EN BANC

G.R. No. 211146 – SECRETARY PROCESO J. ALCALA, AS SECRETARY OF THE DEPARTMENT OF AGRICULTURE, AND AS CHAIRMAN OF THE NATIONAL FOOD AUTHORITY COUNCIL, AND THE BUREAU OF CUSTOMS, REPRESENTED BY COMMISSIONER JOHN PHILLIP P. SEVILLA, Petitioners, **v. HONORABLE JUDGE EMMANUEL C. CARPIO, IN HIS CAPACITY AS PRESIDING JUDGE OF BRANCH 16, REGIONAL TRIAL COURT IN DAVAO CITY, AND JOSEPH MANGUPAG NGO,** Respondents.

G.R. No. 211375 – SECRETARY PROCESO J. ALCALA, AS SECRETARY OF THE DEPARTMENT OF AGRICULTURE, AND AS CHAIRMAN OF THE NATIONAL FOOD AUTHORITY COUNCIL, AND THE BUREAU OF CUSTOMS, REPRESENTED BY COMMISSIONER JOHN PHILLIP P. SEVILLA, Petitioners, **v. HONORABLE JUDGE CICERO D. JURADO, JR., IN HIS CAPACITY AS PRESIDING JUDGE OF BRANCH 11, REGIONAL TRIAL COURT IN MANILA, DANILO G. GALANG, DOING BUSINESS UNDER THE NAME AND STYLE ST. HILDEGARD GRAINS ENTERPRISES, AND IVY M. SOUZA, DOING BUSINESS UNDER THE NAME AND STYLE BOLD BIDDER MARKETING AND GENERAL MERCHANDISE,** Respondents.

Promulgated:
April 11, 2023

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CONCURRING OPINION

LEONEN, *J.*:

The trial courts' injunction against the customs collector and in favor of the illegal rice shipment, favored rice smugglers to the detriment of the Filipino farmer and sets to zero the country's tariffs on our most essential agricultural and food product, rice.

This Court exercises caution from making pronouncements which may undermine the various protections given to a developing country such as ours, under the principle of special and differential treatment, won through several rounds of negotiations that culminated in trade agreements and special exemptions.

As the *ponencia* aptly discussed, the international plane has generally accorded the Philippines protection and repeatedly granted the country special exemptions on treaty obligations concerning our staple commodity.[1] Accordingly, courts should not stand in the way and strip us of this protection, especially when the domestic plane likewise implements protectionist policies.

For this Court's resolution are consolidated petitions challenging Regional Trial Court Orders[2] which issued a writ of preliminary injunction that enjoined Bureau of Customs District Collectors from seizing illegal rice shipments and directing their release to respondents.

In 2014, when petitioners brought these cases before this Court, we issued a Temporary Restraining Order, restraining the concerned judges from implementing their orders to release the rice shipment, even if the seized goods were perishable.

I join the majority in maintaining this position, granting the petitions, and upholding the restraining order we previously issued. Appreciating the import of domestic regulations, this Court, through the esteemed Justice Jhosep Y. Lopez, resolved to dissolve the writ of preliminary injunction that the courts below issued.

I

Rule 58, Section 3 of the Rules of Court lists the grounds when a writ of preliminary injunction may be granted:

> SECTION 3. *Grounds for issuance of preliminary injunction.* — A preliminary injunction may be granted when it is established:
>
> (a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring performance of an act or acts, either for a limited period or perpetually;
>
> (b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or
>
> (c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

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1 Decision, pp. 3–5, 23–27.
2 *Id.* at 2.

The following requisites must be established for a writ of preliminary injunction to be issued:

> (1) The applicant must have a clear and unmistakable right to be protected, that is a right *in esse*;
>
> (2) There is a material and substantial invasion of such right;
>
> (3) There is an urgent need for the writ to prevent irreparable injury to the applicant; and
>
> (4) No other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury.[3]

When deliberating on the issuance of a writ of preliminary injunction, trial courts must exercise great caution.[4] "A court should, as much as possible, avoid issuing the writ, which would effectively dispose of the main case without trial and/or due process."[5] When trial courts fail to do so, and gravely abuse their discretion, this Court may intervene.

Grave abuse of discretion is the "arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or a capricious exercise of power that amounts to an evasion or a refusal to perform a positive duty enjoined by law or to act at all in contemplation of law."[6]

Spouses Nisce v. Equitable PCI Bank[7] explained that parties applying for injunctive relief must show their "present and unmistakable right to be protected; that the facts against which injunction is directed violate such right; and there is a special and paramount necessity for the writ to prevent serious damages."[8] Litigants must justify their prayer for an injunction pending final judgment, and it should not be issued "if there is no clear legal right materially and substantially breached from a *prima facie* evaluation of the evidence of the complainant."[9]

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3 *Bicol Medical Center v. Botor*, 819 Phil. 447, 458 (2017) [Per J. Leonen, Third Division] *citing St. James College of Parañaque v. Equitable PCI Bank*, 641 Phil. 452, 466 (2010) [Per J. Velasco, Jr., First Division]. *See also Biñan Steel Corporation v. Court of Appeals*, 439 Phil. 688, 703–704 (2002) [Per J. Corona, Third Division]; and *Hutchison Ports Philippines Ltd. v. Subic Bay Metropolitan Authority*, 393 Phil. 843, 859 (2000) [Per J. Ynares-Santiago, First Division].

4 *Spouses Nisce v. Equitable PCI Bank*, 545 Phil. 138, 160 (2007) [Per J. Callejo, Sr., Third Division].

5 *Boncodin v. National Power Corp. Employees Consolidated Union*, 534 Phil. 741, 759 (2006) [Per C.J. Panganiban, *En Banc*], *citing* 1 F. REGALADO, REMEDIAL LAW COMPENDIUM, 639 (7th revised ed., 1999); *Bayanihan Music Phil., Inc. v. BMG Records (Pilipinas)*, GR No. 166337, March 7, 2005, [Notice, Third Division]; *Ortigas & Company Limited Partnership v. Court of Appeals*, 688 Phil. 367 [Per J. Abad, Third Division].

6 *Ong Lay Hin v. Court of Appeals*, 752 Phil. 15, 22 (2015) [Per J. Leonen, Second Division], *citing Lagua v. The Hon. Court of Appeals*, 689 Phil. 452 (2012) [Per J. Sereno, Second Division].

7 545 Phil. 138 (2007) [Per J. Callejo, Sr., Third Division].

8 *Id.* at 160 *citing Searth Commodities Corporation v. Court of Appeals*, G.R. No. 64220, March 31, 1992 [Per J. Gutierrez, Jr., Third Division].

9 *Bicol Medical Center v. Botor*, 819 Phil. 447, 457 (2017) [Per J. Leonen, Third Division].

Boncodin v. National Power Corp. Employees Consolidated Union[10] explained:

> A *clear legal right* means one clearly founded in or granted by law or is enforceable as a matter of law.
>
> Absent any *clear and unquestioned legal right*, the issuance of an injunctive writ would constitute grave abuse of discretion. Injunction is not designed to protect contingent, abstract or future rights whose existence is doubtful or disputed. It cannot be grounded on the possibility of irreparable damage without proof of an actual existing right. Sans that proof, equity will not take cognizance of suits to establish title or lend its preventive aid by injunction.[11] (Citations omitted)

Here, I agree with the majority that private respondents failed to establish their clear and unmistakable right to be protected by the injunction they sought.

There is no inherent right that allows an individual or enterprise to import rice. It is not a fundamental right, nor is it found in law. On the contrary, the government has been implementing protectionist policies where the State grants licenses, *a mere privilege*, to permit limited importation of rice, clearly imposing restrictions.

We recall the antecedents.

In 1972, Presidential Decree No. 4, later amended by Presidential Decree Nos. 699 and 1485, created the National Grains Authority. In implementing government policies and regulations on grains, including rice, it was empowered to institute a licensing mechanism for their importation:

> Sec. 6. Administration Powers, Organization, Management and Exemptions. . . .
> (xii) *to establish rules and regulations governing the importation of rice,* corn and other grains and their substitutes and/or by-products/end products *and to license, impose and collect fees and charges for said importation* for the purpose of equalizing the selling price and such imported grains and their substitutes and/or their by-products/end products with the normal prevailing domestic prices. (Emphasis supplied)

In 1981, Presidential Decree No. 1770 reconstituted the agency to the National Food Authority, broadened its scope to other basic food commodities, and increased its powers.

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[10] 534 Phil. 741 (2006) [Per C.J. Panganiban, *En Banc*].
[11] *Id.* at 754.

In 1995, the Philippines joined the World Trade Organization. Republic Act No. 8178, or the "Agricultural Tariffication Act of 1996," was enacted to comply with the country's treaty obligations. It declares:

> Section 2. *Declaration of Policy.* – It is the policy of the State to make the country's agricultural sector viable, efficient and globally competitive. The State adopts the use of tariffs in lieu of non-tariff import restrictions to protect local producers of agricultural products, *except in the case of rice, which will continue to have quantitative import restrictions.* (Emphasis supplied)

Pursuant to these enabling laws, the National Food Authority has since been regulating the importation of rice into the country through various issuances which impose restrictions. When the smuggled rice subject of the cases were seized, Memorandum Circular No. AO-2K13-03-003 was in effect. This outlines the guidelines for the issuance of an import permit for enterprises, their allocation, and the countries from which we may import rice.

It is undisputed that private respondents had no permit to import the rice that they had shipped into the country, which is in clear violation of the rule. While respondents sought to establish their supposed rights over the goods, they missed the point that rice importation is heavily regulated, and their shipment was illegal without the license required by law. It is irrelevant whether they owned, or eventually gained ownership of the goods.

Respondents hinge their right on the shipped goods based on the pending request of the Philippines for an extension of its special treatment and exemptions before the World Trade Organization. "The WTO Special Treatment was the only source of the Philippines' right to impose quantitative restrictions by way of import permits and permit quotas."[12] This is wrong, as likewise clarified in the *ponencia*. I appreciate the *ponencia's* framework in resolving the issue:

> A review of R.A. No. 8178, enacted after the Philippines' concession to the WTO Agreement, reveals that it does not contain any sunset clause to indicate that the effectivity of the quantitative restrictions on rice were contingent on external events outside the scope of the text of the law, i.e., the grant or denial by the WTO of the Philippines' requests for special treatment. To hold the contrary that an expiry date on the effectivity of laws may be based on external, global events would produce a significant amount of instability to the State.
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> It was on the basis of this authority that the NFA issued the subject 2013 NFA Rice Importation Guidelines, which provided that all interested NFA-licensed importers may apply to import by submitting the enumerated company documents, obtaining a Certificate of Eligibility, payment of

[12] Decision, p. 7.

> duties/tariffs, obtaining a Notice of Allocation, submitting the enumerated shipment documents, and ultimately obtaining the Import Permit on a per bill of lading basis.
>
> Given legal foundations behind the NFA's requirements, this Court would be hard-pressed to declare the existence of a clear and unmistakable right to import rice regardless of adherence to the guidelines set by the NFA, which acted according to its mandate.[13]

A supposed conflict between the administrative regulations' requirement of a rice import license and the Philippine free trade commitments before the World Trade Organization unnecessarily muddled the issue. The district collectors were well within their authority when they seized the smuggled goods in violation of the provisions of Memorandum Circular No. AO-2K13-03-003.

Thus, private respondents' allegations did not warrant the issuance of a preliminary injunction, failing to prove any right to import. "A court may issue a writ or preliminary injunction only when the respondent has made out a case of invalidity or irregularity. *That case must be strong enough to overcome, in the mind of the judge, the presumption of validity*; and it must show a clear legal right to the remedy sought."[14] Respondent judges gravely abused their discretion when they issued the writ of preliminary injunction.

Republic Act No. 8178 and Memorandum Circular No. AO-2K13-03-003 enjoy the presumption of validity. The mere expiration of the special waivers extended to a developing country to implement tariffs on essential staples, like rice, under the Agreement on Agriculture does not *ipso facto* mean that our courts are under obligation to immediately allow unbridled importation of those goods without an enabling law imposing the tariff. It requires Congressional imprimatur to remove the exemption on rice tariffication, specifically imposing tariffs on rice importation, to amend these laws. The Agreement on Agriculture, while a source of international law, does not form part of the "generally accepted principles of international law"[15] that are automatically adopted as part of the law of the land.

Were it the opposite, this would effectively set to zero the tariff on our staple agricultural and food product.

II

Under Annex 2 of the World Trade Organization agreement governing settlement of disputes, the Dispute Settlement Understanding requires that any

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[13] *Id.* at 22.

[14] *Boncodin v. National Power Corp. Employees Consolidated Union*, 534 Phil. 741, 759–760 (2006).

[15] CONST., art. II, sec. 2. *See also Pangilinan v. Cayetano*, G.R. Nos. 238875, 239483 and 240954, March 16, 2021 [Per J. Leonen, *En Banc*].

state party, aggrieved by the alleged non-compliance with any of the annexed agreements—such as the Agreement on Agriculture—are to commence arbitration and establish dispute panels.[16] Indeed, this is the track of large developing countries like India as well as countries such as the United States and China.

Private respondents, who are individuals and business enterprises, have no personality to assail our supposed non-compliance with the World Trade Organization agreement, or invoke their provisions against the State. Dispute Settlement Understanding aims to promptly settle "situations in which a Member considers that any benefits accruing to it directly or indirectly under the covered agreements are being impaired by measures taken by another Member[.]"[17] This is "essential to the effective functioning of the [World Trade Organization] and the maintenance of a proper balance between the rights and obligations of Members."[18]

Noncompliance with trade rules is not a criminal act or a violation of international law per se. Rather, it can be the subject of acquiescence especially for markets that are as small as the Philippines,[19] and for products which are essential for our food security.

Nonetheless, even when the country is the subject of a complaint under the Dispute Settlement Understanding, there is no imposable penalty for noncompliance.[20] Under the treaty, the State will be asked to comply "within a reasonable period of time."[21]

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16 World Trade Organization, *Understanding on Rules and Procedures Governing the Settlement of Disputes*, Annex 2, arts. 6–12. *Available at* https://www.wto.org/english/docs_e/legal_e/28-dsu_e.htm (last accessed on December 12, 2023). Article 17 provides for appellate review by a standing Appellate Body.

17 World Trade Organization, *Understanding on Rules and Procedures Governing the Settlement of Disputes*, Annex 2, art. 3. *Available at* https://www.wto.org/english/docs_e/legal_e/28-dsu_e.htm (last accessed on December 12, 2023).

18 World Trade Organization, *Understanding on Rules and Procedures Governing the Settlement of Disputes*, Annex 2, art. 3. *Available at* https://www.wto.org/english/docs_e/legal_e/28-dsu_e.htm (last accessed on December 12, 2023).

19 World Trade Organization, *Understanding on Rules and Procedures Governing the Settlement of Disputes*, Annex 2, arts. 7–8. *Available at* https://www.wto.org/english/docs_e/legal_e/28-dsu_e.htm (last accessed on December 12, 2023). Provide concessions for developing countries.
If the matter is one which has been raised by a developing country Member, the DSB shall consider what further action it might take which would be appropriate to the circumstances.
If the case is one brought by a developing country Member, in considering what appropriate action might be taken, the DSB shall take into account not only the trade coverage of measures complained of, but also their impact on the economy of developing country Members concerned.

20 World Trade Organization, *Understanding on Rules and Procedures Governing the Settlement of Disputes*, Annex 2, arts. 21–22. *Available at* https://www.wto.org/english/docs_e/legal_e/28-dsu_e.htm (last accessed on December 12, 2023).

21 Annex 2 of the World Trade Organization Agreement, Dispute Settlement Understanding, article 21 provides:
Article 21, Surveillance of Implementation of Recommendations and Rulings
....
3. At a DSB meeting held within 30 days (11) after the date of adoption of the panel or Appellate Body report, the Member concerned shall inform the DSB of its intentions in respect of implementation of the recommendations and rulings of the DSB. If it is impracticable to comply immediately with the recommendations and rulings, the Member concerned shall have a reasonable period of time in which to do so. The reasonable period of time shall be:

Issuing the writs of preliminary injunctions against the customs district collectors, absent an order from the WTO Dispute Settlement Bodies (Panel or Appellate Body) grossly fails in fully appreciating the nature of trade agreements under international law, the dynamics of relationships of trading countries, and will put the Philippines at an unnecessary disadvantage in trade especially when it comes to our critical and essential food products.

Courts misunderstanding their judicial role as regarding trade agreements may potentially cause economic ruin and food insecurity, without the benefit of scrutiny by the political bodies. That is not an understatement.

ACCORDINGLY, I vote to **GRANT** the consolidated petitions, and vacate the assailed Regional Trial Court Orders issued in grave abuse of discretion.

MARVIC M.V.F. LEONEN
Senior Associate Justice

(a) the period of time proposed by the Member concerned, provided that such period is approved by the DSB; or, in the absence of such approval,
(b) a period of time mutually agreed by the parties to the dispute within 45 days after the date of adoption of the recommendations and rulings; or, in the absence of such agreement,
(c) a period of time determined through binding arbitration within 90 days after the date of adoption of the recommendations and rulings (12). In such arbitration, a guideline for the arbitrator (13) should be that the reasonable period of time to implement panel or Appellate Body recommendations should not exceed 15 months from the date of adoption of a panel or Appellate Body report. However, that time may be shorter or longer, depending upon the particular circumstances.