REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

JG SUMMIT OLEFINS CORPORATION, *Petitioner,*	**CTA Case No. 10913** Members:
- versus -	**REYES-FAJARDO,** *Chairperson,* and, **ANGELES,** *JJ.*
SECRETARY OF TRADE AND INDUSTRY, SECRETARY OF FINANCE, COMMISSIONER OF CUSTOMS AND CHAIRPERSON OF THE TARIFF COMMISSION, *Respondents.*	Promulgated: JUL 30 2026 3:44 p.m.

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DECISION

REYES-FAJARDO, *J.*:

Before Us is the Petition for Review[1] dated July 8, 2022, which seeks to overturn Department Administrative Order No. 22-05, series of 2022, issued by the Secretary of Trade and Industry (2022 DTI-DAO). 2022 DTI-DAO dismissed JG Summit Olefins Corporation's application for general safeguard measures on the importation of LLDPE pellets and granules from various countries falling under 2017 ASEAN Harmonized Tariff Nomenclature (AHTN) Codes 3901.10.12, 3901.10.92, 3901.40.00, and 3901.90.90.

FACTS

Petitioner JG Summit Olefins Corporation is the largest manufacturer of polyolefins and petrochemicals in the Philippines.

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[1] Docket, pp. 6-55.

Established in 1994, with commercial operations commencing in 1998, it is the first and only integrated polyethylene (PE) and polypropylene resin manufacturer in the country. It is currently the sole local producer of LLDPE. LLDPE resins are used in a broad range of applications that encompass the food, beverage, consumer products, and packaging sectors.[2]

Respondent Secretary of Trade and Industry is the head of the DTI with the power to, among others, impose the provisional and definitive safeguard duties on imported products.[3]

Respondent Commissioner of Customs is the head of the Bureau of Customs (BOC), the government agency with the power and duty to collect provisional and definitive safeguard duties on imported products.[4]

Respondent Secretary of Finance is the head of the Department of Finance and is tasked to send out written instructions to the Commissioner of Customs authorizing the imposition of safeguard measures.[5]

Respondent Chairperson of the Philippine Tariff Commission (TC) is the head of the TC, the governmental agency primarily tasked to conduct formal investigations to determine the necessity of the imposition of safeguard measures.[6]

On March 9, 2020, the Philippine polyethylene industry, represented by petitioner, filed with the DTI, an application for the imposition of safeguard measures against importations of LLDPE pellets and granules from various countries pursuant to Republic Act (RA) No. 8800, otherwise known as the "Safeguard Measures Act [SMA]."[7]

On August 28, 2020, respondent DTI Secretary issued its Initiation Report, finding "prima facie evidence to initiate and

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2 Par. 1, Joint Statement of Facts, Joint Stipulation of Facts and Issues (JSFI). *Id.* at p. 670.
3 Par. 2.2, Parties, Petition for Review. *Id.* at p. 8.
4 Par. 2.3, Parties, Petition for Review. *Ibid.*
5 Par. 2.4, Parties, Petition for Review. *Ibid.*
6 Par. 2.5, Parties, *Petition for Review. Ibid.*
7 Par. 2, Joint Statement of Facts, JSFI. *Id.* at p. 671.

conduct a preliminary safeguard investigation to determine whether LLDPE pellets and granules are being imported into the Philippines in increased quantities and is causing serious injury to the domestic industry."[8] The scope and period thereof are as follows:

a. Covered Products: LLDPE pellets and granules classified under AHTN 2017 Code 3901.10.12; 3901.10.92; 3901.40.00; and 3901.90.90. Excluded from the investigation were the following LLDPE resins: "special wires and cable grades, and rotational molding grades in powder form (and) LLDPE products for which domestically manufactured counterpart products of comparable quality or sufficient quantity are not available i.e., Hi Performance PE Grades such as metallocene LLDPE, C6 hexene, and C8 LLDPE products."[9]; and,

b. Period of Investigation (POI): from 2015 to 2019. Updated data until September 2020 were also presented and taken into consideration.[10]

On September 4, 2020, TC received respondent DTI Secretary's Letter dated August 28, 2020, advising TC of said initiation of investigation.[11]

In its preliminary determination, respondent DTI Secretary found: (1) "a causal link exists between increased imports of the product under consideration and serious injury to the domestic industry"[12]; and (2) "critical circumstances were not established to warrant the imposition of a provisional safeguard measure."[13]

On September 17, 2021, respondent DTI Secretary issued DAO No. 21-05. There, the latter stated that "imports originating from ASEAN member states shall be governed by the provisions of Articles 11 and 23 of the ASEAN Trade in Goods Agreement (ATIGA)." Said DAO was published in the Manila Standard and Business Mirror on September 22, 2021.[14]

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8 Par. 3, Joint Statement of Facts, JSFI. *Ibid.*
9 Par. 6, Joint Statement of Facts, JSFI. *Ibid.*
10 Par. 7, Joint Statement of Facts, JSFI. *Ibid.*
11 Par. 4, Joint Statement of Facts, JSFI. *Ibid.*
12 Par. 5, Joint Statement of Facts, JSFI. *Ibid.*
13 Par. 8, Joint Statement of Facts, JSFI. *Id.* at p. 672.
14 Par. 9, Joint Statement of Facts, JSFI. *Ibid.*

On September 24, 2021, TC received respondent DTI Secretary's Letter dated September 20, 2021, requesting for the conduct of a formal investigation to determine the merits of imposing a definitive safeguard measure on importations of LLDPE pellets and granules from various countries pursuant to Section 9 of RA No. 8800 and its Implementing Rules and Regulations (IRRs).[15] Respondent DTI Secretary endorsed to TC, a copy of DTI-DAO No. 21-05, as well as the entire records of the case contained in the following folders:[16]

Table 1.1 Case Records Received from the DTI

Folder I	DTI Preliminary Report
Folder II	Importer's Response to DTI-BIS Questionnaire
Folder III	Exporter's Response to DTI-BIS Questionnaire
Folder IV	Other Correspondences

On September 30, 2021, TC commenced its formal investigation with the issuance of the Notice of Formal Investigation and Preliminary Conference on September 30, 2021. The said Notice was posted on TC's website (http://www.tariffcommission.gov.ph) and published in The Manila Times and Manila Standard on the same date. Individual notices were likewise sent *via* email to all parties on record.[17] The period covered by TC's formal investigation was from 2015 to June 2021, *i.e.*, the period for which the latest data on importations is available (POI). Notably, the formal investigation was undertaken in accordance with the requirements of the World Trade Organization (WTO).[18]

On October 7, 2021, TC conducted Preliminary Conference *via* videoconferencing through Microsoft Teams. There, the parties were apprised of the adoption of Commission Order (CO) No. 2021-02 of the Revised Rules of Procedure for the Conduct of Formal Investigation pursuant to RA No. 8800.[19] Petitioner, through its authorized representatives, was present during the TC's Preliminary Conference.[20]

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15 Par. 11, Joint Statement of Facts, JSFI. *Ibid.*
16 Par. 12, Joint Statement of Facts, JSFI. *Ibid.*
17 Par. 13, Joint Statement of Facts, JSFI. *Id.* at p. 673.
18 Par. 14, Joint Statement of Facts, JSFI. *Ibid.*
19 Par. 15, Joint Statement of Facts, JSFI, *Ibid.*
20 Par. 16, Joint Statement of Facts, JSFI. *Ibid.*

On October 12, 2021, TC issued an Order of Preliminary Conference, which was posted on the TC's website and sent through electronic mail to the parties present.[21]

TC then conducted on-site and online investigations, to verify information provided or to obtain further details. The following verification/consultation meetings were conducted:[22]

Schedule of Online Data Verification Activities

Party	Date of Consultation/Data Verification
Petitioner	November 10, 2021/ January 12, 2022/ January 21, 2022/ February 24, 2022 (on-site)
Chamber of Philippine Electric Wires and Cables, Inc.	November 24, 2021
Inca Philippines	November 25, 2021
Dow Chemicals Pacific (Singapore) Private Limited	December 1, 2021
Qatar Chemical and Petrochemical Marketing and Distribution Company (Muntajat) Q.P.J.S.C.	December 1, 2021
Dow Chemical Pacific Ltd.	December 2, 2021
Sumitomo Chemical Asia Pte Ltd.	December 3, 2021

Following the verification/consultation meetings, TC requested relevant information (*e.g.*, product specifications, manufacturing process, data on production, trade financial indicators, and market share) from petitioner and other interested parties as follows:[23]

Request for Additional Information by TC

Party	Date of Initial TC Communication	Date of Initial Response
Petitioner	November 9, 2021	December 2, 2021
Chamber of Philippine Electric Wires and Cables, Inc.	November 24, 2021	December 20, 2021
Inca Philippines	November 26, 2021	December 3, 2021
Qatar Chemical and Petrochemical Marketing and Distribution Company	December 1, 2021	December 17, 2022

[21] Par. 17, Joint Statement of Facts, JSFI. *Ibid.*
[22] Par. 18, Joint Statement of Facts, JSFI. *Id.* at pp. 673-674.
[23] Par. 19, Joint Statement of Facts, JSFI. *Id.* at pp. 674-675.

(Muntajat) Q.P.J.S.C.		
Dow Chemicals Pacific (Singapore) Private Limited	December 3, 2021	December 20, 2021
Dow Chemical Pacific Ltd.	December 3, 2021	December 20, 2021
Sumitomo Chemical Asia Pte Ltd.	December 6, 2021	December 21, 2021
Philippine Plastics Industry Association, Inc.	November 9, 2021	November 24, 2021

On October 12, 2021, the Office of the Commissioner of the BOC issued Memorandum No. 148-2021 making reference to "DTI's positive findings in the preliminary determination conducted on the petitions for general safeguard measures filed by JG Summit Petrochemical Corporation on LLDPE pellets and granules" and enjoining relevant BOC personnel to "ensure the lawful collection of duties and taxes for LLDPE under AHTN Code 3901.10.12; 3901.10.92; 3901.40.00; and 3901.90.90" in order to "prevent serious injury to the domestic industry."[24]

On February 7, 2022, TC issued a Notice of Public Hearing (NPH), setting the case for hearing on the aspects of serious injury or threat thereof and existence of causal relationship between increased imports and serious injury on March 1 to 4, 2022 and March 7, 2022, *via* videoconferencing through the Microsoft Teams Application.[25]

The NPH was published in The Manila Times and the Manila Standard on February 8, 2022, and was posted on TC's website on February 7, 2022. Individual notices were likewise sent to all identified interested parties through electronic mail.[26]

On February 11, 2022, TC issued its **[Original] Staff Report (OSR)**,[27]in accordance with Section 18 of CO No. 2021-02.[28] The OSR contained TC's **preliminary findings** on the determination of product comparability and volume of increased imports, wherein "the [Tariff] Commission concludes that LLDPE pellets and granules were imported into the Philippines in increased quantities, both in absolute terms and relative to domestic production" and that the "the

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24 Par. 10, Joint Statement of Facts, JSFI. *Id.* at p. 672.
25 Par. 20, Joint Statement of Facts, JSFI. *Id.* at p. 675.
26 Par. 21, Joint Statement of Facts, JSFI. *Ibid.*
27 Exhibits "P-6" and "R-9." *Id.* at pp. 733-797 and pp. 440-504, respectively.
28 Par. 23, Joint Statement of Facts, JSFI. *Id.* at p. 677.

increase in volume of imports can be considered recent, sudden, sharp and significant," *viz.*:[29]

> Based on import data from 2015 to June 2021, the Commission finds the following:
>
> a. Following a slump in 2016, imports of LLDPE pellets and granules significantly increased in the next four years, particularly for the recent years of 2018 (by 138%) and 2019 (by 96%). In 2020, imports grew at a relatively slower rate of 19% which was attributable to the intense economic disruptions brought by the COVID-19 global outbreak. Nevertheless, the 2020 volume (83,877 MT) was the highest during the POI.
>
> Similarly, first semester imports, which represents the most recent past and may be deemed a best indicator of the likely situation in the very near future, grew considerably from 2016 to 2021, peaking at 39,785 MT in the final year of the POI. When compared with imports prior to the pandemic (26,526 MT in 2019), the 2021 figure represents an increase of 50% which may be considered sudden, sharp and significant considering the lingering economic effects of the pandemic.
>
> b. The share of imports of LLDPE pellets and granules relative to domestic production averaged 19% in 2015 to 2017. These shares subsequently rose to 70%, 129%, and 92% in 2018, 2019, and 2020, respectively, attributable mainly to the declines in local production volumes arising from planned shutdown (October 2019 to March 2020) and the adverse economic impact of the pandemic.
>
> From January to June 2021, which represents the most recent data and is indicative of the likely situation in the very near future, the share of imports to local production was 67%, significantly and sharply higher than the 19% average share for the 'normal' years of 2015 to 2017 taking into account that the ongoing pandemic continues to disrupt economic activities.
>
> In view of the foregoing, and in accordance with RA No. 8800, the Commission concludes that LLDPE pellets and granules were imported into the Philippines in increased quantities, both in absolute terms and relative to domestic production. The increase in volume of imports can be considered recent, sudden, sharp, and significant."

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29 Par. 22, Joint Statement of Facts, JSFI, Docket, pp. 675-676; Exhibits "P-6" and "R-9," *id.* at pp. 733-797, and pp. 440-504, respectively.

All concerned parties were provided with copies of TC's OSR, and were given until February 18, 2022 to submit their respective comments to the same.[30] The following parties submitted their comments thereon:[31]

Party	Date of Submission
Weida Philippine, Inc.	February 15, 2022
Dow Chemical Pacific Ltd.	February 18, 2022
Dow Chemical Pacific (Singapore) Private Limited	
Siam Polyethylene Company Limited	
Siam Synthetic Latex Company Limited	
Philippine Plastics Industry Association, Inc.	February 21, 2022
Government of Indonesia – Ministry of Trade	February 21, 2022
Qatar Chemical and Petrochemical Marketing and Distribution Company (Muntajat) Q.P.J.S.C.	February 22, 2022
GCM Marketing Solutions Company Limited	February 22, 2022
Sumitomo Chemical Asia Pte. Limited	March 1, 2022
Rabigh Refining and Petrochemical Corporation	March 1, 2022

On March 1, 2022, public hearing was held by the TC. Petitioner, through its duly authorized representatives, was present.[32]

Petitioner presented its evidence, while the oppositors were given the opportunity to cross-examine, respond, and seek clarifications on the same. Said oppositors, including other interested parties, were likewise given the opportunity to be heard and submit their views before the TC.[33]

Petitioner was then directed by the TC to submit its Final Memorandum/Position Paper, along with the additional information required during the public hearing, on March 11, 2022. Meanwhile, the oppositors were given until March 21, 2022 to file their respective Final Memoranda/Position Papers. Having no further issues for discussion, the public hearing was terminated on March 1, 2022.[34]

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30 Par. 24, Joint Statement of Facts, JSFI. Docket, p. 677.
31 Par. 25, Joint Statement of Facts, JSFI. *Ibid.*
32 Par. 26, Joint Statement of Facts, JSFI. *Ibid.*
33 Par. 27, Joint Statement of Facts, JSFI. *Id.* at p. 678.
34 Par. 28, Joint Statement of Facts, JSFI. *Ibid.*

The parties' submissions after conduct of the public hearing are as follows:[35]

Party	Date of Submission
Government of Thailand – Department of Foreign Trade	March 2, 2022
Government of Indonesia – Embassy of the Republic of Indonesia to the Philippines	March 11, 2022
Petitioner	March 11, 2022
Chamber of Philippine Electric Wire and Cable Manufacturers, Inc.	March 21, 2022
Philippine Plastics Industry Association	March 22, 2022
GCM Marketing Solutions Company Limited	March 25, 2022
Sumitomo Chemical Asia Pte. Limited	March 25, 2022
Rabigh Refining and Petrochemical Corporation	March 25, 2022
Dow Chemical Pacific Ltd.	March 31, 2022
Dow Chemical Pacific (Singapore) Private Limited	March 31, 2022
Siam Polyethylene Company Limited	March 31, 2022
Siam Synthetic Latex Company Limited	March 31, 2022
Qatar Chemical and Petrochemical Marketing and Distribution Company (Muntajat) Q.P.J.S.C.	March 31, 2022
Kingdom of Saudi Arabia – General Authority of Foreign Trade	April 5, 2022

On April 21, 2022, TC issued its **Updated Staff Report (USR)**, updating its earlier findings on "Chapter 7: Determination of Increased Imports" of the Staff Report issued on February 11, 2022.[36] There, TC concluded that "... LLDPE pellets and granules were not being imported into the Philippines in increased quantities, both in absolute terms and relative to domestic production, during the POI."[37]

On April 26, 2022, petitioner filed its Comment to TC's USR, followed by its Amended Comment to Updated Staff Report filed on April 28, 2022.[38]

On April 28, 2022, petitioner further filed its Motion, praying that the TC's updated findings on import determination be set aside

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35 Par. 29, Joint Statement of Facts, JSFI. *Ibid.*
36 Par. 30, Joint Statement of Facts, JSFI. *Id.* at p. 679.
37 Page 12, USR (Exhibit "P-15"). Docket, p. 884.
38 Par. 31, Joint Statement of Facts, JSFI. *Id.* at p. 679.

for being contrary to law and administrative, substantive and procedural due process and/or a re-tabulation of the data on increased imports be conducted in the presence of all concerned parties.[39] Petitioner received[40] an Order dated May 4, 2022, denying said motion.[41]

Meanwhile, the comments and submissions to the USR are summarized as follows:[42]

<table>
<tr><th>Party</th><th>Date of Submission</th></tr>
<tr><td>Petitioner (Comment to Updated Staff Report)</td><td>April 26, 2022</td></tr>
<tr><td>Petitioner (Amended Comment to Updated Staff Report)</td><td>April 28, 2022</td></tr>
<tr><td>Qatar Chemical and Petrochemical Marketing and Distribution Company (Muntajat) Q.P.J.S.C.</td><td>April 28, 2022</td></tr>
<tr><td>Dow Chemical Pacific Ltd.</td><td rowspan="4">April 28, 2022</td></tr>
<tr><td>Dow Chemical Pacific (Singapore) Private Limited</td></tr>
<tr><td>Siam Polyethylene Company Limited</td></tr>
<tr><td>Siam Synthetic Latex Company Limited</td></tr>
</table>

On May 20, 2022, the TC released the **Final Report (FR)** in accordance with Section 9 of RA No. 8800 and Section 24 of CO No. 2021-02, with the updated conclusion that "there was no increase in imports of LLDPE pellets and granules, both in absolute terms and relative to domestic production, during the POI."[43]

On June 14, 2022, petitioner received[44] respondent DTI Secretary's 2022 DTI-DAO,[45] dismissing its application for issuance of safeguard measures.

On July 12, 2022, petitioner filed its Petition for Review,[46] docketed as CTA Case No. 10913, to which respondents filed their Answer[47] on April 28, 2023.

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39 Par. 32, Joint Statement of Facts, JSFI. *Ibid.*
40 Par. 34, Joint Statement of Facts, JSFI. *Ibid.*
41 Par. 33, Joint Statement of Facts, JSFI. *Ibid.*
42 Par. 35, Joint Statement of Facts, JSFI. *Ibid.*
43 Par. 36, Joint Statement of Facts, JSFI. *Id.* at p. 680.
44 Par. 1.3, Petition for Review (Docket, p. 7). Respondents' Answer (Docket, pp. 87-139) made no specific denial of said allegation; hence, the date of receipt of the assailed DAO is deemed admitted.
45 Par. 37, Joint Statement of Facts, JSFI. *Id.* at p. 680.

On August 23, 2023, pre-trial conference was held.[48] There, the issues to be answered were formulated. Further, the parties' schedules for the presentation of evidence, and marking of their respective exhibits were set. Additionally, the parties were required to submit their Joint Stipulation of Facts and Issues, on or until September 22, 2023.

On September 29, 2023, the parties submitted their Joint Stipulation of Facts and Issues,[49] which was admitted and approved *via* Minute Resolution dated October 16, 2023.[50] On the basis thereof, a Pre-Trial Order[51] was issued on November 16, 2023.

On November 20, 2023, petitioner filed its Manifestation and Motion to Amend Pre-Trial Order dated 16 November 2023,[52] to which respondents posted their Manifestation in Lieu of Comment on January 15, 2024.[53]

By Resolution dated February 28, 2024, [54] petitioner's Manifestation and Motion to Amend Pre-Trial Order dated 16 November 2023 were noted and granted, respectively. In view thereof, the list of petitioner's documentary evidence in the Pre-Trial Order was accordingly amended.

Trial followed.

Petitioner presented the following witnesses:

Witness	Position	Trial Date
Ms. Maria Veron M. Marasigan[55]	Petitioner's Senior Manager for Business Development, Research and Communications	November 16, 2023[56]
Mr. Reynaldo M.	Petitioner's Vice President for	

46 *Supra* note 1.
47 Docket, pp. 87-139.
48 Order dated August 23, 2023. *Id.* at pp. 647-649, respectively.
49 *Id.* at pp. 670-684.
50 *Id.* at p. 687.
51 *Id.* at pp. 1708-1726.
52 *Id.* at pp. 1730-1737.
53 *Id.* at pp. 1751-1754.
54 *Id.* at pp. 1791-1796.
55 Exhibits "P-1" and "P-35." *Id.* at pp. 693-726, and pp. 1148-1154, respectively.
56 Order dated November 16, 2023. *Id.* at pp. 1728-1729.

Ganal[57]	Finance	
Ms. Victoria C. Pulmones[59]	Former Controller and currently petitiner's Adviser for Controllership and Special Projects	February 29, 2024[58]

On March 18, 2024, petitioner filed its Formal Offer of Evidence (with Manifestation),[60] to which respondents filed their Comment to the Formal Offer of Evidence via accredited courier on April 17, 2024.[61]

Under Resolution dated July 2, 2024,[62] the exhibits offered by petitioner were admitted, except for Exhibit "P-39." for failure to present the original thereof for comparison. Petitioner rested its case.

Respondents presented[63] Ms. Jean C. Alberto,[64] Chief Tariff Specialist, Financial Studies Division of the Research, Investigation and International Trade Analysis Service (RIITAS), TC, as witness.

On July 17, 2024, respondents filed their Formal Offer of Evidence,[65] to which petitioner filed its Comment (To Respondents' Formal Offer of Evidence dated 09 July 202[4]) on August 2, 2024.[66]

In the Resolution dated November 8, 2024,[67] the Court admitted all of respondents' offered exhibits.

On July 31, 2025, CTA Case No. 10913 was submitted[68] for decision, considering: (1) respondents' filing of Memorandum[69] on December 13, 2024; and (2) Memorandum for Petitioner[70] filed on February 5, 2025.

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57 Exhibit "P-46." *Id.* at pp. 1767-1777.
58 Order dated February 29, 2024. *Id.* at pp. 1798-1799.
59 Exhibit "P-48." *Id.* at pp. 1779-1786.
60 *Id.* at pp. 1800-1815.
61 *Id.* at pp. 1829-1838.
62 *Id.* at pp. 1889-1890.
63 Order dated July 3, 2024. *Id.* at pp. 1892-1894.
64 Exhibits "R-11" and "R-11-2." *Id.* at pp. 1849-1879.
65 *Id.* at pp. 1933-1940.
66 *Id.* at pp. 1944-1950.
67 *Id.* at pp. 1959-1960.
68 Minute Resolution dated July 31, 2025. *Id.* at p. 2089.
69 *Id.* at pp. 1961-2012.
70 *Id.* at pp. 2023-2079.

ISSUES

a. Is 2022 DTI-DAO invalid because the conclusion reached thereon was based on TC's FR and USR?

b. Is TC's FR valid, considering that it was issued based on TC's USR?

c. Is TC's USR valid, considering that petitioner and other interested parties were deprived of opportunity to be heard thereon?

d. Did TC arbitrarily act in issuing its USR, considering that the findings therein diametrically departed from the results in TC's OSR, without sufficient reason? and

e. Could TC's OSR be validly used as justification in 2022 DTI-DAO to impose general safeguard measures?

ARGUMENTS

Petitioner argues that 2022 DTI-DAO erred in dismissing its application for safeguard measures, by using TC's USR, as reflected in its FR. According to petitioner:

> *One*. TC's USR is null because it was issued in violation of law and its right to due process.
>
> *Two*. TC's FR is arbitrary because it disregards evidence and is contrary to pertinent facts and the law. Further, it indicated surge of imports, both absolute and relative. In addition, The FR did *not* determine the element of causal link in the issuance thereof.
>
> *Three*. Both FR and USR failed to explain the basis for the drastic changes and departure from the OSR.

With the purported invalidity of TC's FR and USR, petitioner then insinuates that TC's OSR should be adopted as basis of 2022 DTI-DAO because the same would show that there was sudden increase or surge of imported LLDPE pellets and granules.

Considering further that there was evidence exhibiting injury or potential injury to the domestic industry by reason of said surge, and public interest involved, petitioner concludes that its application for general safeguard measures should be granted.

On the other hand, respondents riposte that 2022 DTI-DAO correctly used TC's USR and FR as basis of denial of petitioner's application for safeguard measures. For them:

> *One.* TC's USR is valid because it was issued in observance of law. Petitioner's right to due process was as well respected because it was given opportunity to be heard. The issuance thereof was likewise within the mandate of TC to conduct formal investigation on the propriety of imposition of safeguard measures.
>
> *Two.* TC's FR is likewise proper because it was pivoted on its USR. Said USR negated the finding of surge of imports, both absolute and relative. With the finding that there was no surge of absolute and relative imports, the determination of the causal link may be dispensed with. Thus, the denial of petitioner's application for imposition of safeguard measures is proper.
>
> *Three.* TC's USR and FR sufficiently explained the deviation from the findings of sudden surge or increase in absolute or relative imports reflected in TC's OSR.
>
> *Four.* TC's findings in the USR, as reflected in its FR, that there was no sudden and sharp surge in imports, are entitled to great respect, if not, finality by the courts; being an administrative body tasked to perform formal investigation of the propriety of application for imposition of safeguard measures under the SMA.

RULING

The Petition fails to impress.

First. Did We obtain jurisdiction over CTA Case No. 10913?

Yes.

Section 7(a)(7) of Republic Act (RA) No. 1125, as amended by RA No. 9282 bestows upon the CTA, exclusive appellate jurisdiction to review by appeal, the decisions of, among others, the DTI Secretary, with respect to the imposition or non-imposition of, *inter alia*, safeguard measures on non-agricultural products, *viz.*:

> Sec. 7. Jurisdiction. - The CTA shall exercise:
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> ...
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
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> ...
>
> 7. **Decisions of the Secretary of Trade and Industry**, **in the case of nonagricultural product, commodity or article**, and the Secretary of Agriculture in the case of agricultural product, commodity or article, **involving** dumping and countervailing duties under Section 301 and 302, respectively, of the Tariff and Customs Code, and **safeguard measures under Republic Act No. 8800, where either party may appeal the decision to impose or not to impose said duties**.[71]

Section 3(a)(6),[72] Rule 4 of the Revised Rules of the Court of Tax Appeals clarified that the CTA in Division possesses exclusive appellate jurisdiction over DTI Secretary's decision with respect to the imposition or non-imposition of safeguard measures.

In addition, Section 11 of RA No. 1125, as amended by RA No. 9282 commands that the party aggrieved by the decision of the DTI Secretary on the imposition or non-imposition of, among others,

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71 Boldfacing ours.

72 SEC. 3. *Cases within the jurisdiction of the Court in Divisions.* - The <u>Court in Divisions</u> shall exercise:

...

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

...

(6) **Decisions of the Secretary of Trade and Industry, in the case of nonagricultural product, commodity or article**, and the Secretary of Agriculture, in the case of agricultural product, commodity or article, **involving** dumping and countervailing duties under Section 301 and 302, respectively, of the Tariff and Customs Code, and **safeguard measures under Republic Act No. 8800, where either party may appeal the decision to impose or not to impose said duties**; (Emphases ours).

safeguard measures, appeal with the CTA in Division, within 30 days from receipt thereof:

> SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. - **Any party adversely affected by a decision**, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, **the Secretary of Trade and Industry** or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.[73]

On June 14, 2022, petitioner received 2022 DTI-DAO, dismissing petitioner's application for safeguard measures.[74] Counting 30 days from June 14, 2022, petitioner had until July 14, 2022 to seek judicial redress. Therefore, the timely filing of petitioner's Petition for Review on July 12, 2022[75] endowed Us with jurisdiction over CTA Case No. 10913.

Second. Is 2022 DTI-DAO based on TC's USR and FR valid?

Yes.

Section 28(2), Article VI of the 1987 Constitution states that "[t]he 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**..."[76]

Relatedly, *The Department of Trade and Industry v. Enriquez*[77] explained that under the doctrine of qualified political agency, "...the heads of the various executive departments are the alter egos of the President and, as such, the actions taken by them in the performance of their official duties are deemed the acts of the President unless the latter disapproves such acts."

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73 Boldfacing ours.
74 *Supra* notes 44 and 45.
75 *Supra* note 46.
76 Boldfacing ours.
77 G.R. No. 225301, June 2, 2020.

As formulated, Section 28(2), Article VI of the 1987 Constitution confers upon the President, and by extension, upon respondent DTI Secretary, the authority to impose, among others, duties and other imposts. Imposts encapsulate most of the safeguard measures under the SMA. *Southern Cross Cement Corporation v. The Philippine Cement Manufacturers Corp., et al. (SCCC)*[78] confirmed:

> The safeguard measures which the DTI Secretary may impose under the SMA may take the following variations, to wit: (a) an increase in, or imposition of any duty on the imported product; (b) a decrease in or the imposition of a tariff-rate quota on the product; (c) a modification or imposition of any quantitative restriction on the importation of the product into the Philippines; (d) one or more appropriate adjustment measures, including the provision of trade adjustment assistance; and (e) any combination of the above-described actions. Except for the provision of trade adjustment assistance, the measures enumerated by the SMA are essentially imposts, which precisely are the subject of delegation under Section 28(2), Article VI of the 1987 Constitution.

Before respondent DTI Secretary could even impose general safeguard measures, Section 28(2), Article VI of the 1987 Constitution requires that it should be in consonance with the limitations and restrictions prescribed by law. One of these limitations and restrictions is found in Section 5 of the SMA, providing as follows:

> SEC. 5. *Conditions for the Application of General Safeguard Measures.* - The Secretary shall apply a general safeguard measure **upon a positive final determination of the Commission that a product is being imported into the country in increased quantities, whether absolute or relative to the domestic production, as to be a substantial cause of serious injury or threat thereof to the domestic industry**; however, in the case of non-agricultural products, the Secretary shall first establish that the application of such safeguard measures will be in the public interest.[79]

SCCC explained that "Section 5 of the SMA operates as a limitation validly imposed by Congress on the presidential authority under the SMA to impose tariffs and imposts. That the **positive final determination** operates as an indispensable requisite to the imposition of the safeguard measure, and that it is the Tariff

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[78] G.R. No. 158540, July 8, 2004 (Decision), and August 3, 2005 (Resolution).

[79] Boldfacing ours.

Commission which makes such determination, are legal propositions plainly expressed in Section 5 [of the SMA] for the easy comprehension for everyone but respondents."[80]

Here, the parties agreed that TC's FR was released in accordance with Section 9 of the SMA and Section 24 of CO No. 2021-02.[81] The conclusion reached by TC in its FR[82] is in the form of a **negative final determination**. Specifically:

> Considering that **LLDPE pellets and granules were not imported in increased quantities (whether absolute or relative to domestic production) during the POI**, the Commissioner hereby terminates its formal investigation and recommends that no definitive safeguards measure be imposed on the importations of the LLDPE pellets and granules subject of this investigation.[83]

Prescinding from *SCCC*, given the **negative final determination** of TC in its FR, respondent DTI Secretary rejected petitioner's application for safeguard measures, through the issuance of 2022 DTI-DAO.[84] Rightly so.

Petitioner takes offense on the foregoing conclusion, insisting that TC's FR is illegal because it was based on an invalid USR. According to petitioner, TC's USR is flawed because: (1) petitioner's right to due process was violated; and (2) TC arbitrarily reversed the finding in the OSR, when it failed to explain the justifications therefor in TC's USR and FR.

Petitioner is off beam. Consider:

One. TC respected petitioner's right to due process in the issuance of USR and FR.

Under Section 3[85] of Commission Order No. 2021-02,[86] the formal investigation conducted by TC is fact-finding and

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80 Emphases ours.
81 Par. 37, Joint Statement of Facts, JSFI. Docket, p. 680.
82 Exhibit "R-7." *Id.* at pp. 202-288.
83 Conclusion, Exhibit "R-7." *Id.* at p. 284. Boldfacing ours.
84 Exhibit "R-4." Docket, pp. 188-189.
85 **Section 3. Nature of the Investigation. The investigation of the Commission is fact-finding and administrative in nature. It shall be conducted in a summary manner.**

administrative in nature. Jurisprudence[87] ruled that "... the essence of due process is the *opportunity to be heard.* In administrative proceedings, one is heard when he [she] is accorded a *fair and reasonable opportunity* to explain his [her] case or is given the chance to have the ruling complained of reconsidered."

Here, from the commencement of the formal investigation conducted by TC until the issuance of its FR, petitioner was afforded ample opportunity to be heard. Chronicled below are the chain of events, leading to the issuance of the FR, as well as petitioner's participation on various segments thereof:

1. TC conducted a preliminary conference.[88] Petitioner, through its representatives were present in said proceeding.[89]

2. TC conducted on-site and online data verification activities. From the among the parties involved, petitioner was allowed with four settings; the greatest number of settings in all of the listed parties therein.[90]

3. TC requested relevant information (product specifications, manufacturing process, production data, trade financial indicators, and market share) from, among others, petitioner. Petitioner submitted its initial response thereon.[91]

4. Prior to issuance of the OSR, TC conducted public hearing, the notice of which were published in Manila Times and the Manila Standard, posted in TC's website, and were likewise sent to all interested parties *via* electronic mail.[92]

However, the Commission may require interested parties to formally present evidence for purposes of determining and clarifying factual matters that are relevant in the conduct of the investigation.

The Commission may, in the course of its investigation, issue and apply procedural directions to secure just and expeditious determination of matters in issue. (Boldfacing ours)

86 SUBJECT: REVISED RULES OF PROCEDURE FOR THE CONDUCT OF FORMAL INVESTIGATIONS PURSUANT TO REPUBLIC ACT NO. 8800.

87 *Villarete v. Commission on Audit,* G.R. No. 243818, April 26, 2022, citing *Fontanilla v. Commission on Audit,* 787 Phil. 713 (2016).

88 *Supra* note 20.

89 *Supra* note 21.

90 *Supra* note 22.

91 *Supra* note 23.

92 *Supra* notes 25 and 26.

5. After the issuance of OSR, the concerned parties were accorded opportunity to submit their comments thereon.[93]

6. TC conducted a *second* public hearing. Petitioner was present in said proceeding.[94] Both petitioner and oppositors were given opportunity to establish their causes.[95]

7. After the *second* public hearing was finished, TC did *not* conduct further hearings. This notwithstanding, petitioner and oppositors were directed by TC to submit their respective final memorandum/position paper.[96] Petitioner did make said submission directed by TC.[97]

8. TC issued the *USR*,[98] to which petitioner filed a comment, and subsequently, an amended comment thereon.[99] Petitioner as well moved,[100] but failed[101] to overturn the findings in TC's USR.

9. TC issued the *FR*.[102] Table 4.1[103] thereof was wholly dedicated to petitioner's positions on every issue it advanced, to support its plea for application for general safeguard measures.

It means that petitioner was able to participate, put forward its postulations, question the actions taken by TC, as well as defend its position from the oppositors relative to its application for safeguard measures during multiple phases of the formal investigation process. *Ergo*, TC valued petitioner's right to administrative due process in the conduct of its formal investigation, including the issuance of its USR and FR.

It does not escape Our attention that petitioner was remonstrative of TC's decision *not* to conduct further public hearings *after* the issuance of USR. However, TC may *not* be censured for such act.

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93 *Supra* note 30.
94 *Supra* note 32.
95 *Supra* note 33.
96 *Supra* note 34.
97 *Supra* note 35.
98 *Supra* note 36.
99 *Supra* note 38.
100 *Supra* note 39.
101 *Supra* notes 40 and 41.
102 *Supra* note 43.
103 Pages 20-22, TC's FR (Exhibit "R-7"). Docket, pp. 226-228.

For one, nowhere in Section 18 of Commission Order No. 2021-02 does it hint, much less show, that TC is required to conduct a public hearing **after** the issuance of SRs. It only mandates that SRs be issued **prior** to the conduct of a public hearing. Thus:

> **Section 18. Issuance of Staff Report.** *At least five (5) working days before the schedule public hearing, the Commission shall issue a public version of a Staff Report* which shall cover, among others, the Commission's findings on product comparability, volume of increased imports, and other relevant data and information pertinent to the investigation duly verified.
>
> All identified interested parties shall be provided a copy of the Commissioner's Staff Report and within five (5) working days from receipt thereof submit their comments on the aspects of product comparability and volume of increased imports as these matters will be binding and excluded for discussion in the public hearing. If no comment is filed, then the factual findings on product comparability and volume of increased imports of the Commission contained in the Staff Report will be binding to the party who did not submit its comment.[104]

For another, TC's decision *not* to conduct further public hearing *after* the issuance of its USR is permitted by its rules. As Section 3 of Commission Order No. 2021-02 puts it: "[t]he Commission may, in the course of its investigation, **issue and apply procedural directions** to secure just and expeditious determination of matters in issue."[105]

Two. TC did ***not*** act arbitrarily in its non-adoption of its OSR's findings in the USR and FR. *En contra*, TC was able to justify and rationalize the investigation results found in its USR and FR.

There is no denying that in its OSR, "[TC] conclude[d] that LLDPE pellets and granules were imported into the Philippines in increased quantities, both in absolute terms and relative to domestic production" and that the "the increase in volume of imports can be considered recent, sudden, sharp and significant."[106] Also beyond cavil is that TC's USR reversed its previous conclusion, by declaring that "... LLDPE pellets and granules were **not** being imported into

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104 Emphases ours.
105 Boldfacing ours.
106 *Supra* note 29.

the Philippines in increased quantities, both in absolute terms and relative to domestic production, during the POI."[107]

For petitioner, the reversal of the initial findings in TC's OSR was neither explained nor rationalized by TC, thereby exposing the arbitrariness and whimsicality in the issuance of its USR and FR.

This is more apparent, than real.

Witness Alberto[108] said after the issuance of TC's OSR, the parties were given opportunity to submit their comments and position papers thereon.[109] TC then saw the need to revisit its findings in the OSR.[110] Thus, TC conducted a public hearing, with petitioner presenting its evidence in support of its application, and for the oppositors to confront said evidence.[111] Petitioner and the oppositors were both directed to submit their Final Memoranda/Position Papers.[112] TC then issued its USR.[113]

Witness Alberto shed light as to why TC's USR overturned the initial findings in its OSR. In its OSR, TC *initially* considered as importation data, only those imported LLDPE pellets and granules falling under tariff lines 3901.10.12, 3901.10.92, 3901.40.00, and 3901.90.90 of the 2017 AHTN. Meanwhile, in its USR, TC *broaden* the scope of coverage by considering imported LLDPE pellets and granules falling under tariff lines 3901.10.12, 3901.10.92, 3901.40.00, 3901.90.90, **as well as** tariff lines 3901.10.19, 3901.10.99, 3901.20.00, and 3901.90.40 of the 2017 AHTN. Thus:

> 37. Q: Going back now to the Staff Report and Updated Staff Report and the Final Report, what was the key difference in their findings Ms. Witness, if any?
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> A: The Staff Report made an initial finding that there was significant increase in importation, whereas the latter two reports – the Updated Staff Report and Final Report – found that the LLDPE

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107 *Supra* note 37. Boldfacing ours.

108 Chief Tariff Specialist, Financial Studies Division of the RIITAS, TC. Exhibits "R-11" and "R-11-2," *supra* note 64.

109 Answer to Question No. 27, Exhibits "R-11" and "R-11-2." *Supra* note 64.

110 Answer to Question No. 28, Exhibits "R-11" and "R-11-2." *Supra* note 64.

111 *Supra* notes 32 and 33.

112 Answer to Question No. 31, Exhibits "R-11" and "R-11-2." *Supra* note 64.

113 *Supra* note 37.

pellets and granules were not being imported into the Philippines in increased quantities, both in absolute terms and relative to domestic production, during the POI. This difference is explained by the fact that the latter two reports used an adjusted range of products included in the investigation.

Explaining further, the First Report examined the LLDPE products based on the scope of the application filed by Petitioner with the DTI. Under the headings of the ASEAN Harmonized Tariff Nomenclature (AHTN) 2017, specifically under AHTN 2017 tariff lines 3901.10.12, 3901.10.92, 3901.40.00, and 3901.90.90.

However, **upon further investigation and after receipt of the position papers and comments o[f]** various **parties, the Commission adjusted the inclusions, finding that the investigation should also include products belonging to the other tariff lines under Heading 39.01. The Updated Staff Report therefore took data not only from the tariff lines in Petitioner's application, but also from four other tariff lines, so that the final inclusion in both the Updated Staff Report and the Final Report were eight tariff lines under AHTN 2017 Heading 39.01. Specifically, this was data from 3901.10.12, 3901.10.92, 3901.40.00, and 3901.90.90, which were the original inclusions, and 3901.10.19, 3901.10.99, 3901.20.00, and 3901.90.40, which were the additions.**

This is explained in item 8.3 of the Final Report.[114]

Item 8.3 of TC's FR,[115] which was lifted from USR,[116] backed witness Alberto's clarification, in this wise:

To determine the volume of imports of LLDPE pellets and granules over the POI, the Commission made use of the Electronic Import Entry Declarations (EIEDs) of the Bureau of Customs (BOC).

...

Following the submissions and issues raised by interested parties in their comments to the Staff Report and final position papers, the Commission prudently examined BOC-EIEDs indicating Imports for AHTN 2017 Heading 39.01 (except for subheading 3901.30.00 which covers ethylene-vinyl acetate copolymers). Product descriptions referring to goods that are classifiable as LLDPE (e.g., 'LLDPE', 'Linear- Low Density Polyethylene', 'alpha olefin', 'LLD Polyethylene', 'MD Polyethylene', and 'LL') were extracted and added as imports of LLDPE. The same process of removing imports with outlier landed costs was also undertaken as a final step.

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114 *Supra* note 64. Boldfacing ours.
115 Exhibit "R-7-11." Docket, pp. 272-273.
116 Par. 7.3, Exhibit "R-10." *Id.* at pp. 553-554.

> A more detailed breakdown of the import data used by the Commission in its final determination of increased imports is shown in Annex M [of the FR].[117]

Above and beyond, Annex M[118] referred to in item 8.3 of TC's FR buttresses Alberto's testimony by showing that tariff lines 3901.10.12, 3901.10.92, 3901.40.00, 3901.90.90, 3901.10.19, 3901.10.99, 3901.20.00, and 3901.90.40 of the 2017 AHTN were utilized by TC to determine the importation volume of LLDPE pellets and granules during the POI.

In Our mind, TC's transition from its initial findings in the OR, to the conclusion reached in its USR and FR, is supported by reason. TC employed different sets of metrics (four tariff lines in the OSR vis-à-vis mainly eight tariff lines in the USR and FR) to gauge whether there was sudden and sharp influx of imports of LLDPE pellets and granules during the POI. Too, TC recalibrated its original metrics after due consideration of position papers and comments of petitioner *and* various concerned parties. Also, the variance and shift in the results per TC's OSR vis-à-vis TC's USR and FR could be tracked and traced in these reports. To add, petitioner was duly informed of these reports. *Ergo*, TC's supposed arbitrariness and whimsicality in overturning the *initial* findings in the OSR, through the issuance of its USR and FR, is a figment of imagination.

Parenthetically, TC's refusal to consider only four 2017 AHTN Tarriff Lines (3901.10.12, 3901.10.92, 3901.40.00, and 3901.90.90) mentioned in petitioner's application for safeguard measures, as reflected in TC's OSR is legally justified.

Section 9 of the SMA enjoins TC to "...afford **interested parties and consumers** an opportunity to be present, or to present evidence, to respond to the presentation of **other parties and consumers**, and otherwise be heard."[119] These parties include not only domestic producers such as petitioner, but also consumers, importers and exporters of the products under consideration.[120] Precisely, TC heard and considered the positions and concerns of these other parties, which led to the ***addition*** of tariff lines 3901.10.19, 3901.10.99,

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117 Boldfacing ours.
118 Annex "M," FR (Exhibit "R-7"). *Id.* at pp. 435-438.
119 Boldfacing ours.
120 See Section 4(g), SMA.

3901.20.00, and 3901.90.40 of the 2017 AHTN as regards its formal investigation, and in the issuance of USR and FR. Simply put, TC acted well-within the purview of Section 9 of the SMA in issuing its USR and FR.

Third. Could TC's OSR be used as basis for respondent DTI Secretary to impose general safeguard measures under Section 5[121] of the SMA?

No.

Section 5 of the SMA requires a **positive final determination** from TC that a product is being imported into the country in increased quantities, whether absolute or relative to the domestic production, as to be a substantial cause of serious injury or threat thereof to the domestic industry. As admitted[122] by the parties, the content of TC's OSR is **preliminary,** rather than **final** findings of TC's formal investigation. Besides, the results reflected in TC's OSR were validly superseded and reversed by TC *via* a **negative final determination** moored on its USR and FR. On these accounts, TC's OSR may not be used by respondent DTI to impose general safeguard measures desired by petitioner under the SMA.

Fourth. May TC's factual findings in its USR and FR be disturbed?

No.

Petitioner bewails the findings in TC's FR for being purportedly contrary to evidence. Meanwhile, the results in TC's FR that LLDPE pellets and granules were <u>**not**</u> being imported into the Philippines in increased quantities, both in absolute terms and relative to domestic production during the POI, are supported by substantial evidence. Particularly, TC arrived at said findings by examining import entry declarations extracted from the BOC, mainly in relation to the *eight* tariff lines pertaining to LLDPE pellets and granules.[123] In view thereof, respect and finality should be accorded to TC's factual

121 Cited in page 17 of this Decision.
122 Par. 22, JSFI. Docket, p. 675.
123 Item 8.3 and Annex "M," TC's FR. *Supra* notes 117 and 120.

findings embodied in its FR. As *Navotas Industrial Corporation v. Guanzon*[124] puts it—

> Under the doctrine of conclusiveness of administrative findings of fact, factual findings of quasi-judicial and administrative bodies, when supported by substantial evidence, are accorded great respect and even finality by the courts. The rationale behind this doctrine is that administrative bodies are considered as specialists in their respective fields and can thus resolve the cases before them with dispatch.
>
> Absent any clear showing of abuse, arbitrariness, or capriciousness committed on the part of the lower tribunal, its findings of facts are binding and conclusive upon the courts.

ACCORDINGLY, the Petition for Review dated July 8, 2022 in CTA Case No. 10913 is **DENIED**, for lack of merit. Department Administrative Order No. 22-05, series of 2022, issued by the Secretary of Trade and Industry is **AFFIRMED**.

SO ORDERED.

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

I CONCUR:

HENRY S. ANGELES
Associate Justice

124 G.R. No. 230931, November 15, 2021. Citations omitted.

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Special Third Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice