REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Special Third Division

PIONEER FLOAT GLASS MANUFACTURING, INC., *Petitioner*,	**CTA CASE NO. 10356**
	Members:
-versus-	**RINGPIS-LIBAN,** *Chairperson, and* **MODESTO-SAN PEDRO,** *JJ.*
SECRETARY OF TRADE AND INDUSTRY, SECRETARY OF FINANCE, COMMISSIONER OF CUSTOMS, AND THE TARIFF COMMISSION, *Respondent.*	Promulgated: SEP 15 2023 8:36 a.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before this Court is a **Petition for Review**,[1] filed on 18 September 2020 by **Pioneer Float Glass Manufacturing, Inc.** ("**PFGMI**" or "**petitioner**") against respondents Secretary of Trade and Industry ("**DTI Secretary**"), Secretary of Finance ("**DOF Secretary**"), Commissioner of Customs ("**COC**"), and the Tariff Commission ("**Commission**") (collectively referred as "**respondents**"), praying that a judgment be rendered annuling ***Department Administrative Order No. 20-04, Series of 2020*** ("**assailed Order**")[2] and directing the DTI Secretary to impose definitive safeguard measures on all imports of reflective, tinted, and clear float glass (collectively referred as "subject articles") in accordance of ***Republic Act No. 8800 ("R.A. No. 8800")*** also known as the ***Safeguard Measures Act ("SMA")***.[3]

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1 Docket Vol. 1, pp. 8-508, with annexes.
2 Exhibit "P-1", Docket Vol. 6, pp. 2604-2605.
3 An Act Protecting Local Industries by Providing Safe In Measure to te Undertaken In Response To Increased Imports and Providing Penalties For Violation Thereof, 19 July 2000.

The Parties

PFGMI is a corporation duly organized and existing under the laws of the Philippines with principal office at Asahi Special Economic Zone (ASEZ), 730 M.H. Del Pilar Street, Pinagbuhatan, Pasig City.[4] It is the sole manufacturer of float glass in the Philippines. Float glass is a sheet of glass manufactured using a melt process which involves pouring molten glass on a bed of molten metal, typically tin. Among other things, float glass is used for facades, partitions, windows, doors, table, desktops, greenhouses, and shelves.[5]

Respondents DTI Secretary and DOF Secretary are being sued in their respective official capacities as such heads of the Department of Trade and Industry ("DTI") and Department of Finance ("DOF"), respectively.

Respondent Tariff Commission is being impleaded as the government agency that rendered the Final Report dated 29 June 2020 that was adopted by respondent DTI Secretary in his assailed Order.

Finally, respondent Bureau of Customs is being impleaded as the government agency tasked to return the cash bond in the event of a negative final determination.

The Facts

The instant case stemmed from PFGMI's application with the DTI for the imposition of safeguard measures on clear, tinted and reflective float glass, filed on 18 July 2018.

Acting on such application docketed as SG Case No. 01-2019, DTI issued its Initiation Report,[6] on 19 February 2019, wherein it found *prima facie* evidence to initiate and conduct a preliminary safeguards investigation to determine whether clear and tinted float glass is being imported into the Philippines in increased quantities and is causing serious injury to the domestic industry.

On 22 July 2019, DTI issued a Report on Preliminary Affirmative Findings[7] wherein it made an initial determination that the increased imports of the subject articles have caused serious injury to the domestic industry.

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[4] Par. 1, The Parties, Petition for Review, Docket Vol. 1, p. 7.
[5] Par. 2, Prefatory Statement, Petition for Review, Docket, Vol. 1, p. 8.
[6] Exhibit "P-4", Report on the Initiation of a Preliminary Investigation on the Application for Safeguard Measures on the Importation of Clear and Tinted Float Glass from Various Countries, Docket Vol. 6, pp. 2824-2869.
[7] Exhibit "P-5", Report on the Preliminary Affirmative Findings Application for Safeguard Measures on the Importation of Clear and Tinted Float Glass from Various Countries, Docket Vol. 6, pp. 428-495.

Pursuant thereto, respondent DTI Secretary issued ***DTI-Department Administrative Order No. 19-12, Series of 2019*** ("***DTI-DAO No. 19-12***"),[8] providing for the imposition of provisional safeguard measures on the subject articles in the form of cash bond.

Subsequently, respondent DTI Secretary endorsed the case to respondent Tariff Commission for a formal investigation. The formal investigation was commenced through the issuance of Notice of Formal Investigation and Preliminary Conference on 5 August 2019.[9] The period of investigation ("POI") covered the years 2013 to June 2019.[10] Thereafter, respondent Tariff Commission requested for relevant information from PFGMI and other interested parties, and conducted ocular inspection, data verification, and meetings with the parties.[11]

On 24 January 2020, respondent Tariff Commission issued a Staff Report[12] containing its findings on the compliance with the domestic industry requirement, product comparability and increased imports.

After giving due notice to all interested parties, respondent Tariff Commission held public hearings on 10 and 11 February 2020, focusing on the elements of serious injury, threats to serious injury, and causation. Petitioner and other interested parties attended the hearing. They were accorded the opportunity to present evidence, elaborate on their submissions, and address issues on the submissions of concerned parties.[13]

On 29 June 2020, respondent Tariff Commission issued the Final Report, informing respondent DTI Secretary, petitioner and other interested parties of its negative final determination. In the Final Report, the Tariff Commission concluded as follows:

> "In accordance with R.A. No. 8800, the Commission hereby concludes the following:
>
> 1. There is a sole float glass manufacturer in the Philippines and the domestic industry requirement under Section 4(f) of R.A. No. 8800 is satisfied.
> 2. Locally produced clear float glass is a "like" product to imported clear (including ultra-clear) float glass.
> 3. Locally produced tinted (bronze) float glass is a "like" product to imported tinted float glass.
> 4. Locally produced tinted (bronze) float glass is a "directly competitive: product to imported reflective (including low-emissivity) float glass.

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[8] Exhibit "P-6", Docket Vol. 1, pp. 496-501.
[9] Exhibit "P-2", Final Report dated 29 June 2020, Docket, Vol. 6, p. 2622.
[10] *Id.* at p. 2621.
[11] *Id.* at pp. 2622-26223.
[12] Exhibit "P-7", Staff Report dated 24 January 2020, Docket Vol. 6, pp. 2944-3036.
[13] Exhibit "P-2", Final Report dated 29 June 2020, Docket, Vol. 6, p. 2622, p. 2624.

5. During the POI, clear, tinted and reflective float glass are being imported into the Philippines in increased quantities, both in absolute terms and relative to domestic production. The increases in the volumes of imports starting in 2018 are considered recent, sudden, sharp and of such magnitude that can be deemed significant.
6. **Despite the deterioration in several factors (i.e. market shares, profitability of clear float glass operations, inventory levels of tinted (bronze) float glass), there was no significant overall impairment in the position of the domestic industry during the POI that constitutes serious injury in accordance with R.A. No. 8800.**
7. There is low likelihood of continued increase of imports in the near future that would lead to imminent serious injury and significant overall impairment to the position of the domestic float glass industry.
8. Causation has become moot and academic in view of the negative determination of the elements of serious injury and threat thereof to the domestic float glass industry."[14]

(Emphasis supplied.)

On 17 July 2020, pursuant to respondent Tariff Commission's negative final determination, respondent DTI Secretary dismissed petitioner's application for safeguard measure through the assailed Order.[15] A copy of the same was received by petitioner on 19 July 2020.

Aggrieved, petitioner filed the instant Petition for Review[16] on 18 September 2020.

Respondents, through the Office of the Solicitor General ("OSG") filed their Answer which was received by the Court on 18 February 2021.[17]

Pre-Trial Briefs were then submitted by petitioner[18] and respondents[19] both on 21 July 2022. Thereafter, Pre-Trial Conference ensued on 26 July 2022, wherein the parties agreed that there are no factual issues in this case.

Petitioner and respondents filed their memoranda on 25 August 2022[20] and 2 September 2022,[21] respectively.

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[14] Exhibit "P-2", Final Report dated 29 June 2020, Docket, Vol. 6, p. 2771.
[15] *Supra* note 2.
[16] *Supra* note 1.
[17] Docket Vol 2 - 3, pp. 869-1286, with annexes.
[18] Petitioner's Pre-Trial Brief, Docket, Vol. 6, pp. 2562-2574.
[19] Respondents' Pre-Trial Brief, Docket, Vol. 6, pp. 2541-2559.
[20] Memorandum for Petitioner, Docket, Vol. 7, pp. 3077-3106.
[21] Memorandum for Respondents, Docket, Vol. 7, pp. 3111-3175.

The instant case was then submitted for decision on 19 September 2022.[22]

The Issues[23]

I.

WHETHER THE ORDER OF RESPONDENT DTI SECRETARY NOT TO IMPOSE ANY DEFINITVE MEASURE ON THE IMPORTATION OF CLEAR, TINTED AND REFLECTIVE FLOAT GLASS IS VOID;

II.

WHETHER THE COURT CAN DIRECT RESPONDENT DTI SECRETARY TO IMPOSE DEFINITIVE SAFEGUARD MEASURES ON ALL IMPORTS OF CLEAR, TINTED AND REFLECTIVE FLOAT GLASS IN ACCORDANCE WITH REPUBLIC ACT NO. 8800.

Arguments of the Parties

Petitioner's Arguments[24]

Petitioner argues that respondent DTI Secretary must be directed to impose definitive safeguard measures on all imports of the subject articles in accordance with ***R.A. No. 8800***. Specifically, petitioner raises that:

1) The Court has the power to review the final determination made by the Tariff Commission as adopted by the DTI Secretary in its assailed Order;
2) The Court has the power to set aside the assailed order and may direct the DTI Secretary to impose definitive safeguard measures on all imports of the subject articles in accordance with R.A. No. 8800; and
3) The assailed Order dismissing the application filed by the petitioner is null and void since the Tariff Commission committed errors in its factual findings and recommendations and relied in making its conclusions based on supposed effect on the COVID-19 pandemic to the economy.

[22] Resolution dated 19 September 2022, Docket, Vol. 7, p. 3181.
[23] Minutes of Hearing dated 26 July 2022 (Pre-Trial Conference), Docket Vol. 7, p. 3057.
[24] See Memorandum for the Petitioner, Docket Vol. 7, pp. 3077- 3106.

Respondent's Counter-Arguments[25]

On the other hand, raises the following defenses:

1) Petitioner fails to demonstrate that the assailed Order is void. It fails to substantiate its claim that respondent DTI Secretary erred in issuing the assailed Order based on the respondent Tariff Commission's negative final determination. On the contrary, the respondent Tariff Commission's negative determination is warranted by laws and jurisprudent, and the facts it considered are backed by data and other substantial evidence;
2) The Court has no power to direct the respondent DTI Secretary to apply definitive safeguard measures on the importation of the subject articles without the respondent Tariff Commission's positive final determination. No law authorizes a judicial review to modify or reverse the respondent Tariff Commission's final determination, which is distinct from the respondent DTI Secretary's final order to impose to not impose safeguard measures.

The Ruling of the Court

We deny the instant Petition for Review.

A positive final determination of the Tariff Commission is required before the DTI Secretary can impose safeguard measures pursuant to R.A. No. 8800

In its Petition, PFGMI argues that respondent DTI Secretary erred in adopting the respondent Tariff Commission's recommendation not to impose definitive safeguard measures on the importation of the subject articles; hence, the assailed Order should be deemed void. Petitioner anchors its argument on the alleged erroneous conclusions of respondent Tariff Commission which ultimately issued a negative final determination.

The imposition of safeguard measures is governed domestically by ***R.A. No. 8800*** or the ***Safeguard Measures Act***. It was enacted as part of the obligations of the Philippines soon after it joined the ***General Agreement on Tariff and Trade (GATT)*** and the ***World Trade Organization (WTO) Agreement***.

[25] See Memorandum for the Respondents, Docket Vol. 7, pp. 3117-3175.

Article XIX (Emergency Action on Imports of Particular Products) of the General Agreement on Tariffs and Trade (GATT) 1994 primarily provides for the imposition of safeguard measures upon satisfaction of the requirements stated therein, to wit:

> "1. (a) if, as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under this Agreement, including tariff concessions, any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products the contracting party shall be free, in respect of such product, and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession."

Complementary to the foregoing, the first paragraph of ***Article 2 of the Agreement on Safeguards*** provides for the characteristics that import trends must possess to justify safeguard measure, thus:

> "1. A Member may apply a safeguard measure to a product only if that Member has determined, pursuant to the provisions set out below, that such product is being imported into its territory in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products."

Consistent with the provisions of ***GATT 1994*** and the ***Agreement on Safeguards***, the ***Section 5 of R.A No. 8800*** provides similar conditions as follows:

> "CHAPTER II
> GENERAL SAFEGUARD MEASURE
>
> Section 5. Condition the Application of General Safeguard Measure.- The Secretary **shall apply a general safeguard measure upon a positive final determination of the Commission** that a product is being imported in to 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 measure will be in the public interest."
> (Emphasis supplied.)

From the foregoing provision, it is clear that there are two condition precedents that must be satisfied before the DTI Secretary may impose general safeguard measures. *First*, there must be a positive final determination by the Tariff Commission that the subject products or articles are being imported into the country in increased quantities, whether absolute or relative to domestic production, as to be a substantial cause of serious injury or threat to the domestic industry. *Second*, in the case of non-agricultural products, the DTI Secretary must establish that the application of such safeguard measures in in the public interest.

Consistent therewith, the Supreme Court, in the case of ***Southern Cross Cement Corporation vs. The Philippine Cement Manufacturers Corp, the Secretary of the Department of Trade & Industry, the Secretary of the Department of Finance, and the Commissioner of the Bureau of Customs (Southern Cross 2004 decision)***,[26] emphasized that the most fundamental restriction of the DTI Secretary's power with respect to the imposition of safeguard measures, as contained in ***Section 5 of R.A. No. 8800***, is that there should first be a positive final determination of the Tariff Commission, *viz.*:

> "The plain meaning of Section 5 shows that **it is the Tariff Commission that has the power to make a "positive final determination." This power, which belongs to the Tariff Commission, must be distinguished from the power to impose general safeguard measure properly vested on the DTI Secretary.** The distinction is vital, as a "positive final determination" clearly antecedes, as a condition precedent, the imposition of a general safeguard measure. At the same time, a positive final determination does not necessarily result in the imposition of a general safeguard measure. Under Section 5, notwithstanding the positive final determination of the Tariff Commission, the DTI Secretary is tasked to decide whether or not that the application of the safeguard measures is in the public interest.
>
> It is also clear from Section 5 of the SMA that the positive final determination to be undertaken by the Tariff Commission does not entail a mere gathering of statistical data. In order to arrive at such determination, it has to establish causal linkages from the statistics that it compiles and evaluates: after finding there is an importation in increased quantities of the product in question, that such importation is a substantial cause of serious threat or injury to the domestic industry.
>
> The Court of Appeals relies heavily on the legislative record of a congressional debate during deliberations on the SMA to assert a purported legislative intent that the findings of the Tariff Commission do not bind the DTI Secretary. Yet as explained earlier, **<u>the plain meaning of Section 5 emphasizes that only if the Tariff Commission renders a positive determination could the DTI Secretary impose a safeguard measure</u>**. Resort to the congressional records to ascertain legislative intent is not warranted if a statute is clear, plain and free from ambiguity. The legislature is presumed to know the meaning of the words, to have used words advisedly, and to have expressed its intent by the use of such words as are found in the statute."
> (Emphasis and underscoring supplied; citations omitted.)

Clearly, the Supreme Court recognized that it is the Tariff Commission which has the power to make a final determination which may either be positive or negative.

[26] G.R. No. 158540, 8 July 2004.

In case of a positive determination, the Tariff Commission shall submit a non-binding recommendation to the DTI Secretary. The latter, in turn, then has the power to either (i) impose a safeguard measure and adopt the recommendation of the Tariff Commission; (ii) impose a safeguard measure different from the such recommendation; or (iii) decide against the imposition of any safeguard measure. In other words, conditioned upon the Tariff Commission's positive final determination, the DTI Secretary may choose to impose or not impose a safeguard measure.

On the other hand, in case of a negative final determination, the DTI Secretary cannot impose any safeguard measure according to the ***Section 5 of R.A. No. 8800*** and as elucidated by the Supreme Court in the ***Southern Cross 2004 decision***.

There is no better settled canon of interpretation than that when language is clear and unambiguous, it must be held to mean what it plainly expresses, thus:

> "[W]hen the words of a statute are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. The plain-meaning rule or *verba legis*, expressed in the maxim *index animi sermo*, or speech is the index of intention, rests on the valid presumption that the words employed by the legislature in a statute correctly express its intention or will, and preclude the court from construing it differently. *Verba legis non est recedendum*. From the words of a statute there should be no departure."[27]
> (Citations omitted.)

In the case at hand, respondent Tariff Commission issued a negative final determination after extensive study and deliberations in its Final Report dated 29 June 2020.[28] Accordingly, absent the condition precedent prescribed in the above-discussed ***Section 5 of R.A. No. 8800***, respondent DTI Secretary cannot impose safeguard measures on the importation of clear, tinted and reflective float glass.

To say that the DTI Secretary erred in relying on the Tariff Commission's determination would be tantamount to bestowing the former with review powers over the decisions or conclusions of the latter which, as discussed in the ***Southern Cross 2004 decision***, the DTI Secretary does not possess, to wit:

> "**[T]he DTI Secretary does not have the power to review the findings of the Tariff Commission for it is not subordinate to the Department of Trade and Industry ("DTI").** It falls under the supervision, not of the DTI nor of the Department of Finance (as mistakenly asserted by Southern Cross), but of the National Economic and

[27] Commissioner of Internal Revenue vs. Philex Mining Corp., G.R. No. 230016, 23 November 23 2020.
[28] Exhibit "P-2", Final Report dated 29 June 2020, Docket, Vol. 6, p. 2606-2793.

Development Authority, an independent planning agency of the government of co-equal rank as the DTI. As the supervision and control of a Department Secretary is limited to the bureaus, offices, and agencies under him, the DTI Secretary generally cannot exercise review authority over actions of the Tariff Commission. Neither does the SMA specifically authorize the DTI Secretary to alter, amend or modify in any way the determination made by the Tariff Commission. The most that the DTI Secretary could do to express displeasure over the Tariff Commission's actions is to ignore its recommendation, but not its determination.

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

x x x

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

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

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

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

> 2. A Member may only apply a safeguard measure to a product only if that member has determined, pursuant to the provisions set out below, that such product is being imported into its territory in such increased quantities, absolute or

> relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products.
>
> 3.(a) A Member may apply a safeguard measure only following an investigation by the competent authorities of that Member pursuant to procedures previously established and made public in consonance with Article X of the GATT 1994. This investigation shall include reasonable public notice to all interested parties and public hearings or other appropriate means in which importers, exporters and other interested parties could present evidence and their views, including the opportunity to respond to the presentations of other parties and to submit their views, inter alia, as to whether or not the application of a safeguard measure would be in the public interest. The competent authorities shall publish a report setting forth their findings and reasoned conclusions reached on all pertinent issues of fact and law.

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

Accordingly, respondent DTI Secretary acted within the bounds of the law when it issued the assailed Order declaring its decision not to impose definitive safeguard measures on the subject articles on the basis of the lack of positive final determination from respondent Tariff Commission.

No law authorizes the Court to modify or reverse the respondent Tariff Commission's final determination, which is distinct from the respondent DTI Secretary's final order

Petitioner posits that the Court can review the final determination made by the Tariff Commission as adopted by the DTI Secretary in issuing the decision not to impose definitive safeguard measures, and on that basis set aside the assailed Order. *[initials]*

Petitioner anchors its position on the ***resolution***[29] issued by the Supreme Court in 2005 (***Southern Cross 2005 resolution***) on the Motion for Reconsideration filed in relation to the ***Southern Cross 2004 decision*** discussed above. It was stated in the ***Southern Cross 2005 resolution*** that the negative determination of the Tariff Commission becomes an integral part of the DTI Secretary's ruling thus open for review before the CTA.

However, the Court finds petitioner's reliance on such resolution misplaced. The issue in the Southern Cross case is whether the CTA has jurisdiction over actions assailing the respondent DTI Secretary's decision not to impose the definitive safeguard measures or that such jurisdiction is limited only to cases when a decision to impose safeguard measures was issued. The Supreme Court debunked respondent's argument therein and resolved that it is the CTA, and not the Court of Appeals, which has jurisdiction over the decisions of the DTI Secretary both on the imposition and non-imposition of the safeguard measures on importations pursuant to ***Section 29 of R.A. No. 8800*** which states:

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

It should also be emphasized that jurisdiction of the CTA is expressly provided by the laws under ***Section 7 (a) (7) of R.A. No. 1125***,[30] as amended by ***R.A. No. 9282***.[31] The provision states that the DTI Secretary's final order or decision to impose or not to impose safeguard measures under R.A. No. 8800 is the proper subject of the Court's exclusive appellate jurisdiction, to wit:

> "Sec. 7 Jurisdiction. – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (7) Decisions of the Secretary of Trade and Industry, in the case of non-agricultural product, commodity or article, and the Secretary of Agriculture in the case of agricultural product, commodity or article, involving dumping and counter ailing duties under Section 301 and 302, respectively, of the

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[29] Southern Cross Cement Corporation vs. Cement Manufacturers Association of the Philippines, he Secretary of the Department of Trade and Industry, the Secretary of the Department of Finance and the Commissioner of the Bureau of Customs, G.R. No. 158540, Resolution, 3 August 2005.

[30] An Act Creating the Court of Tax Appeals, 16 June 1954.

[31] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections or Republic Act No. 1125, As Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes; 30 March 2004.

> Tariff 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."

In the same vein, ***Section 11 of R.A. No. 1125, as amended by R.A. No. 9282*** provides an exclusive list of the agencies, offices or court whose decisions, rulings or inaction can be the subject of an appeal to the Court. Undeniably, nowhere in this provision is the Tariff Commission mentioned. ***Section 11 of R.A. No. 1125***, as amended reads:

> "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."

Clearly, there is nothing in the laws which authorizes the CTA to modify or reverse the Tariff Commission's final determination under ***R.A. No. 8800***.

Moreover, the Court has proclaimed in previous rulings that it recognizes that the Tariff Commission is considered an expert in its field and that its factual findings are considered binding on the Court.[32] Thus, the Court will not interfere in matters which are addressed to the sound discretion of the government agency entrusted with the regulation of activities coming under their respective special technical knowledge and training.[33]

Based on the foregoing, the Court finds that the assailed Order cannot be set aside by the Court on the basis of the alleged errors of the respondent Tariff Commission's in its final determination.

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[32] Philippine Ceramics Products Importers Association, Inc., vs. Secretary of Trade and Industry, CTA Case No. 6478, 11 May 2006; Glass Temp Industries, Inc. vs. Secretary of the Department of Trade and Industry, CTA Case Nos. 7007, 7008 and 7009, 22 June 2006.

[33] Philippine Ceramics Products Importers Association, Inc., vs. Secretary of Trade and Industry, CTA Case No. 6478, 11 May 2006.

<u>In the absence of the Tariff Commission's negative final determination, the Court cannot direct the DTI Secretary to impose safeguard measures on all imports of the subject articles</u>

As discussed above, ***Section 5 of R.A. No. 8800*** equivocally states that a positive final determination from the Tariff Commission is required before the DTI Secretary may decide on imposing safeguard measures on imports of the subject articles.

Moreover, the Supreme Court, particularly in the ***Southern Cross 2004 decision*** and ***2005 resolution***, repeatedly declared in clear and categorical language, that the Tariff Commission's positive final determination operates as an indispensable requisite to such imposition of any safeguard measure.

In the case at hand, petitioner argues that upon finding on the invalidity of the Tariff Commissioner's negative final determination, the Court can thereafter direct the DTI Secretary to impose safeguard measure on all imports of the subject articles. The Court, however, finds no merit in such claim.

Assuming arguendo that the Court has jurisdiction to review respondent Tariff Commission's negative final determination, it may not replace the previously issued negative final determination with the Court's own positive determination, and on such basis direct the DTI Secretary to impose safeguard measures. At most, the Court may only nullify the Tariff Commission's determination. Otherwise, the determination would no longer be the respondent Tariff Commission's determination; it would not satisfy the express requirement of the law.

The Court highlights the pronouncement of the Supreme Court, in the ***Southern Cross 2005 resolution*** which states:

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

All told, the Court finds that instant petition must fail.

WHEREFORE, premises considered, the Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

I CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

I attest that the conclusion 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
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the 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.

ROMAN G. DEL ROSARIO
Presiding Justice