Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SPECIAL FIRST DIVISION

RMJR GRAINS CENTER CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF CUSTOMS, BUREAU OF CUSTOMS,
Respondent.

CTA Case Nos. 9156, 9157, 9158, 9159 and 9160

Members:

DEL ROSARIO, P.J., *Chairperson*
UY, and
MINDARO-GRULLA, JJ.

Promulgated:

FEB 08 2019 10:57am

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DECISION

MINDARO-GRULLA, J.:

This case is a consolidation of five (5) Petitions for Review filed by RMJR Grains Center Corporation against the Commissioner of Customs, Bureau of Customs, seeking (a) the reversal, setting aside, and nullification of the Order of the Commissioner of Customs dated August 27, 2015 and the Decision of the District Collector (MICP) of the Bureau of Customs dated October 15, 2014; and (b) the award in favor of petitioner of the portion of the proceeds of the auction sale held in escrow in the total amount of ₱9,733,760.00 broken down as follows:

CTA CASE NO.	INPUT VAT CLAIM
9156	₱ 2,781,074.29
9157	695,268.57
9158	1,390,537.14
9159	4,171,611.43
9160	695,268.57
Total	**₱9,733,760.00**

Petitioner RMJR Grains Center Corporation is a corporation duly registered and existing under the laws of the Republic of the Philippines, with principal place of business at 093 B.S. Aquino Avenue, Barangay Tangos, Baliwag, Bulacan.[1]

On the other hand, respondent, as represented by the Commissioner of Customs (COC), is an unincorporated government agency attached to the Department of Finance.[2]

On November 3, 2013, the following shipment containers, said to contain bags of White Rice consigned to petitioner, arrived from Thailand on board different vessels, to wit:

CTA CASE NO.	SHIPMENT CONTAINER SIZE	NO. OF BAGS OF RICE	VESSEL	REGISTRY NO.
9156[3]	30x20'	13,200	CAPE FRAISER	SIC-0121
9157[4]	10x20'	4,400	CAPE FRAISER	SIC-0121
9158[5]	20x20'	8,800	MOL WISDOM	MOL-0088
9159[6]	39x20'	17,160	OTANA BHUM	RCL-0088
9160[7]	12x20'	5,280	MAMITSA 0590-026E	EGP-0147

The shipments are covered by the following import documents:

DOCUMENTS	CTA CASE NO.				
	9156	9157	9158	9159	9160
Import Entry	C221514[8]	C221528[9]	C221547[10]	C221537[11]	C223490[12]
Bill of Lading	ICS310029[13]	ICS310030[14]	ICS311032[15]	ICS310031[16]	0503007663 82[17]

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[1] Par. 1, Joint Stipulation of Facts, Joint Stipulations of Facts and Issues (JSFI), CTA Case No. 9156, Docket, p. 351.
[2] Par. 2, Joint Stipulations of Facts, JSFI, CTA Case No. 9156, Docket, p. 351.
[3] Exhibit "R-20", CTA Case No. 9156, BIR Records, p. 1.
[4] Exhibit "R-29", CTA Case No. 9157, Docket, p. 135.
[5] Exhibit "R-38", CTA Case No. 9158, BIR Records, p. 1.
[6] Exhibits "P-4" and "R-1", CTA Case No. 9159, Docket, p. 240.
[7] Exhibit "R-11", CTA Case No. 9160, BIR Records, p. 2.
[8] Exhibit "R-20", CTA Case No. 9156, BIR Records, p. 1.
[9] Exhibit "R-29", CTA Case No. 9157, Docket, p. 135.
[10] Exhibit "R-38", CTA Case No. 9158, BIR Records, p. 1.
[11] Exhibits "P-4" and "R-1", CTA Case No. 9159, Docket, p. 240.
[12] Exhibit "R-11", CTA Case No. 9160, BIR Records, p. 2.
[13] Exhibit "P-37", CTA Case No. 9156, BIR Records, p. 10.
[14] Exhibit "P-54", CTA Case No. 9157, Docket, p. 147.
[15] Exhibit "P-69", CTA Case No. 9158, BIR Records, p. 10.
[16] Exhibit "P-5", CTA Case No. 9159, Docket, p. 231.
[17] Exhibit "P-21", CTA Case No. 9160, BIR Records, p. 8.

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NFA Import Permit	MAVCSQ2013-11-105[18]	MAVCSQ2013-11-098[19]	MAVCSQ2013-11-097[20]	MAVCSQ 2013-11-100[21]	MAVCSQ2013-11-104[22]
Notice of Allocation	NFA/NOA-MAV-CSQ2013-17	NFA/NOA-MAV-CSQ2013-17	NFA/NOA-MAV-CSQ2013-17	NFA/NOA-MAVCSQ2013:17	
Certificate of Eligibility	MAVCSQ2013 COE:32	MAVCSQ2013COE:32	MAVCSQ2013COE:32	MAVCSQ2013 COE:32	
Packing List	BKK56-2548/2013 (B)[23]	BKK56-2572/2013 (B)[24]	BKK56-2494/2013 (B)[25]	BKK56-2566/2013 (B)[26]	13935 (2)72013/2[27]
Invoice	179/2013[28]	178/2013A[29]	174/2013A[30]	178/2013[31]	TH-091-13-A
Certificate of Origin	THTCCC0130183383[32]	THTCCC0130183395[33]	THTCCC0130183398[34]	THTCCC0130183394[35]	THTCCC01301858889[36]
Phytosanitary Certificate	3954625[37]	3954627[38]	3954560[39]	3954628[40]	
Certificate of Analysis, Certificate of Fumigation	BKK56-2548/2013 (C)[41]	BKK56-2572/2013 (C)[42]	BKK56-2494/2013 (C)[43]	BKK56-2566/2013 (C)[44]	13935 (2)/2013[45]
Certificate of Weight/ Quality/ Condition of Bags	BKK56-2548/2013 (A)[46]	BKK56-2572/2013 (A)[47]	BKK56-2494/2013 (A)[48]	BKK56-2566/2013 (A)[49]	13935 (2)/2013/1[50]

18 Exhibits "P-38" and "R-21", CTA Case No. 9156, BIR Records, p. 2.
19 Exhibits "P-55" and "R-30", CTA Case No. 9157, Docket, p. 121.
20 Exhibits "P-70" and "R-39", CTA Case No. 9158, BIR Records, p. 2.
21 Exhibits "P-6" and "R-2", CTA Case No. 9159, Docket, p. 239.
22 Exhibits "P-22" and "R-12", CTA Case No. 9160, BIR Records, p. 23.
23 Exhibit "P-42", CTA Case No. 9156, BIR Records, p. 4.
24 Exhibit "P-59", CTA Case No. 9157, Docket, p. 152.
25 Exhibit "P-74", CTA Case No. 9158, BIR Records, p. 4.
26 Exhibit "P-10", CTA Case No. 9159, Docket, p. 237.
27 Exhibit "P-26", CTA Case No. 9160, BIR Records, p. 4.
28 Exhibit "P-41", CTA Case No. 9156, BIR Records, p. 8.
29 Exhibit "P-58", CTA Case No. 9157, Docket, p. 148.
30 Exhibit "P-73", CTA Case No. 9158, BIR Records, p. 8.
31 Exhibit "P-9", CTA Case No. 9159, Docket, p. 233.
32 Exhibit "P-43", CTA Case No. 9156, BIR Records, p. 7.
33 Exhibit "P-60", CTA Case No. 9157, Docket, p. 149.
34 Exhibit "P-75", CTA Case No. 9158, BIR Records, p. 7.
35 Exhibit "P-11", CTA Case No. 9159, Docket, p. 234.
36 Exhibit "P-27", CTA Case No. 9160, BIR Records, p. 3.
37 Exhibit "P-44", CTA Case No. 9156, BIR Records, p. 6.
38 Exhibit "P-61", CTA Case No. 9157, Docket, p. 150.
39 Exhibit "P-76", CTA Case No. 9158, BIR Records, p. 6.
40 Exhibit "P-12", CTA Case No. 9159, Docket, p. 235.
41 Exhibit "P-45", CTA Case No. 9156, BIR Records, p. 3.
42 Exhibit "P-62", CTA Case No. 9157, Docket, p. 153.
43 Exhibit "P-77", CTA Case No. 9158, BIR Records, p. 3.
44 Exhibit "P-14", CTA Case No. 9159, Docket, p. 238.
45 Exhibits "P-29" and "P-30", CTA Case No. 9160, BIR Records, pp. 5 and 7.
46 Exhibit "P-46", CTA Case No. 9156, BIR Records, p. 5.
47 Exhibit "P-63", CTA Case No. 9157, Docket, p. 151.
48 Exhibit "P-78", CTA Case No. 9158, BIR Records, p. 5.
49 Exhibit "P-15", CTA Case No. 9159, Docket, p. 236.
50 Exhibit "P-23", CTA Case No. 9160, BIR Records, p. 6.

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Petitioner paid the duties and taxes on the shipments covered by the import permits and as declared in the supporting documents, based on the In-Quota rate of 40%, under Tariff Heading No. 1006.3091A.[51]

The Manila International Container Port (MICP) of respondent Bureau of Customs (BOC) conducted an examination of said shipments.[52] Upon examination, said shipments were discovered to contain an excess importation of white rice.[53] The discrepancies in the shipments of rice are as follows:

CTA CASE NO.	DECLARED NO. OF BAGS	ACTUAL NO. OF BAGS	EXCESS NO. OF BAGS	DISCREPANCY RATE
9156[54]	13,200	15,000	1,800	12%
9157[55]	4,400	5,000	600	12%
9158[56]	8,800	10,000	1,200	12%
9159[57]	17,160	19,500	2,340	12%
9160[58]	5,280	6,000	720	12%

Petitioner paid the following amounts as appearing in the E2M Assessment Notices:[59]

CTA CASE NO.	E2M NOTICE ASSESSMENT	TOTAL ASSESSED AMOUNT	PAYMENT REFERENCE NO.
9156	2013 L 277836[60]	4,252,861[61]	1HO131113DIMR694
9157	2013 L 277428[62]	1,496,666[63]	1HO081113DIMR682
9158	2013 L 277453[64]	2,837,949[65]	1HO081113DIMR682

[51] Pars. 10, 21, 32, 43, and 55, Joint Stipulation of Facts, JSFI, CTA Case No. 9156, Docket, pp. 352, 354, 355, 357, and 358.
[52] Pars. 11, 22, 33, 44, and 56, Joint Stipulation of Facts, JSFI, CTA Case No. 9156, Docket, pp. 353, 354, 355, 357, and 358.
[53] Pars. 12, 23, 34, 45, and 57, Joint Stipulation of Facts, JSFI, CTA Case No. 9156, Docket, pp. 353, 354, 355, 357, and 358.
[54] Exhibit "R-22", CTA Case No. 9156, BIR Records, p. 15.
[55] Exhibit "R-31", CTA Case No. 9157, Docket, p. 143.
[56] Exhibit "R-40", CTA Case No. 9158, BIR Records, p. 13.
[57] Exhibit "R-3", CTA Case No. 9159, Docket, p. 228.
[58] Exhibit "R-13", CTA Case No. 9160, BIR Records, p. 13.
[59] Pars. 13, 24, 35, 46, and 58, Joint Stipulation of Facts, JSFI, CTA Case No. 9156, Docket, pp. 353, 354, 355, 357, and 358.
[60] Exhibit "P-50", CTA Case No. 9156, BIR Records, p. 16.
[61] Exhibit "P-50-a", CTA Case No. 9156, BIR Records, p. 16.
[62] Exhibit "P-65", CTA Case No. 9157, Docket, p. 140.
[63] Exhibit "P-65-a", CTA Case No. 9157, Docket, p. 140.
[64] Exhibit "P-80", CTA Case No. 9158, BIR Records, p. 16.
[65] Exhibit "P-80-a", CTA Case No. 9158, BIR Records, p. 16.

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9159	2013 L 277447[66]	5,533,052[67]	1HO081113DIMR682
9160	2013 L 280855[68]	1,686,091[69]	1HO131113DIMR695

The BOC released to petitioner the shipments covered by Import Permits MAVCSQ2013-11-105, MAVCSQ2013-11-098, MAVCSQ2013-11-097, MAVCSQ 2013-11-100, and MAVCSQ2013-11-104, but withheld several containers not covered by the Import Permits, to wit:[70]

CTA CASE NO.	IMPORT PERMIT NO.	NO. OF CONTAINERS WITHHELD	WITHHELD CONTAINER NOS.
9156	MAVCSQ2013-11-105	4	BMOU2745139, BMOU2832845, SEGU1482610 and SEGU1754391
9157	MAVCSQ2013-11-098	1	AKLU6000146
9158	MAVCSQ2013-11-097	2	CAIU2652210 and CMAIU1656955
9159	MAVCSQ2013-11-100	6	CAIU2113250, CAIU2184969, FCIU3098251, FSCU7471486, GLDU5768395, and REGU3136010
9160	MAVCSQ2013-11-104	1	HMCU3012577

The District Collector of Customs (MICP) issued a Warrant of Seizure and Detention against the withheld containers for violation of Section 2530(f) and (i) of the Tariff and Customs Code of the Philippines (TCCP), as amended, viz:[71]

CTA CASE NO.	SEIZURE IDENTIFICATION CASE NO.	DATE OF AMENDED WARRANT OF SEIZURE AND DETENTION	CONTAINER NOS.
9156	375-2014[72]	July 25, 2014	BMOU2745139, BMOU2832845,

[66] Exhibit "P-17", CTA Case No. 9159, Docket, p. 225.
[67] Exhibit "P-17-a", CTA Case No. 9159, Docket, p. 225.
[68] Exhibit "P-33", CTA Case No. 9160, BIR Records, p. 15.
[69] Exhibit "P-33-a", CTA Case No. 9160, BIR Records, p. 15.
[70] Pars. 14, 25, 36, 48, and 60, Joint Stipulation of Facts, JSFI, CTA Case No. 9156, Docket, pp. 353, 354, 356, 357, and 359.
[71] Pars. 15, 26, 37, 49, and 61, Joint Stipulation of Facts, JSFI, CTA Case No. 9156, Docket, pp. 353, 354, 356, 357, and 359.
[72] Exhibit "R-23", CTA Case No. 9156, BIR Records, pp. 23-24.

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			SEGU1482610 and SEGU1754391
9157	377-2014[73]	July 25, 2014	AKLU6000146
9158	374-2014[74]	July 25, 2014	CAIU2652210 and CMAIU1656955
9159	379-2014[75]	July 25, 2014	CAIU2113250, CAIU2184969, FCIU3098251, FSCU7471486, GLDU5768395, and REGU3136010
9160	378-2014[76]	July 25, 2014	HMCU3012577

On October 15, 2014, the District Collector of Customs (MICP) issued the following Orders forfeiting the aforesaid containers or the excess rice importations of petitioner:[77]

CTA Case No.	Date of Order	Seizure Identification No.
9156	October 15, 2014[78]	375-2014
9157	October 15, 2014[79]	377-2014
9158	October 15, 2014[80]	374-2014
9159	October 15, 2014[81]	379-2014
9160	October 15, 2014[82]	378-2014

On January 21, 2015, the excess rice importations of petitioner were the subject of sale in auction by the Auction and Cargo Disposal Division (ACDD) of MICP.[83] The proceeds of the public auction were held in escrow pending the final determination of the case. The details of the auction are as follows:

SEIZURE IDENTIFICATION NO.	WINNING BID AMOUNT	OFFICIAL RECEIPT NO.

[73] Exhibit "R-32", CTA Case No. 9157, Docket, pp. 133-134.
[74] Exhibit "R-41", CTA Case No. 9158, BIR Records, pp. 20-21.
[75] Exhibit "R-4", CTA Case No. 9159, Docket, pp. 220-221.
[76] Exhibit "R-14", CTA Case No. 9160, BIR Records, pp. 21-22.
[77] Pars. 16, 27, 38, 50, and 62, Joint Stipulation of Facts, JSFI, CTA Case No. 9156, Docket, pp. 353, 354, 356, 357, and 359.
[78] Exhibits "P-34" and "R-24", CTA Case No. 9156, BIR Records, pp. 27-30.
[79] Exhibit "R-33", CTA Case No. 9157, Docket, pp. 125-129.
[80] Exhibits "P-66" and "R-42", CTA Case No. 9158, BIR Records, pp. 24-28.
[81] Exhibits "P-1" and "R-5", CTA Case No. 9159, Docket, pp. 212-217.
[82] Exhibits "P-18" and "R-15", CTA Case No. 9160, BIR Records, pp. 25-29.
[83] Pars. 17, 28, 39, 51, and 63, Joint Stipulation of Facts, JSFI, CTA Case No. 9156, Docket, pp. 353, 355, 356, 357-358, and 359.

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375-2014, 377-2014, 374-2014,	₱ 4,866,880.00	8242815
379-2014, 378-2014,	₱ 4,866,880.00	8242811
TOTAL	**₱9,733,760.00**	

On September 2, 2015, petitioner received the following Decisions, all dated August 27, 2015, wherein respondent denied petitioner's appeal and affirmed the Forfeiture Orders dated October 15, 2014 of the District Collector of Customs (MICP):

CTA CASE NO.	DATE OF DECISION	SEIZURE IDENTIFICATION NO.
9156	August 27, 2015[84]	375-2014
9157	August 27, 2015[85]	377-2014
9158	August 27, 2015[86]	374-2014
9159	August 27, 2015[87]	379-2014
9160	August 27, 2015[88]	378-2014

On October 1, 2015, petitioner filed the instant Petitions for Review. CTA Case No. 9156 was raffled to the First Division of the Court of Tax Appeals, while CTA Case Nos. 9157 and 9159 were raffled to the Third Division. On the other hand, CTA Case Nos. 9158 and 9160 were raffled to the Second Division of the CTA.

On November 3, 2015, respondent filed Motions to Consolidate to the Third Division CTA Case Nos. 9159 and 9160[89] in both CTA Case Nos. 9159 and 9160.

Meanwhile, on November 27, 2015, within the extended time granted by the Court,[90] respondent filed his Comment[91] in CTA Case No. 9156 interposing the following arguments:

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[84] Exhibits "P-35" and "R-27", CTA Case No. 9156, BIR Records, pp. 36-41.
[85] Exhibits "P-36" and "R-52", CTA Case No. 9157, Docket, pp. 114-119.
[86] Exhibits "P-367" and "R-45", CTA Case No. 9158, BIR Records, pp. 39-44.
[87] Exhibits "P-2" and "R-8", CTA Case No. 9159, Docket, pp. 198-203.
[88] Exhibits "P-19" and "R-18", CTA Case No. 9160, BIR Records, pp. 49-54.
[89] CTA Case No. 9159, Docket, pp. 74-80; CTA Case No. 9160, Docket pp. 73-79.
[90] CTA Case No. 9156, Order dated November 5, 2015, Docket, p. 74.
[91] CTA Case No. 9156, Docket, pp. 76-91.

"**<u>DISCUSSION</u>**

Respondent Commissioner of Customs did not err in forfeiting petitioner's excess <u>rice shipments.</u>

Petitioner filed the instant Petition for Review to have the proceeds of their auctioned rice shipments released from the custody of the Bureau of Customs through the District Collector of Customs of the Manila International Container Port.

In their Petition, they stated that they submitted the necessary documents to the rice shipments. They also claim that proper taxes, tariffs and customs duties for the rice shipments have been paid, but despite such payment, respondent refused to release the rice shipments, or its proceeds.

Respondent Commissioner of Customs affirmed the order of the District Collector of Customs of the MICP to forfeit the 2,080 bags of rice shipment consigned to petitioner for having been in excess of the amount allocated in their Import Permit.

The guidelines for the import permit pertinent to the shipment in this case are contained in NFA Memorandum Circular No. AO-2K13-03-003. It specifies the requirements for the procurement of rice importation permit, as well as the maximum amount of rice to be imported and the enumeration of the countries from which we can import rice.

As will be discussed in the succeeding paragraphs, respondent correctly affirmed the District Collector's decision to forfeit the excess rice shipments consigned to petitioner as it was beyond the allocation granted to them in their Import Permit.

A. The government is authorized to impose quantitative restrictions on rice importation.

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Petitioner argues that the government is no longer authorized to require import permits because the Special Treatment afforded to the Philippines under the WTO-GATT, which provides exemption from the prohibition against imposition of quantitative restrictions in the importation of primary agricultural products, already lapsed on 30 June 2012. They add that notwithstanding the grant of extension on the special treatment on rice, the imposition of the quantitative restrictions interregnum were ultra vires.

Respondent submits that the foregoing arguments are devoid of merit.

As a background, then President Ferdinand E. Marcos promulgated Presidential Decree (P.D.) No. 4, creating the National Grains authority, the primary government agency charged with implementing government policies and regulations concerning basic grains such as rice and corn, among others. It was authorized to institute a licensing mechanism for enterprises that wish to import grains such as rice. Section 6 of P. D. No. 4, as amended, provides:

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In 1981, to include the rest of the food industry, the NGA was converted into the National Food Authority (NFA) by virtue of Presidential Decree No. 1770 also promulgated by President Marcos. The powers of the former NGA were retained, and even increased.

These increased powers of the NFA included the authority to require licenses for importation of rice, among other agricultural products. Thus, among the documents required by the Bureau of Customs through its District Collectors is the importation permit to cover imported agricultural produce.

In the 1990s, the Philippines became a member of the World Trade Organization Agreement on Agriculture. As a consequence, certain restrictions on the entry of agricultural and food products were reduced, removed, or made subject to tariff instead. However, certain agricultural produce were protected for some countries, like rice in the case of the Republic of the Philippines.

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The Philippine legislature, in compliance with its treaty obligations, enacted Republic Act (R.A.) No. 8178, otherwise known as the Agricultural Tariffication Act of 1996, the Declaration of Policy of which states:

> **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.** x x x

Pursuant to the above policy and its statutory mandate, the NFA has been steadily regulating the influx of imported rice into the country by requiring the procurement of license to traders who wish to import rice into the country. They implement this by issuing NFA Memorandum Circulars annually, stating the amount of rice that may be imported and from which territories. It also provides the guidelines for private entities to be issued permits to import rice.

The waiver granted to the Philippines with regard to rice was to be effective until 2005, but it was extended until 30 June 2012. Prior to its 2012 expiration, the Philippine government has begun negotiations with the WTO for another extension.

In 2014, the Special Treatment extension on rice has been extended up to 30 June 2017 with the approval of the Philippines' request for waiver of the special treatment on rice by the World Trade Organization, through the Council for Trade in Goods. The approval is contained in the Decision promulgated last 24 July 2014. With this circumstance, petitioner cannot insist on the automatic application of non-tariff import restrictions as regards rice importations.

The initial expiration of the Special Treatment on rice does not repeal or negate the effectivity of Republic Act No. 8178. There is no principle of law that can support the hypothesis interposed by petitioner.

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Further, under the dualistic approach in Public International Law, not all treaties which our country enters into automatically become part of the law of the land. In his book, international law expert Prof. Merlin M. Magallona describes the theory as follows:

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The excerpt above explains why the 1987 Philippine Constitution has the Incorporation Clause in Section 2, Article II and the Transformation or Treaty Clause in Section 21, Article VII. The two provisions provided in our fundamental law sets the policy and the means with which international law figures and affect our municipal law.

Section 2, Article II of the 1987 Constitution recognizes the incorporation of general principles of international law as part of the law of the land:

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The provisions of the GATT, or even the WTO Agreement on Agriculture, while sources of international law, are neither at the level of customary international law nor of generally accepted principles of international law. They are different sources as stated in the Statute of the International Court of Justice.

In our fundamental law, only those generally accepted principles of international law automatically become part of the law of the land. Those that do not require the ratification of our Congress, and in some cases, would require an enabling or implementing legislation, as in the case of R.A. No. 8178. This is a consequence of the dualistic approach of the Philippine legal system.

Nevertheless, the dualistic approach does not affect the Philippines' compliance with its obligations under international law. The principle of *pacta sunt servanda* is the standard of compliance in good faith, whether a country espouses the monistic or dualistic view. And in this case, it is respectfully submitted that respondent's performance of his duties do not run against our *bona fide* compliance with our treaty obligations.

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It must be noted that when the Philippines became a party to the GATT, <u>the provisions therein did not automatically amend our laws</u>. In order to comply with our treaty obligations, many laws have been passed. One of these laws is R.A. No. 8178, which provides for the imposition of tariffs for certain agricultural products which used to have import quotas, with the specific exception of rice.

The mere expiration of the period in the WTO-GATT for the special treatment accorded to the Republic of the Philippines does not render the authority to require rice import permits automatically ineffective. Neither does the continuing implementation of the import permit requirement violate our treaty obligations to the World Trade Organization. On the contrary, during the negotiations, parties observed *status quo* in terms of respecting the Philippines' continued imposition of the import permit requirement for imported rice. When the Waiver on Special Treatment of Rice was granted, the table of quotas and duties imposed included that of the period when the Philippines and other parties were still negotiating.

It must be pointed out that petitioner, being a private entity, cannot invoke provisions of a treaty against the State. The subject of international law and treaty obligations are the states. The invocation of a treaty is a prerogative that belongs to a state.

The country's request for further extension with the WTO on the special treatment with regard to rice importation is already approved. The Philippines has authority until 30 June 2017 to impose such quantitative restrictions.

When the special treatment on rice expires and the Philippines is already required to subject rice to tariff, it is not automatic and would require Congressional action on the matter. A law has to be passed removing the exemption on tariffication of rice, and expressly imposing tariffs on rice imports, amending R.A. No. 8178.

Lest it be forgotten, rice is perhaps one of the most valuable agricultural products of the country. The government takes serious efforts in ensuring not only the growth and development of the rice industry, but its protection from unfair

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competition from sources, especially the ones that enter the country illegally.

Nothing in Presidential Decree No. 4 and its amendments, especially Republic Act No. 8178, and even the WTO-GATT Agreement on Agriculture, specifically grants private individuals and entities the automatic right to engage in the importation of rice products, a protected commodity, and be unrestrained by State regulation. On the other hand, the direct importation of rice by private individuals or entities will be a violation of R.A. No. 8178 conferring upon the NFA the power to directly undertake such importation.

Since rice is the most important agricultural grain product of the country, rice trading is under strict regulation and monitoring by the government, particularly the NFA, with the assistance of the BOC and its District Collectors.

The imposition of an import permit by the NFA, and enforced by the BOC, is a multi-pronged regulatory measure. It is a means of regulating *who* can import, *what* to import, and *how much* can be imported within a certain period.

The guidelines for the import permit pertinent to the shipments in this case are contained in NFA Memorandum Circular No. AO-2K13-03-003. It specifies the requirements for the procurement of rice importation permit, as well as the maximum amount of rice to be imported and the enumeration of the countries from which we can import rice.

The import license requirement has been implemented for a number of years now, pursuant to the power and authority granted to the NFA by Section 6 of P.D. No. 4, as amended by R.A. No. 8178. The said provision solely mandates the NFA to undertake direct importation of rice or allocate import quotas among certified and licensed importers.

Respondent is simply obeying the directives of the NFA and the BOC pursuant to the provisions of P.D. No. 1770 and R.A. No. 8178 - laws which have not been repealed or even questioned as regards its constitutionality. Thus, respondent cannot be deemed in violation of any law when the acts in question are simply direct implementation of the clear provisions of said laws and its mandate under the Tariff and Customs Code, among other laws.

B. Petitioner's reliance on Section 2503 of the Tariff and Customs Code is misplaced

Petitioner also relies on the Tariff and Customs Code in claiming that respondent gravely erred in forfeiting their shipments. They argue that while the shipments that arrived indeed turned out to be in excess of what was allocated to them, it was not undeclared, but a mere misdeclaration as to quantity.

Respondent submits that this is an erroneous conclusion.

Petitioner specifically refers to Section 2503 of the Tariff and Customs Code, as amended, which states:

xxx xxx xxx

Petitioner also relies on Customs Administrative Order No. 01-2014. It claims that under said issuance, it should only be liable for payment of penalty and not forfeiture. Particularly, they rely on Section 2 (b) thereof, which states:

xxx xxx xxx

Petitioner claims that they merely relied on the documents forwarded by their foreign supplier. They claim that they have not made undeclared importation since it was clear that what was imported was rice, and the only discrepancy has to do with the quantity. Hence, they claim that they should not be deprived their right to the excess shipments especially since the only liability they have, if ever, was the payment of the surcharge.

The foregoing submission is erroneous.

The customs authorities found that 'the quantity of the rice shipment declared in the Bill of Lading, Import Entry C22151413, Packing List, Invoice, is only 660,000 kgs or 15,600 bags. However, **examination revealed that there**

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is an excess of <u>104,000 kgs or 2,080 bags</u> of white rice...'

Petitioner interprets Section 2503 TCCP and CAO No. 01-2014 to mean that they should only be held liable for payment of surcharge. They claim that the shipment should not be forfeited in favor of the government.

A reading of Section 2503 of the TCCP *does not state* that the penalties of surcharge and forfeiture are exclusive, contrary to what petitioner suggests. Respondent submits that the second proviso in the first paragraph directing the forfeiture of misdeclared or undeclared imported article/items found upon examination shall be imposed on top of the surcharge.

In addition, a perusal of the Decision of the respondent would show that aside from Section 2503, the other provision relied upon by the Bureau of Customs is Section 2530, which states:

xxx xxx xxx

It bears stressing that the forfeiture of seized goods in the Bureau of Customs is a proceeding against the goods and not against the owner. It is in the nature of a proceeding *in rem, i.e.,* directed against the *res* or imported articles and entails a determination of the legality of their importation. **In this proceeding, it is, in legal contemplation, the property itself which commits the violation and is treated as the offender, *without reference whatsoever to the character or conduct of the owner*.**

In the instant case, the primary reason for the holding of the rice shipments is that they were not only beyond the declared quantity in the importation documents, but that <u>they were imported beyond the quantity allocated to petitioner</u> under the import permit granted to them by the NFA.

The excess rice shipments entered our territory without the necessary import permit. Hence, its forfeiture is the proper course of action under applicable laws, rules and regulations.

Respondent submits that this is not a mere case of misdeclaration in quantity. The excess bags of rice were imported in violation of the terms and conditions under the NFA Import Permit. They were thus undeclared in so far as the import documents of petitioner are concerned.

To repeat, the importation of rice into the country is a highly regulated activity by both the NFA and the BOC. Only the NFA has the statutory authority to import rice. For private individuals to make such importations is only by virtue of a privilege granted by the NFA through said import permits.

It is one of the first principles in the field of administrative law that a license or a permit is not a contract between the sovereignty and the licensee or permittee, and is not a property in any constitutional sense, as to which the constitutional prescription against impairment of the obligation of contracts may extend. **A license is rather in the nature of a special privilege, of a permission or authority to do what is within its terms. It is not in any way vested, permanent, or absolute...**

From the foregoing, petitioner should not be allowed to do what is beyond the terms in the importation permit granted to it. Whatever excess were found in petitioner's shipment was no longer covered by the import permit, and were already considered illegally imported articles. To allow the release of said shipments or their proceeds would be tantamount to consenting to prohibited importation.

Consequently, respondent Commissioner of Customs did not err in affirming the Order of the District Collector of the MICP. Perforce, the instant Petition for Review must fail."

On December 16, 2015, respondent filed his Answers[92] in both CTA Case Nos. 9159 and 9160, interposing the following main points in his special and affirmative defenses:

1. Rice importations are subject to Import Permit from the NFA;

[92] CTA Case No. 9159, Docket, pp. 118-163; CTA Case No, 9160, Docket, pp. 110-155.

2. Petitioner has no personality to question before this Court the government's alleged non-compliance with the World Trade Organization (WTO) Agreement;

3. The special privilege on rice granted to the Philippines under Annex 5 of the WTO Agreement on Agriculture does not cease upon the expiration of the Extension Agreement on June 30, 2012;

4. The NFA has the power and legal authority to issue the herein assailed NFA Memorandum Circular No. AO-2K13-03-003, requiring import permits for rice importations, and such power has not ceased upon the expiration of the Extension Agreement for the Philippines' Special Treatment for rice; and

5. The subject rice importation of petitioner in excess of the allocation by the NFA is not covered by any import permit, and thus, is an unauthorized importation and, hence, subject to forfeiture.

CTA Case No. 9160 was set for pre-trial conference by the CTA Second Division on February 18, 2016.[93] On the other hand, CTA Case No. 9159 was set for pre-trial conference by the CTA Third Division on March 15, 2016.[94]

In a Resolution[95] dated January 15, 2016, the CTA Second Division granted respondent's motion to consolidate CTA Case No. 9159 with CTA Case No. 9160, subject to the conformity of the CTA Third Division. Accordingly, the pre-trial conference set on February 18, 2016 was cancelled.

Thereafter, in a Resolution[96] dated January 21, 2016, the CTA Third Division granted respondent's motion to consolidate CTA Case Nos. 9159 and 9160. In the Order[97] dated January 28, 2016, the Court noted the Resolution dated January 15, 2016 of the CTA Second Division.

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[93] CTA Case No. 9160, Notice of Pre-Trial Conference, Docket, pp. 178-179.
[94] CTA Case No. 9159, Notice of Pre-Trial Conference, Docket, pp. 245-246.
[95] CTA Case No. 9160, Docket, p. 183.
[96] CTA Case No. 9159, Docket, pp. 249-250.
[97] CTA Case No. 9159, Docket, p. 252.

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Meanwhile, on January 29, 2016, within the extended period granted by the Court,[98] respondent filed his Comment[99] to the Petition for Review through registered mail. Respondent interposed the same arguments and discussion he stated in his Comment in CTA Case No. 9156 except as to the findings of the custom authorities as to the excess bags of white rice, to wit:

> "The customs authorities found that 'the quantity of the rice shipment declared in the Bill of Lading, Import Entry C221528, Packing List, Invoice, is only 220,000 kgs or 4,400 bags. However, **examination revealed that there is an excess of <u>26,000 kgs or 520 bags</u> of white rice...**'"

In the consolidated CTA Case Nos. 9159 and 9160, respondent filed his Pre-Trial Brief[100] on March 9, 2016, while petitioner filed its Pre-Trial Brief[101] on March 11, 2016.

Thereafter, the parties submitted their Joint Stipulation of Facts and Issues[102] in the consolidated CTA Case Nos. 9159 and 9160 on April 8, 2016.

Meanwhile, CTA Case No. 9157 was set for pre-trial conference on May 3, 2016.[103] Petitioner filed its Pre-Trial Brief[104] on April 21, 2016. Petitioner then filed a Motion for Consolidation and Suspension of Pre-Trial[105] on April 27, 2016. Subsequently, the CTA Third Division issued the Resolution[106] dated June 7, 2016, granting the Motion to Consolidate in CTA Case No. 9157 and consolidated the case with CTA Case No. 9156 subject to the approval of the Court.

Meanwhile, in CTA Case No. 9158, the CTA Second Division in the Resolution[107] dated April 29, 2016 noted that respondent has not yet filed his Answer, while petitioner did not move to declare respondent in default. Thus, petitioner was given a last opportunity to inform the Court whether

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[98] CTA Case No. 9157, Resolution dated January 6, 2016, Docket, p. 78.
[99] CTA Case No. 9157, Docket, pp. 80-95.
[100] CTA Case No. 9159, Docket, pp. 257-267.
[101] CTA Case No. 9159, Docket, pp. 329-338.
[102] CTA Case No. 9159, Docket, pp. 357-367.
[103] CTA Case No. 9157, Notice of Pre-Trial Conference, Docket, pp. 98-99.
[104] CTA Case No. 9157, Docket, pp. 158-162.
[105] CTA Case No. 9157, Docket, pp. 183-186.
[106] CTA Case No. 9157, pp. 209-210.
[107] CTA Case No. 9158, Docket, p. 73.

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it is still pursuing the case and to file the necessary motion, otherwise the Court will be constrained to dismiss the case pursuant to Section 3 of Rule 17 of the Rules of Court.

The CTA Third Division issued a Pre-Trial Order[108] for the consolidated CTA Case Nos. 9159 and 9160 on May 10, 2016.

Petitioner filed a Motion to Declare Defendant in Default in CTA Case No. 9158 on May 12, 2016. This was denied by the CTA Second Division in the Resolution[109] dated July 5, 2016, which also admitted respondent's Comment/Answer[110]. Petitioner's Answer/Comment in CTA Case No. 9158 interposed the following arguments and discussion:

> "**DISCUSSION**
>
> Respondent Commissioner of Customs did not err in ordering the forfeiture of petitioner's shipment.
>
> I. The government is authorized to impose quantitative restrictions on rice importation.
>
> According to petitioner, respondent wrongfully interpreted Republic Act No. 8171 and National Food Authority (NFA) Memorandum Circular No. AO-2K13-003 to mean that the importation of rice still requires an import permit from the NFA considering that 'it is not the only relevant law in relation to quantitative restrictions on rice' (Petition, p. 4) as there is still this provision of the GATT-WTO Agreement particularly Part III, Article 4 thereof which provides that 'members shall to(sic) [not] maintain, resort to, or revert to any measures of the kind [quantitative import restrictions, discretionary import licensing, etc.] which must be converted into ordinary customs duties, except as otherwise provided for in Article 5 and Annex 5.' (*Ibid.*, pp. 5-6).
>
> Petitioner claims that with the expiration of the period in the WTO-GATT for the special treatment accorded to the

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108 CTA Case No. 9159, Docket, pp. 394-404.
109 CTA Case No. 9158, Docket, pp. 109-110.
110 CTA Case No. 9158, Docket, pp. 94-105.

Republic of the Philippines, the Philippines is bound to convert the quantitative restrictions to ordinary custom duties with respect to rice importations. (*Ibid.*, p. 6) Petitioner further contends that BSP Circular No. 794 dated April 18, 2013 has removed rice from the List of Regulated Import Commodities and the List of Prohibited Commodities, which indubitably reinforces its position that rice has become importable subject to no quantitative restrictions. (*Id.*)

Petitioner's contentions are devoid of merit.

While it is admitted that with the membership of the Philippines in the WTO Agreement on Agriculture, certain restriction on the entry of agricultural and food products were removed, reduced or made subject to tariff instead. However, in the case of rice, the quantitative import restriction continue to apply pursuant to Section 2 of Republic Act (R.A.) No. 8178, otherwise known as the Agricultural Tariffication Act of 1996, which was enacted by the Philippine Legislature in compliance with its treaty obligation under the GATT-WTO Agreement. Section 2 of R.A. No. 8178 provides:

xxx xxx xxx

Pursuant to the above policy and statutory mandate, the NFA has been steadily regulating the influx of imported rice into the country through its annual issuance of Memorandum Circulars, one of which is NFA Memorandum Circular No. AO-2K13-003, stating the amount of rice that may be imported and from which territories and by requiring the procurement of license/import permits to traders who wish to import rice into the country.

The waiver granted to the Philippines under the GATT-WTO Agreement with regard to rice was effective until 2005 but it was extended until June 30, 2012. Prior to its expiration in 2012, the Philippine Government begun negotiations with the WTO for another extension. During the negotiations, the parties observed the *status quo* in terms of the Philippines' continued imposition of import permit requirement for imported rice. Thus, in 2014, when the Special Treatment extension on rice has been extended up to June 30, 2017 by the WTO, the provisions of R.A. No 8178 remains to be effective and the Philippine government continues to impose

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such quantitative restrictions on the importation of rice through the NFA.

II. Forfeiture of petitioner's shipment in favor of the government and its disposition pursuant to the provision of the Tariff and Customs Code is in order.

Petitioner argues that it secures an import permit for its shipment And that while its shipment of imported rice turned out to be in excess of the volume/quantity indicated in the import permit, the excess volume constitute less than 10% of the quantity declared on the face of the import permit. Thus, respondent should not have confiscated/forfeited said excess volume in favor of the government but instead should just have imposed a surcharge applying the provision of Section 2503 of the Tariff and Customs Code.

Petitioner's allegation lacks merit.

As mandated in R.A. 8178 and implemented by NFA Memorandum Circular No. AO-2K13-003, rice importers are required to secure import permits from the NFA for all rice importations coming in and imported into the country.

Under Section 4 of Memorandum Circular No. AO-2K13-003, the NFA required that:

> Starting April 10, 2013, all licensed NFA licensed-importers may apply to import by submitting the following documents to NFA Central Office, as basic requirements:
>
> xxx xxx xxx
>
> 4.1. **Letter of Intent detailing the importer's volume of rice to be imported, its quality specifications and source country**. The LOI shall also indicate the complete address, contract details and email address of the applicant;

4.2. **<u>Valid NFA Import License</u>** valid until 31 December 2013.

(Emphasis and underscoring supplied.)

In the case at bar, it is undisputed that the subject containers or excess rice importation is without import permit. As such, and as correctly ordered by the MICP District Collector, the subject excess rice importation is liable for forfeiture under Section 2530 (f) of the TCCP, as amended, which states:

xxx xxx xxx

And as correctly ruled by respondent, the Import Permit granted by the NFA ascribe a certain import allocation to herein petitioner. Thus, petitioner has no authority to import rice in excess of the 440MT allowed by the NFA with its Import Permit, and any amount of rice in excess of the allocation granted the company is already considered a prohibited importation. Therefore, the excess rice shipment is an importation that can be rightfully subjected to seizure under Section 2530, Par. f of the TCCP, as amended.

Also, it is worthy to note that the excess rice importation was not properly declared in the import entry filed and in the import documents submitted.

Upon verification of the import documents attached to import entry No. C221547-13 and submitted with Section 1, FED, MICP, the quantity of rice shipment declared in the Bill of Lading, Import Entry C-221547-13, Packing List, Invoice, is only 440,000 kgs or 8,800 bags. However, upon inspection/examination, it was revealed that there is an excess of 52,000 kgs or 1,040 bags of white rice. Thus, the excess rice importation is considered undeclared items that are *ipso facto* liable for forfeiture for violation of Section 2503 of the TCCP, as amended, which reads:

xxx xxx xxx

It bears stressing that the excess importation of petitioner is not a mere case of misdeclaration in quantity. The excess volume of imported rice were brought into the country in violation of the terms and conditions contained in the import permit issued by the NFA. Thus, not being covered by the rice allocation authorized by the NFA, it can be said to be an importation prohibited by law that can be validly forfeited and disposed of in favor of the government.

All told, the forfeiture and disposition of the excess shipment of petitioner in favor of the government is warranted under the premises."

On June 16, 2016, petitioner filed a Motion for Consolidation[111] to consolidate CTA Case Nos. 9159 and 9160 with CTA Case No. 9156. This was granted by the CTA Third Division in the Order dated June 20, 2016 and CTA Case Nos. 9159 and 9160 were consolidated with CTA Case No. 9156.

CTA Case No. 9158 was set for pre-trial conference on August 4, 2016.[112]

On July 29, 2016, petitioner filed a Motion to Consolidate[113] in CTA Case No. 9158. This was resolved by the CTA Second Division in the Resolution dated August 3, 2016. Thus, CTA Case No. 9158 was consolidated with CTA Case No. 9156 and the pre-trial conference previously set on August 4, 2016 was cancelled.

Respondent's Consolidated Pre-Trial Brief[114] and petitioner's Pre-Trial Brief[115] were respectively filed on July 25, 2016 and on July 26, 2016.

The parties filed their Joint Stipulations of Facts and Issues[116] through registered mail on September 29, 2016. This was approved by the Court in the Resolution[117] dated October 14, 2016, which also terminated the Pre-Trial. Subsequently, the Court issued the Pre-Trial Order[118] on November 16, 2016.

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[111] CTA Case No. 9159, Docket, pp. 405-407.
[112] CTA Case No. 9158, Notice of Pre-Trial Conference, Docket, pp. 111-112.
[113] CTA Case No. 9158, Docket, pp. 113-115.
[114] CTA Case No. 9156, Docket, pp. 223-242.
[115] CTA Case No. 9156, Docket, pp. 244-260.
[116] CTA Case No. 9156, Docket, pp. 351-370.
[117] CTA Case No. 9156, Docket, p. 377.
[118] CTA Case No. 9156, Docket, pp. 388-413.

In the Order[119] dated January 24, 2017, the Court gave petitioner fifteen (15) days from January 26, 2017, the last scheduled Commissioner's Hearing, within which to file its Formal Offer of Evidence.

However, instead of filing its Formal Offer of Evidence, petitioner filed a Motion for Production[120] on March 28, 2017. This was denied by the Court in the Resolution[121] dated April 4, 2017 and petitioner's filing of its Formal Offer of Evidence was also deemed waived for failure to file within the given period.

On April 11, 2017, petitioner filed a Motion to Admit[122] its Formal Offer of Evidence. This was granted by the Court in the Resolution[123] dated June 28, 2017 and petitioner's Formal Offer of Evidence[124] was admitted.

In the Resolution dated September 25, 2017, the Court acting on petitioner's Formal Offer of Evidence, admitted Exhibits "P-1", "P-2", "P-4", "P-4A", "P-5", "P-6", "P-9", "P-10", "P-11", "P-12", "P-14", "P-15", "P-16", "P-16-A", "P-17", "P-18", "P-19", "P-20", "P-20-A", "P-22", "P-22-A", "P-26", "P-27", "P-29", "P-30", "P-31", "P-32", "P-32-A", "P-33", "P-33-A", "P-34", "P-35", "P-37", "P-38", "P-38-A", "P-41", "P-42", "P-43", "P-44", "P-45", "P-46", "P-47", "P-47-A", "P-50", "P-50-A", "P-52", "P-54", "P-55", "P-55-A", "P-58", "P-59", "P-60", "P-61", "P-62", "P-63", "P-64", "P-64-A", "P-65", "P-65-A", "P-66", "P-67", "P-69", "P-70", "P-73", "P-74", "P-75", "P-76", "P-77", "P78", "P-79", "P-79-A", "P-80", and "P-80-A". However, the Court denied the admission of Exhibit "P-21", for failure of the exhibit formally offered to correspond with the duly marked document; Exhibits "P-25" and "P-53" for failure to present originals for comparison; and Exhibit "P-51" for not being found in the records of the case.

In the same Resolution, the Court also deemed waived the right of respondent to file Judicial Affidavit and to present his intended witness. Thus, respondent filed a Manifestation and Motion[125] on October 9, 2017, seeking a partial reconsideration of the Resolution dated September 25,

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[119] CTA Case No. 9156, Docket, p. 427.
[120] CTA Case No. 9156, Docket, pp. 438-440.
[121] CTA Case No. 9156, Docket, pp. 457-460.
[122] CTA Case No. 9156, Docket, pp. 461-463.
[123] CTA Case No. 9156, Docket, pp. 494-496.
[124] CTA Case No. 9156, Docket, pp. 464-469.
[125] CTA Case No. 9156, Docket, pp. 547-551

2017. Respondent then filed his Formal Offer of Exhibits[126] on October 9, 2017.

In the Resolution[127] dated December 18, 2017, the Court granted respondent's motion and admitted his Formal Offer of Exhibits. The Court also resolved respondent's Formal Offer of Exhibits and admitted respondent's Exhibits "R-1", "R-1-a", "R-2", "R-2-a", "R-3", "R-4", "R-5", "R-6", "R-7", "R-8", "R-9", "R-10", "R-11", "R-11-a", "R-12", "R-12-a", "R-13", "R-14", "R-15", "R-16", "R-17", "R-18", "R-19", "R-20", "R-21", "R-21-a", "R-22", "R-23", "R-24", "R-25", "R-26", "R-27", "R-28", "R-29", "R-30", "R-30-a", "R-31", "R-32", "R-33", "R-34", "R-35", "R-36", "R-37", "R-38", "R-39", "R-39-a", "R-40", "R-41", "R-42", "R-43", "R-44", "R-45", and "R-46".

However, the admission of Exhibits "R-20-a", "R-29-a", and "R-38-a" were denied for not being found in the records of the case; Exhibit "R-47", for failure to submit the duly marked exhibit; and Exhibit "R-48", for failure to submit the duly marked document and failure to present the originals for comparison.

Petitioner filed its Memorandum[128] on October 30, 2017; while respondent's Consolidated Memorandum[129] was filed through registered mail on February 7, 2018. Thus, in the Resolution[130] dated February 15, 2018, the instant Petition for Review was submitted for decision.

THE ISSUES

The parties submitted the following issues[131] for resolution of this Court:

1. Whether or not rice importations are subject to Import Permit from the NFA.

    a. Whether or not petitioner has the personality to question before this Court the government's alleged non-compliance with the WTO Agreement.

[126] CTA Case No. 9156, Docket, pp. 553-566.
[127] CTA Case No. 9156, Docket, pp. 603-605.
[128] CTA Case No. 9156, Docket, pp. 579-595.
[129] CTA Case No. 9156, Docket, pp. 614-639.
[130] CTA Case No. 9156, Docket, p. 644.
[131] Issues to be Tried, JSFI, CTA Case No. 9156, Docket, pp. 359-360.

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b. Whether or not the special privilege on rice granted to the Philippines under Annex 5 of the WTO Agreement on Agriculture does not cease upon the expiration of the Extension Agreement on June 30, 2012.

c. Whether or not the NFA has the power and legal authority under PD Nos. 4 and 1770, and Republic Act No. 8178 to issue the herein assailed NFA Memorandum Circular No. AO-2K13-03-003, requiring import permits for rice importations.

d. Whether or not such power of the NFA has not ceased upon the expiration of the Extension Agreement for the Philippines' Special Treatment for rice.

e. Whether or not the subject rice importation of petitioner in excess of the allocation by the NFA is not covered by any import permit, and thus, is an unauthorized importation and is subject to forfeiture.

2. Whether or not respondent erred in affirming the forfeiture of the subject excess rice importation of petitioner.

3. Whether the excess rice is subject of forfeiture under Section 2503 in relation to Section 2530 of the Tariff and Customs Code of the Philippines.

ARGUMENTS OF THE PARTIES

Petitioner argues that with respect to quantitative import restrictions on rice, aside from RA No. 8178 and NFA Memorandum Circular No. A0-2K13-003, the provisions of the WTO Agreement are also relevant. It alleges that the Philippines, being a signatory to the GATT-WTO, is bound to observe and respect its international obligations under the GATT-WTO. Specifically, the Philippines is bound to comply with Part III, Article 4 of the Agreement on Agriculture (GATT) which provides that members shall not maintain, resort to, or revert to any measures of the kind (referring to quantitative import restrictions, discretionary import licensing, etc.) which must be converted into ordinary customs duties, except as otherwise provided for in Article 5 and Annex 5.

Furthermore, petitioner contends that while the Philippines was granted the privilege to impose quantitative restrictions on rice from 1995 to 2005, which was thereafter extended until June 30, 2012, after negotiations, the Philippines was bound to convert the quantitative restrictions to ordinary customs duties with respect to rice importations after that date. It argues that the Philippines cannot invoke RA No. 8178 to justify its refusal to impose tariff on rice instead. Petitioner alleges that NFA Memorandum Circular No. A0-2K13-003 is null and void for being ultra vires since it was issued after June 30, 2012 and before July 24, 2014 when the Philippine government was granted another extension on its special treatment of rice until June 30, 2017.

Petitioner also alleges that the subject shipment was covered by an import permit and that, contrary to the assailed Decision of the COC, the excess rice shipment should not be considered "undeclared", but merely a "misdeclaration as to quantity" which merits the imposition of a surcharge and not seizure. It points out that Customs Administrative Order (CAO) No. 01-2014 sets out the guidelines for the imposition of surcharge under Section 2503 of the TCCP. Petitioner insists that the Order of Seizure is unwarranted because the percentage difference is not more than thirty percent (30%) as required by Paragraph 2(b) of CAO No. 01-2014 when seizure proceedings are proper.

On the other hand, respondent counter-argues that he did not err in affirming the forfeiture of petitioner's excess rice shipments for having been in excess of the amount declared in the supporting documents of the rice shipments and for not being covered by the allocation in their Import Permit issued by the NFA.

According to respondent, the government is authorized to impose quantitative restrictions on rice importation. The NFA has the power and legal authority to issue the assailed NFA Memorandum Circular No. AO-2K13-03-003, requiring import permits for rice importations. Neither does the continuing implementation of the import permit requirement violate our treaty obligations to the World Trade Organization.

Furthermore, respondent contends that petitioner's reliance on Section 2503 of the Tariff and Customs Code of the Philippines is

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misplaced. He asserts that a reading of Section 2503 of the TCCP does not state that the penalties of surcharge and forfeiture are exclusive. Respondent submits that the second proviso in the first paragraph directing the forfeiture of misdeclared or undeclared imported article/items found upon examination shall be imposed on top of the surcharge.

Respondent avers that the reason for the holding of the rice shipments is that they were not only beyond the declared quantity in the importation documents, but that they were imported beyond the quantity allocated to petitioner under the import permit granted to them by the NFA. In other words, the subject rice importation of petitioner in excess of the allocation by the NFA is not covered by any import permit, and thus, is an unauthorized importation and subject to forfeiture.

THE COURT'S RULING

The Court has jurisdiction over the Petitions for Review

The Court of Tax Appeals is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.[132] Pursuant to Section 7(a)(4) of Republic Act No. 9282[133], amending Republic Act No. 1125[134], this Court has jurisdiction over decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs, to wit:

> "SEC. 7. *Jurisdiction.* – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

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[132] *Commissioner of Internal Revenue vs. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.),* G.R. No. 169778, March 12, 2014.
[133] 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 Of Republic Act No. 1125, As Amended, Otherwise Known As The Law Creating The Court Of Tax Appeals, And For Other Purposes, March 30, 2004.
[134] An Act Creating The Court Of Tax Appeals, June 16, 1954.

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(4) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;"

In relation thereto, Section 3 of Rule 4 of the 2005 Revised Rules of the Court of Tax Appeals, as amended, specifically includes the decision of the Commissioner of Customs as one of the cases falling within the jurisdiction of the Court of Tax Appeals in Division, to wit:

"SEC. 3. *Cases within the jurisdiction of the Court in Divisions.* – The Court in Division shall exercise:

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

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(4) Decisions of the Commissioner of Customs in cases involving liability for custom duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;"

Corollary thereto, Section 3(a) of Rule 8 of the Revised Rules of the Court of Tax Appeals provides the period within which the decision of the COC may be appealed with the Court of Tax Appeals, to wit:

"SEC. 3. *Who may appeal; period to file petition.* –

(a) **A party adversely affected** by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or **by a decision or ruling of the Commissioner of Customs**, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial

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Court in the exercise of its original jurisdiction **may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling,** or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. xxx" *(Emphasis supplied)*

Based on the foregoing, the Court in Division shall exercise exclusive original jurisdiction to review by appeal decisions of the COC in cases involving liability for custom duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs. Said appeal may be availed of by filing a petition for review with the CTA within thirty days after receipt of a copy of such decision or ruling.

In this case, petitioner received all the subject Decisions[135] of respondent COC on September 2, 2015. Counting 30 days from said date, petitioner had until October 2, 2015 within which to file the Petitions for Review with the CTA. Thus, petitioner timely filed the instant Petitions for Review on October 1, 2015 and the Court, accordingly, has jurisdiction over the instant Petitions for Review.

The Court will now proceed to address the principal issues of this case, which will be jointly discussed.

Petitioner's rice importations do not require import permits from the NFA

In all the Decisions dated August 27, 2015, respondent found that the subject excess rice importations in these consolidated cases were without import permits and thus subject to forfeiture under Section 2530(f) of the TCCP.

Petitioner argues that the government is no longer authorized to require import permits because the Special Treatment afforded to the Philippines under the WTO-GATT, which provides exemption from the

[135] Exhibits "P-35" and "R-27", CTA Case No. 9156, BIR Records, pp. 36-41; Exhibits "P-36" and "R-52", CTA Case No. 9157, Docket, pp. 114-119; Exhibits "P-367" and "R-45", CTA Case No. 9158, BIR Records, pp. 39-44; Exhibits "P-19" and "R-18", CTA Case No. 9160, BIR Records, pp. 49-54.

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prohibition against imposition of quantitative restrictions in the importation of primary agricultural products, already lapsed on June 30, 2012.

Respondent, on the other hand, counter-argues that the government is authorized to impose quantitative restrictions on rice importation. The NFA has the power and legal authority to issue the assailed NFA Memorandum Circular No. AO-2K13-03-003, requiring import permits for rice importations. Moreover, he contends that the expiration of the Extension Agreement on June 30, 2012 does not render the authority to require rice import permits automatically removed.

The Philippines became a member of the World Trade Organization (WTO) Agreement on Agriculture in 1994. It was concurred to by Congress, as provided in Senate Resolution No. 97 dated December 14, 1994.[136]

As a consequence of this membership, certain restrictions on the entry of agricultural and food products into the country were either reduced, removed, or made subject to tariff instead. Article XI of the 1994 GATT[137] requires the general elimination of Quantity Restrictions (QRs); while Article XIII of the 1994 GATT[138] requires non-discriminatory application of such restrictions. Hence, as a general rule, no QRs are allowed to be imposed by any WTO member.

Article 15 of the WTO Agreement on Agriculture (on Special and Differential Treatment)[139] provides that developing country members, like the Philippines, shall have the flexibility to implement reduction commitments over a period of up to ten (10) years. Any extension of the Special Treatment can be negotiated, pursuant to Section B(8) of Annex 5: Special Treatment with Respect to Paragraph 2 of Article 4, WTO Agreement on Agriculture.[140] In effect, this Special Treatment temporarily permitted the Philippines to impose QRs on the importation of rice from the years 1995 to 2005.

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[136] *Tañada vs. Angara*, G.R. No. 118295, May 2, 1997,
[137] https://www.wto.org/english/res_e/publications_e/ai17_e/gatt1994_art11_oth.pdf; last accessed: December 20, 2018.
[138] https://www.wto.org/english/res_e/publications_e/ai17_e/gatt1994_art13_gatt47.pdf; last accessed: December 20, 2018.
[139] https://www.wto.org/english/docs_e/legal_e/14-ag_02_e.htm#articleXV; last accessed: December 20, 2018.
[140] https://www.wto.org/english/res_e/publications_e/ai17_e/agriculture_ann5_oth.pdf; last accessed: December 20, 2018.

To implement the WTO Agreement, on March 28, 1996, R.A. No. 8178, otherwise known as the "Agricultural Tariffication Act" was approved, amending Presidential Decree (PD) No. 4. It provides that an importer like petitioner must first secure an import permit from the NFA before importing rice.

In 2006, pursuant to Article 4.2 and Section B of Annex 5 of the Agreement, the Philippines' Special Treatment for rice was extended from July 1, 2005 to June 30, 2012.[141] Hence, from July 1, 2012 until July 24, 2014, no Special Treatment of rice was in place under treaty.

However, on March 22, 2013, the NFA issued NFA Memorandum Circular No. AO-2K13-03-003[142] providing that rice importers are required to procure rice permits prior to the importation of rice, essentially imposing QRs on rice.

The subject rice importations were all made on November 3, 2013.[143]

It was not until July 24, 2014 when the Waiver Decision[144] was approved that the Special Treatment was extended until June 30, 2017.

Thus, the importations were made after the Special Treatment expired on June 30, 2012, after the passing of the NFA Memorandum Circular, and before the Waiver Decision was afforded to the Philippines.

Based on the records, respondent found that the subject excess rice importations in these consolidated cases were without import permits and thus subject to forfeiture under Section 2530(f) of the TCCP.

In the case of *Jade Bros Farm and Livestock, Inc. vs. Bureau of Customs and Commissioner of Customs*[145], this Court discussed thoroughly the GATT-WTO, RA No. 8178 and NFA Memorandum Circular No. AO-

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[141] Rectification and Modification of Schedule LXXV- Republic of the Philippines contained in the WTO documents G/MA/TAR/RS/99/Rev.1 dated 27 September 2006 and WT /Let/562 on 08 February 2007.
[142] Exhibit "R-10", CTA Case No. 9156, Docket, pp. 568-575.
[143] Exhibit "R-20", CTA Case No. 9156, BIR Records, p. 1; Exhibit "R-29", CTA Case No. 9157, Docket, p. 135; Exhibit "R-38", CTA Case No. 9158, BIR Records, p. 1; Exhibits "P-4" and "R-1", CTA Case No. 9159, Docket, p. 240; Exhibit "R-11", CTA Case No. 9160, BIR Records, p. 2; and Exhibit "R-20", CTA Case No. 9156, BIR Records, p. 1.
[144] Exhibit "R-47", CTA Case No. 9156, Docket, pp. 92-98.
[145] CTA Case No. 8886, September 21, 2016.

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2K13-03-003, and their application on the need for import permits during the interim period between the expiration of the Special Treatment on June 30, 2012 and the Waiver Decision[146] approved on July 24, 2014 which extended the Special Treatment until June 30, 2017, to wit:

> "It is clear, and in fact vigorously argued by respondent COC, that under *PD No. 4, as amended by RA No. 8178*, the NFA 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.
>
> *Section 5 of RA No. 8178* further grants the NFA the power 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.
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> From the foregoing provisions of the law, respondent COC declared petitioner's importations as illegal because of the absence of an import permit from the NFA, citing *Section 2530(f) of the TCCP*, which states that 'any article of prohibited importation or exportation, the importation or exportation of which is effected or attempted contrary to law, and all other articles which, in the opinion of the Collector, have been used, are or were intended to be used as instrument in the importation or exportation of the former.'
>
> However, *PD No. 4* and *RA No. 8178*, relied upon by respondent COC for his classification of petitioner's rice shipments, must be read in relation to the *WTO Agreement*. As a matter of fact, the obligations of the Philippines under the *WTO Agreement* is expressly referenced in *Section 6(a) of PD No. 4*, as amended by RA No. 8178, to wit:
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> > Sec. 6. (a) Powers. –
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[146] Exhibit "R-47", CTA Case No. 9156, Docket, pp. 92-98.

> (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.

The *WTO Agreement* became part of Philippine laws through the Incorporation clause and the Treaty Clauses.

The Incorporation Clause is found in *Section 2, Article II of the 1987 Philippine Constitution*, which states that '[t]he Philippines ... 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 all nations.' By the doctrine of incorporation, the country is bound by generally accepted principles of international law, which are considered to be automatically part of our own laws.

The Treaty Clause can be found in *Section 21, Article VII of the 1987 Philippine Constitution*, which reads: '[n]o treaty or international agreement shall be valid and effective unless

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concurred in by at least two-thirds of all the Members of the Senate.' Hence, once a treaty has been concurred to by two-thirds (2/3) of all the Members of the Senate, it automatically forms part of the law of the land and is treated as a domestic law.

The ratification by the President and the Philippine Senate of the *WTO Agreement* is an official and constitutional act, which incorporated the agreements composing the *WTO Agreement* as part of our local legislation. Hence, following the Treaty Clause, the *WTO Agreement* became domestic law on December 14, 1994.

In fact, the pronouncement that the *WTO Agreement* forms part of the law of the land, is a settled precept declared by the SC in the case of *Tañada v. Angara*:

> <u>The WTO Agreement provides that '(e)ach Member shall ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements</u>.' xxx
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> xxx xxx xxx
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> xxx Unquestionably, the Constitution did not envision a hermit-type isolation of the country from the rest of the world. In its Declaration of Principles and State Policies, the Constitution '<u>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 all nations.' By the doctrine of incorporation, the country is bound by generally accepted principles of international law, which are considered to be automatically part of our own laws. One of the oldest and most fundamental rules in international law is *pacta sunt servanda* - international agreements must be performed in good faith.</u>' xxx

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Moreover, the Supreme Court also ruled in the case of the *Secretary of Justice v. Lantion* that under the Incorporation Clause, rules of international law form part of the law of the land and no further legislative action is needed to make such rules applicable in the domestic sphere.

Going over the provisions of the *WTO Agreement*, the Court agrees with petitioner that at the time it imported the rice shipments in November 2013, there was no need to secure an import permit from the NFA.

As a matter of fact, *Paragraph 2 of Article 4 of the WTO Agreement on Agriculture* proscribes member countries, as follows:

> 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.

Those are specifically proscribed under *Paragraph 2 of Article 4 of the WTO Agreement on Agriculture* are as follows:

> These measures include 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 other than ordinary customs duties, whether or not the measures are maintained under country-specific derogations from the provisions of GATT 1947, but not measures maintained under balance-of-payments provisions or under other general, non-agricultural-specific provisions of GATT 1994 or of the other Multilateral Trade Agreements in Annex 1A to the WTO Agreement.

The WTO also interpreted and applied *Paragraph 2 of Article 4 of the WTO Agreement on Agriculture* as follows:

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d) 'discretionary import licensing'

55. The Panel in *Turkey* - Rice examined the question whether Certificates of Control issued by Turkey were 'import licences' and whether the issuance of these certificates constituted 'discretionary import licensing'. Recalling that the term 'import licence' is not defined in the Agreement on Agriculture or elsewhere in the WTO Agreement, and recalling the definition of 'import licensing' in the Agreement on Import Licensing Procedures, the Panel noted:

> '[N]ot all documents giving the permission to import may be necessarily considered to be 'import licences'. As noted by the parties, the importation process is often a complex procedure during which a number of steps must be completed in order to obtain the permission to import certain products. <u>Throughout this process, governments may require that written documents be obtained and then produced to certify the completion of certain steps and thus the compliance with certain legal requirements, in order to allow the importation of goods and their final entry into the importing market. Each of these steps and documents may serve particular objectives. Strictly speaking, these special documents, when used for purposes such as sanitary and phytosanitary control, customs clearance, payment of taxes or duties, are not to be considered as 'import licences'</u>.
>
> xxx not all practices of 'import licensing' would be 'discretionary import licensing'. 'Discretionary' is defined as 'pertaining to discretion [or] left to discretion'. 'Discretion' can be characterized in turn as the '[f]reedom to decide or act as one thinks fit, absolutely or within limits; having one's own judgement as the sole arbiter'.

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> xxx 'discretionary import licensing' xxx appears as one of the measures in the indicative list of 'measures of the kind which have been required to be converted into ordinary customs duties'. The object and purpose of Article 4 of the Agreement on Agriculture, 'to achieve improved market access conditions for imports of agricultural products by permitting only the application of ordinary customs duties', would be undermined if Members could decide, at their discretion, whether or not to grant permission for the importation of a good, or if they could decide, at their discretion, whether or not to grant a document that is indispensable for such importation.
>
> This interpretation is consistent with the definition agreed by WTO Members in the context of the Import Licensing Agreement. Article 1.1 of the Import Licensing Agreement and its footnote, when defining import licensing, refer to licensing and 'other similar administrative procedures'. We note in this regard that the footnote to the Annual Questionnaire on import licensing procedures, adopted by the WTO Committee on Import Licensing, indicates that 'similar procedures':
>
> '[A]re understood to include technical visas, surveillance systems, minimum price arrangements, and other administrative reviews effected as a prior condition for entry of imports.'

56. Applying this analysis to the measures at issue, the Panel in *Turkey - Rice* noted that regarding 'whether a measure may be characterized as an 'import licence' or a conduct as an 'import licensing' practice, the proclaimed objectives of a

particular document or requirement are not the main issue to consider in this dispute' and it concluded that 'regardless of the purported objectives of the Certificates of Control, the decision to stop granting such documents for periods of time has served as an instrument for administering trade'. The Panel concluded generally:

'[W]ithout necessarily having to articulate a general definition of what constitutes an 'import licence' or a practice of 'import licensing', we find that the discretionary use by authorities in an importing country of the concession, or refusal to grant, a particular document which is necessary for the importation of a good, as an instrument to administer trade, in this case can be safely characterized as a practice of 'discretionary import licensing' under footnote 1 to Article 4.2 of the *Agreement on Agriculture*.'

It cannot be denied, as well, that import permits issued by the NFA, and required by respondent COC, are quantitative import restrictions, under *Section 3(f) of RA No. 8178*:

> (f) 'Quantitative Import Restrictions' refers to non-tariff restrictions used to limit the amount of imported commodities, including but not limited to *discretionary import* licensing and import quotas, whether qualified or absolute.

While WTO member countries like the Philippines are prohibited from imposing QRs on imported products, a Special Treatment is accorded to certain countries, allowing them to impose discretionary import licensing as a matter of exception to the rule. This Special Treatment is found in *Annex 5 of the Agreement on Agriculture:*

> *Annex 5: Special Treatment with Respect to Paragraph 2 of Article 4*
>
> *Section A*
>
> 1. The provisions of paragraph 2 of Article 4 shall not apply with effect from the entry into force

of the WTO Agreement to any primary agricultural product and its worked and/or prepared products ('designated products') in respect of which the following conditions are complied with (hereinafter referred to as 'special treatment'):

(a) imports of the designated products comprised less than 3 per cent of corresponding domestic consumption in the base period 1986-1988 ('the base period');

(b) (b) no export subsidies have been provided since the beginning of the base period for the designated products;

(c) effective production-restricting measures are applied to the primary agricultural product;

(d) such products are designated with the symbol 'ST-Annex 5' in Section I-B of Part I of a Member's Schedule annexed to the Marrakesh Protocol, as being subject to special treatment reflecting factors of non-trade concerns, such as food security and environmental protection; and

(e) minimum access opportunities in respect of the designated products correspond, as specified in Section I-B of Part I of the Schedule of the Member concerned, to 4 per cent of base period domestic consumption of the designated products from the beginning of the first year of the implementation period and, thereafter, are increased by 0.8 per cent of corresponding domestic consumption in the base period per year for the remainder of the implementation period.

2. At the beginning of any year of the implementation period a Member may cease to

apply special treatment in respect of the designated products by complying with the provisions of paragraph 6. In such a case, the Member concerned shall maintain the minimum access opportunities already in effect at such time and increase the minimum access opportunities by 0.4 per cent of corresponding domestic consumption in the base period per year for the remainder of the implementation period. Thereafter, the level of minimum access opportunities resulting from this formula in the final year of the implementation period shall be maintained in the Schedule of the Member concerned.

3. <u>Any negotiation on the question of whether there can be a continuation of the special treatment as set out in paragraph 1 after the end of the implementation period shall be completed within the time-frame of the implementation period itself as a part of the negotiations set out in Article 20 of this Agreement, taking into account the factors of non-trade concerns.</u>

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8. <u>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.</u>

By way of exception, the Philippines applied for and was allowed to enjoy this Special Treatment from the years 1995 to 2005, or for ten (10) years, and a further extension of seven (7) years until June 30, 2012. Before the expiration of the Special Treatment on June 30, 2012, the Philippines requested for another extension. However, the extension was granted only on July 24, 2014 through a *Waiver Decision*.

As aptly stated in *page 8 of the DOJ Opinion*:

> 3. Under Annex 5, the 'special treatment', which effectively allows for the imposition of QRs, in derogation of the general provision under Paragraph 2, Article 4, was never intended to be effective permanently or for an indefinite period of time. In fact, by the terms of Annex 5, the special treatment shall only be effected during the implementation period (in relation to paragraph 1) or within a ten-year period following the start of the implementation period (in relation to paragraph 7).
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> 4. Thereafter, its continued application shall be subject of negotiations, which will be completed within the time frame of the implementation period itself as part of the negotiations set our in Article 20 of the Agreement (with respect to special treatment under Paragraph 1), or within the time-frame of the 10th year itself following the beginning of the implementation period (with respect to [the] special treatment under Paragraph 7.

Therefore, during the period of June 30, 2012 up to July 24, 2014, the Philippines did not enjoy any Special Treatment under *Annex 5 of the WTO Agreement on Agriculture*. Hence, the following provisions of *Annex 5* take operative effect, given the absence of the grant of any Special Treatment in favor of the Philippines:

> *Annex 5: Special Treatment with Respect to Paragraph 2 of Article 4*
>
> *Section A*
>
> xxx xxx xxx
>
> 5. Where the special treatment is not to be continued at the end of the implementation period, the Member concerned shall implement the provisions of paragraph 6. In such a case, after the

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end of the implementation period the minimum access opportunities for the designated products shall be maintained at the level of 8 per cent of corresponding domestic consumption in the base period in the Schedule of the Member concerned.

6. Border measures other than ordinary customs duties maintained in respect of the designated products shall become subject to the provisions of paragraph 2 of Article 4 with effect from the beginning of the year in which the special treatment ceases to apply. Such products shall be subject to ordinary customs duties, which shall be bound in the Schedule of the Member concerned and applied, from the beginning of the year in which special treatment ceases and thereafter, at such rates as would have been applicable had a reduction of at least 15 per cent been implemented over the implementation period in equal annual installments. These duties shall be established on the basis of tariff equivalents to be calculated in accordance with the guidelines prescribed in the attachment hereto.

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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.

To reiterate, *Paragraph 2, Article 4 of the WTO Agreement on Agriculture* states that '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.'

This only means that the NFA could not legally require petitioner to secure an import permit for its importations made on November 2013.

As between the *WTO Agreement* entered into by the Philippines and became part of domestic law as early as 1994, and the *NFA Memorandum Circular* of 2013, there is no dispute that in case of discrepancy between the former (the basic law) and the latter (the rules and regulations implementing the said basic law), the former prevails, because the rules and regulations cannot go beyond the terms and provisions of the basic law.

Respondents likewise claim that the *Waiver Decision*, which granted an extension of the Special Treatment, applies to the importations even if approved only on July 24, 2014. However, this cannot take effect retroactive to the dates when the importations were made in 2013 since *Article 4 of the New Civil Code* provides that '[l]aws shall have no retroactive effect unless the contrary is provided' and *Article 28 of the Vienna Convention on the Law on Treaties* provide that '[u]nless a different intention appears from the treaty or is likewise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.' It must likewise be noted that the *Waiver Decision* itself provides the effective date thereof, that is upon approval by the WTO General Council. Since it was approved on July 24, 2014, it is only effective from the said July 2014 until June 30, 2017.

The observation of the DOJ was correct when the (then) Secretary of Justice pointed out to the Secretary of Agriculture that 'from the moment the effectivity of the special treatment under Annex 5 expired, the Government under Paragraph 2, Article 4 with respect to rice importation became effective,' *i.e.*, it agreed that it 'shall <u>not</u> maintain resort to or revert to any

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measures of the kind which have been required to be converted into ordinary customs duties.' Indeed, it was grave error for respondent COC to impose the requirement of an import permit issued by the NFA, given that the latter could not validly issue one at the time of petitioner's importations.

This is not the first occasion in judicial history where an act of a Government agency having basis under our local laws was invalidated because the act contravened the provisions of a treaty for which the Philippines is a signatory. In the case of *Deutsche Bank AG Manila Branch v. Commissioner of Internal Revenue*, the Supreme Court held that the provisions of a tax treaty wherein the Philippines is a signatory prevailed over a regulation from the Bureau of Internal Revenue:

> Our Constitution provides for adherence to the general principles of international law as part of the law of the land. The time-honored international principle of *pacta sunt servanda* demands the performance in good faith of treaty obligations on the part of the states that enter into the agreement. Every treaty in force is binding upon the parties, and obligations under the treaty must be performed by them in good faith. More importantly, treaties have the force and effect of law in this jurisdiction. xxx A state that has contracted valid international obligations is bound to make in its legislations those modifications that may be necessary to ensure the fulfillment of the obligations undertaken. Thus, laws and issuances must ensure that the reliefs granted under tax treaties are accorded to the parties entitled thereto. The BIR must not impose additional requirements that would negate the availment of the reliefs provided for under international agreements. More so, when the RP-Germany Tax Treaty does not provide for any pre-requisite for the availment of the benefits under said agreement. ... The obligation to comply with a tax treaty must take precedence over the objective of RMO No. 1-2000. Logically, noncompliance with tax treaties has negative implications on international relations, and unduly discourages

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foreign investors. While the consequences sought to be prevented by RMO No. 1-2000 involve an administrative procedure, these may be remedied through other system management processes, *e.g.*, the imposition of a fine or penalty. xxx

Therefore, taking into account its rectitude, and the binding and conclusive effect on respondent BOC of the said *DOJ Opinion*, petitioner's rice shipments cannot be considered illegal by respondents for the lone reason that import permits were not secured prior to importation."

Based on the foregoing, between July 1, 2012 until July 24, 2014, when no Special Treatment of rice was in place under treaty, there was no need to secure import permits from the NFA to import rice.

Since at the time of the importations on November 3, 2013, it was legal for petitioner to import rice shipments without need of import permits, there would be no ground to support the seizure and forfeiture proceedings done by respondent. Thus, the following containers which were withheld by the District Collector of Customs (MICP) for violation of Section 2530(f) and (i) of the TCCP, as amended, should be released.

CTA CASE NO.	**SEIZURE IDENTIFICATION CASE NO.**	**CONTAINER NOS.**
9156	375-2014[147]	BMOU2745139, BMOU2832845, SEGU1482610 and SEGU1754391
9157	377-2014[148]	AKLU6000146
9158	374-2014[149]	CAIU2652210 and CMAIU1656955
9159	379-2014[150]	CAIU2113250, CAIU2184969, FCIU3098251, FSCU7471486, GLDU5768395, and REGU3136010
9160	378-2014[151]	HMCU3012577

[147] Exhibit "R-23", CTA Case No. 9156, BIR Records, pp. 23-24.
[148] Exhibit "R-32", CTA Case No. 9157, Docket, pp. 133-134.
[149] Exhibit "R-41", CTA Case No. 9158, BIR Records, pp. 20-21.
[150] Exhibit "R-4", CTA Case No. 9159, Docket, pp. 220-221.
[151] Exhibit "R-14", CTA Case No. 9160, BIR Records, pp. 21-22.

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WHEREFORE, the instant Petitions for Review are hereby **GRANTED**. The Court hereby declares petitioner's excess rice shipments, covered by Bills of Lading Nos. ICS310029[152], ICS310030[153], ICS311032[154], ICS310031[155], and 050300766382[156] as having been legally imported into the Philippines. Considering that petitioner's rice shipments have already been auctioned, respondents are hereby **ORDERED TO RELEASE** to the petitioner, the proceeds of the auction sale held last January 21, 2015, which are presently held in escrow, less the applicable ordinary duties, taxes, penalties, government fees and assessments, that may be assessed over the subject importations.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice
Chairperson, Special First Division

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[152] Exhibit "P-37", CTA Case No. 9156, BIR Records, p. 10.
[153] Exhibit "P-54", CTA Case No. 9157, Docket, p. 147.
[154] Exhibit "P-69", CTA Case No. 9158, BIR Records, p. 10.
[155] Exhibit "P-5", CTA Case No. 9159, Docket, p. 231.
[156] Exhibit "P-21", CTA Case No. 9160, BIR Records, p. 8.