REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

PHILIPPINE CERAMICS PRODUCTS IMPORTERS ASSOCIATION, INC., WEST POINT INDUSTRIAL SALES, INC. and FIVE STAR MARKETING, Petitioners, - versus - **SECRETARY OF TRADE AND INDUSTRY, SECRETARY OF FINANCE, COMMISSIONER OF CUSTOMS, and CHAIRMAN OF THE TARIFF COMMISSION,** Respondents.	**C.T.A. CASE NO. 6478** **IN RE: Decision Imposing Safeguard Measure Against Importation of Ceramic Tiles, Tariff Commission SG Investigation No. 01-01 Department of Trade and Industry Safeguard Case No. 01-2001**

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CEBU OVERSEA HARDWARE CO., INC. Petitioner, -versus- **CERAMIC TILES MANUFACTURERS ASSOCIATION and MAR ROXAS in his Capacity as D.T.I. SECRETARY,** Respondents.	**C.T.A. CASE NO. 6479** Members: **CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.* **Promulgated:** MAY 1 1 2006

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DECISION

UY, *J.*:

Before this Court are two consolidated cases entitled "*Philippine Ceramic Products Importers Association, Inc., West Point Industrial Sales, Inc. and Five Star Marketing vs. Secretary of Trade and Industry, Secretary of Finance, Commissioner*

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of Customs and Chairman of the Tariff Commission" (docketed as C.T.A. Case No. 6478) and "*Cebu Oversea Hardware, Co., Inc. vs. Ceramic Tiles Manufacturers Association and Mar Roxas in his capacity as D.T.I. Secretary*" (docketed as C.T.A. Case No. 6479), both filed on May 13, 2002, questioning the subject decision of the public respondent *Secretary of Trade and Industry* ("DTI") rendered on April 11, 2002, imposing safeguard duties against imports of ceramic tiles allegedly in violation of Republic Act No. 8800, otherwise known as the "Safeguard Measures Act", and WTO Agreement on Safeguard.

In C.T.A. Case No. 6478, petitioners *Philippine Ceramic Products Importers Association, Inc., West Point Industrial Sales, Inc.* and *Five Star Marketing* pray for the rendition of a judgment:

> 1.) reversing the positive final determination findings and recommendations by the Tariff Commission as contained in its Formal Investigation Report dated March 26, 2002 in SG Case No. 01-01 for failure to comply with the statutory requirements of R.A. No. 8800 and the WTO Agreement;
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> 2.) reversing the decision of respondent *Secretary of Trade and Industry* dated April 11, 2003 imposing a final definitive safeguard duties against imports of ceramic tiles under Safeguard Case No. 01-2001 for it was rendered in violation of R.A. No. 8800 and the WTO Agreement on Safeguard; and
>
> 3.) ordering respondents *Secretary of Trade and Industry, Secretary of Finance* and the *Commissioner of Customs* to immediately refund all safeguard bond and/or duties collected on imported ceramic tiles pursuant to Safeguard Case No. 01-2001, the relevant department orders and customs memorandum order.

In C.T.A. Case No. 6479, petitioner *Cebu Oversea Hardware, Co., Inc.* prays for the setting aside of the assailed Decision of respondent Secretary Manuel R. Roxas III and for the rendition of another judgment adopting the recommended definitive safeguard measure of the Philippine Tariff Commission ("Tariff

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Commission"), particularly on tariff-rate quota and the imposition of specific safeguard duty at ₱2.29/kg. in all out-quota importations of ceramic floor and wall tiles.

THE FACTS

Culled from the evidence and records of the case, the facts are as follows:

Petitioner *Philippine Ceramic Products Importers Association, Inc.* is an association duly organized and existing under the laws of the Philippines with office address at 250 Ibuna St., San Juan, Metro Manila. Its members are composed of companies engaged in the importation and distribution of ceramic tile products.

Petitioner *West Point Industrial Sales, Inc.* is a corporation duly organized and existing under Philippine laws. It is engaged in the import, sale, and distribution at wholesale and retail of general merchandise with office address at No. 712 Col. San Miguel St., Brgy. Batis, San Juan, Metro Manila.

Petitioner *Five Star Marketing* is a single proprietorship owned and operated by a certain Pacita S. Choy. It is engaged in the import, export, retail and wholesale of general merchandise with address at Tiboli St., Dominic Subdivision, Kalookan, Metro Manila.

Petitioner *Cebu Oversea Hardware, Co., Inc.* is a domestic corporation duly organized and existing under the Philippine laws. It is an importer of ceramic floor and wall tiles, principally from China and Indonesia with office address at 82 Plaridel St., Cebu City.

Respondent *Ceramic Tiles Manufacturers Association* is an association among local manufacturers of ceramic tiles with MARIWASA as lead company. It was subsequently dropped as respondent after the two (2) entitled cases were consolidated.

All public respondents, *Chairman of the Tariff Commission, Secretary of Trade or Industry* ("DTI"), *Secretary of Finance* and *Commissioner of Customs*, are being sued in their respective official capacities as such heads of their respective departments.

On May 22, 2001, the Department of Trade and Industry accepted from the Philippine ceramic tile industry an application[1] for the imposition of the safeguard measures on the importation of ceramic floor and wall tiles, glazed and unglazed, from various countries pursuant to R.A. No. 8800, otherwise known as the "Safeguard Measures Act". The Ceramic Tile Manufacturers Association ("CTMA"), represented by Mariwasa Siam Ceramics and Lepanto (Guoco) Ceramics, Inc., alleged that ceramic floor and wall tiles started to injure the domestic industry beginning 1998 up to 2000. Mariwasa Siam Ceramics and Lepanto (Guoco) Ceramics, the largest domestic producers of the products, accounting for 70% of actual production capacity of 2000, also alleged that the industry had suffered losses for the past two years and their shares in the domestic market have been eroded by the influx of imported ceramic tiles.

The Bureau of Import Services (BIS) of the DTI conducted a preliminary investigation and determined that critical circumstances existed which justified the imposition of provisional measures to prevent further injury to the local industry.

As a result of the preliminary investigation, respondent *Secretary of Trade and Industry* issued on November 26, 2001, an order imposing a provisional measure amounting to ₱5.40 per kilogram on the importation on ceramic tiles. It reads:

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[1] Docketed as SG Case No. 01-2001.

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"**WHEREFORE, IN VIEW THEREOF**, the Department of Trade and Industry, acting under Section 7 of RA 8800, the 'Safeguard Measures Act', found after preliminary determination, an affirmative finding that increased imports of the product under consideration have caused serious injury to the domestic industry, particularly in terms of declining market share, domestic sales and gross profits, increasing finished goods inventory and underutilization of production capacity leading to plant closure.

Pursuant to Section 8 of RA 8800 which provides that **'in critical circumstances where a delay would cause damage which would be difficult to repair, and pursuant to a preliminary determination that increased imports are a substantial cause of, serious injury to the domestic industry'** the imposition of a provisional measure in the form of a cash bond amounting to ₱5.40 per kg. shall be imposed for a period not exceeding 200 days from the date of the issuance by the Bureau of Customs of the relevant Customs Memorandum Order (CMO) on all importations of ceramic floor and wall tiles, glazed and unglazed, classified under HS Codes 6907.9000 and 6908.9000. However, the provisional duty shall not be applied to imports sourced from those countries which are already deemed exempted by virtue of the 'developing country rule' as provided in the subsequent paragraph of this Order.

Considering that imports from Thailand, India, Sri Lanka and Iran are less than 3% of the total Philippine imports during the period of investigation, imports from these countries are, therefore, exempted from the application of provisional safeguard measures as provided in Rule 8.8 of the IRRs of RA 8800 (developing country rule).

Considering further that ceramic tiles is one of the products covered by the ASEAN-CEPT Agreement, as provided under Articles 6 and 8 of the said Agreement of the Philippine is required to notify the Ministerial Level Council and to accord adequate opportunity for consultations with the governments of the ASEAN countries concerned i.e. Indonesia, Malaysia and Singapore, which may be affected by the application of provisional measures on imports sourced from ASEAN countries. Thus, for imports originating from ASEAN countries the provisional safeguard measure shall be imposed upon compliance with Articles of 6.3 and 8 of the ASEAN-CEPT Agreement.

The case records will be transmitted to the Tariff Commission for formal investigation to determine whether or not there is a need to impose a definitive safeguard measure.

Let this Order be published immediately in two (2) newspapers of general circulation.

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This Order shall take effect immediately.

SO ORDERED."[2]

On December 3, 2001, the case records of SG Case No. 01-2001 were transmitted to the Tariff Commission for formal investigation to determine the merit of imposing a definitive safeguard measure on imports on ceramic tiles pursuant to R.A. No. 8800 and Joint Administrative Order No. 03 (the Implementing Rules and Regulations of R.A. No. 8800 or the "IRR").

Meanwhile, the Bureau of Customs issued CMO No. 4-2002 dated January 9, 2002 implementing the DTI Order imposing provisional measure, to wit:

> "Pursuant to instructions contained in the 1st Indorsement, dated 11 December 2001 and received by this Office on 08 January 2002, issued by Sec. JOSE ISIDRO N. CAMACHO, Department of Finance, relative to DTI Order in Safeguard Case No. 01-2001 Re: IN THE MATTER OF THE PRELIMINARY DETERMINATION OF THE SAFEGUARD MEASURES CASE AGAINST THE IMPORTATION OF CERAMIC FLOOR AND WALL TILES FROM VARIOUS COUNTRIES, with information that proper notifications have been issued to the WTO Safeguards Committee and the ASEAN member countries in compliance with Articles 6.3 and 8 of the **ASEAN-CEPT Agreement**.
>
> It is hereby directed that all importations of ceramic floor and wall tiles, glazed and unglazed, classified under HS Codes 6907.9000 and 6908.9000 from all countries, except those from Thailand, India, Sri Lanka and Iran, shall be imposed, in addition to taxes and duties and other charges, a cash bond amounting to P5.40 kg.
>
> Upon the effectivity of this Order, covered shipments entered in or withdrawn from warehouses in the Philippines for consumption shall be subject to the aforestated safeguard measure.
>
> This Order shall take effect starting 09 January 2002 and shall remain in force for the next 200 days."

On March 26, 2002, the Tariff Commission rendered a formal Investigation Report finding a positive determination for a safeguard measure against imports of

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[2] Exhibit "1"; Rollo, pp. 492-493.

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ceramic tiles and recommended the imposition of final determinative safeguard measure in the form of IN QUOTA ALLOCATION and a Specific Duty on OUT QUOTA IMPORTS amounting to ₱2.29 per kilogram of ceramic tile imports.

The Tariff Commission concluded:

> "1. The circumstances provided in Article XIX of GATT 1994 need not be demonstrated since the product under consideration (ceramic tiles) is not the subject of any Philippine obligation or tariff concession under the WTO Agreement. Nonetheless, such inquiry is governed by the national legislation (R.A. 8800) and the terms and conditions of the Agreement on Safeguards.
>
> 2. The collective output of the two (2) applicant companies constitutes a major proportion of the total domestic production of ceramic tiles.
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> 3. Locally produced ceramic tile is deemed 'like product' to imported ceramic tile.
>
> 4. Ceramic tiles are being imported into the Philippines in increased quantities, both in absolute terms and relative to domestic production, starting in 2000. The increase in volume of imports is recent, sharp and significant as to cause serious injury to the domestic industry.
>
> 5. The industry suffered and is suffering significant overall impairment in its condition in terms of loss of market share; inability to increase production and sales volume despite the increase in demand; decline in employment; underutilization of capacity; and huge losses in operations.
>
> 6. While there are other factors which contributed to the overall impairment in the positions of the domestic industry, the Commission considers that cheap imports in increased quantities were the dominant cause of serious injury to the domestic ceramic tile industry."[3]

Thus, the Tariff Commission recommended that a definitive general safeguard measure be imposed on all imports of ceramic floor and wall tiles and that the measure shall be effective for four (4) years starting from the date the provisional

[3] Formal Investigation Report of the Tariff Commission, Annex F-58; Rollo, p. 166.

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measure was in effect. However, the definitive safeguard measure shall not be applied to imports originating from developing countries Brazil, India, Singapore, South Africa, South Korea, Sri Lanka, Thailand and Vietnam (*de minimis* rule). Also, imports originating from ASEAN Member States shall be governed by the provisions of Articles 6 and 8 of the Agreement on the Common Effective Preferential Tariff ("CEPT") Scheme and new exporters not covered by the *de minimis* rule shall automatically be imposed the specific duty.

On April 11, 2002, the Secretary of Trade and Industry rendered a Decision imposing a definitive safeguard measure on imports of ceramic tiles amounting to ₱5.40 per kilogram for the first year; ₱4.30 per kilogram for the second year and ₱3.50 per kilogram for the third year after the Tariff Commission submitted its Formal Investigation Report. We quote:

> "**IN VIEW THEREOF**, and in accordance with Section 13 of RA 8800, the following is hereby issued:
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> 1. A definitive safeguard duty in the amount of ₱5.40/kg for the first year, ₱4.30/kg for the second year and ₱3.50/kg for the third year shall be imposed on imported ceramic floor and wall tiles from various countries. The first year of implementation of the definitive safeguard measure shall include the period in which the provisional safeguard duty took effect i.e. 9 January 2002, the date of the issuance of Customs Memorandum Order No. 4-2002.
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> 2. The ceramic tiles, however, from Japan and the member states of the European Union which cannot be considered 'like product or directly competitive product' as defined in Section 4 of RA 8800, are excluded from the imposition of general safeguard duty.
>
> 3. Pursuant to Section 13 of RA 8800 and Rule 13.1.d of its IRR, '**a general safeguard measure shall not be applied to a product originating from a developing country if its share to total**

> **Philippine imports of the said product is less than three percent (3%): Provided, however, that developing countries with less than three percent (3%) share collectively account for not more than nine percent (9%) of the total Philippine imports of the product concerned'**, the following countries listed below are also excluded from the imposition of the general safeguard duty on ceramic floor and wall tiles:
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> xxx xxx xxx
>
> The notification and consultation requirements of Article 12 of the WTO Safeguards Agreement and Section 17 of RA 8800 and its IRR shall be complied with.
>
> Imports originating from ASEAN Member states shall be governed by the provisions of Articles 6 and 8 of the Agreement on the CEPT Scheme.
>
> The application of the definitive general safeguard measure shall be monitored and reviewed in accordance with Rules 15 and 16 of RA 8800.
>
> Let this Decision be published in two (2) newspapers of general circulation.
>
> **SO ORDERED**."[4]

On May 13, 2002, both petitioners *Philippine Ceramic Products Importers Association, Inc., West Point Industrial Sales, Inc.* and *Five Star Marketing* and petitioner *Cebu Oversea Hardware, Co., Inc.* filed their respective Petitions for Review before the Court.

On September 10, 2002, respondents *Secretary of Trade and Industry, Secretary of Finance, Commissioner of Customs* and *Chairman of the Tariff Commission* moved for the consolidation of the above-entitled cases which the Court,

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4 Respondent Secretary of Trade and Industry issued on September 5, 2003 an Order amending the assailed Decision, specifically on the list of countries excluded from the imposition of the said safeguard duty on ceramic floor and wall tiles.

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after due hearing on October 4, 2002, granted but ordered that Ceramic Tiles Manufacturers Association be dropped as among the respondents of the cases.[5]

THE ISSUES

The parties to the two consolidated cases submit the following issues:

I. Did the Secretary satisfy the requirement of considering public interest prior to the imposition of a safeguard definitive measure as required by R.A. No. 8800?

II. Are the requirements of Article XIX of GATT 1994 (on unforeseen development, etc.) as enunciated in various WTO Appellate Body rulings complied with?

III. Assuming for argument sake that there was an existence of serious injury on the domestic industry during the period of investigation, is there a casual link between the serious injury suffered and the import surge?

IV. Was grave abuse of discretion committed by the Secretary of Trade and Industry when he did not explain in his Decision how he arrived at his calculations of final definitive measure and whether this computation (if there is any basis at all) conforms with the limitations imposed by R.A. No. 8800 and the WTO Agreement on Safeguard?

On the foregoing issues, petitioners *Philippine Ceramic Products Importers Association, Inc., West Point Industrial Sales, Inc.* and *Five Star Marketing* submit that:

I. The Secretary failed to satisfy the legal requirement that before a safeguard measure shall be imposed he must establish that its application will be for the public interest;

II. The Secretary, without explaining his basis for the definitive measure, arbitrarily and whimsically imposed a safeguard duty of ₱5.40 per kg. or equivalent to an ad valorem rate of 72% to 94% tariff on dutiable value of imported ceramic tiles in violation of R.A. No. 8800 and the *WTO ("World Trade Organization") Agreement*;

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5 Docket, p. 302.

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III. The Tariff Commission erred in holding that the requirements of Article XIX of *GATT (General Agreement on Tariffs and Trade") of 1994* need not be complied with. As the domestic industry failed to satisfy the requirements of Article XIX, its application should have been dismissed outright; and

IV. The serious injury suffered by the domestic industry cannot be linked to the import surge. Absent any causal link, the Tariff Commission should have dismissed the application for safeguard.

Said petitioners argue that before a safeguard measure can be applied, the following must be present: (1) there must be an import surge; (2) there must be serious injury or threat of serious injury to a domestic industry; (3) there must be a causal link between the import surge and serious injury caused to the domestic industry; and (4) such an import surge was a result of unforeseen developments and of the effect of the obligations incurred by contracting party under the *WTO Agreement*. More importantly, the application of safeguard measure should be for the public interest. Specifically, they claim that respondent *Secretary of Trade and Industry*'s assailed Decision is void absent a statement of ultimate facts that will establish the requirement "that the application of safeguard measures shall be in the public interest." On the contrary, the safeguard duties to be applied are adverse to public interest for such imposition will mean higher prices for consumers.

Additionally, they posit that respondent *Secretary of Trade and Industry* violated the WTO Agreement and the statutory requirements of R.A. No. 8800 for his failure to disclose the basis of his calculations and other relevant facts in the imposition of safeguard duties.

They further stated that the application for the imposition of the safeguard measures on the importation of ceramic tiles by the Philippines Ceramic Tile Industry should have been denied for the latter's failure to allege and prove that unforeseen

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developments and effect of obligations of the Philippines under the *WTO Agreement*, including tariff concessions, led to the surge in imports; and consequently, the application should have been denied in the absence of any causal link between the increased imports of the product under consideration and serious injury or threat thereof to the domestic industry consistent with Section 12 of R.A. No. 8800 and Article 4.2(b) of the *WTO Agreement*.

However, as far as petitioner *Cebu Oversea Hardware, Co., Inc.* is concerned, it does not question the imposition of the definitive safeguard duty which the *Tariff Commission* has recommended. What it assails is the validity and propriety of respondent *Secretary of Trade and Industry's* decision in increasing the definitive safeguard duty recommended by respondent *Tariff Commission*.

It argues that respondent *Secretary of Trade and Industry* does not have concrete basis and the necessary technical expertise, knowledge and training to make a conclusion that increase in the duty is necessary and warranted in the public interest. He cannot alter or modify the factual findings, determinations or conclusions of *Tariff Commission* as they are conclusions of facts, not merely recommendations.

On the other hand, respondents counter the foregoing arguments of the petitioners, and maintain that the *Agreement on Safeguards* negotiated during the Uruguay Round of Multilateral Trade Negotiations, which is an elaboration of Article XIX of *GATT of 1994*, has broadened the application of safeguard measures. The *Agreement on Safeguards* provides for the conditions in the imposition of safeguard measures that do not include the pre-conditions set forth in Article XIX of *GATT of 1994*.

The investigation of respondent *Tariff Commission* is governed by Article 5 of R.A. No. 8800 and Article 2 of the WTO Agreement on Safeguards. As a result of

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the investigation, respondent *Tariff Commission* identified two (2) reinforcing but unforeseen developments resulting in the surge in imports. As provided in Section 12 of R.A. No. 8800, the determination of serious injury and causal link was thoroughly discussed and demonstrated in Section 8 (Determination of Serious Injury) and Section 9 (Causation) of the respondent *Tariff Commission*'s Formal Investigation Report. It found that while there were other factors that contributed to the overall impairment in the position of the domestic industry, cheap imports in increased quantities were the dominant cause of serious injury to the domestic ceramic tile industry. Respondent *Tariff Commission* thus recommended to respondent *Secretary of Trade and Industry* that a definitive general safeguard measure be imposed on all imports of ceramic tiles.

While respondent *Tariff Commission* makes a recommendation to respondent *Secretary of Trade and Industry* with respect to the form that a safeguard measure may take to adequately protect the domestic industry, the latter may or may not adopt the recommended safeguard measure.

THIS COURT'S RULING

In view of the respective arguments of the parties, the Court finds it apropos and necessary to mention herein the background of the pertinent laws and subject agreements involve in the case at bar.

To begin with, the Philippines joined the *General Agreement on Tariff and Trade* ("GATT") as provisional member in 1973. It was only in January 1, 1980 when the Philippines formally acceded to GATT.

The Philippines, thereafter, participated actively in the "Uruguay Round" negotiations until the *Final Act Embodying the Results of the Uruguay Round of*

Multilateral Trade Negotiations ("Final Act") and the *WTO Agreement* were signed at Marrakesh, Morocco in April 15, 1994.[6]

The *Final Act* was concurred with by the Senate through Resolution No. 97 dated December 14, 1994 and ratified by the President through the Instrument of Ratification dated December 16, 1994.

Annexed to the WTO Agreement were *Multilateral Agreements on Trade In Goods*, including *General Agreement on Tariff and Trade of 1994* ("GATT of 1994"). Article XIX of *GATT of 1994* establishes rules for the application of safeguard measures where any GATT member is allowed to take emergency action on a product being imported in increased quantities that cause or threaten serious injury to domestic producers of like or directly competitive products as a result of (1) unforeseen developments, and (2) the effect of the obligations incurred by a contracting party under *GATT of 1994*, including tariff concessions.

The Philippines, as original or founding member of World Trade Organization,[7] is also bound to observe the *Agreement on Safeguards*.[8] Such agreement reads:

> "*Having* in mind the overall objective of the Members to improve and strengthen the international trading system based on the GATT 1994;
>
> *Recognizing* the need to clarify and reinforce the disciplines of the GATT 1994, and specifically those of its Article XIX (Emergency Action on Imports of Particular Products), to re-establish multilateral control over safeguards and eliminate measures that escape such control;

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6 Laserna, M.J., *A Report on the General Agreement on Tariff and Trade (GATT) and the World Trade Organization (WTO): Background, Negotiation Process, Dispute Settlement and Enforcement, and their Implications to the Philippines.*

7 *Tañada vs. Angara*, 272 SCRA 18 (1997).

8 Forms part of Annex 1A ("Multilateral Agreement on Trade on Goods") of *Uruguay Round of Multilateral Trade Negotiations.*

> *Recognizing* the importance of structural adjustment and the need to enhance rather than limit competition in international markets; and
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> *Recognizing* further that, for these purposes, a comprehensive agreement, applicable to all Members and based on the basic principles of the GATT 1994, is called for;
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> *xxx xxx xxx"*

Apparently therefore, the *Agreement on Safeguards* is adopted "to clarify and reinforce the disciplines of the *GATT of 1994*, and specifically those of its Article XIX (*Emergency Action on Imports of Particular Products*), to re-establish multilateral control over safeguards and eliminate measures that escape such control". Article 2 of the *Agreement on Safeguards* therefore sets the conditions to be followed before taking emergency action. Thus:

"Article 2

Conditions

> 1. A Member may apply a safeguard measure to a product only if that Member has determined, pursuant to the provisions set out below, that such product is being imported into its territory in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products.
>
> 2. Safeguard measures shall be applied to a product being imported irrespective of its source."

Based on the foregoing, there are two conditions which are necessary for the application of safeguard measure, to wit: (1) such product is being imported into its territory in such increased quantities, absolute or relative to domestic production; and (2) under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products. It must be observed that it removed the requirements for the application of safeguard measure under *GATT of 1994* that the import surge was a result of "unforeseen developments" and of the effect of the obligation incurred by contracting party under the *WTO Agreement*.

The above two conditions are likewise found in R.A. No. 8800 ("An Act Protecting Local Industries by Providing Safeguard Measures to be Undertaken in Response to Increased Imports and Providing Penalties for Violation Thereof"). Section 5 of R.A. No. 8800 reads:

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

Section 5 of R.A. No. 8800 provides additional conditions before the Secretary of Trade may apply a general safeguard measure. The *first* condition is that there must be a positive final determination by the Tariff Commission that a product is being imported into the country in increased quantities (whether absolute or relative to domestic production), as to be a substantial cause of serious injury or threat to the domestic industry. The *second* condition is that, in the case of non-agricultural products, the Secretary must establish that the application of such safeguard measures is in the public interest.[9]

With respect to the first condition, Section 6 of R.A. No. 8800 requires that the following elements shall be established:

(1) an increase in imports of like or directly competitive products;
(2) the existence of serious injury or threat thereof to the domestic industry; and
(3) the causal link between the increased imports of the product under consideration and the serious injury or threat thereof.

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9 *Southern Cross Cement Corp. vs. Philippine Cement Manufacturers Corp. (hereafter referred as "Southern Cement Case"),* 434 SCRA 65 (2004).

A review of the Tariff Commission's Formal Investigation Report reveals that all the three (3) elements above-mentioned were established through an extensive evaluation of evidence and discourse which the Court has exhaustively reviewed and consequently considered.

The first element for the imposition of safeguard measures is that there must be an increase in imports of like or directly competitive products. Thus, the Tariff Commission, after determining the: (a) manufacturing method; (b) material composition; (c) appearance; (d) quality; (e) size; and (f) end use, concluded that: "xxx locally produced and imported ceramic tiles are made from the same raw materials, use the same process and technology, conform to recognized product standards, fall under the same tariff classification, and have the same end-use".

The second element requires the existence of serious injury or threat thereof to the domestic industry. In making a determination of the existence of a threat of serious injury, the Tariff Commission shall consider all relevant economic factors, such as:

(a) the rate and amount of the increase in imports of the product under consideration in absolute and relative terms;
(b) the share of the domestic market taken by the increased imports;
(c) changes in the level of sales, prices, production, productivity, capacity utilization, inventories, profits and losses, wages and employment of the domestic industry;
(d) significant idling of productive facilities in the domestic industry including the closure of plants or underutilization of production capacity;
(e) inability of a significant number of firms to carry out domestic production at a profit; and

(f) significant unemployment or underemployment within the domestic industry.[10]

In the present case, the Tariff Commission took into consideration the following factors: (a) market shares; (b) production, sales and ending inventory; (c) employment; (d) capacity utilization; and (e) profitability,[11] matters which are of vital importance to its positive report.

Based on Tariff Commission's aforesaid Report, it concluded that the industry has suffered and is suffering a significant impairment in its overall market position, production and sales, capacity utilization, employment and profitability. In short, the domestic industry has suffered and is suffering serious injury or threat from the surge of imported ceramic floor and wall tiles.

The last element is the causal link between the increased imports of the product under consideration and the serious injury or threat thereof. In its report, the Commission demonstrated the causal link between the increased imports of the ceramic floor and wall tiles and serious injury or threat thereof to the domestic industry by considering: (a) market shares; (b) production and sales; (c) employment; (d) productivity; (e) capacity utilization; (f) profitability; and (g) other factors such as price effects and interest expense/foreign currency losses.

Accordingly, it is clear in said Report that while there are other factors which contributed to the overall impairment in the position of the domestic industry, cheap imports of ceramic floor and wall tiles in increased quantities were the dominant cause of serious injury to the domestic ceramic tile industry.

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10 Philippine Tariff Commission, *A Primer on New Developments in Trade and Tariff Policy* (updated version), p. 69.

11 Formal Investigation Report of the Tariff Commission, pp. 37-45; Docket, pp. 155-163 and 549-556.

The above findings of the Tariff Commission resulted in a positive final determination that a product is being imported into the country in increased quantities, whether absolute or relative to the domestic production of ceramic floor and wall tiles, as to be a substantial cause of serious injury or threat thereof to the domestic industry under Section 5 of R.A. No. 8800.

The Court finds no reason to disturb the above findings. Being considered experts in its field, the factual findings of the Tariff Commission are binding on the Court.[12] Thus, the three elements having been established, the first condition for the application of safeguard measure under R.A. No. 8800 and *Agreement on Safeguards* is therefore present.

As for the second condition, R.A. No. 8800 requires that the application of safeguard measures must be for public interest. Respondent *Secretary of Trade and Industry* reviewed "the Commission's findings and recommendations and has established that the application of safeguard measures shall be in the public interest"[13].

While petitioners *Philippine Ceramic Products Importers Association, Inc., West Point Industrial Sales, Inc.* and *Five Star Marketing* argue that respondent *Secretary of Trade and Industry*'s decision failed to state ultimate facts that would establish the requirement "that the application of safeguard measures shall be in the public interest", such omission does not render the assailed decision void. R.A. No. 8800 does not require the decision imposing general safeguard measures to contain such facts. It is enough that in the exercise of his unquestionable competence to determine whether or not the application of such safeguard measures is in the public

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12 *Golden Thread Knitting Industries, Inc. vs. National Labor Relations Commission*, 304 SCRA 568 (1999).

13 Exhibit "B-2"; Docket, p. 186.

interest and in the absence of any evidence showing that he has acted with grave abuse of discretion, the *Secretary of Trade and Industry*'s findings that it "is in the public interest" shall be deemed established pursuant to the provisions of R.A. No. 8800. The statute does not require the *Secretary of Trade and Industry*, after taking into consideration relevant factors, among others, such as: "(i) whether the imposition of the provisional measure will result in a political or economic crisis; and (ii) the extent to which such imposition will cause a shortage of the product under consideration in the domestic market"[14], to categorically state in his decision said factors in order to establish the concept of "public interest".

Furthermore, it appears that respondent *Secretary of Trade* properly considered the elements, as provided in Section 6 of R.A. No. 8800; and other factors necessary in determining serious injury or threat thereof, as provided in Section 12 of the same law, as bases in determining whether the application for safeguard measures is for public interest.

"Public interest", although not defined in the law, must be understood to mean "more than a mere curiosity; it means something in which the public, the community at large, has some pecuniary interest by which their legal rights or liabilities are affected."[15] Moreover, the Supreme Court has defined "public interest" as too elastic, broad and comprehensive which may include most anything though of minor importance, but affecting the public.[16]

In the present case, respondent *Secretary of Trade and Industry* based his decision to apply safeguard measures on the Tariff Commission's findings and

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14 Rule 5.2, Joint Administrative Order No. 03-00, Implementing Rules and Regulations Pursuant to Republic Act 8800.

15 Banco Filipino vs. Monetary Board, 142 SCRA 523 (1986).

16 *In Re: Parazo*, 82 Phil. 230 (1948).

conclusions. Such is sufficient. We rule that the aforesaid decision rendered by the *Secretary of Trade and Industry*, being an official of the government called upon to execute or implement laws, commands respect and weight in the absence of any proof to show that he has acted with grave abuse of discretion amounting to lack or in excess of jurisdiction.

In a Resolution, the Supreme Court elucidated in the *Southern Cross Cement case* the subject matter as follows:

> "We recognize that Congress deemed it necessary to insulate the process in requiring that the factual determination to be made by an ostensibly independent body or specialized competence, the Tariff Commission. This prescribed framework, constitutionally sanctioned, is intended to prevent the baseless, whimsical, or consideration-induced imposition of safeguard measures. It removes from the DTI Secretary jurisdiction over a matter beyond his putative specialized aptitude, the compilation and analysis of picayune facts and determination of their limited causal relations, and instead <u>vests in the Secretary the broad choice on a matter within his unquestionable competence, the selection of what particular safeguard measure would assist the duly beleaguered local industry yet at the same time conform to national trade policy</u>. Indeed, the SMA recognizes, and places primary importance on the DTI Secretary's mandate to formulate trade policy, in his capacity as the President's *alter ego* on trade, industry and investment-related matters."[17] *(Underscoring ours)*

Clearly, the respondent *Secretary of Trade and Industry*'s mandate is to decide, only after Tariff Commission's positive final determination, whether to apply safeguard and to determine the appropriate definitive measure as provided in Section 13 of R.A. No. 8800.

To reiterate, the Court gives great weight to the decision of respondent *Secretary of Trade and Industry* to apply safeguard measures on the ground of protecting public interest in this case. Elementary is the rule that courts will not interfere on matters which are addressed to the sound discretion of government

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[17] 465 SCRA 532 (2005).

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agencies entrusted with the regulation of activities coming under their respective special technical knowledge and training.[18] The opinions and rulings of officials of the government called upon to execute or implement laws, command respect and weight;[19] provided that the same are supported by substantial evidence.[20]

Coming now to the argument raised by petitioner *Cebu Oversea Hardware, Co., Inc.* that respondent *Secretary of Trade* cannot increase the definitive safeguard duty recommended by the Tariff Commission, this Court disagrees. R.A. No. 8800 is clear that the report of the Tariff Commission is merely recommendatory. Section 13 of R.A. No. 8800 provides in part:

> "SEC. 13. Adoption of Definitive Measures. – Upon its positive determination, the Commission shall recommend to the Secretary an appropriate definitive measure in the form of:
>
> (a) An increase in, or imposition of, any duty on the imported product;
> (b) A decrease in or the imposition of a tariff-rate quota on the product;
> (c) A modification or imposition of any quantitative restriction on the importation of the product into the Philippines;
> (d) One or more appropriate adjustment measures, including the provision of trade adjustment assistance; and
> (e) Any combination of the above-described actions."

Moreover, no less than the Highest Court summarized the pertinent powers of the respondent *Secretary of Trade and Industry* stating that "[t]he Secretary is also authorized to decide, after receipt of the report of the Tariff Commission, whether or not to impose the general safeguard measure, and if in the affirmative, what general safeguard measures should be applied. Even after the general safeguard measure is imposed, the Secretary is empowered to extend the safeguard measure, or terminate,

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18 *Batelec II Electric Cooperative, Inc. vs. Energy Industry Administration Bureau*, 447 SCRA 482 (2004) and *Energy Regulatory Board vs. Court of Appeals*, 357 SCRA 30 (2001).
19 *Protector's Services, Inc. vs. Court of Appeals*, 330 SCRA 404 (2000).
20 *Floralde vs. Court of Appeals*, 337 SCRA 371 (2000).

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reduce or modify his previous rulings on the general safeguard measure."[21] *(Underscoring ours)*

Indubitably, respondent *Secretary of Trade and Industry* is not bound to adopt the recommendations of the Tariff Commission upon a positive determination as he may increase, decrease, modify or adjust the definitive measures recommended by the Tariff Commission. The law itself gives him the power to decide the appropriate definitive measure, subject to several conditions and limitations as provided therein and in conformity with international agreements and obligations.

In affirming the assailed Decision of respondent *Secretary of Trade and Industry*, this Court adopts the reasoning behind the provisions of R.A. No. 8800, quoted as follows:

> "Moreover, the mechanism established by Congress establishes a measure of check and balance involving two different governmental agencies with disparate specializations. The matter of safeguard measures is of such national importance that a decision either to impose or not to impose then could have ruinous effects on companies doing business in the Philippines. Thus, it is ideal to put in place a system which affords all due deliberation and calls to fore various governmental agencies exercising their particular specializations.
>
> Finally, if this arrangement drawn up by Congress makes it difficult to obtain a general safeguard measure, it is because such safeguard measure is the exception, rather than the rule. The Philippines is obliged to observe its obligations under the GATT, under whose framework trade liberalization, not protectionism, is laid down. Verily, the GATT actually prescribes conditions before a member-country may impose a safeguard measure. xxx"[22]

Petitioner *Cebu Oversea Hardware, Co., Inc.*, failed to discharge its obligation of presenting any evidence that would establish its allegation that the decision of

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21 *Decision, Southern Cross Cement case, supra*, p. 88.
22 *Southern Cross Cement Case, supra*, pp.105-106.

respondent *Secretary of Trade and Industry* imposing a higher definitive safeguard duty on imported ceramic floor and wall tiles from various countries has no basis.[23]

It must be noted that the Bureau of Import Services ("BIS") of the Department of Trade and Industry initiated a preliminary investigation on the application for the imposition of safeguard measures and determined the imposition of provisional measures to prevent further injury to the local industry. The provisional measure, equivalent to ₱5.40 per kilogram, was deemed sufficient to remedy the serious injury arising from increased imports. "It was derived by comparing the landed cost computed from available import documents from the Bureau of Customs (BOC) for year 2000 *vis-à-vis* the average cost of production of the two (2) firms [referring to Mariwasa Siam Ceramics and Lepanto (Guoco) Ceramics] for the same year." The records of this case provide sufficient support for this finding.

Among others, the Court took into consideration the BIS Officer-in-Charge Luis M. Catibayan's findings, stated in his Memorandum to the *Secretary of Trade and Industry*, as follows:

> "The Tariff Commission recommended an additional specific duty of ₱2.29/kg for imports exceeding the in-quota allocations. The specific duty was computed by comparing the weighted average cost to produce and sell (COPS) of the industry in 2001 *vis-à-vis* the weighted average ex-warehouse selling price of the imported tiles for the same year. The average selling price of imported tiles was at ₱11.67 per kg. (Annex B1) while the average COPS was at ₱13.96 per kg. (Annex C). TC derived a difference of ₱2.29/kg which was recommended as the additional specific duty.
>
> In evaluating the methodology applied by TC [Tariff Commission] in computing the specific duty of ₱2.29/kg, we have noted that they compared the ex-importer's selling price of ₱11.67/kg (Annex B!) which included the importer's profit with the domestic industry's cost to produce and sell (COPS) for 2001 of ₱13.96/kg (Annex C) which does not have any provision for profit. These two values are, therefore, not comparable i.e. not at the same level of trade

23 Section 1, Rule 131 of the Revised Rules of Court.

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> since the latter consists only of costs while the former takes in both costs and profit. Thus, we computed for the appropriate amount of profit that must be added to the industry's cost to produce and sell to make it comparable with the importer's (ex-warehouse) selling price. Using the information provided in Annex H of TC's Formal Investigation Report, we derived the margins of profit and the actual profits of the domestic industry from 1996 to 2001. Since the industry has negative profits from 1999 to 2001, we calculated the average profit from 1996 to 1998 (normal years for the industry) and derived a value of ₱2.63/kg (Annex D). This amount was added to the industry's cost to produce and sell for 2001 of ₱13.96 per kg. to arrive at an amount of ₱16.59/kg as the domestic industry's estimated (ex-plant) selling price."[24]

Thus, he recommended:

> "Comparing the estimated importer's (ex-warehouse) selling price of ₱10.36/kg (Annex B2) with the domestic industry's estimated (ex-plant) selling price of ₱16.59/kg (domestic industry's cost to produce and sell for 2001 at ₱13.96/kg plus the average profit of ₱2.63/kg) a difference of ₱6.23/kg was computed as the appropriate specific duty for the first year. This amount is higher than the provisional safeguard duty of ₱5.20/kg. In line with the policy declaration in Section 2 of RA 8800 of promoting the competitiveness of the domestic industries through the application of safeguard measures and pursuant to the public interest clause under Section 5, it is recommended that the provisional safeguard duty be retained as the definitive safeguard duty for the first year. To prod the domestic industry to accelerate its adjustment efforts to achieve global competitiveness, the definitive general safeguard duty shall be reduced by 20% on the second and third years of implementation. The specific duty shall be ₱4.30/kg on the second year and ₱3.50/kg on the third year.
>
> Imports from Japan and the European Union are excluded from the definitive general safeguard measure considering that they cannot be considered as 'like or directly competitive products' since they are evidently of higher quality and are known to cater to the higher-income segment of the ceramic tile market particularly to those who are willing to pay a 'premium' for better quality products."[25]

It may be stressed in this connection that the assailed decision is congruent with Section 13 of R.A. No. 8800, which provides that a general safeguard measure shall be limited to the extent of redressing or preventing the injury and to facilitate

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24 Exhibit "3", p. 2; Docket, p. 745.

25 Ibid., pp. 3-4; Docket, p. 746-747.

adjustment by the domestic industry from the adverse effects directly attributed to the increased imports. Therefore, after a comprehensive review and careful weighing of evidence on record, this Court affirms the Decision of respondent *Secretary of Trade and Industry* imposing a definitive safeguard duty in the amount of ₱5.40/kg for the first year, ₱4.30/kg for the second year and ₱3.50/kg for the third year on imported ceramic floor and wall tiles from various countries.

GATT is a multilateral treaty that provides a code of agreed rules for international trade. It provides trade measures against import surges that affords relief to any of its members and allow time to adjust to foreign competition provided the conditions are present and the procedures agreed upon are observed. The objective of general safeguards is to remove injury (or threat of injury) and facilitate structural adjustments for the industry to be competitive.[26]

WHEREFORE, premises considered, both Petitions for Review are hereby **DISMISSED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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26 Philippine Tariff Commission, *A Primer on New Developments in Trade and Tariff Policy* (updated version), p. 69.

ATTESTATION

I attest 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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairman

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairman's Attestation, 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.

ERNESTO D. ACOSTA
Presiding Justice