaining the rights and obligations of the parties** under their contract: see, for instance, *Philippson v. Imperial Airways Ltd.*, [1939] 332."

[27] Lord Oliver of Aylmerton continues at page 1003:

"It must be borne in mind, moreover, that the conclusion of an international treaty and its terms are as much matters of fact as any other fact. **That a treaty may be referred to where it is necessary to do so as part of the factual background against which a particular issue arises may seem a statement of the obvious.** But it is, I think, necessary to stress that the purpose for which such reference can legitimately be made is purely an evidential one. **Which states have become parties to a treaty and when and what the terms of the treaty are questions of fact.** The **legal results which flow from it in international law, whether between the parties**

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16 *R. v. Vincent,* 12 OR (3d) 427 (1993) (Ontario Court of Appeal).

> **inter se or between the parties or any of them and outsiders are not and they are not justiciable by municipal courts**. (Emphasis supplied)

But the orders of Judge Carpio and Judge Jurado do not fall within the circumstances contemplated by the exceptions. They are clearly out-of-step with the legal doctrine that textually commits foreign relations exclusively to the President and his or her subalterns. The right which these assailed orders have recognized to be allegedly clear and unmistakable crumbles in the face of the fact that the architects of the country's foreign affairs **have not at any instance endorsed it in the course of their exercise of this exclusive power**.

In other words, there is no clear and unmistakable right to import rice without restrictions and *sans* license because by seeking to negotiate for another rice *concession* in the international domain, the President and his subalterns in the foreign affairs department **have refused to accept it (or at least have ignored it) as a rule of international law**.

The Court cannot second guess the wisdom of the President and his subalterns on this matter since it falls within their exclusive domain to determine. This is the rule that they have the power to impose as it is part and parcel of the conduct and outcome of international relations.

The absence of clear and unmistakable legal right on the part of private respondents is the law of the case.

Notably, in its Resolution dated April 22, 2014, the Court **already denied** the respective Motions and/or Manifestations for the Release of Perishable Goods of Ngo and Galang. Subsequently, the Court denied their reconsideration per Resolution dated June 23, 2015 emphasizing that "**private respondents had not even clearly shown their legal right to the rice shipments.**"[17] The *ponencia* has admitted this important fact when it also mentioned:

> xxx private respondents' brazen act of importation without a permit during the gap of the second concession's expiry and the grant for the third concession was clearly a gamble that they made at their own risk.[18]

The **absence of clear and unmistakable legal right** on the part of private respondents is already therefore the **law of the case** in the present matter.

In *Philippine Ports Authority v. Nasipit Integrated Arrastre and Stevedoring Services Inc.*,[19] the Court explained the legal principle of the ***law of the case***:

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[17] Decision of J. Lopez, p. 11.
[18] Decision of J. Lopez, p. 28.
[19] 807 Phil. 942 (2017) [Per J. Caguioa, First Division].

> The **doctrine of the law of the case precludes departure from a rule previously made by an appellate court in a subsequent proceeding essentially involving the same case**. Pursuant to this doctrine, the Court, in De La Salle University v. De La Salle University Employees Association (DLSUEA-NAFTEU), (DLSU) denied therein petitioner's prayer for review, since the petition involved a **single issue which had been resolved with finality** by the CA in a previous case involving the same facts, arguments and relief.
>
> ....
>
> The law of the case has been defined as the opinion delivered on a former appeal. It means that **whatever is once irrevocably established as the controlling legal rule or decision between the same parties in the same case continues to be the law of the case**, whether correct on general principles or not, **so long as the facts on which such decision was predicated continue to be the facts of the case before the court**.
>
> In *Heirs of Felino M. Timbol, Jr. v. Philippine National Bank* (Heirs of Timbol), the Court was confronted with procedural antecedents similar to those attendant in this case. Therein, the Court affirmed the CA's decision declaring as valid the extrajudicial foreclosure assailed by petitioners on the basis of factual findings which were affirmed by the Court in a previous decision that dealt with the dissolution of a writ of preliminary injunction issued in the same case. Thus, in Heirs of Timbol, the Court ruled that the CA correctly applied the doctrine of the law of the case.
>
> ....
>
> Thus, **"[q]uestions necessarily involved in the decision on a former appeal will be regarded as the law of the case on a subsequent appeal, although the questions are not expressly treated in the opinion of the court**, as the presumption is that all the facts in the case bearing on the point decided have received due consideration whether all or none of them are mentioned in the opinion."[20] (Emphasis supplied)

Here, the Court has ruled with finality that the respondent judges' preliminary injunction cannot be given effect since **private respondents had no clear and unmistakable legal right**. Hence, this declaration ought to bind us so far as this element matters.

By way of resolution, the Court should not only reiterate that private respondents have no clear and legal right to be protected by the writs of preliminary injunction issued by the respondent judges but must also dismiss the actions below for lack of cause of action.

The **absence of a clear and unmistakable legal right** on the part of private respondents has already been **resolved** by the Court when it granted the preliminary injunction prayed for by petitioners. The Court was definite and categorical that private respondents were **unable to show this character** to their alleged legal right to benefit from preliminary injunction. I commend

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[20] *Id.* at 957-958.

Justice Lopez for reiterating this point in his *ponencia* as it is now the **law of the case**.

But more important, the Court **must already declare the absence of any right** on the part of the private respondents to import rice without license from the NFA. Hence, their actions utterly **lack a cause of action** and must therefore be **dismissed**. These resolutions necessarily arise from the legal doctrines discussed above.

The President and his subalterns were **negotiating for quantitative** restrictions for rice importations. This was **the rule of international law** to which the country, *including the Court*, was **bound to recognize** and **abide by**. This is because their exclusive power in this regard is **exclusive** and the outcomes of the exercise of this power are **unquestionable**. No one can summon them to our courts to compel them to reverse or retract their negotiating positions. Further, as also keenly noted above, international law **cannot trump** domestic laws, which here were then **Republic Act No. 8178** (1996), **Presidential Decree 4** (1972) and **Memorandum Circular (M.C.) No. AO-2K13-03-003**. Private respondents **cannot find** a **cause of action** on the basis of allegations and conclusions that are **contrary to our domestic laws**, though they anchor the same upon international law, the existence and relevance of which anyway are absolutely disputed.

In any event, private respondents are *technically* **not without any remedy**. Under international law, a wronged investor could seek the intervention of its state to protect its interests. The state, if it so desires, could then espouse the investor's claim under the principle of "diplomatic protection." This principle is part of customary international law. When a national is injured by an act contrary to international law, the state itself is injured. The concept is that an investor, or the investment, carries with it a little piece of the sovereign. So that injury to an investor or their property, if unremedied, is an injury to the state of that investor, or the sending state of the investment.

In the present case, the WTO and the Agreement on Agriculture has ordained that Articles XXII and XXIII of the General Agreement on Tariffs and Trade (GATT) of 1994 shall apply, thus:

> Part XI: Article 19
> Consultation and Dispute Settlement
>
> The provisions of Articles XXII and XXIII of GATT 1994, as elaborated and applied by the Dispute Settlement Understanding, shall apply to consultations and the settlement of disputes under this Agreement.[21]

The mechanism involving dispute settlement covers **consultations** where WTO Members other than the consulting parties are informed in

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[21] World Trade Organization – Agreement on Agriculture. Accessed at https://www.wto.org/english/docs_e/legal_e/14-ag_02_e.htm#articleXIX on August 14, 2022.

writing of requests for consultations, and any Member that has a substantial trade interest in consultations may request to join in the consultations as a third party.[22] When the Dispute Settlement Body has ruled that a provision of GATT 1994 has not been observed, the responsible Member-State shall take such reasonable measures as may be available to ensure its observance.[23] It is now up to private respondents to locate a Member willing to take up the cudgels for them.

Finally, records show that the tariffs and taxes over the rice shipments were only paid upon filing of the complaint in 2013 insofar as respondent Ngo is concerned.[24] Indeed, the Court cannot simply turn a blind eye to the shortcomings of private respondents, nor coddle the perpetuation of rampant smuggling of rice which continues to threaten the livelihood of millions of local rice farmers in the country. This is another ground for the Court to dismiss outright the actions below for utter lack of cause of action.

Conclusion

ACCORDINGLY, I vote to grant the petition, nullify the assailed orders of respondent judges, make the injunction granted by the Court permanent, and finally, order the dismissal of Civil Case No. 35,354-2013 and Civil Case No. CV-14-131261.

AMY C. LAZARO-JAVIER
Associate Justice

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[22] See General Agreement on Tariffs and Trade 1994. Accessed at https://www.jus.uio.no/english/services/library/treaties/09/9-01/gatt-1994.xml on August 14, 2022.

[23] See General Agreement on Tariffs and Trade 1994. Accessed at https://www.jus.uio.no/english/services/library/treaties/09/9-01/gatt-1994.xml on August 14, 2022.

[24] Draft *ponencia*, p. 25, circulated last July 26, 2022.

EN BANC

G.R. No. 211146 – SECRETARY PROCESO J. ALCALA, AS SECRETARY OF THE DEPARTMENT OF AGRICULTURE, AND AS CHAIRMAN OF THE NATIONAL FOOD AUTHORITY COUNCIL, AND THE BUREAU OF CUSTOMS, REPRESENTED BY COMMISSIONER JOHN PHILLIP P. SEVILLA, *petitioners*, ***versus*** **HONORABLE JUDGE EMMANUEL C. CARPIO, IN HIS CAPACITY AS PRESIDING JUDGE OF BRANCH 16, REGIONAL TRIAL COURT IN DAVAO CITY, AND JOSEPH MANGUPAG NGO,** *respondents*.

G.R. No. 211375 – SECRETARY PROCESO J. ALCALA, AS SECRETARY OF THE DEPARTMENT OF AGRICULTURE, AND AS CHAIRMAN OF THE NATIONAL FOOD AUTHORITY COUNCIL, AND THE BUREAU OF CUSTOMS, REPRESENTED BY COMMISSIONER JOHN PHILLIP P. SEVILLA, *petitioners*, ***versus*** **HONORABLE JUDGE CICERO D. JURADO, JR., IN HIS CAPACITY AS PRESIDING JUDGE OF BRANCH 11, REGIONAL TRIAL COURT IN MANILA, DANILO G. GALANG, DOING BUSINESS UNDER THE NAME AND STYLE ST. HILDEGARD GRAINS ENTERPRISES, AND IVY M. SOUZA, DOING BUSINESS UNDER THE NAME AND STYLE BOLD BIDDER MARKETING AND GENERAL MERCHANDISE,** *respondents*.

Promulgated:

April 11, 2023

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DISSENTING OPINION

CAGUIOA, *J.*:

The *ponencia* grants the consolidated Petitions based on its finding that respondent judges Honorable Emmanuel C. Carpio (Judge Carpio), as presiding judge of Branch 16 of the Regional Trial Court (RTC) of Davao City, and Honorable Cicero D. Jurado, Jr. (Judge Jurado), as presiding judge of Branch 11 of the RTC of Manila City, gravely abused their discretion amounting to lack or excess of jurisdiction when they respectively granted and issued writs of preliminary injunction (WPI) in favor of private respondents Joseph M. Ngo (private respondent Ngo) and Danilo G. Galang (private respondent Galang) (collectively, private respondents), for the release of private respondents' rice shipments from customs custody.

I respectfully submit that the foregoing ruling be revisited and reconsidered, and that the consolidated Petitions should be dismissed for lack of merit.

First, the preliminary nature of the injunctive writs required respondent judges to determine the existence of the requirements for the issuance of a WPI based only on a sampling of evidence. As such, the issuance of said writs was not, as they were not meant to be, conclusive on the resolution of the principal action involving the issue of whether the subject rice imports may be held on the basis of the National Food Authority's (NFA) Memorandum Circular No. AO-2K13-03-003 (NFA MC) on quantitative restrictions.

Second, taking into account the sampling of evidence evaluated by respondent judges, they cannot be held to have gravely abused their discretion in making the preliminary finding that private respondents had a clear and unmistakable right to import the subject rice shipments.

Third, the district collectors did not have any legal basis to bar the subject rice shipments as there was, at the time, no subsisting exemption to the World Trade Organization (WTO) Agriculture Agreement.

Finally, considering the passage of a rice tariffication law, and the issue of the NFA MC's validity being one of first impression, the finding that the NFA MC is invalid for contravening the Philippines' obligations under the said Agriculture Agreement should be made *pro hac vice*.

I.

A brief restatement of the factual circumstances surrounding this case is in order.

To recall, the crux of the controversy centers on the Philippines' commitments under the WTO Agreement. Among the annexes to the WTO Agreement is the Agreement on Agriculture (Agriculture Agreement) which enjoins Member-States from maintaining, resorting to, or reverting to trade restrictive measures.[1] Specifically, as provided for in the footnote of Part III, Article 4(2) of the Agriculture Agreement, these measures pertain to quantitative import restrictions, variable import levies, minimum import prices, discretionary import licensing, non-tariff measures maintained through state-trading enterprises, voluntary export restraints, and similar border measures, **which have been required to be converted into ordinary customs duties**. At the same time, however, Part III, Article 4(2) provides for exceptions, one of which pertains to Annex 5 of the Agriculture Agreement. Annex 5 contains mechanisms by which Member-States may request that certain agricultural products be temporarily exempted from their general free

[1] World Trade Organization, *Agriculture Agreement, Part III: Article 4(2) Market Access*, available at <https://www.wto.org/english/docs_e/legal_e/14-ag_01_e.htm#articleIV>.

trade commitments. **One of these mechanisms permits Member-States to request for exemption with respect to primary agricultural products which are deemed "predominant staples" in the Member-States' traditional diet.**[2] This is the mechanism the Philippines itself availed of in its application for exemption from its general free trade commitments in the WTO.

The Philippines secured its first exemption on January 1, 1995, when the WTO Agreement was established and upon the Philippines' accession thereto.[3] Said exemption covered a period of ten (10) years and expired on December 31, 2004.[4] The Philippines was later granted a second exemption which was set to expire on July 30, 2012.[5] Prior to the expiration of the second exemption, the Philippines applied for a third exemption.[6] However, said application was granted only on July 24, 2014.[7] **In other words, there was no exemption in effect for the two (2)-year period between June 30, 2012 and July 24, 2014.**

During this period, private respondents separately imported rice in the ports of Davao and Manila, respectively.[8] These rice shipments were seized by the district collectors for being imported without the licenses required by NFA MC. Aggrieved, they filed separate complaints for injunction before the RTC Davao and RTC Manila, respectively. Private respondents' complaints respectively alleged that the district collectors of Davao and Manila unlawfully seized their rice shipments. Specifically, private respondents argued that the Philippines' second exemption under the WTO Agreement had already expired at the time their rice shipments were seized. Hence, the district collectors no longer had any authority to enforce the license requirement imposed by the NFA MC.

Acting on private respondent Ngo's complaint, Judge Carpio of RTC Davao issued a WPI enjoining and restraining the district collector of Davao and all those acting in the latter's behalf from seizing and holding private respondent Ngo's rice shipments.[9] A similar WPI was issued by Judge Jurado of RTC Manila in connection with private respondent Galang's rice shipments.[10]

Aggrieved, the NFA and the Bureau of Customs (BOC) filed separate petitions for *certiorari* docketed as G.R. Nos. 211146 and 211375, claiming

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2 Annex 5, Section B(7) of the Agriculture Agreement.
3 *Ponencia*, p. 3.
4 *Id.* at 4.
5 *Id.*
6 *Id.*
7 *Id.* at 5.
8 *Id.* at 6–9.
9 *Id.* at 8.
10 *Id.* at 9.

that the WPI had been issued with grave abuse of discretion.[11] The Court issued two (2) separate resolutions suspending the enforcement of the WPI in question, and later ordered the consolidation of G.R. Nos. 211146 and 211375.[12]

During the pendency of the consolidated Petitions, specifically, on July 24, 2014, the WTO granted the Philippines' third exemption, allowing it to impose trade restrictions on rice until June 30, 2017.[13] Later still, on February 14, 2019, President Rodrigo Duterte signed into law Republic Act (R.A.) No. 11203, otherwise known as *An Act Liberalizing the Importation, Exportation and Trading of Rice, Lifting for the Purpose the Quantitative Restriction on Rice, and for Other Purposes*.[14] Under R.A. No. 11203, the quantitative restrictions on rice imports were finally lifted, and in lieu thereof, tariff measures were imposed.

Since the rice shipments subject of the injunction cases before the trial court were imported into the Philippines during the intervening period—*i.e.*, after the second exemption expired and before the third exemption was granted—private respondents argue that the NFA cannot implement the quantitative restrictions on rice by requiring the import permit. Further, private respondent Ngo asserts that the duties payable on the subject rice shipments were paid, and as such, he has the right to their release.[15] Private respondent Galang, on the other hand, manifested that the imported rice were not concealed from the NFA or from the BOC, as in fact, he was willing to pay the correct taxes thereon.[16]

Thus, there being no subsisting exemption from the WTO Agreement, private respondents argue that there should be no legal impediment to the importation of rice, even beyond the import quotas imposed by the NFA. Having complied with the payment of the applicable taxes on the subject rice shipments, the district collectors in the Ports of Manila and Davao may not continue to hold them on the basis of the absent NFA import permit.

The *ponencia* disagrees with private respondents and grants the Petitions. It finds that private respondents were not entitled to the issuance of an injunctive writ because there is no right *in esse* to import goods.[17] Verily, respondent judges were deemed to have gravely abused their discretion in issuing the assailed orders, as private respondents failed to overcome the requisites for an injunctive writ.[18]

I disagree.

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11 *Id.* at 10.
12 *Id.*
13 *Id.* at 11.
14 *Id.*
15 *Rollo* (G.R. No. 211146), Vol. II, p. 465.
16 *Rollo* (G.R. No. 211375), Vol. I, p. 290.
17 *Ponencia*, pp. 17–19.
18 *Id.* at 31–32.

The evidence clearly shows that private respondents were able to establish the requirements for the issuance of an injunctive writ. To be more specific, at the time of the importation of the rice, the Philippines was no longer enjoying the special treatment granted in favor of rice, and as such, it could not impose non-tariff measures for its importation. In this regard, private respondents may import the subject rice shipments without the need for a license from the NFA, as this license is intended to implement quantitative restrictions on rice.

In the same manner, respondent judges could legitimately rely, as they did, on the expiration of the period for special treatment in evaluating the merits of private respondents' applications for an injunctive writ. As a provisional remedy, the issuance of the WPI in their favor did not preclude respondent judges from making a final determination on the NFA's authority to continue imposing non-tariff measures for rice. Being a difficult question of law—that even the Members of the Court have diverging views on, there should be some measure of forbearance extended to respondent judges in having issued the assailed orders.

I expound on these points below.

II.

There is a right in esse to import rice in the absence of any law prohibiting it

The *ponencia* says that the right to import is not a fundamental right. While private respondents were able to establish their ownership to the questioned goods, according to the *ponencia*, their right remains subject to the limitations of public law and the rights of other individuals.[19] Citing *Southern Luzon Drug Corporation v. DSWD*,[20] the *ponencia* explains that the right to property has a social dimension that, when so demanded by the legislature, must bow to the primacy of police power.[21] Moreover, according to the *ponencia*, even a review of the statutes involved, particularly the WTO provisions, would negate the establishment of such right under the law. To buttress this assertion, the *ponencia* discusses Article 4 of the Agriculture Agreement, which recognizes instances where market access may be increased, hence, effectively restricting the importation of certain goods.[22]

The *ponencia* further explains that the Philippine regulation of rice importation operates within the framework of the WTO Agreement[23] and in order to obtain a concession from a Member-State's obligations under the Agriculture Agreement, Member-States like the Philippines are required to

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19 *Id.* at 29.
20 809 Phil. 315 (2017).
21 *Ponencia*, pp. 29–30.
22 *Id.* at 25–29.
23 *Id.* at 19–28.

undergo complex, collegial negotiations and decision-making processes as required by Section B of Annex 5 of the Agriculture Agreement. These observations led the *ponencia* to conclude that there is nothing that *per se* confers a right to import to individual citizens of Member-States, more so a clear and unmistakable one as required in injunction proceedings.

I respectfully register a strong disagreement with this position.

The right to import is a property right exercisable by any citizen. It does not cease to be a right *in esse* simply because it is not a fundamental right.[24] To recall, a right *in esse* is a clear and unmistakable right to be protected, one clearly founded on or granted by law or is enforceable as a matter of law. As can be gleaned, the right *in esse* contemplated under the Rules of Court does not require such right to be a *fundamental* one. In fact, true to its translation, a right *in esse* need only exist.[25] That a right is normally subjected to limitations due to policy considerations under the Constitution[26] and Statutes[27] does not negate the existence of such right.

Therefore, while it is true that importation of goods is a highly regulated activity, in the absence of any express prohibition by law, then it cannot be successfully argued that there is no right to import. As applied specifically in this case, if there is no law that prohibits the importation of rice, then anyone has the right to do so, including private respondents. To be clear, this does not imply that the State may not impose restrictions on importation, or that anyone may import rice or other products without having to comply with the applicable rules and regulations. But once it is shown that the applicant to the injunctive writ has complied with these regulations, as private respondents were able to successfully establish in this case, then it is untenable to rule that there is still no clear and unmistakable right. It is simply irrational and illogical to deprive a person of one's property and the fruits thereof because property rights do not enjoy the same level of protection as fundamental rights.

Associate Justice Maria Filomena D. Singh raises the point that private respondents did not comply with the NFA MC nor did they obtain a Grains Business License.[28] Justice Singh posits that, as a consequence of these omissions, private respondents have failed to prove their clear and unmistakable right to the importation of their goods into the country.

It is true that private respondents are required to obtain a grains business license as provided in Regulation II of the Revised Rules and Regulations of the NFA in Grains Businesses. As to private respondent Galang, he has demonstrated that he complied with this requirement in 2013.[29] That said,

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[24] *Id.* at 30–31.
[25] *In esse*, BLACK'S LAW DICTIONARY (2nd ed.).
[26] CONST. (1987), Art. VI, Sec. 28.
[27] See TARIFF CODE.
[28] Concurring Opinion of Associate Justice Maria Filomena D. Singh, p. 3.
[29] *Rollo* (G.R. No. 211375), Vol. I, p. 83, RTC Order.

compliance with this requirement relates to the regulation of the rice business and does not pertain to the requirements for the *importation* of rice into the Philippines—which is the issue pertinent to this case.

To stress, petitioners' main point of contention is the absence of an NFA import license for the subject rice shipments. **Petitioners do not dispute private respondents' compliance with the general requirements of importation as enumerated in the Department of Trade and Industry (Bureau of Import Services)**, to wit:

> Unless and until the Bureau is operating in a paperless environment, the printout of the Single Administrative Document (SAD) which is signed by the declarant and the customs broker, if any, and duly notarized must be submitted to the Formal Entry Division (FED) or its equivalent office or unit, together with the following documents:
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> 1. Duly endorsed Bill of Lading or Airway Bill, or certification by the carrier or agent of the vessel or aircraft;
> 2. Commercial Invoice, Letter of Credit or any other verifiable commercial document evidencing payment; in cases where there is no sale for export, by any commercial document indicating the commercial value of the goods;
> 3. Packing List;
> 4. Duly notarized Supplemental Declaration on Valuation (SDV);
> 5. Documents as may be required by rules and regulations, such as:
>
>   1. Import Permit or Clearance;
>   2. Authority to Release Imported Goods (ATRIG);
>   3. Proof of Origin for Free Trade Agreements (FTAs);
>   4. Copy of an Advance Ruling, if the ruling was used in the goods declaration;
>   5. Load Port Survey Reports or Discharge Port Survey Reports for bulk or break bulk importations;
>   6. Document evidencing exemption from duties and taxes;
>   7. Others, e.g., Tax Credit Certificate (TCC) or Tax Debit Memo (TDM).[30]

It bears to emphasize anew that **at the time the rice importations were made by private respondents, there was no exemption in effect for the two (2)-year period between July 30, 2012 and July 24, 2014**. Stated simply, when private respondents imported the subject rice shipments, the Philippines was duty-bound to remove non-tariff measures on its agricultural products. Since the Philippines was then unable to secure an exemption from its obligations under the Agriculture Agreement with respect to rice, private respondents were not prohibited from importing rice, and neither were they required to secure an NFA import license. To be sure, when the *ponencia* states that private respondents' ownership over the rice shipments must adhere

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[30] Department of Trade and Industry, *Import Facilitation*, available at <https://www.dti.gov.ph/negosyo/imports/import-facilitation>.

to the Philippines' regulation of rice importation which operates within the framework of the WTO[31]—**that is precisely the situation that happened here.**

III.

The NFA, by virtue of the NFA MC, cannot impose quantitative restrictions on rice after the expiration of the second exemption

Having established that a right *in esse* need not be a fundamental right, I now turn to the issue of whether the NFA may continue to impose import quotas despite the absence of a subsisting special treatment.

Petitioners argue, in the main, that the subject rice shipments should not be released because private respondents failed to comply with the required NFA import permit under the NFA MC. Private respondents, on the other hand, assert that the second concession allowing the Philippines to impose quantitative restrictions on rice, by virtue of the import permits, had already expired at the time the subject rice shipments were imported. There being no extension of the special concession, it was not necessary for them to secure import permits from the NFA.[32]

The *ponencia* upholds the authority of the NFA, as R.A. No. 8178,[33] or the *Agricultural Tariffication Act*, purportedly empowers the NFA to regulate rice importation.[34]

Again, I register my disagreement with the *ponencia.*

With the Philippines' membership in the WTO on January 1, 1995, it acceded to several trade agreements, including the Agriculture Agreement. The Agriculture Agreement was crafted with the intention of reforming trade in the agricultural sector by minimizing distortion[35] resulting from non-tariff measures such as import quotas and export subsidies.[36] Thus, parties to the agreement committed to convert non-tariff measures on agricultural products into tariffs.

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31 *Ponencia*, pp. 16–27.

32 *Id.* at 12–13.

33 March 28, 1996.

34 *Ponencia*, pp. 22–28.

35 *N.B.* Distortion refers to a situation where "prices are higher or lower than normal, and if quantities produced, bought, and sold are also higher or lower than normal – *i.e.*, than the levels that would usually exist in a competitive market." World Trade Organization, *Chapter 2: The Agreements*, available at <https://www.wto.org/english/thewto_e/whatis_e/tif_e/utw_chap2_e.pdf>.

36 World Trade Organization, *Understanding the WTO: The Agreements, Agriculture: Fairer Markets for Farmers*, available at <https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm3_e.htm>.

Member-States to the WTO agreed to implement the tariffication of agricultural trade over a period of time. Developing countries, in particular, were granted a longer period of ten (10) years from 1995 to implement the tariffication of agricultural trade.[37]

The Philippines, however, invoked the "special treatment" provision in Annex 5, Section B of the Agriculture Agreement with respect to rice—being a predominant staple in the traditional diet of a developing country. The duration of this special treatment is set out in paragraphs 8 to 10 of Annex 5, Section B:

> 8. Any negotiation on the question of whether there can be a continuation of the special treatment as set out in paragraph 7 after the end of the 10th year following the beginning of the implementation period shall be initiated and completed within the timeframe of the 10th year itself following the beginning of the implementation period.
>
> 9. If it is agreed as a result of the negotiation referred to in paragraph 8 that a Member may continue to apply the special treatment, such Member shall confer additional and acceptable concessions as determined in that negotiation.
>
> 10. In the event that special treatment under paragraph 7 is not to be continued beyond the 10th year following the beginning of the implementation period, the products concerned shall be subject to ordinary customs duties, established on the basis of a tariff equivalent to be calculated in accordance with the guidelines prescribed in the attachment hereto, which shall be bound in the Schedule of the Member concerned. In other respects, the provisions of paragraph 6 shall apply as modified by the relevant special and differential treatment accorded to developing country Members under this Agreement.

A cursory examination of the terms of the Agriculture Agreement reveals that, unless a special treatment is expressly conferred on the Member-State, parties to the agreement "shall not maintain, resort to, or revert to any measures of the kind which have been required to be converted into ordinary customs duties".[38] Further, any extension of the special treatment is subject to negotiation, as the Member-State seeking the same is bound to confer additional and acceptable concessions as a result thereof.

Following its commitment as a Member-State of the WTO, the Philippines agreed to phase out non-tariff measures on rice, particularly import quotas, by 2005. But after the expiration of the initial period for special treatment on December 31, 2004, the Philippines negotiated for its

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[37] *Id.*; *N.B.* Developed countries agreed to implement the Agriculture Agreement within six (6) years.

[38] WTO Agreement on Agriculture, Part III, Article 4, par. 2.

extension.[39] A seven (7)-year extension was granted, or until June 30, 2012.[40] The extension of the special treatment beyond June 30, 2012 was explicitly "contingent on the outcome of the Doha Development Agenda (DDA) negotiations."[41]

Based on the foregoing, any concession on the commitments of a Member-State after this period should be explicitly agreed upon. The Member-State invoking the special treatment cannot simply presume that it is automatically extended upon the expiration of the period specified in paragraph 8 of Section B, Annex 5. **In the same manner, neither should it presume that it may continue to implement non-tariff measures during the intervening time between the expiration of the special treatment and the decision extending the period. As soon as the period for the special treatment expires, the Member-State must abide by its commitment to convert its non-tariff measures to ordinary customs duties in accordance with Article 4, paragraph 2 of the Agriculture Agreement.**

That the WTO Agreement was enacted in a matter that was mindful of developing nations,[42] as the *ponencia* posits, is true; but this observation is inaccurately applied in this case. Indeed, the Agriculture Agreement, in particular, allows some flexibility in the way commitments are implemented. Developing countries do not have to cut their subsidies or lower their tariffs as much as developed countries, and they are given extra time to complete their obligations.[43] Thus, in the case of products which are granted special treatment, it should be emphasized that the duration specified in Annex 5, Section B **coincides with and clearly incorporates** the ten (10)-year implementation period under the Agriculture Agreement, thus:

> *Section B*
>
> 7. The provisions of paragraph 2 of Article 4 shall also not apply with effect from the entry into force of the WTO Agreement to a primary agricultural product that is the predominant staple in the traditional diet of a developing country Member and in respect of which the following conditions, in addition to those specified in paragraph 1(a) through 1(d), as they apply to the products concerned, are complied with:
>
> > (a) minimum access opportunities in respect of the products concerned, as specified in Section I-B of Part I of the Schedule of the developing country Member concerned, correspond to 1 per cent of base period domestic consumption of the products concerned from the beginning of the first year of the implementation period

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39 *Rollo* (G.R. No. 211146), Vol. I, p. 11; *See also* World Trade Organization, *Trade Policy Review: The Philippines* (July 2005), available at <https://www.wto.org/english/tratop_e/tpr_e/s149-3_e.doc>.

40 World Trade Organization, *WTO documents G/MA/TAR/RS/99/Rev.1* (December 27, 2006) and *WT/Let/562* (February 8, 2007), available at <https://goods-schedules.wto.org/system/files/WTO_import/Drive/WT-Let_English/562.pdf>.

41 *Id.*

42 *Ponencia*, pp. 23–28.

43 World Trade Organization, *Understanding The WTO: The Agreements, Agriculture: Fairer Markets for Farmers*, available at <https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm3_e.htm>.

> and are increased in equal annual instalments to 2 per cent of corresponding domestic consumption in the base period at the beginning of the fifth year of the implementation period. From the beginning of the sixth year of the implementation period, minimum access opportunities in respect of the products concerned correspond to 2 per cent of corresponding domestic consumption in the base period and are increased in equal annual instalments to 4 per cent of corresponding domestic consumption in the base period until the beginning of the 10th year. Thereafter, the level of minimum access opportunities resulting from this formula in the 10th year shall be maintained in the Schedule of the developing country Member concerned;
>
> (b) appropriate market access opportunities have been provided for in other products under this Agreement.
>
> 8. Any negotiation on the question of whether there can be a continuation of the special treatment as set out in paragraph 7 after the end of the 10th year following the beginning of the implementation period shall be initiated and completed within the timeframe of the 10th year itself following the beginning of the implementation period.

As such, the developing country Member-State invoking the exemption is expected to take measures during this time to discontinue the implementation of quantitative restrictions on trade. **The special treatment is therefore not meant to be a perpetual exemption from the required tariffication of agricultural trade. It only postpones an obligation that the developing country Member-State is ultimately bound to implement.**

Thus, in this case, petitioners were surely not unaware that upon the inevitable lapse of the first or the second exemption, the Philippines would then be obliged to lift the import quotas on rice. Annex 5, Section B(10) of the Agriculture Agreement pertinently provides that in the event that the special treatment is discontinued beyond the 10th year following the beginning of the implementation period, the products concerned shall be subject to ordinary customs duties, established on the basis of a tariff equivalent to be calculated in accordance with the guidelines prescribed in the attachment thereto. **Petitioners, particularly, the NFA, cannot simply plug the gap by issuing a memorandum circular that unilaterally maintains the quantitative restrictions on rice imports. *This is not justified by the terms of the Agriculture Agreement, which the Philippines is obliged to fulfill following its accession to the WTO Agreement*.**

Justice Singh argues that the NFA is authorized to impose import quotas pursuant to its delegated legislative authority. According to her, the enactment of R.A. No. 8178, which explicitly excludes rice from the policy of non-tariff restrictions, reveals the intention of Congress "to maintain the power of the NFA to impose quantitative restrictions on the rice trade".[44] Justice Singh

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[44] Concurring Opinion of Associate Justice Maria Filomena D. Singh, pp. 3–4.

therefore essentially opines that a treaty should conform with national statutes on the same subject, as the authority of Congress to legislate should prevail.[45]

This argument puts the cart before the horse. R.A. No. 8178 was passed on March 28, 1996, or a year after the ratification of the WTO Agreement. This law was passed with full cognizance of the country's commitments under the WTO Agreement. This is seen from the law's declaration of policy which states that "[i]t is the policy of the State to make the country's agricultural sector viable, efficient and globally competitive." It further holds that "[t]he State adopts the use of tariffs in lieu of non-tariff import restrictions to protect local producers of agricultural products, except in the case of rice, which will continue to have quantitative import restrictions."[46] Section 5 of R.A. No. 8178 also amended Presidential Decree (P.D.) No. 4, or the enabling law of the NFA, granting the agency with the authority "[t]o establish rules and regulations governing the importation of rice and to license, impose and collect fees and charges for said importation for the purpose of equalizing the selling price of such imported rice with normal prevailing domestic prices."[47]

In other words, the authority granted to the NFA by virtue of R.A. No. 8178 cannot be detached from the factual milieu at the time of its enactment. In short, R.A. No. 8178 was passed as the domestic law that implemented WTO provisions on agriculture for the Philippines.[48]

As the Court held in *Tañada v. Angara*[49] (*Tañada*), the Senate, after deliberation and voting, voluntarily and overwhelmingly gave its consent to the WTO Agreement thereby making it "a part of the law of the land". The Court recognized this as a legitimate exercise of the Senate's sovereign duty and power.[50] To be sure, the fundamental maxim of international law, *pacta sunt servanda*, requires the Philippines, as a party to the WTO Agreement, to keep its concurrence and commitments therein in good faith.[51]

Similarly, the observance of our country's legal duties under an international obligation is also compelled by Section 2, Article II of the Constitution which provides that "[t]he Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land, and adheres to the policy of peace, equality, justice, freedom, cooperation and amity with nations". Insofar as treaties are concerned, however, the Court clarified in *Pangilinan v. Cayetano*[52] that they follow a different process to become part of the law of the land and are deliberately delineated by the framers of the 1987

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45 *Id.* at 13–15.
46 R.A. No. 8178, Sec. 2.
47 *Id.*
48 Senate Economic Planning Office, *Rice Tariffication: Why is it a necessary public policy?*, Policy Brief, (December 2017), available at <https://legacy.senate.gov.ph/publications/SEPO/PB_Rice_ Tariffication_19Dec2017.pdf>.
49 338 Phil. 546 (1997).
50 *Id.* at 605.
51 *See Secretary of Justice v. Lantion*, 379 Phil. 165, 212 (2000).
52 G.R. No. 238875, March 16, 2021.

Constitution from generally accepted principles of international law. Under Section 21, Article VII of the Constitution, no treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate. This provision signifies that treaties and international agreements are not automatically incorporated to the Philippine legal system, but are transformed into domestic law by Senate concurrence.[53]

Hence, when the Philippines opened its agricultural market to other WTO Member-States upon its accession to the WTO in 1995, ***it established, in turn, a tariffication system through R.A. No. 8178 in 1996***.[54] Through R.A. No. 8178, all quantitative restrictions on agricultural products were converted into tariffs. Rice was excluded from the tariffication, not out of partial renunciation of the country's international obligations under the WTO Agreement—***but because the Philippines was able to negotiate for a "special treatment" of the Agriculture Agreement***.[55]

In other words, at the time of the passage of R.A. No. 8178, the Philippines had already been granted special treatment for rice imports until December 31, 2004, and was only a year into the ten (10)-year implementation period for the Agriculture Agreement. The Congress, therefore, clearly took this fact into consideration when it enacted R.A. No. 8178. Thus, to my mind, R.A. No. 8178 was not enacted to permanently carve out rice from the tariffication of agricultural products. Rather, it was meant to faithfully fulfill the Philippines' obligation as a WTO Member-State.

As well, given the factual backdrop within which R.A. No. 8178 was passed in 1996 as described above, the supposed conflict between the domestic law and the WTO Agreement in light of the expiration of the exemption is more imagined than real.

It is well-settled that because of legislative participation through the Senate, a treaty is regarded as being on the same level as a statute.[56] A valid treaty or international agreement may be effective just as a statute is effective and has the force and effect of law.[57] While a statute prevails when it is conflict with a treaty,[58] the first rule to follow is to harmonize the treaty with the statute, so as to give effect to both.

Here, harmonizing the Agriculture Agreement and R.A. No. 8178 would result in the conclusion that there really is no conflict between the two to begin with. Again, to stress, R.A. No. 8178 was enacted after the country's

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53 *Id.*

54 Senate Economic Planning Office, *Rice Tariffication: Why is it a necessary public policy?*, Policy Brief, (December 2017), *supra* note 48.

55 *Id.*

56 *Saguisag v. Ochoa*, 777 Phil. 280, 293 (2016).

57 *Pangilinan v. Cayetano*, *supra* note 52.

58 *Id.*

accession to the WTO Agreement, precisely to faithfully comply with its obligations under the Agriculture Agreement and to domestically reflect the special treatment accorded to the country under Annex 5 with respect to rice. Thus, when the exemption or such special treatment expired, this did not give rise to a conflict between the Agriculture Agreement and R.A. No. 8178, but, at best, a seeming gap in R.A. No. 8178. Specifically, a question may be raised as to what happens after the special treatment with rice expires. When harmonized, however, with the Agriculture Agreement, the clear answer is found in Annex 5, Section B(10), which, to reiterate, provides that "in the event that the special treatment is discontinued beyond the 10th year following the beginning of the implementation period, the products concerned shall be subject to ordinary customs duties, established on the basis of a tariff equivalent to be calculated in accordance with the guidelines prescribed in the attachment [t]hereto."

On another note, it is noteworthy that while Congress, under R.A. No. 8178, saw fit to provide for quantitative restrictions on rice imports, this did not preclude the enactment of a subsequent law on rice tariffication. Congress may even decide to lift these non-tariff measures on rice while the second exemption is in effect, as the agreement on the extension of the special treatment to June 30, 2012, provides that:

> 4. Country Specific Quotas (CSQ)
>
> The following country specific quotas (CSQ's) are being given on a yearly basis for the duration of the period that the Philippines implements the special treatment under Annex 5:
>
> . . . .
>
> 4.1 In case of cessation of special treatment during the implementation period or after the completion of the implementation period, the entire volume of the CSQs shall become a global quota on an MFN basis.[59]

In other words, the enactment of R.A. No. 8178 should not, as it could not, thwart the expiration of the second exemption. To be sure, waivers or exemptions are generally treated or interpreted strictly.

Accordingly, the NFA MC, having been issued in March 2013 when the second extension of the Philippines' special treatment under Annex 5 had already expired, could not have been a valid source of a right on the part of government to impose additional requirements on rice importation beyond the general requirements for importation.

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[59] World Trade Organization, *WTO documents G/MA/TAR/RS/99/Rev.1* (December 27, 2006), and *WT/Let/562* (February 8, 2007), available at <https://goods-schedules.wto.org/system/files/WTO_import/Drive/WT-Let_English/562.pdf>.

To be sure, an administrative issuance pursuant to a delegated law-making power, 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.[60]

With respect, the NFA MC failed to observe all the above requisites, especially the third requisite.

While the NFA MC expressly states that it was issued pursuant to the powers granted to the NFA under P.D. No. 4, as amended, it should be noted that P.D. No. 4 and its amendments, *i.e.,* P.D. Nos. 699 and 1485, were enacted around two decades before the Philippines acceded to the WTO Agreement. After the accession, R.A. No. 8178 amended the authority of the NFA under P.D. No. 4 "to establish rules and regulations governing the importation of rice and to license, impose and collect fees and charges for said importation . . ."[61] by including a proviso that the requirement of prior consultation with the Office of the President before exercising said authority "shall not apply to the importation of rice equivalent to the Minimum Access Volume obligation of the Philippines under the WTO."[62] Therefore, our accession to the WTO Agreement, as circumscribed by the special treatment which the Philippines was able to secure, was seriously taken into account when the authority of the NFA in R.A. No. 8178 was amended.

Bearing all the foregoing in mind, the authority of the NFA to establish rules and regulations governing the importation of rice is sourced not from P.D. No. 4, as further amended by R.A. No. 8178, alone—*but from the WTO Agreement as well.* This, again, is also owing to the fact that the WTO Agreement has gained the status of a statute upon the Senate's concurrence thereto and is in equal footing with R.A. No. 8178.

At the time the NFA MC was issued in March 2013, the regime of quantitative restrictions on rice was no longer in effect as the exemption by which it operated had already expired. In its stead, ordinary customs duties took effect. Consequently, there was no longer any statutory basis for the NFA to impose the said quantitative restrictions on rice in 2013 *via* the subject NFA MC. By doing so, the issuance ran afoul with the **third requisite** for a valid administrative order—in that it must be within the scope of authority given by the legislature.

As the Court aptly held in *Executive Secretary v. Southwing Heavy Industries*,[63] 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**. At the pain of being repetitious, a

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60 *Executive Secretary v. Southwing Heavy Industries*, 518 Phil. 103, 117 (2006).
61 R.A. No. 8178, Sec. 5.
62 *Id.*
63 *Supra* note 60.

spring cannot rise higher than its source. To construe the source of the NFA's authority to restrict imports as limited to R.A. No. 8178 completely disregards the underlying purpose of this law—*i.e.*, ensuring that the Philippines take steps to comply with its obligations under the WTO Agreement. Surely, given this history, it is incongruous to rule that R.A. No. 8178, simply by virtue of being a later law, can supersede the very agreement it seeks to implement.

The expiration of the second exemption notwithstanding, views were expressed by some Members of the Court during the deliberations, emphasizing that herein respondent judges should not have directed the release of the rice shipments as this will cause economic ruin and worse food insecurity without the benefit of scrutiny by our political bodies.

With due respect, this is a digression from the factual circumstances and the issues surrounding this case. As the Court in *Tañada* declared, whether the Senate's concurrence to the WTO was wise, beneficial, or viable is outside the realm of judicial inquiry and review and is a matter between the elected policy makers and the people. The Court proclaimed further that "[a]s to whether the nation should join the worldwide march toward trade liberalization and economic globalization is a matter that our people should determine in electing their policy makers. After all, the WTO Agreement allows withdrawal of membership, should this be the political desire of a [M]ember-[State]."[64] In this regard, I agree with the statements in the *ponencia* that "it is not within the province of this Court to comment on the benefits and disadvantages of either of the . . . economic policies as these are dynamic issues that [are] better left to the wisdom of the Executive branch."[65] I likewise laud the attempt of the *ponencia* to focus instead on the rights involved, narrowed down to the asserted rights of private respondents as vendees of the seized rice shipments, as opposed to the right of the State to regulate markets in the interest of general welfare, as determined.[66]

Ultimately, the Philippines agreed that by the end of its special treatment, which was further extended for another seven (7) years from the implementation period, quantitative restrictions on rice imports would be phased out. To be sure, petitioners were also aware that the extension of the second exemption was contingent on the outcome of the DDA negotiations, which unfortunately, were not completed before the expiration of the second extension.[67]

As well, petitioners, fully cognizant of the ensuing termination of this special treatment, cannot now invoke the same law to rationalize its insistence in the imposition of rice import quotas, which deviates from the Philippines' commitments under the Agriculture Agreement. Consequently, while it may be argued that the lapse of the waiver extension under the WTO Agreement

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64 *Tañada v. Angara, supra* note 49, at 606.
65 *Ponencia*, p. 14.
66 *Id.*
67 *Rollo* (G.R. No. 211146), Vol. I, p. 12.

did not automatically prohibit the imposition of quantitative restrictions on rice imports, and that the NFA is empowered under P.D. No. 4 and R.A. No. 8178 to regulate the importation of rice, these should not impair the capacity of private respondents to import rice during the interregnum of the special treatment, especially when they were willing to pay, or had actually paid, the corresponding duties and taxes on the subject rice shipments.

IV.

Respondent judges did not gravely abuse their discretion in issuing the injunctive writs in favor of private respondents

It bears emphasis that the Court is not confronted here with a review of a definitive and substantive ruling from respondent judges in the main cases. The Court's discussions on the consequences of the expiration of the special treatment on private respondents' importation of rice are only necessary due to the substantial amount of time that had lapsed since the present Petitions were filed. To my mind, these discussions should therefore warrant a ruling that applies *pro hac vice*. More importantly, these discussions should be read within the context of what a proceeding for an application for a WPI merely requires before a judge rules on the same, and the high threshold a petitioner should establish in claiming that a judge has gravely abused his or her discretion.

Verily, as well, there is no practical value for the Court to remand the case back to the trial courts for the resolution of the main action for injunction. Given the considerable lapse of time since the rice shipments arrived in the port and the passage of the new tariffication law, R.A. No. 11598, the assailed orders of respondent judges have been rendered *functus officio*.

To clarify, I agree that there are interwoven matters in this case that are largely political, touching upon policy considerations about the country's participation in the liberalized global trading stage, on the one hand, and the management of the effects thereof in the local industry, on the other. I stress, however, that the Court should bear in mind that the kernel issue raised in these Petitions is **whether there was grave abuse of discretion on the part of the trial court judges in issuing the assailed orders granting the WPI in favor of private respondents**. It certainly is within the province and bounden duty of the Court to resolve this issue without improperly weighing in on the political aspects surrounding the case. With respect, I submit that the *ponencia* has unduly ventured outside this narrow path.

As a general rule, the grant or denial of a WPI in a pending case rests on the sound discretion of the court taking cognizance of the case, since the assessment and evaluation of evidence towards that end involves findings of

fact left to the said court for its conclusive determination.[68] In other words, the exercise of judicial discretion by a court in injunctive matters must not be interfered with, except when there is grave abuse of discretion.[69]

Hence, in resolving the propriety of the Order dated December 12, 2013 issued by Judge Carpio and the Order dated February 28, 2014 issued by Judge Jurado (the assailed Orders), the Court should be guided by what constitutes grave abuse of discretion.[70] In *Aurelio v. Aurelio*,[71] the Court emphasized that by grave abuse of discretion is meant the capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction.[72] Mere abuse of discretion is not enough and must be grave as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility.[73] It must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[74]

Using this established standard, I submit that respondent judges were fully justified in granting the applications for WPI. A preliminary injunction is hinged only on *prima facie*, or a sampling of, evidence.[75] Such evidence need only be good and sufficient on its face, or, to reiterate, a sampling that is intended merely to give the court an evidence of justification for a preliminary injunction pending the decision on the merits of the case, and is not conclusive of the principal action which has yet to be decided.[76] The discussion in *Urbanes, Jr. v. Court of Appeals*,[77] is instructive, *viz.*:

> The evidence submitted during the hearing on an application for a writ of preliminary injunction is not conclusive or complete for only a "sampling" is needed to give the trial court an idea of the justification for the preliminary injunction pending the decision of the case on the merits. As such, the findings of fact and opinion of a court when issuing the writ of preliminary injunction are interlocutory in nature and made even before the trial on the merits is commenced or terminated. There are vital facts that have yet to be presented during the trial which may not be obtained or presented during the hearing on the application for the injunctive writ. The trial court needs to conduct substantial proceedings in order to put the main controversy to rest. It does not necessarily proceed that when a writ of preliminary injunction is issued, a final injunction will follow.[78]

In the same vein, it likewise bears emphasis that for a writ of preliminary injunction to issue, Section 3, Rule 58 of the Rules of Court does

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68 *Tiong Bi, Inc. v. Philippine Health Insurance Corporation*, G.R. No. 229106, February 20, 2019, 894 SCRA 205, 210–211.
69 *Cahambing v. Espinosa, et al.*, 804 Phil. 412, 421 (2017).
70 *See DPWH v. City Advertising Ventures Corporation*, 799 Phil. 47, 61 (2016).
71 665 Phil. 693 (2011).
72 *Id.* at 703.
73 *Id.* at 704.
74 *Id.*
75 *Urbanes, Jr. v. Court of Appeals*, 407 Phil. 856, 866 (2001).
76 *Id.* at 866.
77 *Supra* note 75.
78 *Id.* at 867.

not require that the act complained of be in clear violation of the rights of the applicant.[79] In *Hernandez v. NPC*,[80] the Court observed that indeed, what the Rules require is that the act complained of be probably in violation of the rights of the applicant. Under the Rules, probability is enough basis for injunction to issue as a provisional remedy.[81] The Court differentiated the situation from injunction as a main action where one needs to establish absolute certainty as basis for a final and permanent injunction.[82]

As such, the assailed Orders issued by Judges Carpio and Jurado were confined to their initial findings on the justifications for the granting of the WPI at that time, which need not rest on absolute certainty, and are far from being tainted with grave abuse of discretion.

For one, the factual circumstances during the filing of the petitions before the lower courts showed that private respondents were able to establish all the requisites necessary for the WPI to be issued. Specifically, private respondents had sufficiently established their rights as owners of the rice shipments.[83]

As well, there were other pieces of evidence that establish, at the very least, an ostensible right in favor of private respondents to the final relief prayed for.

First, private respondent Galang raised in his complaint for injunction that the subject NFA MC was not filed with the University of the Philippines (UP) Law Center. He further furnished the trial court with a Certification from the UP Law Center, certifying that the NFA MC was not filed with the institution.[84] Similarly, in his comment filed before the Court, private respondent Ngo submitted to the Court a Certification dated November 15, 2013 from the UP Law Center's Office of the National Administrative Register (UP-ONAR), attesting to the fact that the NFA MC had not been filed with said office as of such date.[85]

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79 *Hernandez v. NPC*, 520 Phil. 38, 40 (2006).

80 *Id.*

81 *Id.* at 48.

82 *City of Naga v. Asuncion*, 579 Phil. 781, 799 (2008).

83 Private respondent Ngo's ownership of his rice shipments is confirmed by the Agreement between respondent Ngo and his importer Starcraft. The Agreement states that title to the goods shipped shall be transferred from Starcraft to private respondent Ngo upon remittance of the down payment. In this connection, private respondent Ngo's testimony and documentary exhibits confirm that private respondent Ngo already paid for the rice shipments in full. On the other hand, private respondent Galang's ownership of his rice shipments is similarly established by the Agreement between private respondent Galang and his importer Bold Bidder Marketing and General Merchandise, as well as an acknowledgment receipt issued by the latter to the former confirming payment of the rice shipments in question. *See ponencia,* p. 29. *See also* the December 12, 2013 Order of Presiding Judge Carpio, *rollo* (G.R. No. 21146), Vol. I, pp. 78–84 and the Order dated January 23, 2014 of Presiding Judge Jurado, *rollo* (G.R. No. 211375), Vol. I, pp. 83–85.

84 *Rollo* (G.R. No. 211375), Vol. I, p. 146, Complaint for Permanent Injunction with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction.

85 *Ponencia*, p. 13; *rollo* (G.R. No. 211146), Vol. II, p. 610, UP-ONAR Certification.

Needless to state, the effect of the non-filing of the administrative regulation with the UP-ONAR is material with respect to the case at bar.

It is settled that publication is a condition precedent to the effectivity of a law. The purpose of such condition is to fully and categorically inform the public of its contents before their rights and interests are affected by the same.[86] Similarly, it is provided under Article 2 of the Civil Code that laws shall take effect after fifteen (15) days following the completion of their publication in the Official Gazette. Meanwhile, under Section 3, Chapter 2 of Book VII of the Administrative Code of 1987, it is provided that "[e]very agency shall file with the University of the Philippines Law Center three (3) certified copies of every rule adopted by it."

It is not evident from the records if petitioners were able to rebut the Certification from the UP-ONAR. Nevertheless, I submit that the NFA MC is a regulation that comes under the rules on prior publication and filing with the UP-ONAR. After all, the exceptions to the said rule only apply to interpretative regulations, which need nothing further than their bare issuance for they give no real consequence more than what the law itself has already prescribed,[87] and those merely internal in nature, that is, regulating only the personnel of the administrative agency and not the public need not be published.[88] **The NFA MC not being under the aforementioned categories, it should have been duly filed with the UP Law Center before its provisions were carried out by the NFA. Otherwise, the NFA MC cannot have been considered in effect at all.**

Second, private respondents had adduced evidence to show that their rice shipments were made after the expiration of the Philippines' second exemption to the WTO Agreement. As discussed, this placed the district collectors' authority to seize and detain their rice shipments pursuant to the NFA MC in serious doubt, considering that the license requirement of the NFA is a mechanism for the implementation of quantitative restrictions on rice imports imposed.

It is also worth noting that petitioner Alcala was advised by then Department of Justice (DOJ) Secretary Leila De Lima that the Philippines' second concession had already expired as of June 30, 2012, and so rice import licenses could no longer be imposed.[89] The pertinent portions of the letter of former DOJ Secretary De Lima are quoted below:

> From the moment the effectivity of the special treatment under Annex 5 expired, the positive obligation or undertaking of the Philippine Government under Paragraph 2, Article 4 with respect to rice importation became effective, *i.e.* it agreed that it "shall **not** maintain, resort to, or revert

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86 *DENR Employees Union v. Secretary Florencio B. Abad*, G.R. No. 204152, January 19, 2021.
87 *Id.*, citing *Villafuerte v. Cordial, Jr.*, G.R. No. 222450, July 7, 2020, 941 SCRA 367, 368–369, 376.
88 *Id.*
89 *Ponencia*, p. 13; *rollo* (G.R. No. 211146), Vol. II, pp. 595–606, DOJ Letter.

> to any measures of the kind which have been required to be converted into ordinary custom duties."
>
> . . . .
>
> Hence, since the Philippines' request for the extension of its QR on rice until 2017 is still pending, and there is thus no existing agreement to "extend" such authority (or, more accurately, grant a new one since the first one had already lapsed), the Philippine Government must honor and implement the effect of the expiration of the period granted to it, under the principle of *pacta sunt servanda*, among which is to instead subject rice importations to ordinary custom duties in accordance with Paragraph 2, Article 4 of the Agreement on Agriculture.[90] (Emphasis supplied)

Such opinion from the DOJ carries a persuasive weight upon the courts.[91] Considering that there appears to be an equivocal guidance from the Executive Department that casts doubt on the authority of the NFA to require the import licenses, respondent judges cannot be said to have gravely abused their discretion when they issued the WPI.

The injunctive writs in favor of private respondents being provisional, respondent judges are not precluded from reaching a different conclusion. To be sure, the expiration of the second waiver has several implications—not only to the rice shipment of private respondents, but to all rice imports during this period. The novelty of the issue as to what happens in the interim when a concession has expired and a new application remains pending, taking into account the fact that the Philippines has religiously abided in its commitments under the WTO Agreement, are difficult questions of law that, understandably, may not be conclusively resolved prior to the issuance of a preliminary injunction writ.

V.

In all, I respectfully submit that the novelty, peculiarity, and complexity of the facts surrounding the core issue in this case should impel the Court to resolve the present Petitions for *certiorari* through a lens that would unequivocally reveal that respondent judges had indeed abused their discretion in a grave manner. Here, however, the writs were granted upon observance of the requisites under Section 3, Rule 58 of the Rules of Court *vis-a-vis* the effects of the expiration of the exemption or special treatment granted to the Philippines under the WTO Agreement during the relevant period subject of these cases. Ergo, respondent judges did not act, and cannot reasonably be held to have acted, in a whimsical, arbitrary, or capricious manner. To the contrary, respondent judges exercised their sound discretion in issuing the challenged writs. Falling short of the threshold I stated at the outset, their assailed Orders should therefore be maintained.

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90 *Rollo* (G.R. No. 211146), Vol. II, pp. 603–605, DOJ Letter.

91 *Land Bank of the Philippines v. Estate of J. Amado Araneta*, 681 Phil. 315, 356 (2012).

As a final word, while I take the position that the NFA exceeded its authority when it issued the subject NFA MC imposing import quotas on rice while there is no subsisting special treatment, I understand that the Court's resolution of this issue has come after a substantial amount of time had considerably lapsed. Considering the difficulty of the question of law presented before the Court, and the current policy on the tariffication of rice imports, I respectfully reiterate that such a finding may be limited to the present Petitions. It should not retroactively invalidate the conduct of other district collectors who disallowed the release of rice shipments due to the absence of an NFA import license, as they only relied on a policy, which, at that time, although suspended in limbo, was carried into practice for a long time.

In view of the foregoing, I **DISSENT**. I vote to **DISMISS** the Petitions.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice