REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

JADE BROS FARM AND LIVESTOCK, INC.,
Petitioner,

-versus-

BUREAU OF CUSTOMS AND THE COMMISSIONER OF CUSTOMS,
Respondents.

CTA CASE NO. 8886

Members:
BAUTISTA, *Chairperson*
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:
SEP 2 1 2016
3:05 p.m.

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RESOLUTION

For resolution are the following:

1. Respondents' Compliance and Motion (Re: Resolution dated June 6, 2016), with attached Judicial Affidavits ("JA") of Mr. Gerardo M. Macatangay and Atty. Porfirio C. Gabiola, along with their respective annexes, filed on July 18, 2016 by registered mail;

2. Judicial Records Division's Records Verification Report issued on July 28, 2016;

3. Petitioner's Manifestation filed on August 4, 2016;

4. Petitioner's Memorandum, with annexes, filed on August 8, 2016 by registered mail;

5. Petitioner's *Ex Parte* Manifestation, with attached Memorandum and documentary exhibits filed on August 10, 2016; and

6. Respondents' Manifestation filed on August 30, 2016.

Pursuant to the Court's grant of petitioner's Motion for Summary Judgment *per* its June 6, 2016 Resolution[1], the following issues found in the Pre-Trial Order[2] are to be resolved:

1. Whether the Seizure and Forfeiture Proceedings by respondents are valid;

2. Whether respondents had legal grounds to refuse the release of petitioner's rice shipments;

3. Whether respondents' acts constitute violations of the *Tariff and Customs Code of the Philippines, as amended ("TCCP")* and of the *Bureau of Customs ("BOC") Regulations*; and

4. Whether the public auction of petitioner's rice shipments was in accordance with the law.

The antecedent facts of this case are as follows:

Petitioner Jade Bros Farm and Livestock, Inc. is engaged in the business of trading and importing all kinds of agricultural, livestock and fishery products and their by-products in the Philippines and abroad.[3]

Respondent BOC is an attached agency of the Department of Finance; and respondent Commissioner of Customs ("COC") is its incumbent Commissioner.

On November 3, 2013 and November 7, 2013[4], petitioner imported rice without import permits from the National Food Authority ("NFA")[5] with a combined total number of 70x20′

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[1] *Records, CTA Case No. 8886, Vol. 5,* pp. 2275-2281.
[2] *Id., Vol. 4, Pre-Trial Order ("PTO"),* pp. 1928-1929.
[3] *Id., Vol. 3, Judicial Affidavit ("JA") of Mr. Emmanuel A. Santos, Q&A No. 8,* p. 1315.
[4] *Id., Vol. 2, Exhibit "P-16," Notice of Public Auction on August 28, 2014,* p. 656; *Records, Vol. 2, Exhibit "P-1," Notice of Public Auction on September 11, 2014,* pp. 442-443.
[5] *Id., Vol. 3, Joint Stipulation of Facts ("JSF"),* p. 1359.

containers and an aggregate dutiable value of Php24,961,500.00[6] under the following Bills of Lading ("BOL"), with other details:[7]

BOL NO.	EXHIBIT	ENTRY NO.	CONTAINER	DATE OF ARRIVAL
APLU690066069	P-13[8]	C-230276	20x20'	November 7, 2013
APLU690195629	P-12[9]	C-230253	20x20'	November 7, 2013
SITGBKMN013481A	P-14[10]	C-226214	15x20'	November 3, 2013
SITGBKMN013481B	P-15[11]	C-226166	20X20'	November 3, 2013

Absent the required import permits from the NFA, upon their arrival at the Manila International Container Port ("MICP"), BOC refused to release the rice shipments to petitioner. After their seizure, petitioner's rice shipments were subjected to forfeiture proceedings, under Seizure Identification Cases ("SIC") Nos. 356-2014, 357-2014, 358-2014 and 359-2014.[12]

On February 13, 2014, petitioner filed a Petition for Declaratory Relief and Permanent Injunction covering the foregoing BOLs[13], with a prayer for the issuance of a Temporary Restraining Order ("TRO") and/or Writ of Preliminary Injunction ("WPI") docketed as Special Civil Action No. 14131418 and raffled to Regional Trial Court ("RTC") Manila, Branch 41 entitled "*Jade Bros Farm and Livestock, Inc. v. National Food Authority, Hon. Orlan A. Calayag, in his capacity as the Administrator of the National Food Authority, NFA Council, Hon. Proceso J. Alcala, in his capacity as Chairman of the NFA Council, Bureau of Customs, Hon. John Phillip Sevilla, in his capacity as the Commissioner of Customs, and District Collectors, in their respective capacities as the District Collectors for the Ports of Manila, South Harbor, North Harbor and Manila International Container Port, Respondents.*"[14]

While the case before the RTC was pending, petitioner wrote letters addressed to Acting District COC of MICP, Gen. Elmer S. Dela Cruz (Ret.) dated June 2, 2014, July 11, 2014[15] and August 22, 2014.

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[6] As alleged in petitioner's Petition for Review and admitted in respondents' Answer; see *Records, Vol. 1, Petition for Review, par. 6,* p. 15 and *Records, Vol. 2, Answer, par. 1,* p. 895.
[7] *Id.*
[8] *Records, Vol. 2, Exhibit "P-13," Bill of Lading ("BOL") No. APLU690066069,* pp. 649-651.
[9] *Id., Exhibit "P-12," BOL No. APLU690195629,* pp. 646-648.
[10] *Id., Exhibit "P-14," BOL No. SITGBKMS013481A,* pp. 652-653.
[11] *Id., Exhibit "P-15," BOL No. SITGBKMS013481B,* pp. 654-655.
[12] *Id., Vol. 3, JSF,* p. 1360.
[13] *Id., Vol. 1, Exhibit "P-24," RTC Petition,* pp. 113-114.
[14] *Records, Vol. 3, JSF,* p. 1360; *Records, Vol. 1, Exhibit "P-24," RTC Petition,* pp. 110-167.
[15] *Id., Vol. 3, JSF,* p. 1360; as alleged in petitioner's Petition for Review and admitted in respondents' Answer; see *Records, Vol. 1, Petition for Review, pars. 42, 43 and 46,* pp. 25-26 and *Records, Vol. 2, Answer, par. 1,* p. 895.

In its first letter dated June 2, 2014, petitioner requested the release of the seized rice shipments after payment of the proper duties or taxes; or alternatively, for the issuance of Warrants of Seizure and Detention ("WSD") for the said rice shipments and their release under cash bond pursuant to *Section 2301 of the TCCP*.[16] Attached thereto is a Memorandum of Authorities asking for the following: *(1)* the lifting of the alert orders against its rice shipments; *(2)* in the alternative, the issuance of WSDs for the rice shipments and for their release under cash bond; (3) in case the release under cash bond is unacceptable, for the conduct of a public sale of the rice shipments, with the proceeds to be held in trust pending the final outcome of the seizure proceedings.[17]

The above letter was not acted upon, thus, petitioner filed a second letter dated July 11, 2014 to follow up and to cite a Resolution issued by the Supreme Court ("SC") on April 22, 2014 in the case of *Secretary Proceso J. Alcala, et. al. v. Hon. Judge Emmanuel C. Carpio, et. al.*[18] in support of its request[19], where the Supreme Court authorized the BOC to proceed with the seizure of the rice shipments and their release under cash bond pursuant to *Section 2301 of the TCCP*.[20]

On July 21, 2014, the BOC issued WSDs pertaining to the following shipments:[21]

BOL NO. ENTRY NO.	SIC NO.	EXHIBIT	DATE OF ARRIVAL	CONTAINER NO.
APLU690066069 C-230276	356-2014	P-2[22]	November 7, 2013	APZU3914631, APZU3962178, GLDU5662000, FCIU2078590, APZU3356930, APZU3989116, TCLU2923371, APZU3712230, APZU3894562, FCIU3871422, TRLU3864863, TGHU0279715, TCKU3563992, TCKU1854751, APZU3822350, APZU3331660, APZU3827413, APZU3861887, APZU3748823, GLDU2978079
APLU690195629 C-230253	357-2014	P-3[23]	November 7, 2014	GLDU3187806, APZU3489701, TRHU1848253, APZU3949073, APZU3403689, APZU3269116, FCIU3344669, APZU3177690, APZU3351498, FCIU3727605, TTNU3737350, APZU3027494, APZU3446952, APZU3755761, TCKU3291981, TCKU2693250, APZU3684945, APZU3072410, FCIU3214053, APZU3323135
SITGBKMN013481A C-226214	358-2014	P-4[24]	November 3, 2014	TEMU3230152, TEMU4106608, TEMU3330547, TEMU2260342, DFSU2815290, TEMU3937274, TEMU2114950, TGHU1591245,

[16] As alleged in petitioner's Petition for Review and admitted in respondents' Answer; see *Records, Vol. 1, Petition for Review, par. 42*, p. 25 and *Records, Vol. 2, Answer, par. 1*, p. 895.
[17] *Records, Vol. 1, Exhibit "P-6," Memorandum of Authorities*, pp. 454-492.
[18] G.R. No. 211146, April 22, 2014.
[19] As alleged in petitioner's Petition for Review and admitted in respondents' Answer; see *Records, Vol. 1, Petition for Review, par. 43*, p. 25 and *Records, Vol. 2, Answer, par. 1*, p. 895.
[20] As alleged in petitioner's Petition for Review and admitted in respondents' Answer; see *Records, Vol. 1, Petition for Review, pars. 41 and 43*, p. 25 and *Records, Vol. 2, Answer, par. 1*, p. 895.
[21] As alleged in petitioner's Petition for Review and admitted in respondents' Answer; see *Records, Vol. 1, Petition for Review, par. 44*, p. 26 and *Records, Vol. 2, Answer, par. 1*, p. 895.
[22] *Records, Vol. 1, Exhibit "P-2," Warrant of Seizure and Detention ("WSD") Seizure Identification Cases ("SIC") No. 356-2014*, pp. 446-447.
[23] *Id., Exhibit "P-3," WSD SIC No. 357-2014*, pp. 448-449.
[24] *Records, Vol. 1, Exhibit "P-4," WSD SIC No. 358-2014*, pp. 450-451.

				SEGU1829490, SEGU1470081, SEGU, 1829166, SEGU1483788, TEMU2967464, BMOU2831767, TRHU1797881
SITGBKMN013481B C-226166	359-2014	P-5[25]	November 3, 2014	TEMU4108576, TEMU3218368, DFSU1269472, DFSU1272579, DFSU2896944, TEMU3211635, SEGU1830969, BMOU2748009, SEGU1830320, TEMU3230044, RFCU2255644, SEGU1830212, BMOU2630905, TRHU2096778, RFCU2256553

Pursuant to the provisions of *Section 2607* in relation to *Section 2601 of the TCCP, Customs Memorandum Order ("CMO") No. 42-93* dated August 27, 1993, and *CMO No. 10-2007* dated November 28, 2007, whereby the BOC is directed to dispose of all fresh, frozen, chilled and/or canned foodstuffs, within ten (10) days after issuance of the WSD, BOC issued a Notice of Public Auction covering SIC Nos. 356-2013 [*sic*], 357-2013 [*sic*], 358-2013 [*sic*] and 359-2014 MICP with a total floor price of Php47,028,800.00, scheduled to be conducted on August 28, 2014 on an "as is where is" basis.[26]

Reacting to this Notice of Public Auction, petitioner sent a third letter dated August 22, 2014 to the District Collector of the MICP, objecting to the public auction of its rice shipments, and arguing, among others, its prematurity in view of the pendency of petitioner's Consolidated Motion for Release Under Cash Bond in SIC Nos. 356-2014, 357-2014, 358-2014 and 359-2014, alleging that no formal notice was sent to petitioner or its counsel anent the public auction, offering to settle the case by payment of a fine and/or redemption value as determined by the BOC, and demanding that petitioner be automatically allowed to participate as one of the bidders in the scheduled public auction.[27] As a result, on August 27, 2014, the BOC cancelled the scheduled public auction.

With its requests left unheeded by the District Collector of the MICP,[28] petitioner filed a Consolidated Motion for Release Under Cash Bond for SIC Nos. 356-2014, 357-2014, 358-2014 and 359-2014, reiterating its request for the release of the rice shipments, upon posting of a cash bond.[29] Thereafter, respondents commenced procedures for the public auction of petitioner's imported rice.[30]

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[25] *Id., Exhibit "P-5," WSD SIC No. 359-2014,* pp. 452-453.

[26] *Id., Vol. 2, Exhibit "P-16," Notice of Public Auction on August 28, 2014,* pp. 656-659.

[27] *Id., Vol. 3, JA of Mr. Gerardo M. Macatangay,* p. 7.

[28] As alleged in petitioner's Petition for Review and admitted in respondents' Answer; see *Records, Vol. 1, Petition for Review, par. 46,* p. 26 and *Records, Vol. 2, Answer, par. 1,* p. 895.

[29] *Records, Vol. 3, JSF,* p. 1360; as alleged in petitioner's Petition for Review and admitted in respondents' Answer; see *Records, Vol. 1, Petition for Review, par. 47,* p. 26 and *Records, Vol. 2, Answer, par. 1,* p. 895; *Records, Vol. 1, Exhibit "P-29," Consolidated Motion for Release Under Cash Bond,* pp. 493-453.

[30] *Id., Vol. 3, JA of Mr. Gerardo M. Macatangay,* p. 6.

Pending the above Consolidated Motion for Release, with no action being taken by the BOC[31] and on September 3, 2014, petitioner filed the present Petition for Review with the following pleas: *(1)* upon filing the Petition for Review, for the issuance of an *Ex Parte* TRO/WPI; *(2)* pending trial on the merits, for the release of the rice shipments upon posting a bond; *(3)* after trial on the merits and hearing, for judgment to be rendered making the WPI permanent, declaring the importations as legal, and ordering the return of any bond posted or paid, or the release of any rice shipments still in the custody of respondents.[32]

Pursuant to the provisions of *Section 2607* in relation to *Section 2601 of the TCCP* and *CMO No. 42-93* dated August 27, 1993 and *CMO No. 10-2007* dated November 28, 2007, BOC issued a Notice of Public Auction covering SI Nos. 356-2014, 357-2014, 358-2014 and 359-2014 MICP with a total floor price of Php47,028,800.00, scheduled to be conducted on September 11, 2014 on an "as is where is" basis and with proceeds to be held in trust.[33]

The Court heard petitioner's application for a TRO on September 10, 2014.[34] On September 11, 2014, the Court granted petitioner's first prayer in the Petition for Review *(1)* ordering respondents to cease and desist from conducting the public auction on September 11, 2014, and *(2)* issuing a TRO effective for twenty (20) days from service on the person/s to be enjoined.[35] Hence, the public bidding did not push through.

Likewise on September 10, 2014, the RTC of Manila issued an Order and noted the Manifestation and Motion filed by petitioner in that case, which seeks to withdraw its prayer for injunctive reliefs (TRO and WPI).[36] Hence, the RTC of Manila considered the said injunctive reliefs withdrawn.

On September 30, 2014, petitioner filed its Very Urgent *Ex Parte* Manifestation and Motion (Re: Application for a WPI).[37]

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[31] As alleged in petitioner's Petition for Review and admitted in respondents' Answer; see *Records, Vol. 1, Petition for Review, par. 47,* p. 26 and *Records, Vol. 2, Answer, par. 1,* p. 895.
[32] *Records, Vol. 1, Petition for Review,* pp. 14-420, with annexes.
[33] *Id., Exhibit "P-1," Notice of Public Auction on September 11, 2014,* pp. 442-443, see p. 436.
[34] *Id.* at 445.
[35] *Id., Resolution and issuance of Temporary Restraining Order ("TRO"),* pp. 574-577.
[36] *Id., Vol. 2,* pp. 1035-1036.
[37] *Records, Vol. 1,* pp. 588-593.

Upon expiration of the twenty (20)-day TRO with no WPI issued by the Court, another Notice of Public Auction was issued, published and posted, which was scheduled to be conducted on October 17, 2014. As compared with the previous scheduled public auctions, this auction pushed through and the winning bidder was awarded the shipments for the amount of Php73,508,689.80, was issued a Notice of Award and Auction Sale, and the proceeds of the sale were held in trust by the BOC.

After being granted an extension[38] and being allowed[39] to file their Answer beyond the said extended period, respondents filed their Answer on November 3, 2014.[40]

In respondents' Answer, the following Special and Affirmative Defenses were interposed, in sum: *(1)* that the petition should be dismissed as it has been rendered moot and academic by the auction of petitioner's shipments on October 17, 2014; and as petitioner committed forum shopping; *(2)* that petitioner illegally imported rice; *(3)* that petitioner has no personality to file a petition before the Court questioning the Government's alleged violation of the *World Trade Organization ("WTO") Agreement*; *(4)* that regardless of the status of the Quantitative Restrictions ("QR"), the NFA continues to have sole authority to import rice in the Philippines and to authorize private entities to import rice; *(5)* that *NFA Memorandum Circular No. AO-2K13-03-003 ("NFA Memorandum Circular")* is presumed valid, hence, compliance therewith is mandatory; *(6)* that the non-submission of the subject *NFA Memorandum Circular* to the UP Law Center does not render the same invalid; *(7)* that the Philippines' request for waiver has been approved; and *(8)* that respondents are not obliged to receive petitioner's bond in exchange for the release of the seized goods.

In response, petitioner filed its *Ex Abundante Ad Cautelam Reply* [Re: Answer dated 31 October 2014] on December 18, 2014.[41]

Thereafter, the Court set the case for Pre-Trial Conference and ordered the submission of the parties' respective Pre-Trial Briefs. In compliance therewith, respondents and petitioner respectively filed

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[38] *Id.* at 833.
[39] *Id.* at 978.
[40] *Id., Vol. 1, Answer*, pp. 895-973, with annexes; see p. 889.
[41] *Id., Vol. 2, Ex Abundante Ad Cautelam Reply [Re: Answer dated 31 October 2014]*, pp. 1055-1114, with annexes; see p. 1050.

their Pre-Trial Briefs on April 22, 2015 and April 24, 2015.[42] The respective counsels of the parties appeared during the Pre-Trial Conference on June 9, 2015,[43] and the Court ordered the parties to submit their respective lists of documentary evidence, and directed the parties to file their Joint Stipulation of Facts and Issues ("JSFI").[44]

On June 19, 2015, the parties filed their Joint Stipulation of Facts ("JSF").[45] This was followed by a Manifestation from respondents on August 29, 2015, stating that it was not clear to the parties that the said JSFI should list the parties' documentary evidence, witnesses and agreed hearing dates; hence, they included in the Manifestation the said details.[46] Petitioner, likewise, filed its Manifestation on July 2, 2015 providing its proposed issues.[47] To avoid confusion, on October 6, 2015, the Court ordered the parties to file an Amended JSFI, which shall include a complete list of facts and issues, documentary evidence, witnesses and agreed hearing dates.[48]

On October 20, 2015, respondents filed their Motion for Reconsideration (of October 6, 2015 Resolution);[49] while on October 22, 2015, petitioner filed a Manifestation, which states that despite efforts to coordinate with respondents, the latter are not amenable to the filing of an Amended JSFI.[50]

On November 27, 2015, petitioner filed its Motion for Summary Judgment[51], which was initially denied by the Court in its February 10, 2016 Resolution[52].

On December 8, 2015, the Court noted that since the parties are unable to jointly define the issues, the Court itself will define the issues for them in a Pre-Trial Order, and based on the JSF, which the parties filed.[53]

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[42] *Records, Vol. 3, Pre-Trial Brief,* pp. 1153-1222, pp. 1237-1249, with annexes.
[43] *Id., June 9, 2015 Minutes of Pre-Trial Conference,* p. 1328.
[44] *Id., June 9, 2015 Minutes of Pre-Trial Conference,* p. 1328; *Records, Vol. 3,* p. 1336.
[45] *Id., JSF,* pp. 1359-1361.
[46] *Id., Manifestation,* pp. 1364-1471, with annexes.
[47] *Id.* at 1478-1481.
[48] *Records, Vol. 4, Amended Resolution,* pp. 1660-1664.
[49] *Id., Motion for Reconsideration (of October 6, 2015 Resolution),* pp. 1684-1698, with annexes.
[50] *Id., Vol. 3, Manifestation,* pp. 1675-1683.
[51] *Id., Motion for Summary Judgment,* pp. 1748-1797.
[52] *Id.* at 2013-2018.
[53] *Records, Vol. 4,* pp. 1920-1924.

On December 17, 2015, the Court issued a Pre-Trial Order, which included the facts, as jointly stipulated by the parties and simplified the issues of the case.[54] However, on account of petitioner's Motion to Amend (Re: Pre-Trial Order dated 17 December 2015)[55] filed by registered mail on January 19, 2016, the Court amended[56] the Pre-Trial Order on March 23, 2016 as to the documentary evidence of petitioner and the schedule of presentation of evidence for petitioner and respondents.

Petitioner, then, filed a Motion for Reconsideration (Re: Resolution dated 10 February 2016)[57] on March 1, 2016 by registered mail, which relates to the denial of the Court of its Motion for Summary Judgment. On June 6, 2016, the Court issued a Resolution reversing its previous Resolution, finding no genuine issue of fact in the case and submitting the case for summary judgment.[58] The parties were directed to submit their respective supporting affidavits within thirty (30) days from receipt thereof; and within fifteen (15) days from receipt of the supporting affidavits or the lapse of the thirty (30) day period, to simultaneously file their opposing affidavits and respective memoranda, if desired.[59] Thereafter, the case will be submitted for resolution.[60]

Records reveal that the June 6, 2016 Resolution was received by petitioner on June 8, 2016, by respondent Commissioner of Customs on June 8, 2016, and by respondent Solicitor General on June 17, 2016.[61] Therefore, petitioner and respondents have, at the latest, until July 11, 2016[62] and July 18, 2016[63] respectively, to file their supporting affidavits.

On July 18, 2016, respondents filed by registered mail their Compliance and Motion (Re: Resolution dated June 6, 2016), with attached JAs of *(1)* Mr. Gerardo M. Macatangay and *(2)* Atty. Porfirio C. Gabiola, along with their respective annexes.

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[54] *Id., PTO,* pp. 1926-1934.
[55] *Id., Motion to Amend (Re: Pre-Trial Order dated 17 December 2015),* pp. 1972-1982.
[56] *Id., Vol. 5,* pp. 2163-2177.
[57] *Id., Vol. 4, Motion for Reconsideration,* pp. 2142-2161.
[58] *Id., Vol. 5,* pp. 2275-2281.
[59] *Records, Vol. 5,* p. 2281.
[60] *Id.*
[61] *Id.* at 2274.
[62] The last day fell on July 8, 2016, a regular holiday; and July 9, 2016 and July 10, 2016 both fell on a weekend.
[63] July 17, 2016 fell on a Sunday.

On July 28, 2016, the Judicial Records Division issued a Records Verification Report stating that petitioner failed to comply with the June 6, 2016 Resolution.

On August 4, 2016, petitioner filed its Manifestation stating that in its Motion for Summary Judgment dated November 27, 2015, it already submitted the JAs of the following witnesses in furtherance of the summary judgment sought: *(1)* Atty. Anthony A. Abad; *(2)* Atty. Flordeliza C. Vargas-Trinidad; and *(3)* Mr. Emmanuel A. Santos, with supplemental JA; that except for the supplemental affidavit, all the foregoing JAs have been previously submitted to the Court and marked during Pre-Trial as *Exhibits* "P-42" to "P-44;" and that respondents have been furnished copies thereof.

On August 10, 2016, petitioner filed its *Ex Parte* Manifestation alleging that it already filed its Memorandum and Opposing Affidavits; and that it attached a copy of the said Memorandum, and the documentary exhibits therewith.

In its Memorandum, petitioner avers that its importation of rice is legal, in view of the expiration of the Special Treatment accorded to the Philippines under the *WTO - General Agreement on Tariffs and Trade Agreement ("WTO Agreement")*, thus, the seizure and forfeiture of the same are illegal; that the refusal of respondents to release the rice shipments and the subsequent sale at a public auction were illegal, contrary to law, and respondents' own regulations; and that petitioner did not engage in forum shopping.

On August 30, 2016, respondents filed a Manifestation stating that they stand firm that the law creating the Court of Tax Appeals ("CTA") does not provide it with jurisdiction to decide on the issue of expiration of the Special Treatment on rice under the *WTO Agreement on Agriculture*, not to mention that the same issue is already pending with the RTC of Manila; that they find no reason to file any opposing affidavit since petitioner's Memorandum only opposed the JA of DOA Undersecretary Serrano which dealt with the issue of Special Treatment on rice; that the said JA was submitted only for a better appreciation by the Court of the issues and to show that petitioner's evidence is not uncontested, without waiving their argument that petitioner committed forum shopping; and that respondents adopt as their Memorandum their Answer to the Petition for Review.

In the course of the proceedings, petitioner presented: *(1)* Atty. Anthony A. Abad ("Atty. Abad"), as an expert witness in international law, the *WTO Agreement on Agriculture*, the Special Treatment given to the Philippines by the WTO, the Philippines' obligations under the *WTO Agreement* and other matters relating thereto; *(2)* Atty. Flordeliza C. Vargas-Trinidad ("Atty. Vargas-Trinidad"), as the Director of the UP Law Center's Office of the National Administrative Register ("ONAR"); and *(3)* Mr. Emmanuel A. Santos ("Mr. Santos"), as President and Incorporator of petitioner.

In his JA[64], Atty. Abad testified that the *WTO Agreement* has become part of the law of the land through *Section 2, Article II of the 1987 Philippine Constitution ("Incorporation Clause")* and *Section 21, Article VII of the 1987 Philippine Constitution ("Treaty Clause")*; that the Special Treatment accorded by the WTO to the Philippines to impose QRs with respect to rice importations is temporary in nature; that the *WTO Agreement on Agriculture* provides that members of the WTO agree to lift all QRs on all its agricultural products as soon as the Special Treatment has expired; that said Special Treatment expired on June 30, 2012, with no hold over provision; that upon expiration of the Special Treatment, the Philippines can no longer impose QRs in the form of import permits in the importation of rice; that *Republic Act ("RA") No. 8178*, which grants the NFA the power to impose QRs on the importation of rice, is only an application of the *WTO Agreement on Agriculture* and said power has become ineffective upon expiration of the Special Treatment; that the *Waiver Decision* issued by the WTO on July 24, 2014 has no retroactive effect to the period 2012 to 2014 when the Special Treatment already expired; that the *NFA Memorandum Circular* issued in 2013, requiring the procurement of import permits, having been issued prior to the issuance of the *Waiver Decision*, is invalid and ineffective; and that respondents did not have legal basis in seizing and auctioning petitioner's rice shipments, hence, their actions are illegal and invalid.

Atty. Vargas-Trinidad testified[65] that the *NFA Memorandum Circular* was filed with the UP Law Center's ONAR only on January 8, 2014; that she issued a *Certification* dated January 10, 2014 to this effect; and that pursuant to *Section 4, Chapter 2, Book VII of the 1987 Administrative Code of the Philippines*, the general rule is each rule shall be effective fifteen (15) days from the date of filing.

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[64] *Records, Vol. 3, JA of Atty. Anthony A. Abad*, pp. 1259-1311, with annexes.
[65] *Id., JA of Atty. Flordeliza C. Vargas-Trinidad*, pp. 1230-1235, with annexes.

In his JAs[66], Mr. Santos stated that petitioner is the owner of 70x20' containers of rice covered by BOL Nos. 690066069, 690195629, SITGBKMN01341A, and SITGBKMN013481B, which it imported sometime in 2013 and with an aggregate value of Php29,961,500.00; that respondents refused to release said rice shipments for being imported without import permits from the NFA; that respondents instituted seizure and forfeiture proceedings before the BOC, which remains pending, and issued WSDs; that despite the pendency of the proceedings before the BOC, the COC ordered the sale of the rice shipments at a public auction; that the rice shipments are not illegal since at the time of their shipments, the Special Treatment has expired, and the *NFA Memorandum Circular* was not yet filed with the UP Law Center's ONAR; that, in fact, the then Department of Justice ("DOJ") Secretary issued a *DOJ Opinion* dated December 16, 2013 bolstering petitioner's contentions; that respondents have no reason to refuse the release of the rice shipments; that release thereof under cash bond is allowed by law and is most advantageous to the Government; and that the acts of the BOC are violative of the *TCCP* and the *BOC Regulations.*

On the other hand, respondents presented: *(1)* Mr. Gerardo M. Macatangay ("Mr. Macatangay"), Chief of the Auction and Cargo Disposal Division of the BOC; and *(2)* Atty. Porfirio C. Gabiola, Jr. ("Atty. Gabiola, Jr."), Acting Chief, Law Division MICP, BOC, in concurrent capacity as Member, Prosecution & Litigation Division, Legal Service.

Mr. Macatangay testified[67] that the auction of the rice shipments was done pursuant to *CMO No. 42-93* due to its highly perishable nature and to avoid their deterioration, preserve their value and protect Government revenue; that according to *CMO No. 42-93,* he was directed to dispose of the articles within ten (10) days after issuance of the WSDs; that a Notice of Public Auction was issued, published and posted for the public auction of the rice shipments on August 28, 2014; that the same was cancelled and postponed to September 11, 2014 with the notice specifically stating that the proceeds shall be held in trust; that on September 10, 2014, a public viewing of the rice shipments and a pre-bid conference was conducted for all qualified bidders; that he received a copy of a TRO issued by the Court, hence, the public bidding did not push through; that when the twenty (20)-day TRO expired with no injunction issued, another Notice of Public Auction was issued, published and posted to be conducted on October 17, 2014;

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[66] *Records, Vol. 3, JA of Mr. Emmanuel A. Santos,* pp. 1312-1327, with annexes; *Records, Vol. 4, Supplementary JA of Mr. Emmanuel A. Santos,* pp. 1720-1747, with annexes.
[67] *Id., No Volume, JA of Mr. Gerardo M. Macatangay,* with annexes.

that a public viewing and a pre-bid conference was conducted for all qualified bidders the day before the auction; that on October 17, 2014, the shipments were awarded to the winning bidder for the amount of Php73,508,689.80, far greater than the floor price of Php47,028,800.00; and that the winning bidder was issued a Notice of Award and Auction Sale and the proceeds were held in trust by the BOC.

Lastly, Atty. Gabiola, Jr. testified[68] that the legal basis for the issuance of the WSDs is *Section 2503* in relation to *Section 2530(f) and (i) of the TCCP*; that the rice shipments were publicly auctioned on October 17, 2014; that the release of the goods upon payment of cash bond is not a ministerial function of the BOC but a discretionary one; that *Customs Administrative Order ("CAO") No. 9-93* and *Section 2301 of the TCCP* provide conditions for the filing of such bond, which were not satisfied by petitioner; that *Section 2301 of the TCCP* requires, among others, the COC to approve such release and the importation to not be prohibited by law, which are both lacking; that the release of the rice shipments under cash bond is not the most advantageous to the Government, which petitioner admitted in its letters to the BOC; that petitioner was not deprived of due process in the seizure proceedings when its letters were ignored; that there was *prima facie* evidence of fraud as a result of the lack of import permits; that *Section 2607 of the TCCP* and *CMO No. 42-93* sanctions the conduct of a public auction of the seized items due to their perishable nature; and that the proceeds of the sale were held in trust by the BOC in favor of whoever is entitled to it.

The Court deems it proper to act upon the pending matters submitted to it for resolution.

With regard to respondents' Compliance filed by registered mail on July 18, 2016, the same is hereby **NOTED**. As to their Motion to Admit the JA of Undersecretary Segfredo R. Serrano filed along with the Compliance, the same is hereby **DENIED**.

Further, the Judicial Records Division's Records Verification Report issued on July 28, 2016 is hereby rendered **MOOT** due to the Manifestation filed by petitioner on August 4, 2016.

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[68] *Records, No Volume, JA of Atty. Porfirio C. Gabiola, Jr.,* with annexes.

Lastly, petitioner's Manifestation filed on August 4, 2016, its *Ex Parte* Manifestation filed on August 10, 2016, its Memorandum filed on August 8, 2016 by registered mail, and respondents' Manifestation filed on August 30, 2016, are all hereby **NOTED**.

The Court will now resolve the following issues found in the Pre-Trial Order[69] in relation to the summary judgment:

1. WHETHER THE SEIZURE AND FORFEITURE PROCEEDINGS BY RESPONDENTS ARE VALID;

2. WHETHER RESPONDENTS HAD LEGAL GROUNDS TO REFUSE THE RELEASE OF PETITIONER'S RICE SHIPMENTS;

3. WHETHER RESPONDENTS' ACTS CONSTITUTE VIOLATIONS OF THE TARIFF AND CUSTOMS CODE OF THE PHILIPPINES ("TCCP") AND OF THE BUREAU OF CUSTOMS ("BOC") REGULATIONS; AND

4. WHETHER THE PUBLIC AUCTION OF PETITIONER'S RICE SHIPMENTS WAS IN ACCORDANCE WITH THE LAW.

At the outset, the Court shall rule upon the issue of jurisdiction.

The Court has jurisdiction over the Petition for Review.

The Petition for Review involves the legality of the importation of petitioner's property, several metric tons of rice, in particular. Although there is no formal decision on the part of respondent COC to embody his stance regarding the legality of petitioner's importations, his actions with respect to the seizure, detention, and auction of the said property indicate his belief that they are illegal, as testified to by its witness, Atty. Gabiola, Jr.[70]

In fact, respondent COC decided to conduct a public auction on petitioner's rice shipments, despite the pendency of petitioner's Motion for Release Under Cash Bond, with no notice to petitioner.

[69] *Records, Vol. 4, PTO,* pp. 1928-1929.
[70] *Records, No Volume, JA of Atty. Porfirio C. Gabiola, Jr.,* with annexes.

These actuations negate any probability that respondent COC will render a decision favorable to petitioner in the event that, instead of seeking relief from the Court, the latter chose to file the necessary action before the BOC. Hence, to wait for a formal decision from respondent COC regarding the release of petitioner's rice shipment will only be an exercise in futility.

Consequently, the said actions of respondent COC amount to estoppel on the part of the respondent BOC to decide otherwise, with respect to the legality of petitioner's property. It bears stressing that estoppel on the part of an administrative agency is a recognized exemption to the general rule of exhausting administrative remedies.[71] Applying the exception to this case, petitioner's resort to the Court without waiting for a decision from respondent COC is justified.

In any event, a review of the provisions *Section 7(a)(4) of RA No. 1125* otherwise known as *"An Act Creating the Court of Tax Appeals,"* as amended by *RA No. 9282*, supports the conclusion that the CTA has jurisdiction over this case, to wit:

> Sec. 7. *Jurisdiction.* - The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> xxx xxx xxx
>
> 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;

The jurisdiction of the CTA is not limited to cases which involve decisions of the COC. The Court notes that *Section 7(a)(4) of RA No. 1125* has two parts. The first part involves the "decisions of the [COC] in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures of other penalties in relation thereto." The second part pertains to "other matters arising under the Customs Law or other laws administered by the [BOC]."

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[71] *Allied Banking Corporation v. Commissioner of Internal Revenue,* G.R. No. 175097, February 5, 2010.

Apropos is the case of *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*[72], which involves a parallel provision of *Section 7(a)(1) of RA No. 1125*. In that case, the SC explained that "the appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue." The Court applies the said doctrine to the present case, with a similar effect.

In the case at bar, petitioner questions respondent COC's refusal to act on its Motion for Release Under Cash Bond and his action to sell at a public auction the questioned rice shipments while its Motion has not been resolved; claims that it was denied due process in the proceedings before respondent BOC; and invokes the applicability of *Section 2301 of the TCCP* to its importations. These are but some of the reliefs sought by petitioner, as alleged in the Petition for Review. Without a doubt, these reliefs fall under the second part, as they involve matters arising from Custom Laws or other laws administered by the BOC. Therefore, the Court has jurisdiction to take cognizance of the instant Petition for Review.

Petitioner did not commit forum shopping.

Before the Court proceeds with the substantial issues of this case, as identified in the Pre-Trial Order, it must first address the additional issue of forum shopping.

The Court is mindful that this issue has lingered in respondents' pleadings, beginning with their Answer. While non-inclusion of this in the Pre-Trial Order is by no means a reflection of its outright denial, this is an earmark of its inherent weakness.

The existence of forum shopping cannot be established by merely comparing the similarities in the paragraphs of two (2) different complaints, or that the evidence in one case will be the same evidence used in the other. It is for this reason that the SC has laid

[72] G.R. No. 162852, December 16, 2004, 447 SCRA 214.

down requisites and tests to determine the existence of forum shopping in the filing of cases.

In their Answer, respondents cited the case of *Heirs of Marcelo Sotto v. Palicte*[73] and the following test:

> There is forum shopping "when a party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court." Forum shopping is an act of malpractice that is prohibited and condemned because it trifles with the courts and abuses their processes. It degrades the administration of justice and adds to the already congested court dockets.
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> xxx xxx xxx
>
> The test to determine the existence of forum shopping is whether the elements of *litis pendentia* are present, or whether a final judgment in one case amounts to *res judicata* in the other. Thus, there is forum shopping when the following elements are present, namely: (a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amounts to res judicata in the action under consideration.

From these tests, the Court adds this further test borrowed from the case of *Polanco v. Cruz*[74]:

> There is forum-shopping when as a result of an adverse decision in one forum, or in anticipation thereof, a party seeks a favorable opinion in another forum through means other than appeal or *certiorari*.

While the Court agrees with the tests of forum shopping that were cited by respondents in their Answer, the Court disagrees with respondents' application of thereof.

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[73] G.R. No. 159691, February 17, 2014, 716 SCRA 175.
[74] G.R. No. 182426, February 13, 2009, 579 SCRA 489.

At the heart of forum shopping lies the concept of *res judicata,* such that the subsequent case filed will be a bar to the previous case filed, if they are tried at the same time but before different courts. This concept was explained in the recent case of *Degayo v. Magbanua-Dinglasan, et. al., G.R. No. 173148, April 6, 2015* in the following manner:

> *Res judicata* literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." It also refers to the "rule that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on points and matters determined in the former suit." It rests on the principle that parties should not to be permitted to litigate the same issue more than once; that, when a right or fact has been judicially tried and determined by a court of competent jurisdiction, or an opportunity for such trial has been given, the judgment of the court, so long as it remains unreversed, should be conclusive upon the parties and those in privity with them in law or estate.

The Court does not find *res judicata* obtaining here.

To begin with, the action that is pending before the RTC of Manila is a complaint for Declaratory Relief. On the other hand, before the court is a Petition for Review pursuant to *Section 7(a)(4) of RA No. 1125.* The two causes of action are different *inse,* such that a final judgment in one case cannot, amount to *res judicata* in another.

Moreover, under its mandate, only the CTA has exclusive and appellate jurisdiction to rule on Petition for Review filed by petitioner. Therefore, the reliefs prayed for in this Petition cannot be same ones that are the subject of the complaint for Declaratory Relief pending before the RTC of Manila.

Finally, the Court notes that the rule on forum shopping does not apply to cases that have been elevated by way of appeal or *certiorari* to higher or appellate courts or authorities.[75] This is so because an appealed case is merely a continuation of the original case, and treated as only one case.

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[75] *Guy v. Asia United Bank,* G.R. No. 174874, October 4, 2007, 534 SCRA 703.

It is undeniable that by the nature of this case, which is an appeal from the decision of the COC 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 BOC, forum shopping is not present.

This case is, by law, a continuation of SIC Nos. 356-2014, 357-2014, 358-2014 and 359-2014, which were initiated by respondents themselves, in the first place. It cannot be treated separately from the seizure and forfeiture cases. Being a court that has exclusive appellate jurisdiction to review by appeal decisions of the COC, and other matters arising under the Customs Law or other laws administered by the BOC,[76] the Court would be rendered powerless to decide this case lest it be one appealed or originating from proceedings before respondent BOC. There is no dispute that the rice shipments subject of this case are the same rice shipments covered by SIC Nos. 356-2014, 357-2014, 358-2014 and 359-2014.

Therefore, being an appeal from the proceedings which originated from respondent BOC, the exception provided by the SC in *Polanco v. Cruz*[77] that "a party seeks a favorable opinion in another forum through means other than appeal" must be applied.

On the TRO sought by petitioner, first before the RTC of Manila, and thereafter, before this Court, again, a mere comparison of the wordings between two initiatory pleadings is insufficient to make a determination of the existence of forum shopping. This is why the Court has to go back to the tests previously mentioned.

It must be remembered that the TRO that petitioner sought in this case was to enjoin the public auction of its rice shipments on September 11, 2014. If it will be argued that the same injunctive relief was sought before the RTC of Manila when the special civil action for

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[76] "Sec. 7. *Jurisdiction*. - The CTA shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided: xxx

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;"

[77] G.R. No. 182426, February 13, 2009, 579 SCRA 489.

Declaratory Relief was filed, then this argument will sink because the rice shipments have not yet been set for auction when the said Declaratory Relief was filed. To illustrate, the public auction of the rice shipments was initially set on August 28, 2014. This was rescheduled to September 11, 2014. On the other hand, the Declaratory Relief was filed with the RTC of Manila on February 13, 2014, even before any public auction was scheduled. Thus, following respondents' reasoning, the act sought to be enjoined by way of injunction when the special civil action for Declaratory Relief was filed on February 13, 2014, was not yet extant. To add to this, the injunction sought before the RTC of Manila is an ancillary remedy to the principal cause of action sought, which is the special civil action for Declaratory Relief. This only means that the purpose and extent of the injunctive reliefs prayed for in the present case and before the RTC of Manila, cannot be the same. It must likewise be noted that petitioner withdraw its prayer for injunctive reliefs, which the RTC of Manila granted.

Then again, on the issue of whether this case will constitute *res judicata* to the case pending before the RTC of Manila, the Court is much aware of the limitations of its jurisdiction, such that it has no power to declare void or unconstitutional a law or regulation of the government, unlike the RTCs which have exclusive authority to hear such class of cases.[78] In a similar vein, the RTCs do not have jurisdiction to review on appeal, decisions of the COC, and other matters arising under the Customs Law or other laws administered by the BOC as these matters are solely vested by law in the CTA. Reflective of these mutually exclusive realms of jurisdiction vested in the CTA and the RTC of Manila, the conclusion that there is no forum shopping in this case is even more indubitable.

The Court therefore rules that no forum shopping in this case exists.

Having laid to rest this side issue of forum shopping, the Court will now proceed to thresh out the principal issues of this case, which will be jointly discussed.

Petitioner's importations are not illegal.

[78] Section 1, Rule 63 of the 1997 Rules of Civil Procedure.

The Court shall now resolve the legality or illegality of petitioner's importation. In resolving the issue raised in this case with respect to the legality of the seizure, detention and auction of petitioner's rice shipments, the Court finds the Petition for Review meritorious and thus, rules in favor of petitioner.

This case involves the overlapping application of local law and international treaties, particularly the *WTO Agreement*. Hence, it is important for the Court to provide a brief background in this regard.

On October 30, 1947, the *General Agreement on Tariffs and Trade ("GATT")* was signed by 23 nations[79], but was not until January 1, 1948 when it entered into force. It contained tariff concessions agreed to in the first multilateral trade negotiations and a set of rules designed to prevent these concessions from being frustrated by restrictive trade measures.[80]

At first, GATT was a collection of treaties governing access to the economies of treaty adherents with no institutionalized body administering the agreements or dependable system of dispute settlement.[81] The Philippines became a member thereof, or a "GATT contracting party," on December 27, 1979.[82]

After rounds of negotiations, in 1994, the WTO was established as the administering body of the GATT, with the signing of the *Final Act* and the ratification of the *WTO Agreement* by its members.[83] On April 15, 1994, a Philippine representative signed the *Final Act Embodying the Results of the Uruguay Round of Multilateral Negotiations ("Final Act")*.[84] As a result, WTO replaced the GATT (as a body), and upon signing the new *WTO Agreements*, the members officially became known as "WTO members."[85]

The *Final Act* (or the *"WTO Agreement")* includes the updated the *1994 GATT*, the *WTO Agreement on Agriculture*, and other agreements. It was concurred to by congress, as provided in its *Senate Resolution No. 97* dated December 14, 1994.[86]

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[79] *Tañada v. Angara*, G.R. No. 118295, May 2, 1997, 272 SCRA 18.
[80] *Id.*
[81] *Id.*
[82] https://www.wto.org/english/thewto_e/gattmem_e.htm; last accessed: September 7, 2016.
[83] *Tañada v. Angara*, G.R. No. 118295, May 2, 1997, 272 SCRA 18.
[84] *Id.*
[85] https://www.wto.org/english/thewto_e/gattmem_e.htm; last accessed: September 7, 2016.
[86] *Tañada v. Angara*, G.R. No. 118295, May 2, 1997, 272 SCRA 18.

Article XI of the 1994 GATT requires the general elimination of QRs; while *Article XIII of the 1994 GATT* requires non-discriminatory application of such restrictions.[87] Hence, as a general rule, no QRs are allowed to be imposed by any WTO member.

However, *Article 15 of the WTO Agreement on Agriculture (on Special and Differential Treatment)* 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*. In effect, this Special Treatment temporarily permitted the Philippines to impose QRs on the importation of rice from the years 1995 to 2005.

To implement the *WTO Agreement*, on March 28, 1996, *RA No. 8178*, otherwise known as the *"Agricultural Tariffication Act"* was approved, amending *Presidential Decree ("PD") No. 4*. *RA No. 8178*. 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.[88] 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 the *NFA Memorandum Circular* providing that rice importers are required to procure rice permits prior to the importation of rice, essentially imposing QRs on rice.

On November 3, 2013 and November 7, 2013, petitioner imported its rice without import permits.

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[87] https://www.wto.org/english/tratop_e/markacc_e/qr_e.htm; last accessed: September 8, 2016.

[88] 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.

It was not until July 24, 2014 when the *Waiver Decision* was approved[89] that the Special Treatment was extended until June 30, 2017.

Notably, 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.

As is evident from the records of the case that the justification proffered by respondents in the seizure, detention, and auction of petitioner's rice shipments lies on the purported illegality thereof, on account of the absence of import permits from the NFA.[90]

On the other hand, petitioner, as supported by the testimony of its expert witness,[91] averred that import permits for its rice shipments are not required because import permits are a form of QRs, which the NFA can no longer impose in view of the expiration of the Special Treatment at the time of the questioned importations.

At this point, as regards the propriety of requiring an import permit, the Court refers to a the *DOJ Opinion*, which is contained in a letter dated December 16, 2013 and addressed to Secretary Proceso J. Alcala of the DOA.[92] This ruling pertains to rice importations made after the Special Treatment expired on June 30, 2012.

In the DOJ Opinion, it was stated that "the WTO provisions on the lifting of QRs as well as their exceptions, and the provisions on negotiations for its extension are already effective and should be complied with" and that "the Philippine Government should honor and implement the effect of the expiration of the period granted to it under the principle of *pacta sunt servanda*, among which is to instead subject rice importations to ordinary customs duties."

Therefore, it appears from the statements of the Secretary of the DOJ that petitioner's position is correct and that securing import permits, a form of QR, can no longer be required by the Philippines.

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[89] *Records, Vol. 3, JA of Atty. Anthony A. Abad, Q&A 12,* p. 1265.
[90] *Id., No Volume, JA of Atty. Porfirio C. Gabiola, Jr., Q&A 12,* p. 4.
[91] *Id., Vol. 3, JA of Atty. Anthony A. Abad,* pp. 1259-1311, with annexes.
[92] *Id., Vol. 4, Supplementary JA of Mr. Emmanuel A. Santos,* pp. 1720-1747, with annexes.

Instead, such importations should just be subjected to ordinary customs duties.

While it has been ruled that opinions made by the DOJ are not binding upon the courts of justice, such opinions carry great weight and importance.[93] Especially in this case wherein the opinion is in accord with the provisions of law.

On the other hand, opinions made by the DOJ are binding upon government offices under the Executive Branch of the Government. This conclusion finds basis in *Section 67, Chapter IV, of Book V of the Administrative Code of the Philippines* which states that "all cases involving only questions of law shall be submitted to and settled or adjudicated by the Secretary of Justice as Attorney-General of the National Government and as *ex officio* legal adviser of all [GOCCs]. His[/her] ruling or decision thereon shall be conclusive and binding on all the parties concerned." In that regard, respondent BOC, as another Government office under the Executive Branch, is bound by the ruling of the DOJ on the above-mentioned matter.

The issue concerning the legality of petitioner's shipments on account of the absence of import permits is purely a question of law which the Secretary of Justice can resolve, based on the above-mentioned provision of the *Administrative Code of the Philippines*. Since respondent BOC relies on the DOA's policy on issuing import permits in the performance of its own functions, respondent BOC is a concerned party, who is also bound by the Secretary of Justice's ruling on the issue concerning import permits.

At any rate, a close scrutiny of the laws applicable to the situation of the parties reveal the same conclusion as the ruling of the DOJ in the *DOJ Opinion* dated December 16, 2013.

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.

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[93] *Natalia Realty, Inc. v. DAR*, G.R. No. 103302, August 12, 1993, 225 SCRA 278.

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.

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:

> Sec. 6. (a) *Powers*. -
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> xxx xxx xxx
>
> (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.
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> 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.[94]

The *WTO Agreement* became part of Philippine laws through the Incorporation clause and the Treaty Clauses.[95]

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.[96]

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 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.[97]

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.[98]

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*[99]:

> <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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[94] Underscoring ours.
[95] *Records, Vol. 3, JA of Atty. Anthony A. Abad, Q&A 9,* p. 1263.
[96] *Tañada v. Angara,* G.R. No. 118295, May 2, 1997, 272 SCRA 18.
[97] *Records, Vol. 3, JA of Atty. Anthony A. Abad, Q&A 9,* pp. 1263-1264.
[98] *Id., Q&A 10 and 11,* p. 1264.
[99] *Tañada v. Angara,* G.R. No. 118295, May 2, 1997, 272 SCRA 18.

xxx xxx xxx

> 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 "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." xxx

Moreover, the SC also ruled in the case of the *Secretary of Justice v. Lantion*[100] 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

[100] G.R. No. 139465, January 18, 2000, 322 SCRA 160.

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.[101]

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

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. 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'.

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

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[101] Footnote 1 of the *WTO Agreement on Agriculture.*

> 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 xxx xxx
>
> 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*."[102]

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.[103]

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");

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[102] Underscoring ours.
[103] Underscoring ours.

(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. 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.[104]

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).
>
> 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.[105]

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:

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[104] Underscoring ours.
[105] Underscoring ours.

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 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.[106]

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[106] Underscoring ours.

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.[107]

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 measures of the kind which have been required to be converted into ordinary customs duties." Indeed,

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[107] *Hijo Plantation, Inc. v. Central Bank*, G.R. No. L-34526, August 9, 1988, 164 SCRA 192.

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*[108], the Supreme Court held that the provisions of a tax treaty which 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 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

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[108] G.R. No. 188550, August 19, 2013, 704 SCRA 216.

for the lone reason that import permits were not secured prior to importation.

Respondents have no legal grounds to refuse the release of petitioner's rice shipments. Hence, the seizure and forfeiture proceedings and the public auction of the rice shipments was not in accord with law.

The Court cites in full, and concurs with, the following portions of the *DOJ Opinion* on this:

> Therefore, it is our opinion that the WTO provisions on the lifting of QRs as well as their exceptions, and the provisions on negotiations for its extension are already effective and should be complied with. It is not for nothing that the Philippine Government gave its consent to the WTO Agreement (the Agreement on Agriculture, in particular). It did so fully knowing that the extension of its authority to impose QR on agricultural products shall only be by agreement after the conduct of negotiations, thus constituting a self-imposed limitation on the exercise of its sovereign power to impose such restrictions unilaterally. To renege on this agreement, consent to which was manifested by the act of both the President and the Senate in accordance with the Philippine Constitution, is beyond the power of a mere implementing agency like the NFA, which must exercise its rule-making and regulatory powers in accordance with, and not contrary to, applicable laws.
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> Hence, since the Philippine's request for the extension of its QC on rice until 2017 is still pending, and there is thus no existing agreement to extend such authority (or, more accurately, grant a new one since the first one had already lapsed), the Philippine Government should honor and implement the effect of the expiration of the period granted to it, under the principle of *pacta sunt servanda,* among which is to instead subject rice importations to ordinary customs duties in accordance with Paragraph 2, Article 4 of the Agreement on Agriculture.

Since at the time of the importations, it was legal for petitioner to import rice shipments, there would be no ground to support the seizure and forfeiture proceedings, and to legally refuse the release of, and the auction petitioner's rice shipments.

Having ruled on the legality of petitioner's rice shipments, it follows that respondents' actions, premised upon the illegality of the subject imports, have no basis and therefore illegal.

WHEREFORE, the instant Petition for Review is **GRANTED**. The Court hereby declares petitioner's rice shipments, covered by Bills of Lading Nos. APLU690066069, APLU690195629, SITGBKMS013481A and SITGBKMS013481B, as having been legally imported in the Philippines. Considering that petitioner's rice shipments have already been auctioned, respondents are hereby **ORDERED TO RELEASE** to petitioner, the proceeds of the auction sale held last October 17, 2014, which are presently held in trust by respondents, less the applicable ordinary duties, taxes, penalties, government fees and assessments, that may be assessed over the subject importations.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice