REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

SPECIAL SECOND DIVISION

ECOSSENTIAL FOODS CORP.
Petitioner,

CTA Case No. 9929

- versus -

Members:

BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, *JJ.*

HON. EMMANUEL F. PIÑOL in his capacity as SECRETARY of the DEPARTMENT OF AGRICULTURE, and COMM. REY LEONARDO GUERRERO in his capacity as the COMMISSIONER OF THE BUREAU OF CUSTOMS,
Respondents.

Promulgated:
DEC 01 2022 11:39 AM

x - x

DECISION

BACORRO-VILLENA, J.:

Before the Court is an Amended Petition for Review[1] filed pursuant to Section 3(a)(6)[2], Rule 4 of the Revised Rules of the Court of

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1 Filed on 20 November 2020, Division Docket, Volume V, pp. 1944-1964.

2 SEC. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Divisions shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
...

Tax Appeals (**RRCTA**) by petitioner Ecossential Foods Corp. (**petitioner/EFC**). It seeks the nullification of Department Order (**D.O.**) No. 06, Series of 2018[3] issued by respondent Emmanuel F. Piñol (**respondent Secretary**) in his capacity as Secretary of the Department of Agriculture (**DA**).

PARTIES OF THE CASE

Petitioner is a corporation duly organized under the laws of the Republic of the Philippines. It is engaged in the business of trading and the importer and exclusive distributor of "Kopiko 3-in-1" products. Its principal business address is at Plaridel Street, Brgy. Umapad, Mandaue City.

Respondent Secretary is the Secretary of the DA with the power, among others, to impose safeguard duties on the import of agricultural products.

Respondent Commissioner of Customs (**respondent Commissioner/COC**) is the Commissioner of the Bureau of Customs, with the duty, among others, to collect duties on imported goods.

FACTS OF THE CASE

On 16 March 2018, the DA issued D.O. No. 06 through respondent Secretary. D.O. No. 06 imposed special safeguard (**SSG**) duties on certain imported commodities (coffee products, among them) pursuant to the provisions of Republic Act (**RA**) No. 8800.[4] The pertinent portions of D.O. No. 06 read, thusly:

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

...

[3] IMPOSITION OF PRICE-BASED SOECIAL SAFEGUARD DUTY ON SEVERAL SSG-ELIGIBLE AGRICULTURAL PRODUCTS. Division Docket, Volume I, pp. 36-37.

[4] AN ACT PROTECTING LOCAL INDUSTRIES BY PROVIDING SAFE IN MEASURE TO BE UNDERTAKE IN RESPONSE TO INCREASED IMPORTS AND PROVIDNG PENALTIES FOR VIOLATION THEREOF.

...

Pursuant to Republic Act 8800, otherwise known as the Safeguard Measures Act, we are requesting for the imposition of price-based special safeguard (SSG) duty on the following agricultural products eligible for SSG measures:

AHTN 2012	Description	SSG Duty to be Imposed
...		
21011110	Instant coffee (out-quota)	Shall be on a shipment by shipment basis depending on the difference between the actual [c.i.f.] import price and the product's trigger price.
21011190	Other extracts, essences and concentrates of coffee (out-quota)	
21011210	Preparations with a basis of extracts, essences or concentrates or with a basis of coffee, mixtures in paste form with a basis of ground roasted coffee, containing vegetable fats (out-quota)	
21011290	Other preparations with a basis of extracts, essences or concentrates or with a basis of coffee (out-quota)	

As shown, it is requested that additional duty be imposed for the above-mentioned products which are eligible for SSG measure because their respective trigger prices have been breached, i.e. the actual [c.i.f.] import price for each product is less than its corresponding trigger price.

May we further request that the imposition of the price-based SSG duties be made effective immediately.

...

Pursuant thereto, on 20 April 2018, the COC issued Customs Memorandum Circular (**CMC**) No. 76-2018[5] reiterating the contents of D.O. No. 06. Thereafter, on 02 August 2018, the COC also issued CMC No. 156-2018[6] specifying SSG-eligible products, together with their trigger prices. On 17 August 2018, petitioner received a copy thereof.

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5 IMPOSITION OF PRICE-BASED SPECIAL SAFEGUARD DUTY ON SEVERAL SSG-ELIGIBLE AGRICULTURAL PRODUCTS.

6 Trigger Prices on All Agricultural Products Eligible for Special Safeguard Duty (SSG).

with an Assessment Notice (**AN**) for payment of SSG on their "Kopiko 3-in-1" products.

On 17 September 2018, petitioner filed a Petition for Review[7] before this Court against respondent Secretary. The case was raffled to the Second Division and was docketed as CTA Case No. 9929.

On 24 September 2018, the Court issued Summons[8] on respondent Secretary.

On 09 November 2018, respondent Secretary, through the Office of the Solicitor General (**OSG**), filed an Answer[9] to petitioner's petition. In the Answer, the following were raised as his special and affirmative defenses, to wit: (1) petitioner's failure to exhaust administrative remedies; and, (2) petitioner's lack of personality to question before the Court the Philippines' obligations under the General Agreement on Tariffs and Trade of 1994 (**GATT**), ASEAN Trade in Goods Agreement (**ATIGA**), and Common Effective Preferential Tariff (**CEPT**) Scheme, among others.

On 14 November 2018, the Court issued its Notice of Pre-Trial Conference[10], directing the parties to submit their Pre-Trial Briefs (**PTBs**) at least three (3) days prior to the said scheduled pre-trial conference.

Respondent Secretary filed his PTB[11] on 27 November 2018 while petitioner filed its PTB[12] on 03 December 2018. On 26 November 2018, petitioner filed a Reply[13] to respondent Secretary's Answer.

During the pre-trial conference[14] on 31 January 2019, the Court ordered the parties to file their Joint Stipulation of Facts and Issues (**JSFI**) within twenty (20) days. On 20 February 2019, the parties

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7 Division Docket, Volume I, pp. 10-64 with annexes..
8 Id., p. 70.
9 Id., pp. 75-113.
10 Id., pp. 133-134.
11 Id., pp. 137-144.
12 Id., pp. 219-228.
13 Id., pp. 270-286.
14 Id., Volume III, p. 996.

submitted their JSFI.[15] In its Pre-Trial Order dated 21 March 2019[16], the Court adopted and approved the same.

Later, on 26 February 2019, petitioner filed an Urgent Motion for the Suspension of Collection of Tax Liability[17] (**Motion to Suspend**) with respondent Secretary's Comment/Opposition[18] thereto on 15 March 2019.

During the hearing on petitioner's Motion to Suspend, it offered the testimony of Atty. Laura Love P. Guevarra (**Atty. Guevarra**) and Atty. Agaton Teodoro O. Uvero (**Atty. Uvero**).[19]

In her Judicial Affidavit[20], Atty. Guevarra testified to her receipt of the copies of D.O. No. 06, CMC No. 76-2018, and CMC No. 156-2018. She stated that the said documents imposed SSG on petitioner's products without a hearing and consultation on the trigger price used. She also argued that petitioner's imported products are from Indonesia and covered by the 2017 Association of Southeast Asian Nations (**ASEAN**) Harmonized Tariff Nomenclature Codes (**AHTN**) and thus, should enjoy a preferential tax rate of zero percent (**0%**) in accordance thereto. Further, that a Certificate of Origin was issued to indicate the products' origin making them eligible for the preferential tax rate under the ATIGA.

Atty. Uvero assumed the witness stand next as an expert witness. In his Judicial Affidavit[21], Atty. Uvero explained when SSG may be imposed. His declarations are quoted below:

> ...
> Atty. Rosario: Q10. You mentioned that D.O. No. 6 applies a wrong and unlawful reference price. Can you explain this?

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15 Id., pp. 1114-1118.
16 Id., pp. 1142-1145.
17 Id., pp. 1106-1028.
18 Id., pp. 1119-1139.
19 See Order dated 25 March 2019, id., p. 1172.
20 Exhibit "P-1", id., Volume I, pp. 383-392.
21 Exhibit "P-10", id., Volume III, pp. 1148-1158.

Witness: A10. Yes. Under Philippine Law, the authority to impose SSG Duties can be found in Section 21 of R.A. 8800. For convenience, I brought a copy of R.A. 8800. A10. May I be allowed to read out loud Section 21 of R.A. 8800?

Atty. Rosario: Q11. Yes, please proceed.
Witness: A11. Section 21. Authority to Impose the Special Safeguard Measure. The Secretary of Agriculture shall issue a department order requesting the Commissioner of Customs, through the Secretary of Finance, to impose an additional special safeguard duty on an agricultural product, consistent with Philippine international treaty obligations, if:

(a) Its cumulative import volume in a given year exceeds its trigger volume, subject to the conditions stated in this Act, in Section 23 below; or but not concurrently; and (b) Its actual c.i.f[.] import price is less than its trigger price, subject to the conditions state[d] in this Act, in Section 24, below.

Atty. Rosario: Q12. Is that all the provision provides?
Witness: A12. Yes. However, in order to fully appreciate it, you would also need Rule 21.1.b of the Implementing Rules and Regulations of R.A. 8800 ("IRR"). I also brought a copy of the IRR. May I be allowed to read out loud Rule 21.1.b of the IRR?

Atty. Rosario: Q13. Yes, please proceed.
Witness: A13. In relation to Section 21 of R.A. 8800, Rule 21.1.b of the IRR says that the SSG Duty can be imposed on a product if its actual [c.i.f.] import price is less than its trigger price, subject to the conditions stated in these IRRs, in Rule 24 below.

Atty. Rosario: Q14: Is that all?
Witness: Q14: Yes. Kindly notice that mention is made of a trigger price. This trigger price is important because under Section 24 (a) of R.A. 8800, the law makes mention of a reference price which is actually a technical term under WTO. May I read out loud Section 24 (a) of R.A. 8800?

Atty. Rosario: Q15. Yes, please proceed.
Witness: A15. Section 24. Determination of Special Safeguard Duty Based on the Price Test. - The additional duly allowed to be imposed on the basis of the price test

pursuant to Section 21 (b) of this Act shall be determined as follows:

(a) The trigger price referred to in Section 21 (b) of this Act is the average actual c.i.f. import price or relevant reference price of the agricultural product under consideration from 1986 to 1988, unless clear justification is given that a different reference price is necessary to prevent or remedy serious injury. The Secretary shall publish the list of trigger prices corresponding to each of the agricultural products covered by this Act, after the conduct of public hearings on the subject.

Atty. Rosario: Q16. Is that all the provision provides?

Witness: A16. Yes. However, it must be taken together with Paragraph 1 (b) of Article 5 of the WTO Agreement of Agriculture ("WAA"). I brought a copy of the WAA. May I be allowed to read out loud Article 5 Paragraph 1 (b)?

Atty. Rosario: Q17. Yes, please proceed.

Witness: A17. Article 5 Paragraph 1 (b) of the WAA provides that the price at which imports of that product may enter the customs territory of the Member granting the concession, as determined on the basis of the c.i.f. import price of the shipment concerned expressed in terms of its domestic currency, falls below a trigger price equal to the average 1986 to 1988 reference price for the product concerned.

In reference to the term "reference price" in the above paragraph, footnote no. 2 to paragraph 1(b) of Article 5, WAA, states as follows:

The reference price used to invoke the provisions of this subparagraph shall, in general, be the average c.i.f. unit value of the product concerned, or otherwise shall be an appropriate price in terms of the quality of the product and its stage of processing. It shall, following its initial use, be publicly specified and available to the extent necessary to allow other Members to assess the additional duty that may be levied.

Atty. Rosario: Q18. What is the meaning or implication of what you just read, if any?

Witness: A18. What it means is that the WAA requires that when using reference price as basis for the trigger price, the following must be present:

(a) the "product concerned" must be the same as the product subject of the special safeguard measure,

(b) the reference price must be appropriate in terms of quality and stage of processing, and

(c) the "product concerned" and the product subject to special safeguard measure must be of the same quality and stage of processing.

Atty. Rosario: Q19. What is the meaning or implication of what you just said, if any?

Witness: A19. It means that, unfortunately, the products concerned in the 1986 to 1988 reference prices is totally different from the products (Kopiko) that were subjected to a special safeguard measure. From 1986 to 1988, no Kopiko products or similar ones were yet available in the domestic market.

Atty. Rosario: Q20. You said that the products concerned in the 1986 to 1988 reference prices is totally different from the products (Kopiko) that were subjected to a special safeguard measure. Can you explain this?

Witness: A20. Certainly. The 1986-1988 reference prices used in D.O. No. 6 refers to instant coffee products. The trigger price in D.O. No. 6 is based on the average price for the period 1986-1988 covering instant coffee products. At that time, instant coffee products sold in the domestic market referred to packed instant coffee (granules or powder) products that consumers add to hot water or milk (or both) when preparing hot coffee. These products are generally produced by passing coffee through an extraction equipment and thereafter, the liquid coffee extract is then filtered, dehydrated and dried to produce coffee granules or powder. Instant coffee products are made from 100% coffee beans.

In contrast, Kopiko 3-1 coffee mix products (Kopiko Blanca, Kopiko Black and Kopiko Brown) is a mixture of instant coffee, refined sugar, non-dairy creamer, salt and other ingredients, and sold in

individual packs for single use. The instant coffee used in Kopiko products constitutes less than 10% of the final product. The instant coffee used for Kopiko are not made from top-grade coffee beans. Premium grade coffee beans are generally used for a different market.

For comparison of the quality, cost and processing, the 1986 to 1988 instant coffee are made from 100% coffee beans while the Kopiko products sold now are made with less than 10% instant coffee.

Atty. Rosario: Q21. What is the meaning or implication of what you just said, if any?

Witness: A21. It means that the "product concerned" covered in the determination of the trigger price merely referred to instant coffee products and not processed coffee mix products with a small percentage of instant coffee. Kopiko products are definitely unlike and dissimilar from instant coffee products in the 1980s in terms of quality, composition, stage of processing and production cost. At the very least, the reference prices must be subject to adjustments for such factors mentioned above to arrive at a corrected basis for the trigger price.

Atty. Rosario: Q22. Is that all?

Witness: A22. I would also like to add that because of what I have just mentioned, the use of the average of the 1986 to 1989 reference prices as trigger price for the imposition of special safeguard measure under D.O. No. 6. is invalid for being contrary to RA 8800 and Article 5, WAA.

As such, the imposition of special safeguards is totally misplaced and wrong. The instant coffee products sought to be protected by the special safeguard measure is totally different from the Kopiko 3-1 products. From 1986 to 1988, there were no Kopiko products or like products sold in the domestic market, whether locally manufactured or imported.

In such a situation where there is no valid or appropriate 1986 to 1988 reference price as basis for the trigger price, or where the trigger price is itself

> non-representative, no special safeguard measure can validly be imposed.
>
> And if indeed there are special circumstances to warrant the need to protect the domestic industry, the proper recourse may be the application for a GENERAL safeguard measure under RA 8800 and its implementing rules.[22]

...

In sum, Atty. Uvero contended that the instant coffee (on which the reference price or trigger price had been based) could not be the same instant coffee being imported by petitioner. He maintained that the SSG's importation was invalid as it was made pursuant to Article 5[23] of the World Trade Organization (**WTO**) Agreement on Agriculture (**WAA**). According to him, any safeguard measures taken against petitioner's products should be by way of General Safeguard (**GSG**) duties.

With no further witnesses to present, the Court later ordered[24] petitioner to file its Formal Offer of Evidence (**FOE**) within five (5) days or until 01 April 2019. Petitioner filed its FOE[25] on 01 April 2019.

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22 Underscoring in the original text.

23 ***Article 5***
Special Safeguard Provisions

1. Notwithstanding the provisions of paragraph 1(b) of Article II of GATT 1994, any Member may take recourse to the provisions of paragraphs 4 and 5 below in connection with the importation of an agricultural product, in respect of which measures referred to in paragraph 2 of Article 4 of this Agreement have been converted into an ordinary customs duty and which is designated in its Schedule with the symbol "SSG" as being the subject of a concession in respect of which the provisions of this Article may be invoked, if:

(a) the volume of imports of that product entering the customs territory of the Member granting the concession during any year exceeds a trigger level which relates to the existing market access opportunity as set out in paragraph 4; or, but not concurrently:

(b) the price at which imports of that product may enter the customs territory of the Member granting the concession, as determined on the basis of the c.i.f. import price of the shipment concerned expressed in terms of its domestic currency, falls below a trigger price equal to the average 1986 to 1988 reference price* for the product concerned.

* The reference price used to invoke the provisions of this subparagraph shall, in general, be the average c.i.f. unit value of the product concerned, or otherwise shall be an appropriate price in terms of the quality of the product and its stage of processing. It shall, following its initial use, be publicly specified and available to the extent necessary to allow other Members to assess the additional duty that may be levied.

...

24 Supra at note 19.

25 Id., pp. 1207-1217.

while respondent Secretary filed his Comment/Opposition[26] thereto on 22 April 2019.

During the presentation[27] of respondent Secretary's evidence on 27 May 2019, the Court also admitted all of petitioner's exhibits[28] not only for the purpose of its Motion to Suspend but for the main case as well. Thereafter, respondent Secretary presented his witnesses, namely: Segfredo R. Serrano (**Serrano**), Elvira Ignacio (**Ignacio**) and Katrin R. Mares (**Mares**), who all testified *via* their respective judicial affidavits. Their testimonies were offered and presented to oppose both of petitioner's Petition for Review and Motion to Suspend.

When Serrano took the witness stand, his testimony was offered as an expert opinion as he was then DA's Undersecretary for Policy and Planning, Project Development, Research and Development, and Regulations. He opined that D.O. No. 06 did not contravene the GATT, Article 5 of the WAA, nor the ATIGA. According to Serrano, despite the 0% preferential tariff rate on agricultural products among ASEAN states, Article 5 of the WAA nevertheless maintains a nation's right to impose SSG provided that the same is non-discriminatory in nature. He opined further that the reference price of instant coffee products from 1986 to 1988 is justified since respondent Secretary cannot use a different reference price without the risk of challenge from other WTO members. Any change in reference price must first be justified before the appropriate committees of the WTO. Pending negotiations and

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26 Id., pp. 1304-1321.

27 See Order dated 27 May 2019, id., p. 1415-A.

28

Exhibit	Description
"P-1"	Judicial Affidavit of Atty. Laura Love P. Guevarra dated November 29, 2018.
"P-2"	Department Order No. 6 dated March 16, 2018 (Series of 2018).
"P-3"	Customs Memorandum Circular No. 76-2018 dated April 13, 2018.
"P-4"	Letter of Director Noel A. Padre to Commissioner Isidro S. Lapeña.
"P-5"	Customs Memorandum Circular No. 156-2018 dated July 30, 2018.
"P-6"	Customs AOCG Memo No. 055-2016.
"P-7"	Certificate of Origin.
"P-8"	Letter of Mr. Stewart Ong to the Department of Agriculture dated September 5, 2018.
"P-9"	Letter of Department of Agriculture to Ms. Patricia Marcelo-Magbanua dated November 8, 2018.
"P-10"	Judicial Affidavit of Atty. Agaton Teodoro O. Uvero.
"R-10-1"	Legal Opinion of Atty. Agaton Teodoro O. Uvero.
"P-10-2"	Curriculum Vitae of Atty, Agaton Teodoro O. Uvero

without any new agreements being reached, respondent Secretary should have had no choice but to use the reference price agreed upon in WAA.[29]

Ignacio, the Acting Director III of the Tariff Commission's (**TC**) Research, Investigation and International Trade Analysis (**RIITAS**), took the witness stand next and testified on the classification of petitioner's Kopiko products. In particular, she stated that Kopiko Brown Coffee, Kopiko Blanca, Kopiko Black 3-in-1, Kopiko Double Cups, Kopiko Cappuccino and Kopiko LA Coffee, all fall under AHTN "heading 21.01" on "[e]xtracts, essences and concentrates, of coffee, tea or mate, and preparations with a basis of these products or with a basis of coffee, tea or mate, roasted chicory and other roasted coffee substitutes, and extracts, essences and concentrates thereof".

Ignacio also stated that the aforementioned products were already covered in the 1986 and 1987 Customs Cooperation Council Nomenclature (**CCCN**) under "heading 21.02" and later transferred to "heading 21.01" in 1988. She concluded that the AHTN 8-digit code that respondent Secretary used in D.O. No. 06 is broad enough to cover petitioner's products.[30]

Lastly, Mares, the Development Manager III of the DA's Macro-Economic Policy Division of the Policy Research Service testified. As the supervisor of the DA's Trade Remedy Unit (**TRU**), she stated that TRU is in charge of implementing trade remedy measures such as those mentioned in RA 8800. She explained that the trigger price of instant coffee from 1986 to 1988 was at ₱203.74 *per* kilogram, along with "extracts, essences and concentrates of coffee", "preparations with a basis extracts, essences or concentrates or with a basis of coffee, mixtures in paste form with a basis of ground roasted coffee, containing vegetable fats", and "other preparations with a basis of extracts, essences or concentrates or with a basis of coffee". She further testified that the trigger price could be found in the Notification of Trigger Prices that the Philippines submitted to the WTO, and that the same refers to the product's "cost, insurance, freight" (**c.i.f.**) price or cost of the good including insurance and freight *per* shipment. She likewise declared that upon finding that the trigger price was

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29 Exhibit "R-15", Division Docket, Volume III, pp. 1347-1365.
30 Exhibit "R-17", id., pp. 1373-1383.

breached, her team recommended to respondent Secretary that SSG measures be imposed on petitioner. As with Serrano, Mares maintained that despite being a party to the ATIGA, the Philippines reserves the right to impose SSG.[31]

After respondent Secretary filed his FOE[32] on 03 June 2019, petitioner filed its Comment/Objections[33] thereto on 17 June 2019. In a Resolution dated 15 October 2019[34], the Court resolved to admit all of respondent Secretary's offered exhibits.[35]

Upon petitioner's manifestation that it would no longer present any rebuttal evidence, the Court, in its Resolution dated 04 November 2019[36], ordered the parties to submit their respective memoranda within thirty (30) days from notice. On 09 December 2019, respondent

31 Exhibit "R-13", id., Volume I, pp. 149-161.
32 Id., Volume IV, pp. 1417-1432.
33 Id., pp. 1715-1730.
34 Id., pp. 1794-1795.
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Exhibit	Description
"R-1"	Department Order No. 06.
"R-2"	Notification of Trigger Prices.
"R-3"	Memorandum dated 16 March 2018.
"R-4"	Import Data of Coffee and Coffee Based Preparations (January 2018).
"R-5"	Printed copy of the electronic email (e-mail) thread between the Management Information System and Technology Group (MISTG) of the Bureau of Customs and the Trade Remedy Unit of the Department of Agriculture.
"R-6"	Printed copy of the Excel file containing the import data of agricultural products for January 2018.
"R-7"	Memorandum dated April 24, 2018 with attached *Ad Hoc* notifications for the imposition of Price-Based Special Safeguard.
"R-8"	Notice of Meeting dated August 20, 2018.
"R-9"	Newspaper excerpts from the Philippine Star issued on March 21, 2002.
"R-10"	Newspaper excerpts from the Business as Usual issued on June 3, 2002.
"R-11"	Highlights of Proceedings during the June 22, 2002 public consultation.
"R12"	Newspaper excerpts from the Philippine Star issued on August 7, 2002.
"R-13" to R-13-a"	Judicial Affidavit of Kartin R. Mares and signature.
"R-14" to "R-14-a"	Supplemental Judicial Affidavit of Kartin R. Mares and signature.
"R-15" to "R-15-a"	Judicial Affidavit of Segfredo R. Serrano and signature.
"R-16"	Personal Profile of Segfredo R. Serrano.
"R-17" to "R17-a"	Judicial Affidavit of Elvira Ignacio and signature.
"R-18"	Curriculum Vitae of Elvira Ignacio.

36 Division Docket, Volume IV, p. 1800.

Secretary filed his Memorandum[37], while petitioner filed its Memorandum[38] on 20 December 2019. In yet another Resolution dated 10 January 2020[39], the Court submitted the present petition for decision.

Later, on 28 October 2020[40], the Court resolved the issues raised by respondent Secretary as his special and affirmative defenses. It ruled that it has jurisdiction over the present case and found the COC to be an indispensable party. The COC was then ordered impleaded in the case as one of the respondents.[41]

Still later, or on 20 November 2020, petitioner filed its Compliance[42] attaching thereto the Amended Petition for Review[43] (to include the respondent COC). Respondents filed their Compliance with Manifestation[44] on 07 December 2020, with their Amended Answer.[45]

On 22 February 2021, respondent COC filed a Manifestation and Motion[46] stating that he will not be presenting any further evidence. He also moved to adopt all of respondent Secretary's evidence. The Court, through a Resolution dated 29 June 2021[47], granted the motion and directed respondent COC 30 days from notice of such order to submit his memorandum. Respondent COC filed his Memorandum[48] on 22 September 2021.

In a Resolution dated 14 December 2021[49], the Court submitted anew this instant case and petitioner's Motion to Suspend for decision/resolution.

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37 Id., pp. 1801-1863.
38 Id., pp. 1880-1916.
39 Id., pp. 1916-1918.
40 See Resolution, id., Volume V, pp. 1921-1935.
41 The prior declaration in the 10 January 2020 Resolution submitting the case for decision was withdrawn.
42 Division Docket, Volume V, pp. 1938-1964.
43 Supra at note 1.
44 Division Docket, Volume V, pp. 1996-1999.
45 Id., pp. 2000-2046.
46 Id., pp. 2120-2123.
47 Id., pp. 2165-2173.
48 Id., pp. 2174-2204.
49 Id., p. 2206.

ISSUES

As proposed in the parties' JSFI, the following issues are being forwarded to the Court for its resolution:

I.
WHETHER THE HONORABLE COURT HAS JURISDICTION OVER THE INSTANT CASE;

II.
WHETHER PETITIONER ECOSSENTIAL FOODS CORP. HAS EXHAUSTED ADMINISTRATIVE REMEDIES BEFORE ELEVATING THE CASE TO THE HONORABLE COURT;

III.
WHETHER PETITIONER ECOSSENTIAL FOODS CORP. HAS LEGAL PERSONALITY TO QUESTION RESPONDENT COMMISSIONER OF INTERNAL REVENUE'S ALLEGED VIOLATION OF THE PHILIPPINES' INTERNATIONAL OBLIGATIONS UNDER THE GENERAL AGREEMENT ON TARIFFS AND TRADE OF 1994 (GATT), ASEAN TRADE IN GOODS AGREEMENT (ATIGA) AND COMMON EFFECTIVE PREFERENTIAL TARIFF (CEPT) SCHEME, AMONG OTHERS;

IV.
WHETHER RESPONDENT COMMISSIONER OF INTERNAL REVENUE HAS THE AUTHORITY TO IMPOSE SPECIAL SAFEGUARD (SSG) MEASURES ON INSTANT COFFEE AND OTHER SIMILAR PRODUCTS STATED IN DEPARTMENT ORDER (D.O.) NO. 06;

V.
WHETHER RESPONDENT COMMISSIONER OF INTERNAL REVENUE VIOLATED ANY INTERNATIONAL AGREEMENT OR OBLIGATION OF THE PHILIPPINES; AND,

VI.
WHETHER THE IMPOSITION OF SPECIAL SAFEGUARD (SSG) MEASURE HAS FACTUAL OR STATISTICAL BASIS.

ARGUMENTS

In this present petition, petitioner claims that the Court has jurisdiction over the present controversy based on Section 29[50] of RA 8800. It also argues that, in imposing the SSG, D.O. No. 06 transgressed the provisions of the GATT, ATIGA, WAA, and CEPT Scheme. The Philippines, being a party to the ATIGA, its import of coffee products from Indonesia (another member of the ASEAN) are subject to 0% preferential rate on import duties.

Petitioner also contends that respondent Secretary has no factual basis in imposing the SSG as D.O. No. 06 was enacted without prior consultation or hearing.

On the other hand, respondents maintain that D.O. No. 06 is a valid and legal enactment because the respondent Secretary has the authority to impose SSG under Section 29 of RA 8800. They further argue that such imposition does not violate any of the international conventions as even Article 5 of the WAA recognized the right of member-states to impose (SSG whether the same be volume-based or price-based).

Respondents also argue that petitioner lacks the personality to question the Philippines' alleged violation of an international treaty as such right belongs to other member states of the WTO whose exports may be affected by the imposition of SSG on certain products. Furthermore, they insist that under RA 8800, no hearing is required for the imposition of SSG Duty.

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

The petition for review shall comply with the same requirements and shall follow the same rules of procedure and shall be subject to the same disposition as in appeals in connection with adverse rulings on tax matters to the Court of Appeals.

...

RULING OF THE COURT

In every case brought before the Court, jurisdiction remains of paramount importance as it defines the limits of its authority. It is worth noting that in a Resolution dated 28 October 2020, the Court made a preliminary finding of its jurisdiction over the present controversy. However, upon a more assiduous study and review of the case, the Court is constrained to abandon its previous finding and ruling in line with Section 5, Rule 135 of the Rules of Court, as amended, which states:

> ...
>
> **RULE 135**
> **Powers and Duties of Courts and Judicial Officers**
>
> Sec. 5. *Inherent powers of court.* — Every court shall have power:
> ...
>
> (g) To amend and control its process and orders so as to make them conformable to law and justice[.]
> ...

Thus, after a second hard look of the parties' evidence, the Court finds that it has no jurisdiction over the case at bar. Section 7 of RA 1125[51], as amended by RA 9282[52] provides:

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

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51 AN ACT CREATING THE COURT OF TAX APPEALS.

52 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

> matters arising under the Customs Law or other laws administered by the Bureau of Customs;
>
> ...
>
> 7. Decisions of the Secretary of Trade and Industry, in the case of nonagricultural product, commodity or article, and the Secretary of Agriculture in the case of agricultural product, commodity or article, involving dumping and countervailing duties under Section 301 and 302, respectively, of the Tariff and Customs Code, and safeguard measures under Republic Act No. 8800, where either party may appeal the decision to impose or not to impose said duties.
>
> ...

The above provisions are reflected in Section 3, Rule 4 of the RRCTA, which states:

> ...
> **SEC. 3.** *Cases within the jurisdiction of the Court in Division.* – The Court in Divisions shall exercise:
>
> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
>
> ...
>
> (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 of other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;**
>
> ...
>
> (6) **Decisions** of the Secretary of Trade and Industry, in the case of nonagricultural product, commodity or article, and **the Secretary of Agriculture, in the case of agricultural product, commodity or article, involving dumping and countervailing duties under Section 301 and 302, respectively, of the Tariff and Customs Code, and safeguard measures under Republic Act No. 8800, where either party may appeal the decision to impose or not to impose said duties**[.][53]
>
> ...

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53 Emphasis supplied.

In connection thereto, Section 11 of RA 1125, as amended, further states:

> ...
> **SEC. 11.** *Who May Appeal; Mode of Appeal; Effect of Appeal.* - Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
>
> Appeal shall be made by filing a **petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling** or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. ...[54]
> ...

Lastly, Section 29 of RA 8800 provides for the following:

> ...
>
> **CHAPTER IV**
> **SPECIAL PROVISIONS**
>
> **Section 29.** *Judicial Review.* - Any interest party who is adversely affected by the ruling of the Secretary in connection with the imposition of a safeguard measure may file with the **Court of Tax Appeals, a petition for review of such ruling within thirty (30) days from receipt thereof:** *Provided, however,* That the filing of such petition for review shall not in any way stop, suspend or otherwise toll the imposition or collection of the appropriate tariff duties or the adoption of other appropriate safeguard measures, as the case may be.
>
> The petition for review shall comply with the same requirements and shall follow the same rules of procedure and shall be subject to the same disposition as in appeals in connection with adverse rulings on tax matters to the Court of Appeals.[55]
> ...

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54 Emphasis supplied.
55 Emphasis supplied.

Petitioner particularly bases its present action on Section 3(a)(6), Rule 4[56] of the RRCTA as it assails the validity of respondent Secretary's D.O. No. 06 issued pursuant to RA 8800.

In filing an appeal before this Court, it is essential that the appealed action has been done in the exercise of judicial or quasi-judicial powers. In the case of *The Chairman and Executive Director, Palawan Council for Sustainable Development, and the Palawan Council for Sustainable Development v. Ejercito Lim doing business as Bonanza Air Services*[57] (**Lim**), the Supreme Court laid out the distinction between quasi-judicial and quasi-legislative functions of an administrative agency in this wise:

> ...
>
> Administrative agencies possess two kinds of powers, the quasi[-]legislative or rule-making power, and the quasi-judicial or administrative adjudicatory power. **The first is the power to make rules and regulations that results in delegated legislation that is within the confines of the granting statute and the doctrine of non-delegability and separability of powers... The second is the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law. The administrative body exercises its quasi-judicial power when it performs in a judicial manner an act that is essentially of an executive or administrative nature, where the power to act in such manner is incidental to or reasonably necessary for the performance of the executive or administrative duty entrusted to it.**
>
> ...

This is not to say that judicial power cannot be extended to check quasi-legislative acts, but the judicial remedies differ depending on the nature of the action assailed. In *Alliance of Non-Life Insurance Workers of the Philippines, et al. v. Hon. Leandro R. Mendoza as Secretary, Department of Transportation and Communications, et al.*[58] (**Mendoza**), the Supreme Court explained thusly:

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[56] Supra at page 18.
[57] G.R. No. 183173, 24 August 2016; Citations omitted and emphasis supplied.
[58] G.R. No. 206159, 26 August 2020; Citations omitted, emphasis supplied and italics in the original text.

...

This should be read in conjunction with Article 8, Section 1 of the Constitution, which provides the expanded scope of judicial review:

> SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.

It is then settled that courts have the jurisdiction to resolve actual cases or controversies involving administrative actions done in the exercise of their quasi-judicial and quasi-legislative functions. In *Provincial Bus Operators Association of the Philippines (PBOAP) v. DOLE*, this Court laid out the distinction between quasi-judicial and quasi-legislative acts and the requirements of judicial review for each one:

> Administrative actions reviewable by this Court, therefore, may either be quasi-legislative or quasi-judicial. As the name implies, quasi-legislative or rule-making power is the power of an administrative agency to make rules and regulations that have the force and effect of law so long as they are issued "within the confines of the granting statute." The enabling law must be complete, with sufficient standards to guide the administrative agency in exercising its rule-making power. As an exception to the rule on non-delegation of legislative power, administrative rules and regulations must be "germane to the objects and purposes of the law, and be not in contradiction to, but in conformity with, the standards prescribed by law." In *Pangasinan Transportation Co., Inc. v. The Public Service Commission*, this Court recognized the constitutional permissibility of the grant of quasi-legislative powers to administrative agencies, thus:
>
> One thing, however, is apparent in the development of the principle of separation of powers and that is that the maxim of *delegatus non potest delegari* or *delegata potestas non potest delegari*,

attributed to Bracton (De Legibus et Consuetedinious Angliae, edited by G. E. Woodbine, Yale University Press, 1922, vol. 2, p. 167) but which is also recognized in principle in the Roman Law (D. 17.18.3), has been made to adapt itself to the complexities of modern governments, giving rise to the adoption, within certain limits, of the principle of "subordinate legislation," not only in the United States and England but in practically all modem governments. (*People vs. Rosenthal and Osmeña*, G.R. Nos. 46076 and 46077, promulgated June 12, 1939.) Accordingly, with the growing complexity of modern life, the multiplication of the subjects of governmental regulation, and the increased difficulty of administering the laws, there is a constantly growing tendency toward the delegation of greater powers by the legislature, and toward the approval of the practice by the courts. (*Dillon Catfish Drainage Dist. v. Bank of Dillon*, 141 S. E. 274, 275, 143 S. Ct. 178; *State v. Knox County*, 54 S. W. 2d. 973, 976, 165 Tenn. 319.) In harmony with such growing tendency, this Court, since the decision in the case of Compañia General de Tabacos de Filipinas vs. Board of Public Utility Commissioners (34 Phil., 136), relied upon by the petitioner, has, in instances, extended its seal of approval to the "delegation of greater powers by the legislature." (*Inchausti Steamship Co. vs. Public Utility Commissioner*, 44 Phil., 366; *Alegre vs. Collector of Customs*, 53 Phil., 394; *Cebu Autobus Co. vs. De Jesus*, 56 Phil., 446; *People vs. Fernandez & Trinidad*, G.R. No. 45655, promulgated June 15, 1938; *People vs. Rosenthal & Osmeña*, G.R. Nos. 46076, 46077, promulgated June 12, 1939; and *Robb and Hilscher vs. People*, G.R. No. 45866, promulgated June 12, 1939.)

On the other hand, quasi-judicial or administrative adjudicatory power is "the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law." The constitutional permissibility of the grant of quasi-judicial powers to administrative agencies has been likewise recognized by this Court. In the 1931 case of *The Municipal Council of Lemery, Batangas v. The Provincial Board of Batangas*, this Court declared that the power of the Municipal Board of Lemery to approve or disapprove a municipal resolution or ordinance is quasi-judicial in nature and, consequently, may be the subject of a *certiorari* proceeding.

> **Determining whether the act under review is quasi-legislative or quasi-judicial is necessary in determining *when* judicial remedies may properly be availed of. Rules issued in the exercise of an administrative agency's quasi-legislative power may be taken cognizance of by courts *on the first instance* as part of their judicial power,** thus:
>
> ...
>
> However, in cases involving quasi-judicial acts, Congress may require certain quasi-judicial agencies to first take cognizance of the case before resort to judicial remedies may be allowed. This is to take advantage of the special technical expertise possessed by administrative agencies. *Pambujan Sur United Mine Workers v. Samar Mining Company, Inc.* explained the doctrine of primary administrative jurisdiction, thus:
>
>> That the courts cannot or will not determine a controversy involving a question which is within the jurisdiction of an administrative tribunal prior to the decision of that question by the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience, and services of the administrative tribunal to determine technical and intricate matters of fact, and a uniformity of ruling is essential to comply with the purposes of the regulatory statute administered.
>
> ...

Mendoza further identified a vital difference between a judicial review over a quasi-judicial act *vis-à-vis* a quasi-legislative act. Whereas in the former, exhaustion of administrative remedies is essential prior to resort to the courts; such principle is inapplicable to the latter, to wit:

> ...
>
> In questioning the validity or constitutionality of a rule or regulation issued by an administrative agency, a party need not exhaust administrative remedies before going to court. This principle applies only where the act of the administrative agency concerned was performed pursuant to its quasi-judicial function, and not when the assailed act pertained to its rule-making or quasi-legislative power. In *Association of Philippine Coconut Desiccators v. Philippine Coconut Authority*, it was held:

> The rule of requiring exhaustion of administrative remedies before a party may seek judicial review, so strenuously urged by the Solicitor General on behalf of respondent, has obviously no application here. The resolution in question was issued by the PCA in the exercise of its rule-making or legislative power. However, only judicial review of decisions of administrative agencies made in the exercise of their quasi-judicial function is subject to the exhaustion doctrine.[59]

...

D.O. No. 06 was issued pursuant to Section 21 of RA 8800 and it empowered respondent Secretary to impose SSG duties in the following manner:

...

CHAPTER III
SPECIAL SAFEGUARD MEASURE FOR AGRICULTURAL PRODUCTS

Sec. 21. *Authority to Impose the Special Safeguard Measure.* - The Secretary of Agriculture shall issue a department order requesting the Commissioner of Customs, through the Secretary of Finance, to impose an addition special safeguard duty on an agricultural product, consistent with Philippine international treaty obligations, if.

(a) its cumulative import volume in a given year exceeds its trigger volume subject to the conditions state in this Act, in section 23 below; or but not concurrently; and[,]

(b) Its actual c.i.f. import price is less that its trigger price subject to the Conditions State in this Act, in Section 24 below.[60]

...

A plain reading of D.O. No. 06 reveals that the imposition of SSG was made on the basis of Section 21(b) above. Section 24 of RA 8800 provides for the conditions that must be present in case of breach of an imported commodity's trigger price:

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59 Id.
60 Emphasis supplied.

...

Sec. 24. *Determination of Special Safeguard Duty Based on the Price Test.* - The additional duty allowed to be imposed on the basis of the price test pursuant to Section 21 (b) of this Act shall be determined as follows:

(a) The trigger price referred to in section 21(b) of this Act is the average actual c.i.f. import price or relevant reference price of the agricultural product under consideration from 1986 to 1988, unless a clear justification is given that a different reference price is necessary to prevent or remedy serious injury. The secretary shall publish the list of trigger prices corresponding to each of the agricultural products covered by this Act, after the conduct of public hearings on the subject; and

(b) The special safeguard duty to be imposed subject to the conditions stated under Section 21 (b) of this Act shall be computed as follows:

(i) Zero, if price difference exceeds ten percent (10%) of the trigger price; or

(ii) Thirty percent (30%) of the amount by which the price difference exceeds ten percent (10%) of the trigger price, if the said difference exceeds ten percent (10%) but is at most forty percent (40%) of the trigger price; or

(iii) Fifty percent (50%) of the amount by which the price difference exceeds forty percent (40%) of the trigger price, plus the additional duly imposed under Section 24(b)(ii) if the said difference exceeds forty percent (40%) but is at most sixty percent (60%) of the trigger price; or

(iv) Seventy percent (70%) of the amount by which the price difference exceeds sixty percent (60%) of the trigger price, plus the additional duties imposed under Section 24 (b) (ii) and (b) (iii), if the said difference exceeds sixty percent (60%) and is at most seventy-five percent (75%) of the trigger price; or

(v) Ninety percent (90%) of the amount by which the price difference exceeds seventy-five percent (75%) of the trigger price; plus the additional duties imposed under Section 24 (b)(ii), (b)((iii), and (b)(iv), if the said difference exceeds seventy-five percent (75%) of the trigger price.

...

Following the principle laid down in *Lim*, there is an exercise of quasi-judicial power when an administrative agency is called to "... hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself ...".[61] The conditions that must be satisfied prior to the imposition of SSG duties is specified in RA 8800. Section 21 thereof uses the word "shall" in directing respondent Secretary to impose SSG measures when specific conditions are availing. The term "shall" is a word of command and one which has always or which must be given a compulsory meaning, and it is generally imperative or mandatory.[62] Considering that a quasi-judicial act requires the use of the administrative body's exercise of discretion, it can be said that in issuing D.O. No. 06, respondent Secretary did not exercise a quasi-judicial function.

At this juncture, a comparison of how the imposition of GSG and SSG is initiated would be in order. The pertinent provisions of Chapter II of RA 8800 read:

> ...
> **Section 5.** Condition the Application of General Safeguard Measure. – The Secretary shall apply a general safeguard measure upon a positive final determination of the Commission that a product is being imported in to the country in increased quantities, whether absolute or relative to the domestic production, as to be a substantial cause of serious injury or threat thereof to the domestic industry; however in the case of on- agricultural products; the Secretary shall first establish that the application of such safeguard measure will be in the public interest.
>
> **Section 6.** Initiation of Action Involving General Safeguard Measure. – **Any person, whether natural or juridical, belonging to or representing a domestic industry may file with the secretary a verified petition requesting that action be taken to remedy the serious injury or prevent the threat thereof to the domestic industry caused by increased imports of the product under consideration.**
>
> The petition shall include documentary evidence supporting the facts that are essential to establish:

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61 Supra.

62 *Alfonso Lacson v. Carmen San Jose Lacson, et al.*, G.R. No. L-23482, 30 August 1968.

1. An increase in import 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.

The sectary shall review the accuracy and adequacy of the evidence adduced in the petition to determine the existence of a *prima facie* case that will justify the initiation of a preliminary investigation within five (5) day from receipt of the petition.

The Sectary may also initiate action upon the request of the President; or resolution of the House or Sale Committee on Agriculture, or house Or Senate Committee on Trade and Commerce.

In the absence of such a petition, the Secretary may, *motu proprio*, initiate a preliminary safeguard investigation if there is evidence that increased imports of the product under consideration are a substantial cause of the threatening to substantially cause, serious injury to the domestic industry.

The Secretary may extend legal, technical and other assistance to the concerned domestic producer and their organization at all stages of the safeguard action.

Section 7. Preliminary Determination. – Not later than thirty (30) days from receipt of the petition or a *motu proprio* initiation of the preliminary safeguard investigation. The Secretary shall on the basic of the evidence and submission of the interested parties, make a preliminary determination that increased imports of the product under consideration are a substantial cause of or threaten to substantially cause, serious injury to the domestic industry In the process of conducting a preliminary determination the Secretary shall notify the interested parties and shall require them to submit their answer within five (5) working days from receipt of such notice. The notice shall be deemed received five (5) working days from the date of transmittal to the respondent secretary or appropriate diplomatic representative of the country of exportation or origin of the imported product under consideration.

When information is not applied within the above time limit set by the Secretary or if the investigation is significantly impeded, decision will be based on the facts derived from the evidence at hand.

Upon a positive preliminary determination that increased importation of the product under consideration is a substantial cause of, or threatens to substantially cause serious injury to the domestic industry the secretary shall without delay transmit its records to the Commission for immediate formal investigation.
...

Section 9. Formal Investigation. – **within five (5) working days from receipt of the request from the Secretary, the Commission shall publish the notice of the commencement of the investigation, and public hearing which shall afford interested parties and consumers and opportunity to be present or to present evidence, to respond to the presentation of other parties and consumers, and otherwise be heard.** The Commission shall submit evidence and position with respect to the importation of the subject article to the Commission within fifteen (15) days after the initiation of the investigation.

The Commission shall complete its investigation and submit its report to the Secretary within one hundred twenty (120) calendars days from receipt of the referral by the Secretary, except when the Secretary certifies that the same is urgent, in which case the Commission shall complete the investigation and submit the report to the Secretary within sixty (60) days.

Section 10. Inspection of Evidence. – **The Commission shall make available for inspection by interested parties, copies of all evidence submitted on or before the relevant due date:** Provided, however, That any information which is by nature confidential or which is provided on a confidential basis, shall, upon cause being shown, not be disclosed without permission of the party submitting it. Parties providing confidential information may be requested to furnish non-confidential summaries thereof or if such parties indicate that such information cannot be summarized, the reasons why a summary cannot be provided: Provided, further, That if the Commission finds that a request for confidentiality is not warranted and if that party concerned is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the Commissions may disregard such information unless it can be demonstrated to its satisfaction from appropriate sources that the information is correct.

Section 11. Adjustment plan. – In the course of its investigation, the Commission shall issue an appropriate notice to representatives of the concerned domestic industry or other parties to submit an adjustment plan to import competition, within forty-five (45) days upon receipt of the notice, except when the Secretary

certifies that the same is urgent, in which case the adjustment plan must be submitted within thirty (30) days.

If the Commission make an affirmative determination of injury or threat thereof individual commitments regarding actions such persons and entities intend to take to facilitate positive adjustments to import competition shall be submitted to the Commission by any (a) firm in the domestic industry, (b) certified or recognized union or group of workers in the domestic industry, (c) local community, (d) trade association representing the domestic industry, or (e) other person or group of persons.

Section 12. Determination of Serious Injury or Threat Thereof. – In reaching a positive determination that the increase in the importation of the product under consideration is causing serious injury or threat thereof to a domestic industry producing like products or directly competitive products, all relevant factors having a bearing on the situation of the domestic industry shall be evaluated. These shall include, in particular, the rate and amount of the increase in imports of the products concerned in absolute and relative terms, the shared of the domestic market taken by the increased imports, and changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment.

Such positive determination shall not be made unless the investigation demonstrates on the basis of objective evidence, the existence of the causal link between the increased imports of the product under consideration and serious injury or threat thereof to the domestic industry. When factors other than increased imports are causing injury, such injury shall not be attributed to increased imports.

Section 13. Adoption of Definitive Measure. – 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 (MAV) 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 measure, including into the provision of trade adjustment measure, including the provision of trade adjustment assistance;

(e) Any combination of actions described in subparagraphs (a) to (d).

The Commission may also recommend other actions, including the initiation of international negotiations to address the underlying cause of the increase of imports of the product, to alleviate the injury or threat thereof to the domestic industry, and to facilitate positive adjustment to import competition.

The general safeguard measure shall be limited to the extent of redressing or preventing the injury and to facilitate adjustment by the domestic industry from the adverse effects directly attributed to the increased imports: Provided, however, That when quantitative import restrictions are used, such measures shall not reduce the quantity of imports below the average imports for the three (3) preceding representative years, unless clear justification is given that a different level is necessary to prevent or remedy a serious injury.

A general safeguard measure shall not be applied to a product originating from a developing country if its share of total imports of the 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 imports.

The decision imposing a general safeguard measure, the duration of which is more than one (1) year, shall be reviewed at regular intervals for purpose of liberalizing or reducing its intensity. The industry benefiting from the application of a general safeguard measure shall be required to show positive adjustment within the allowable period. A general safeguard measure shall be terminated where the benefiting industry fails to show any improvement, as may be determined by the Secretary.

The Secretary shall issue a written instruction to the heads of the concerned government agencies to implement the appropriate general safeguard measure as determined by the Secretary within fifteen (15) days from receipt of the report.

In the event of a negative final determination, or if the cash bond is in excess of the definitive safeguard duty assessed, the Secretary shall immediately issue, through the Secretary of Finance, a written instruction to the Commissioner of Customs authorizing the return of the cash bond or the remainder thereof, as the case may be, previously collected as provisional general safeguard measure within ten (10) days from the date a final decision has been made: Provided, That the government shall not be liable for any interest on the amount to be returned. The Secretary shall not accept for

consideration another petition from the same industry, with respect to the same imports under consideration within one (1) year after the date of rendering such a decision.

When the definitive safeguard measure is in the form of a tariff increase, such increase shall not be subject or limited to the maximum levels of tariff as set forth in Section 401 (a) of the Tariff and Customs Code of the Philippines.

...

Section 19. Extension and Re-application of Safeguard Measure.

(1) Subject to the review under Section 16, an extension of the measure may be requested by the petitioner if the action continues to be necessary to prevent or remedy the serious injury and there is evidence that domestic industry is making positive adjustment to import competition.

(2) The petitioner may appeal to the secretary at least ninety (90) days before the expiration of the measure for an extension of the period by stating concrete reasons for the need thereof, and a description of the industry's adjustment performance and future plan. The secretary shall immediately refer the request to the Commission. Following the procedures required under Section 9, the Commission shall then submit a report to the Secretary not later than sixty (60) days from its receipt of the request. Within seven (7) days from its receipt of the report, the Secretary shall issue an order granting or denying the petition. In case an extension is granted, the same shall be more liberal than the initial application.

Section 20. Evaluation of Effectiveness of Action. – After termination of any action under Section 13, the Commission shall evaluate the effectiveness of the actions taken by the domestic industry in facilitating positive adjustment to import competition.

The Commission shall hold a public hearing on the effectiveness of the action at which all interested parties shall be afforded opportunity to present evidence or testimony.[63]

...

On the other hand, Chapter III of RA 8800 states:

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63 Emphasis supplied.

...

Section 21. Authority to Impose the Special Safeguard Measure. - The Secretary of Agriculture shall issue a department order requesting the Commissioner of Customs, through the Secretary of Finance, to impose an addition special safeguard duty on an agricultural product, consistent with Philippine international treaty obligations, if:

(a) Its cumulative import volume in a given year exceeds its trigger volume, subject to the conditions stated in this Act, in Section 23 below; or but not concurrently; and

(b) Its actual c.i.f. import price is less than its trigger price subject to the conditions stated in this Act, in Section 24 below.

Section 22. Initiation of Action Involving Special Safeguard Measure. – Any person, whether natural or juridical, may request the Secretary to verify if a particular product can be imposed a special safeguard duty subject to the conditions set in Section 21 of this Act. The request shall include data which would show that the volume of imports of a particular product has exceeded its trigger volume or that the c.i.f. import price of a particular product has gone below its trigger price. The Secretary shall come up with a finding within five (5) working days from the receipt of a request.

The Secretary may, *motu proprio,* initiate the imposition of a special safeguard measure following the satisfaction of the conditions for imposing the measure set in this Chapter.

...

A cursory reading of the provisions of Chapter II of RA 8800 would readily show that the imposition of GSG is initiated *via* a verified petition accompanied by evidence of the need to impose GSG on a certain commodity. Although respondent Secretary may *motu propio* make a preliminary investigation, he is still, nevertheless, required to hold public hearings and receive evidence on the matter (prior to determining whether serious injury or threat to the domestic industry exists requiring thus definitive measures to be taken on the importation of certain commodities).

This is in stark contrast to Chapter III where SSG measures are initiated by a mere request from an interested party not to impose SSG but for respondent Secretary "to verify if a particular product can be

imposed a special safeguard duty". Put simply, an interested party only requests from respondent Secretary to check whether the conditions for imposing SSG duties are present. Such request need not be verified nor accompanied by evidence. In the alternative, respondent Secretary may also *motu propio* impose SSG measures once the conditions for its imposition are prevalent which, in this case, is the breach of the trigger price in accordance with Section 21(b) in relation to Section 24 of RA 8800. Unlike in Chapter II thereof, the imposition of SSG measures does not require a preliminary investigation, hearing, nor an appreciation of the evidence submitted by an interested party. This is precisely the reason why the imposition of SSG measures is not done through a ruling or decision but through the issuance of a department order requesting the COC to execute said measures.

This is telling as it clearly shows that the imposition of GSG measures requires respondent Secretary to first hear and determine the factual basis (*i.e.,* the existence of serious injury or threat to the local industry) for the imposition of said measures. On the other hand, in imposing SSG measures, the mere existence of the conditions for its imposition triggers the duty of respondent Secretary to impose the same. Considering the foregoing, it becomes more glaring that D.O. No. 06's issuance was not a quasi-judicial act or a result of the performance of a quasi-judicial power or function.

As held in *Lim*, quasi-legislative power is the authority "to make rules and regulations that results in delegated legislation that is within the confines of the granting statute and the doctrine of non-delegability and separability of powers".[64] On this note, the issuance of D.O. No. 06 was clearly within the bounds of respondent Secretary's delegated powers as specified by the legislative in RA 8800. In other words, D.O. No. 06 is *not* a decision or ruling *but* a form of subordinate legislation (or at the very least a ministerial act of respondent Secretary).

With the above disquisition, the Court finds that the exhaustion of administrative remedies does not apply in challenging the validity of D.O. No. 06. However, whether the present petition is the proper remedy for petitioner's present plight is another matter.

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64 Supra at note 56.

To recall, respondent Secretary issued D.O. No. 06 on 16 March 2018. Pursuant thereto, the COC issued CMC No. 76-2018. Thereafter, CMC No. 156-2018 was issued and a copy of which was received by petitioner with an AN for payment of SSG on 17 August 2018. As the records show, petitioner has considered its receipt of a copy of CMC No. 156-2018 and the AN as its reckoning point for filing the present petition.

Additionally, Section 11(a)(7) of RA 1125, as amended, and Section 3(a)(6), Rule 4 of the RRCTA both deem appealable to this Court the "decisions" of respondent Secretary on matters of safeguard duty imposition pursuant to RA 8800. As previously explained, D.O. No. 06 is *not* a decision as contemplated under the above provisions.

It is likewise well to note that petitioner is not disputing the COC's assessment. Its prayer is mainly for the nullification of D.O. No. 06 itself on the ground that the latter's issuance violated international treaties. Though the Court has not shied away from invalidating administrative issuances as an incident to the proper and orderly adjudication of cases brought before it, it can only do so if its jurisdiction over the case is established clearly.

As it is, petitioner has not shown any ground on which the Court may anchor its jurisdiction and consequently, exercise its power of appellate review. It cannot be gainsaid enough that jurisdiction must exist as a matter of law.[65] RA 1125, as amended, limits the scope of this Court's jurisdiction only to "decisions" rendered by respondent Secretary. Therefore, since D.O. No. 06 is neither a decision nor ruling as contemplated by statute, any action or decision on the merits that this Court will make in this case would be void for lack of jurisdiction.

Assuming that the enactment of D.O. No. 06 was indeed a quasi-judicial act, then respondents would be correct in alleging that petitioner's petition would be premature. The Court notes that Section 28 of RA 8800 places a limit on the effectivity of an SSG measure. Section 28 of RA 8800 reads, thusly:

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[65] G.R. No. 251177, 08 September 2020.

...

Sec. 28. *Duration of Special Safeguard Measures.* - The special safeguard measures for agricultural products **shall lapse with the duration of the reform process in agriculture as determined in the WTO. Thereafter, recourse to safeguard measures shall be subject to the provisions on general safeguard measures as provided in Chapter II of this Act.**[66]

...

Article 20 of WAA states that:

...

Article 20
Continuation of the Reform Process

Recognizing that the long-term objective of substantial progressive reductions in support and protection resulting in fundamental reform is an ongoing process, Members agree that negotiations for continuing the process will be initiated one year before the end of the implementation period, taking into account:

(a) the experience to that date from implementing the reduction commitments;

(b) the effects of the reduction commitments on world trade in agriculture;

(c) non-trade concerns, special and differential treatment to developing country Members, and the objective to establish a fair and market-oriented agricultural trading system, and the other objectives and concerns mentioned in the preamble to this Agreement; and[,]

(d) what further commitments are necessary to achieve the above-mentioned long-term objectives.

...

As of date, the WTO has not made any reforms or decisions abolishing the imposition of SSG. Neither have the conditions for its imposition been modified. Article 5[67] of the WAA remains effective and intact, and is sufficient basis for the Philippines' imposition of SSG.

[66] Emphasis supplied.
[67] Supra at note 56.

To the mind of the Court, it is only after the WTO makes a definitive ruling to remove the State's right to impose SSG that an action under the procedures of Chapter II of RA 8800 on GSG can be resorted to. Hence, at this point, to challenge D.O. No. 06 by way of appeal would be premature given that the WTO's reform process (at least on the issue of the need for SSG is concerned) has not yet ended.

Further assuming that the Court could take cognizance of this case as it is vested with jurisdiction, petitioner has still failed to prove that its products should not be considered covered by D.O. No. 06. Aside from Atty. Uvero's expert testimony that the 1986 to 1988 reference price of instant coffee only covers 100% ground coffee and not mixtures of coffee, sugar, and creamer, petitioner has not presented other evidence to corroborate this theory.

As the records so yield, petitioner also admitted in its petition that its "Kopiko 3-in-1" products are all classified under "heading 21.01"[68] of the AHTN, as follows:

...

Hdg. No.	AHTN Code 2017	Description
21.01		Extracts, essences and concentrates, of coffee, tea or mate, and preparations with a basis of these products or with a basis of coffee, tea or mate; roasted chicory and other roasted coffee substitutes, and extracts, essences and concentrates thereof.
		- Extracts, essences and concentrates, of coffee, and preparations with a basis of these extracts, essences or concentrates or with a basis of coffee:
	2101.11	- - Extracts, essences and concentrates:
	2101.11.10	- - - Instant coffee :
	...	...
	2101.11.90	- - - Other :
	...	...
	2101.12	- - Preparations with a basis of extracts, essences or concentrates or with a basis of coffee :
	2101.12.10	- - - Mixtures in paste form with a basis of ground roasted coffee, containing vegetable fats :
	...	...
		- - - Other :

68 Chapter 21. Miscellaneous edible preparations.

	2101.12.91	- - - - Coffee preparation with a basis of extracts, essences or concentrate containing added sugar, whether or not containing creamer :
	...	...
	2101.12.92	- - - - Coffee preparation with a basis of ground roasted coffee containing added sugar, whether or not containing creamer :
	...	...
	2101.12.99	- - - - Other :
	...	...
	2101.20	- Extracts, essences and concentrates, of tea or maté, and preparations with a basis of these extracts, essences or concentrates or with a basis of tea or maté :
	2101.20.20	- - Tea extracts for the manufacture of tea preparations, in powder form :
	2101.20.30	- - Preparations of tea consisting of a mixture of tea, milk powder and sugar :
	2101.20.90	- - Other :
	2101.30.00	- Roasted chicory and other roasted coffee substitutes, and extracts, essences and concentrates thereof :

...

Such products are among the commodities on which D.O. No. 06 imposes SSG Duty. The respondent Secretary's authority to enact the same is provided for under RA 8800 and such remedy is recognized under Article 5 of the WAA. To reiterate, no hearing is required for the imposition of SSG under RA 8800 nor does Article 5 of WAA require the same. The only hearing required under Section 24 of RA 8800 is a public hearing for the determination of the trigger price.

However, as proven by respondents, after the enactment of RA 8800, publications in newspapers (namely The Philippine Star and Business as Usual issued on 21 March 2002[69] and 03 June 2002[70], respectively) were made as notice of public hearings for the determination of trigger prices for agricultural products. After a public consultation, the determined trigger prices were all published in The Philippine Star on 07 August 2002[71] wherein products falling under "extracts, essences and concentrates, of coffee" and "preparations with a basis of extracts, essences or concentrates or with a basis of coffee" were given a trigger price of ₱203.74 *per* kilogram.

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69 Exhibit "R-9", Division Docket, Volume IV, p. 1702.
70 Exhibit "R-10", id., p. 1703.
71 Exhibit "R-12", id., p. 1713.

As *per* the DA's 16 March 2018 Memorandum[72], petitioner's products (and the like) have all breached their respective trigger prices. The records show that petitioner presented countervailing evidence to prove that the findings therein are incorrect. Therefore, absent any evidence to the contrary, the presumption that such official duty has been regularly performed will stand.[73]

With Court's findings that it has no jurisdiction over the present petition, it shall no longer belabor itself with a detailed discussion of the other issues raised as it will no longer change the outcome of this case.

WHEREFORE, the foregoing considered, the Amended Petition for Review filed by petitioner Ecossential Foods Corp. on 20 November 2020 is **DISMISSED** for lack of jurisdiction. Accordingly, with the petition's dismissal, petitioner's Urgent Motion for the Suspension of Collection of Tax Liability filed on 26 February 2019 and all other pending incidents have been rendered **MOOT**.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice

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72 Exhibit "R-3", id., pp. 1453-1455.
73 Revised Rules on Evidence, Rule 131, Section 3(m).

ATTESTATION

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Special 2nd Division Acting Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice